

BRIEF 40B REFORM EFFORT TIMELINE

1969: 40B became law, providing developers a zoning override in the form of the Comprehensive Permit. Under 40B, if the state or federal government provides a subsidy to a developer, 40B provides a streamlined zoning override. Initially used by non-profits and local and regional housing groups.

1998: As the result of a court case, the definition of “subsidy” expanded, allowing for private developers to build 40B projects. The number of 40B proposals exploded while the percentage of actual affordable units being built collapsed.

JULY 31, 2002: House and Senate approve so-called “40B Reform Bill.” During Senate debate, Sen. Pacheco predicts citizens will be protesting on steps of the State House if real 40B reform is not enacted. Sen. Hedlund applauded the veto by Gov. Swift. The bill in no way adequately addressed the real problems communities face.

OCT. 7, 2002: Gov. Swift makes regulatory changes to 40B.

FEB. 18, 2003: Gov Romney forms “40B task force.” Report released on June 13. Proposes reform legislation in October.

MAY 10, 2004: House approves “40B reform bill” that avoids major reforms but contains series of tweaks designed to quiet opposition from local communities. Senate does not take up bill.

OCT. 2005: Inspector General Gregory Sullivan launches investigation into 40B cost certification process. Finds that DHCD failed to ensure that hundreds of projects were even reviewed.

SEPT. 13, 2006: IG Sullivan informs MassHousing Executive director Thomas Gleason the cost certification process is “broken,” with developer profits “routinely and substantially understated.”

NOV. 2006- DEC. 2007: Inspector General Sullivan releases reports on five separate 40B projects that owe host communities millions of dollars in excess profits.

DEC. 2007: Inspector General Sullivan describes the cost certification abuse “one of the worst financial scandals in the state’s history.”

FEB. 2008: DHCD promulgates new regulations and guidelines regarding the cost certification process. Inspector General Sullivan restates opinion given to DHCD 5 months earlier that the new rules will just perpetuate the problem.

MAR. 27, 2008: Senate conducts first substantial debate on 40B issues since 2002. Rejects Hedlund amendments increasing the minimum affordable component to 33% and capping profits for homeownership projects at 10%.

APR. 10, 2008: Sens. Hedlund, Fargo, Moore, Timilty, Tisei, Tarr, Brown, Knapik sign letter asking Sen. Pacheco to order investigation into Inspector General Sullivan's findings.

JULY 2008: Without any public comment period, DHCD adopts new guidelines expanding project densities, limiting amount local boards can reduce project size, and removing a project's profit margin "floor."

SEPT. 18, 2008: Senate Post Audit & Oversight Committee holds public hearing into abuses of 40B law.

MAY 20, 2009: Senate approves budget amendment 37-1 allowing IG to convene special commission to recoup owed excess profits. Vote is reconsidered and amendment withdrawn in deference to June 1 release of Post Audit & Oversight Committee report.

MAY 9, 2010: Senate again approves a budget amendment allowing the IG to convene a special commission to recoup excess profits owed by 40B developers to municipalities. Unfortunately, the budget conference committee does not include this amendment in the final budget.

NOV. 2, 2010: Question 2 on the statewide ballot, which put the question of whether or not to repeal 40B directly to the voters, fails. Developers and the Real Estate Industry outspent Repeal 40B proponents by an 18-1 margin, spending \$1.15 million to defeat the repeal. Sen. Hedlund's district supported the repeal (54%), with Norwell having the highest level of support (67%).

MAY 12, 2011: Senate again approves (37-1) a Hedlund budget amendment allowing the IG to convene a special commission to recoup excess profits owed by 40B developers to municipalities. Once again, the budget conference committee excludes the amendment from the final budget.

JUNE 20, 2011: Sen. Hedlund and several other legislators send a letter asking the Budget Conference Committee to include Hedlund's amendment. Again, the budget conference committee does not include this amendment in the final FY 2012 budget.

OCTOBER 11, 2011: Bills sponsored by Sen. Hedlund that would reform Ch. 40B have public hearing before Housing Committee. Eventually, all 60 bills to reform 40B were sent to study.

MAY 23, 2012: Senate unanimously (38-0) approves a Hedlund budget amendment allowing the IG to hire an outside firm to perform an audit on any project under 40B built since 2004. Once again, the conference committee does not include it in the final budget.

JULY 30, 2013: Senate rejects Hedlund's 40B amendments to Housing Bond Bill, including one regarding wetland protection and another requiring DHCD to enforce all comprehensive permit conditions, use restrictions, covenants, and other related matters.

NOV. 19, 2013: Sen. Hedlund invites the Chairmen and Vice Chairmen of the Joint Housing to visit proposed 40B projects and to have discussion on the intentions and effects of 40B.

Below are a few examples of Senator Hedlund's legislative efforts (bills and amendments) over the last decade to stop, delay and reform various aspects of 40B...most have been repeatedly filed by Senator Hedlund.

A moratorium on 40B approvals until a study is conducted relative to maximum build-out.

A moratorium on 40B approvals until the Legislature completes its review of pending 40B legislation (Sen. Hedlund also successfully lobbied 27 legislators to sign a letter asking then Gov. Romney to do this administratively).

Allow local boards of appeals to condition and/or deny a comprehensive permit application on land that it deems unsuitable based upon engineering or environmental constraints...The Housing Appeals Committee could not overrule a decision by a local board of appeals that relies upon the language of the bill in its determination of suitability.

Require all affordable housing constructed through the 40B permitting process to remain affordable in perpetuity (or 99 years)...giving the local zoning board the sole discretion in waiving this requirement, providing there is still a minimum use restriction of 30 years.

Completely rewrite Sections 20 through 23 of Chapter 40B of the General Laws to 1) provide a more protection for open space and environmentally-sensitive land; 2) prevent sprawl that is the by-product under the current version of the statute; 3) limit untenable levels of density that may be proposed under current version of Chapter 40B; 4) ensure the availability and viability of local services; 5) ensure the oversight by viable subsidizing agencies; 6) provide attainable incentives for cities and towns to develop affordable housing; 7) limit unnecessary bureaucracy while providing a uniform and streamlined appeals process; 8) ensure that the effective and time-honored tradition of home rule and will be maintained; 9) preserve viable opportunities for well-intentioned developers with a vested interest in the construction of affordable housing.

Strengthen 40B cost certification program. Originally filed on behalf of the Inspector General...Senate Committee on Post Audit and Oversight verified the IG's findings that, due to lack oversight and regulations, many developers have been gaming the system...The IG found, and the Senate report confirmed, that developers routinely conceal profits, inflate land costs and construction expenses, and undertake other tactics to pocket excess profits that should be going to municipalities...requires that all projects must undergo an independent review using a CPA hired at random, not the contractor's CPA...requires that developers have to document their expenses...requires developers to file their cost certification reports under pains and penalties of perjury...gives communities more opportunity to review and question the cost certification reports...sets specific penalties for developers who fail to file, or are caught pocketing excess profits.

Allow the Inspector General to hire an outside firm to perform an audit on any project built under Chapter 40B since 2004...The independent auditor would be paid 10% of any recovery, with the remaining 90% going back to the municipality where the project was built...Would cost the state nothing, and could result in millions being returned to cities and towns.

Change certain 40B definitions to make sure focus of 40B remains on the construction of affordable housing...would increase mandatory affordable component to 35% for low-income projects and 50% for medium-income projects...would allow commercial or non-residential components so long as they do not exceed 15% of the project's total residential square footage... zoning board could allow larger non-residential component if the project meets smart-growth principles.

Codify what DHCD finally did in compiling a complete list of all 40B projects...making sure this wasn't a one-time effort that is soon forgotten.

Remove exemptions for 40B projects built in federally and state recognized historic district, which are not required to meet local building and construction guidelines concerning appearance, size, construction materials, etc. Local boards would not be able to deny a comprehensive permit application due solely to its location in an historic district. Instead, local boards would have the authority to adopt conditions that ensure projects meet local guidelines.

Any 40B project built within a state and federally-recognized historic district must go through an appropriateness review -- usually involving a local historic district commission -- and must meet specific conditions before a permit is approved...conditions include building height, architecture, construction materials, trim color...prevents black and gray, steel and glass commercial buildings from being built next to 250-year-old white clapboard homes, and churches.

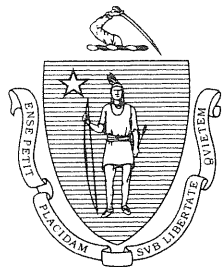
Place DHCD in charge of enforcing all comprehensive permit conditions, use restrictions, covenants, and other related matters. Currently no one is checking up on these projects and LHA are often understaffed and underfunded and unable to police these projects.

Require that 40B projects be built in accordance with local conservation bylaws and ordinances. (Endorsed by MMA and Sierra Club)...Currently, 40B projects must only meet state restrictions....Attempts to force 40B projects to meet local rules typically are appealed to the Housing Appeals Committee as an uneconomic condition...More than half of the communities within the Commonwealth have adopted wetlands bylaws and ordinances that are stricter than state rules.

Expand definition of affordable housing built through 40B to include units subsidized at local level, including those funded by CPA, housing authority, or town meeting. Projects currently can only use federal or state programs.

Cap density at 4 times underlying zoning or 8 units per acre, whichever is greater...this condition could not be appealed as an uneconomic condition...This cap was the acknowledged rule of thumb before DHCD passed new guidelines -- without public comment -- that allowed for between 8 and 160 units per acre depending on type of unit.... gave the local zoning board sole power to waive this cap under certain conditions.

Steps to further ensure focus of 40B remains on the construction of real, affordable housing...codify rules that 40B projects contain 20% affordable units for low-income projects and 25% for medium-income projects...cap the size of affordable units at 1,000 square feet for a 2-bedroom unit and 1,200 square feet for a 3-bedroom unit...require projected monthly utility costs for affordable units meet standards used by local Habitat for Humanity chapter.



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January 14, 2003



REDACTED:

Thank you for your recent letter concerning the proposed Chapter 40B development in the Town of Norwell. I join you in your opposition to this project, and have been working hard pass reforms to Chapter 40B in the legislature to stop developments like Tiffany Hill from negative impacting the quality of life in our neighborhoods.

Chapter 40B is a law that went into affect in 1969 with the noble intention of increasing the amount of affordable housing in Massachusetts. However, the law has ultimately proven to be a tool for developers to force large developments on towns who have otherwise rejected the proposal with limited success in increasing the amount of affordable housing in Massachusetts. I have been an outspoken critic of Chapter 40B over the past few years, and just last year I led the debate in the Senate on reforms to 40B. Unfortunately, those who resisted Chapter 40B reforms and advocated for the status quo prevailed. Ultimately, The Governor rightly vetoed their bill, and I am optimistic about the possibility for the passage of real reforms during this upcoming session.

In preparation for action this upcoming session, I have sponsored legislation to reform 40B that empowers local boards of appeals to review, restrict and reject these developments. I have also sponsored a measure that would put a moratorium on all 40B project proposals until such time as the legislature votes upon all pending 40B legislation for this session. As the developers are more and more frequently taking advantage of the 40B law to make a quick profit, more and more legislators are determined to make changes to this law.

I will continue to work against this development and am working closely to provide any and all assistance to the Norwell Board of Selectmen, the Zoning Board of Appeals and other town officials to protect the residents of Norwell from this intrusive project. It is clear that important quality of life issues for the surrounding neighborhood were ignored when creating the plan for these 66 units.

Again, thank you for your opinion on this matter. If you have any further questions or concerns, please feel free to contact my office.

Sincerely,

Robert L. Hedlund

State Senator - Plymouth/Norfolk District

Mansfield protest spreads

BY RICK FOSTER/ SUN CHRONICLE STAFF | Posted: Monday, March 24, 2003 12:00 am

MANSFIELD — When Selectman Mike McCue got fellow board members to back a suspension of the state's Chapter 40B affordable housing law, he wasn't sure whether other communities would go along. Still, he felt something had to be done about proliferating apartment projects taxing schools and services.

Now, however, the idea seems to have grown legs.

Locally, about a dozen legislators publicly backed a requested moratorium on new housing projects and eight communities formally backed the initiative. In addition, two South Shore legislators are circulating a letter asking Gov. Mitt Romney to suspend appeals of affordable housing projects denied by local communities.

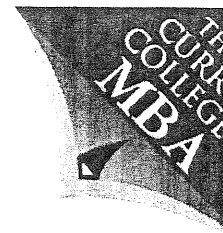
If approved, the action would effectively slap a hold on such projects.

State Rep. Garrett Bradley, D-Hingham, and state Sen. Robert Hedlund, R-Weymouth, are circulating the letter among all state legislators before submitting it to the governor.

“A lot of people have signed on,” said Bradley, who said he sees considerable sentiment in favor of the idea.

McCue started the ball rolling several weeks ago saying a temporary halt in the construction of Chapter 40B projects — which can leapfrog local zoning laws as long as at least 25 percent of their housing units are designated as affordable — was needed. At a time when towns are struggling with declining state aid and ballooning employee benefit and insurance costs, more affordable housing would place an even greater burden on schools and municipal services.

Bradley said he researched the issue and found that the governor lacks the power to order an out-and-out moratorium. But he could order that an appeals committee to stop hearing appeals from builders whose projects are rejected by local zoning boards.



Hedlund, selectmen talk tough about affordable housing law

By Matt Dunning
 GateHouse Media

Posted Feb 15, 2007 @ 01:09 PM

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Norwell — Last month, the Norwell Board of Selectmen demonstrated its support for two pieces of legislation currently under review at the State House, both of which would severely limit the number of Chapter 40B housing developments springing up in Massachusetts.

Board members voted Jan. 31 to back legislation filed by State Sen. Robert Hedlund, R-Weymouth, and State Rep. Richard Hargraves, R-Groton, signaling their collective disapproval of the state's affordable housing plan.

"The vote was not intended to minimize the importance or need to provide affordable housing," Selectman Donald Mauch said recently, "but rather convey the board's profound displeasure with the manner in which the state has attempted to orchestrate its development."

Earlier this year, both Hedlund and Hargraves filed legislative initiatives for consideration at the State House: one for an outright repeal of Chapter 40B, and the other for a moratorium on 40B applications.

Passed in the 1960s, Chapter 40B allows developers to get comprehensive permits for projects where a percentage of the units are deemed affordable, allowing them to circumvent local zoning bylaws. The law allows developers to build under 40B regulations if less than 10 percent of a town's available housing is deemed affordable.

Hedlund said the architecture of the law heavily favors developers looking to build densely populated housing units in communities all over Massachusetts, regardless of "whether or not the development is at all congruent with the nature of the community."

"What it does is take most of the control out of the hands of the communities and puts it in the hands of the [Massachusetts Department of Housing and Community Development,]" Hedlund said. "Town planning boards have no oversight, so you bypass a whole series of steps right there. Then, even if the local zoning boards reject a development, the developer can turn right around to the state and appeal

the decision, and typically the state's going to overturn that decision.

"In the years 40B has been on the books, I'd say about 20 percent of all ZBA denials were upheld," Hedlund added. "It just shows you how little local control there really is."

Hedlund said he and several other legislators — many of whom represent communities similar to Norwell in size and demographics — are interested in seeing a completely renovated law relative to affordable housing.

"It flies in the face of the tradition of local control and local government in New England," Hedlund said. "We should blow it up and start all over. All [the law] has done is create a lot of pain for communities, create a profit tool for developers, and it hasn't solved the affordable housing crisis in this state at all."

Reached for comment earlier this week, Selectman Richard Merritt did not mince words expressing his displeasure with the state's affordable housing laws.

"Chapter 40B, while perhaps once well intentioned, is one of the greatest legislative miscarriages of all time," Merritt said. "It is used as a weapon by developers who have no interest in affordable housing at all."

"At a minimum, a moratorium should be imposed until the law and its effects on small communities can be fully examined," Merritt added. "At a maximum, the state should get out of the housing mandate business altogether and let local communities exercise home rule."

If given a choice, Mauch said he'd rather see the state legislature rule in favor of the more drastic of the two initiatives and repeal Chapter 40B altogether.

"A full repeal of the law would allow a complete and thorough reassessment of if and how the state ought to be involved in mandating affordable housing," Mauch said. "Town and cities around the state have been 'raped and pillaged' by unscrupulous 40B developers whose only interest has been to line their pockets."

While Hedlund said he and Hargraves are not necessarily alone in their desire to see drastic changes made to the Chapter 40B laws, any significant action relative to 40B, he said, is little more than a pipe dream at present.

"Quite frankly, I don't see anything happening in this session," Hedlund said.

"Bottom line, we don't have enough numbers in the legislature," he added. "We don't have any sympathy from urban legislators, because their communities are already densely populated and they're really not concerned with protecting that."

Hedlund said support from rural communities has also been hard to come by, largely because those types of towns — many of them in the western part of the state — have ample land on which to accommodate 40B developments.

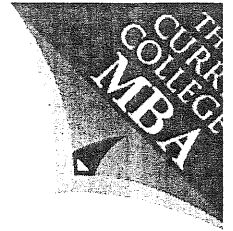
“We’re just not getting much understanding from the rural communities,” Hedlund said. “In towns like Norwell, Cohasset and Hingham, we’re at pretty much maximum build-out. They’ve got the space to take in some of these developments, but we don’t. If you talk with a legislator from a rural area, it’s not an issue.”

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Local legislators testify in favor of changes to 40B

GateHouse News Service

Posted Oct 23, 2007 @ 04:26 PM

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What's this?

BOSTON — State Sen. Robert Hedlund, R-Weymouth, State Rep. Frank Hynes, D-Marshfield, and State Rep. Garrett Bradley, D-Hingham, each testified today before the Joint Committee on Housing in favor of bills altering Chapter 40B, the state's so-called affordable housing law.

Developers who build projects under Chapter 40B, also known as the comprehensive permit law, are allowed to skirt local zoning and planning regulations in exchange for deeding between 20 and 25 percent of the built housing units as affordable according to state housing guidelines.

While the legislators support the need for affordable housing in their districts, they feel that Chapter 40B is not working; that the law is instead being abused by developers looking to maximize profits at the expense of the host communities.

"To me, the 'B' in 40B stands for 'broken,'" Hedlund said. "Too often Chapter 40B is being abused by unscrupulous developers with little interest in actually providing affordable housing. They hijack a well-intentioned law and use it to build as many units as they can, for as much money as possible, with little regard to the impact on the town."

Both Hedlund and Hynes have filed legislation calling for a statewide moratorium on projects proposed under Chapter 40B.

"It has been several years since the Senate has had a chance to debate this problematic law and until we do, I don't think its fair for the towns I represent to continue to be hammered by these projects," Hedlund said.

Hynes said previous attempts to review and reform 40B have never been fully implemented and never got to the core of the problems caused by the comprehensive permit law. He said projects built with

comprehensive permits can short-circuit a community's attempt at long-term planning.

"We recognize that a need exists for housing that is affordable, but with the wide latitude granted by the statute, the lack of objective oversight of a development's lasting impacts and a project's finances in many cases serve as an incentive for a developer to use 40B to their advantage," he said. "South Shore legislators are among the leaders in seeking responsible reforms to this unworkable law."

In addition to the moratorium, Hedlund has also filed a bill that would require 100 percent of all housing units built using a comprehensive permit to be classified as "affordable," up from the current requirement of 20 to 25 percent.

Bradley has filed bills that would expand the definition of affordable units, require a full audit by the inspector general's office of Chapter 40B project profit levels, and allow zoning boards of appeal to take into consideration the financial feasibility of projects.

"It is clear that 40B has not worked and has been abused," Bradley said. "I will continue to work with Representative Hynes and Senator Hedlund to allow our communities to have more of a say on potential projects. Many developers have been using loopholes in the 40B law to bypass local regulations and that is wrong. We must return some level of local control to communities."

Hynes has filed bills that would, among other things, commission a special panel to review 40B and make recommendations, redefine what would make a project proposed under the law "uneconomical", give more control over projects to cities and town.

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Lawmakers Call For Reform of Affordable Housing Law

By Catherine Williams

03:38PM / Sunday, October 28, 2007

State House News Service

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BOSTON - The state's chief housing official last week unveiled a proposal for a pilot program featuring incentives for cities and towns to adopt affordable housing projects.

The proposal, outlined by Undersecretary of Housing and Community Development Tina Brooks, would modify an existing affordable housing law, known as Chapter 40B. The proposal is a pilot program designed to reward municipalities for approving projects that create housing for low and moderate income individuals and families.

Administration officials said the proposal is an economic development tool designed to create housing for moderate income workers needed by employers. But critics of Chapter 40B oppose modifying the law and favor scrapping it.

"We believe the pilot program is an important step in the evolution of 40B," said Brooks, during her testimony at the Committee on Housing hearing today.

Since Massachusetts cities and towns are encouraged to maintain 10 percent of total housing supply as affordable housing, units are counted in each municipality. Under the pilot program a municipality would reach the quota with less total units if it designates both low- and moderate-income units.

It is unclear if the change would need to win approval from the Legislature because the proposal is in the early stages of crafting, said Philip Hailer, spokesman for the Department of Housing and Community Development.

In addition, Brooks said during her testimony that she is in the midst of a top-to-bottom review of the law and plans to make recommendations for changes to Chapter 40B to speed up the appeals process and update regulations based on recent court rulings.

State housing officials plan to submit regulation reform recommendations to the secretary of state's office by the end of the year in time for a public hearing about the proposed changes, said Hailer.

But the issue is complicated and affordable housing reform debate has plagued lawmakers for decades. Lawmakers and state officials who oppose the law said it needs an overhaul not just modification.

Even the state's inspector general, Gregory Sullivan, is weighing in on the topic. Sullivan is conducting an ongoing investigation of "wide-spread abuse" of one aspect of the law that sets profit caps for developers.

"This represents the biggest scandal in state history," Sullivan said in an interview.

Sen. Robert Hedlund, R-Weymouth, said Chapter 40B is "an abject failure" and would

support scrapping the law to craft and come up with something better.

"I would like some of these people to get out of policy papers spoon-fed by organizations such as CHAPA (Citizens' Housing and Planning Association) and talk to local officials who are on the front lines," said Hedlund.

Meanwhile, the housing committee's co-Chairwoman Sen. Susan Tucker, D-Andover, said Brooks' proposal is worth pursuing.

"We hear constantly from employers that we are losing talent because of the high cost of housing. We need a whole menu of solutions to keep the economy afloat," Tucker said in an interview.

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The Hedlund Report -- Fixing the 40B scandal

By State Sen. Robert Hedlund

GateHouse News Service

Posted Nov 14, 2007 @ 07:55 PM

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Marshfield — Late last month, the Joint Committee on Housing, on which I sit, held a hearing on proposed changes to Chapter 40B, our state's so-called affordable housing law.

This hearing is quickly becoming a biannual tradition, as a lengthy line of senators and representatives air their grievances, explaining how developers are taking advantage of giant loopholes in this well-meaning law and burying local communities and volunteer boards with these horrendous projects that do little but drain municipal resources.

And then "affordable housing advocates" get up and tell the panel how everything is fine and nothing needs to be changed. And then nothing is changed.

But as anyone living in my district knows, Chapter 40B has been an abject failure when it comes to providing true affordable housing for the region. As I told the Housing Committee during my testimony, the "B" in Chapter 40B stands for "broken."

Regardless of its progressive origins, the truth is that Chapter 40B is a 38-year-old law that has been hijacked by some unscrupulous developers interested in little more than maximizing profits under the guise of providing for the common good.

Here are some facts about the impact Chapter 40B has had on affordable housing:

- Although the number of housing units built under 40B has skyrocketed, the total number of affordable units in the state has decreased significantly.

- Prior to 1999, 36 percent of all units built under 40B were considered affordable. In 2006, that figure stood at 26.6 percent.

- Since 2003, cities and towns have produced an estimated 5,484 units of affordable housing. Over that same time, 40B projects have generated just 4,517 affordable units, but also resulted in an additional 20,000 market-rate units.

These figures come from Repeal 40B, a grassroots group trying to collect enough signatures to have a question placed on the 2008 state ballot allowing Massachusetts voters to decide whether the law should be eliminated from the books. The reason this group formed in the first place is because the Legislature has failed to address one of the most significant issues facing suburban communities today.

The House of Representatives, to its credit, did approve a bill in 2004 that made modest changes to the law, including increasing the type of housing that can be counted toward a community's affordable housing stock. But like with so many other issues, the Senate shirked its responsibility to take the issue up, and the bill subsequently died.

How important of an issue is this to suburban communities? So far 40 towns have signed on to an initiative asking the Legislature to institute a moratorium on 40B projects.

One of the two 40B bills that I filed, Senate Bill 760, would do just that. It's not just that 40B isn't the solution to our affordable housing needs; it's that the law is being blatantly abused.

State Inspector General Gregory Sullivan last year reviewed the financial paperwork of 10 randomly selected projects and found significant problems with seven of them. We're not talking about misplaced commas, or forgetting to carry a two. We're talking about improperly inflated construction costs, hidden profits through sweetheart deals with friends and business partners and other "accounting fictions," as Sullivan put it. The most concerning part is that a post-completion audit by a monitoring agent missed many of these problems. Among the findings were that several of the projects had actually exceeded the 20 percent profit margin cap and owed the host communities hundreds of thousands of dollars.

"Based on our review to date, it has become clear to this office that the cost certification and monitoring process is 'broken,'" Sullivan wrote. "Our review has revealed that reported developer profits were routinely and substantially understated. The results, in many cases, were profit windfalls to the developers which deprived the respective municipalities of the excess profits that should have been paid."

And in a recent interview with the State House News Service, Sullivan was quoted as saying the problems he has uncovered represent "the biggest scandal in state history."

Changes are needed, and until we in the Legislature do just that, I think it is unfair to ask our local communities to work under the current set of rules.

I also have proposed Senate Bill 758, which would require all housing units built under Chapter 40B to be reserved as affordable. I think we need to ensure that developers have the common good at heart before they propose throwing a town's zoning and building regulations out the window. Developers currently only have to set aside between 20 and 25 percent of the units built as affordable. That's a terrible cost/benefit ratio for host communities who are being forced to provide costly municipal services to housing developments they have little control over and receive minimal benefit from.

Only in Massachusetts can a development where 75 percent of the condos are sold for more than \$500,000 be considered an "affordable housing development."

No one doubts that we need more affordable housing, especially as median house prices continue to top \$300,000. But Chapter 40B is not the answer. Evidence continues to mount that for every 40B project that lives up to the law's lofty ideals, there are several others that are just bad for the residents of the commonwealth.

For more information on the effort to eliminate Chapter 40B, check out repeal40b.com.

Republican State Sen. Robert Hedlund represents the eight-town Plymouth-Norfolk District that includes: Hingham, Hull, Cohasset, Weymouth, Norwell, Scituate, Marshfield and Duxbury.

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SPEAK OUT: Greed not only the only flaw in Chapter 40B

Without major overhaul, voters could kill affordable housing law

By Robert Hedlund
The Patriot Ledger

Posted Sep 27, 2008 @ 02:15 AM

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QUINCY — I have listened to a lot of revealing testimony over the years as state senator, but without question the recent testimony of our state's Inspector General regarding his findings of fraud and abuse by developers utilizing the state's 40B law was some of the most shocking information presented on Beacon Hill.

At a hearing I requested as the ranking member of the Senate Committee on Post Audit & Oversight, Inspector General Gregory Sullivan testified that 40B developers likely owe cities and towns as much as \$100 million as a result of fraudulent behavior and a broken state oversight process.

And in addition to restating his opinion that 40B is one of the biggest scandals perpetrated upon Bay State taxpayers, the Inspector General also testified to the historic and ongoing reluctance by state housing officials to monitor the program or adopt any sort of meaningful reforms.

For example, the state has only reviewed 53 of the 220 40B projects completed since 1998 for excess profits and has no formal plans to audit the remaining 167.

Sullivan also drew attention to the state Department of Housing and Community Development's disturbing and frustrating habit of enacting significant policy changes through internal regulations and guidelines, often without public hearings.

These changes in policy are often completely dismissive, and sometimes counterproductive, to legitimate concerns being raised by communities, lawmakers and, in some cases, the courts.

It was telling that Housing Secretary Daniel O'Connell and Undersecretary Tina Brooks chose to spend most of their time defending the merits of 40B, rather than directly refuting the Inspector General's testimony.

The Patriot Ledger was correct in saying that developer greed alone isn't sufficient reason for lawmakers to pull the plug on Chapter 40B. But this is not simply about greed; this is also about the gross failure of 40B to create sufficient affordable housing in Massachusetts.

After 40 years with 40B, Massachusetts still ranks near the bottom in the country with regard to housing affordability. The number of communities considered affordable to first-time home buyers has plummeted since 1998.

And statistics show that more affordable housing has been created in Massachusetts over the past decade using alternative affordable housing plans than 40B.

In addition, the average percentage of affordable units in 40B projects has plummeted from 73.4 percent over the first 30 years of the law, to 29.7 percent between 2000 and 2006.

This is the biggest sign that 40B is now about maximizing developer profits, not creating affordable housing. The fraud is real. Excessive developer profits are real. The failure of 40B is real.

I am hopeful that this hearing will result in a legislative reform package that at the very least addresses the cost certification failures and roots out the fraud and abuse the Inspector General has documented. Otherwise, voters may take it upon themselves to repeal the law come 2010.

Sen. Robert Hedlund, who represents the Plymouth and Norfolk district, is a Republican member of the Senate Post Audit Committee. He lives in Weymouth.

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40B has placed a demand on cities and towns that they are ill-prepared to handle. Poverty often begets other social service needs; needs that cities are better equipped and funded to deal with because of federal grant programs and the like. When communities don't qualify for CDBG or other Fed programs, they lack the services/funding to deal with 'some' (not all) of the issues that are associated with introducing poorer people into a community that previously didn't require so many services.

40B needs a major overhaul - good intentions - bad results.

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South Shore legislators and town officials are accusing a state housing agency of failing to give adequate public notice of a hearing on possible changes to the state's affordable-housing law. Opponents say the proposed changes to Chapter 40B are far too weak.

The local legislators and officials say the Department of Housing and Community Development did "the bare minimum" to notify the public, legislators and organizations calling for stronger Chapter 40B reforms that the hearing would be held.

And a spokesman for the secretary of state's office said the agency failed to, as required, provide at least 48 hours' notice of the hearing, which was held Wednesday morning.

"There was nothing filed for the hearing today," the spokesman, Brian McNiff, said Wednesday.

(Editor's note: McNiff later said the agency is required to give notice of a public meeting, but not a public hearing.)

The hearing, at which fewer than a dozen people spoke, lasted a little more than a half-hour.

Chapter 40B exempts developers from much local regulation if at least 25 percent of the homes in a proposed development meet the definition of affordable housing, and if less than 10 percent of the town's housing stock is classified as affordable.

The hearing was supposed to allow the public to offer oral or written statements on key changes – such as establishing a 20 percent ceiling on 40B developers' profits – and suggest other reforms.

Norwell Town Manager James Boudreau is one of several 40B critics drafting a post-hearing statement this week.

"I've been working on a comment today," he said Wednesday. "Getting notification the day before certainly doesn't prepare you."

Boudreau found out about the hearing from a legislative aide to state Sen. Robert Hedlund, R-Weymouth, a member of the Legislature's Joint Committee on Housing, one of two committees that were notified.

This summer, frustrated Norwell residents staged a "Tea Party" protest by mailing tea bags to the governor's office, accompanied with calls for Chapter 40B reform. They criticized the law as "pro-developer" and "anti-home rule."

Boudreau said he would have liked for a board member to attend the hearing.

A spokesman for the Department of Housing and Community Development said the agency did as much as it could to let people know about the hearing.

The department has a public notice for the hearing posted on its Web site under "news and updates" for the week of Oct. 26.

It also placed legal ads in seven daily newspapers – including The Patriot Ledger – that ran one day in mid-October, said Phil Hailer, spokesman for the department. He also said the two legislative committees were notified.

"That's sort of standard procedure for any sort of public hearing for us," Hailer said.

But several officials disagreed, saying such notifications are routinely sent to legislators and news agencies by mail and e-mail.

"That may be their protocol, but it's not protocol for any other state agencies," Hedlund said.

He and state Rep. Garrett Bradley, D-Hingham, filed a joint statement to the department Tuesday afternoon.

Bradley said he believes several community groups would have been represented at the hearing had they known about it.

Geoff Beckwith, executive director of the Massachusetts Municipal Association, also worked on his post-hearing comment Wednesday.

"It's well-known that the MMA is an interested party, but we, unfortunately, did not receive notification," he said.

The Department of Housing and Community Development will accept written comments through Nov. 26, Hailer said.

Reach Nancy Reardon at nreardon@ledger.com.

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40B critiques from local legislators

- Language referring to “regional need” may open the door for developers to use 40B in towns that already meet their 10 percent affordable housing quota
- A revised definition of “uneconomic condition” unfairly places the burden to prove a project can’t be scaled down on the town, not the developer
- A definition of “reasonable return” appears to guarantee developers a 20 percent profit margin instead of capping it
- Language codifying the 20-25 percent minimum of affordable housing units in 40B developments should be included in the statute, not left to agreements between developers and subsidizing agencies

Source: Statement from State Sen. Robert Hedlund and Rep. Garrett Bradley

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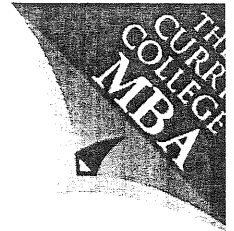
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Hedlund 40B legislation would give local boards more discretion

By Ed Baker

GateHouse News Service

Posted May 07, 2009 @ 01:53 PM

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Duxbury — Builders that construct apartments and homes for people under the state's 40B affordable housing law would not be allowed to bypass local wetlands protection laws under legislation proposed by Republican state Sen. Robert Hedlund of Weymouth.

"The 40B affordable housing law has not worked," said Hedlund, whose district includes Duxbury. "The statistics on most of the affordable housing reveals they were built by other means."

The other means mentioned by Hedlund refers to when builders had to heed the local zoning requirements while building homes before the passage of the 40B law in 1969.

Chapter 40B of state law allows a developer to apply for a comprehensive permit to build affordable housing in a community without having to heed local requirements such as conservation restrictions and density limits as long as the project is 25 percent affordable and the town has less than 10 percent affordable housing.

The zoning board of appeals in the community is responsible for approving or turning down a developer's application to build 40B housing under the statute.

"My bill would not allow the state Department of Housing and Community Development to bypass local wetlands protection bylaws," Hedlund said. "The other bill I've filed would not allow the state to bypass local historic districts or state historic district regulations or any local designations in a community when building a 40B project in a given area."

The proposed legislation would give local boards the option to waive the wetlands and historical title requirements. Members of the House Joint Committee on Municipalities and Regional Government recently reviewed Hedlund's legislation.

"The committee on municipalities heard two of my bills," Hedlund said. "I have some support from the state Senate chairman."

Hedlund is also proposing legislation that would require all 40B units to remain affordable for a minimum of 30 years. He said this requirement should be approved because communities have to give up some zoning rights when a developer seeks to build a 40B complex.

"It should be there for the long term," Hedlund said. "The project should not be a windfall profit for the developer."

Proponents of 40B say the statute has produced hundreds of necessary affordable housing developments that would not have been built under traditional zoning practices. Critics say the law only benefits developers because they often overbid when buying land for a complex, which drives up the price of nearby parcels and makes housing prices more expensive to buyers.

Hedlund said in a published report that he wants the Department of Housing and Community Development to keep track of all 40B projects in Massachusetts to determine how the affordable housing law is being implemented.

"These are incremental reforms," he said.

The legislation is being supported by Democratic state Rep. Jim Cantwell of Marshfield and Republican state Sen. Bruce Tarr of Gloucester.

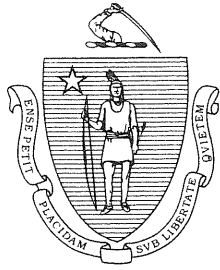
A recent State House News report states housing affordability in addition to employment outranks health care as a public safety concern to Massachusetts residents. The poll, conducted in late March, reveals one in four persons surveyed fearing they will fall behind on their mortgage payments during the next three months.

The survey also stated that 12.6 percent of those queried believe their home is worth less than what they owe on their mortgage and 64.4 percent said high housing costs are hurting the local economy.

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Dec. 21, 2009

Ms. Tina Brooks, Undersecretary
Department of Housing and Community Development
Commonwealth of Massachusetts
100 Cambridge Street, Suite 300
Boston, MA 02114

Undersecretary Brooks,

Please accept this letter as my written testimony on proposed regulatory changes to 760 CMR 56.00 – Comprehensive Permit: Low or Moderate Income Housing. I apologize for not being able to deliver this testimony in person, however, Gov. Patrick was in my hometown on a tour during the hearing.

I am urging the Department of Housing and Community Development (DHCD) to shelve these proposed changes, and instead draft new regulations that reflects the growing scandal involving the state's 40B program, as well as the legitimate concerns and criticisms voiced by legislators, town officials and local residents.

First, I would like to acknowledge two worthy changes proposed by DHCD in these draft regulations that were part of a package of recommendations included in the final report issued by the Senate Committee on Post Audit and Oversight, on which I serve. I support the inclusion of language in 56.04 Section 7c that states cost certification requirements be submitted under the pains and penalties of perjury, as well as the internal requirement in 56.04 Section 8f that DHCD maintain an inventory of all comprehensive permit projects, and whether they have filed their cost certification reports.

However, it is disappointing that it took a critical report from a legislative investigatory committee to inspire these two basic fundamental changes. It is because of DHCD's historical lack of executive oversight and accountability of a program that has received hundreds of millions of taxpayer dollars over the years that the state's Inspector General and Attorney General are now forced to bring lawsuits against developers in an attempt to recoup millions of dollars in money illegally pocketed in violation of state law and DHCD regulations.

While the Senate Committee's report did recommend defining "reasonable return" as a profit margin between 15% and 20%, I disagreed with that conclusion at the time and I urge DHCD to drop this definition, as contained within 56.04 Section 8c, as well. This 15% floor did not exist in any set of regulations or guidelines prior to its adoption by MassHousing in 2005, well after 40B became a favored program among developers. In addition, government should not be in the business of guaranteeing a minimum profit for a private business enterprise, which comprehensive permit projects remain despite the taxpayer subsidies. Since banks only require developers to demonstrate a profit margin of approximately 7% to obtain financing, a guaranteed 15% profit margin seems excessive.

This regulation also shifts the permitting process even more in favor of developers, as it further binds the hands of local boards to adopt conditions that are deemed critical by the host community. I, for one, reject the notion that a town's ability to protect its water supply, preserve its historic character, or prevent the straining of its infrastructure, should be subjugated so a developer can make a 15% profit on a housing development that traditionally consists of 75% market-rate units.

I also strongly object to the inclusion of new language expanding the definition of an "Uneconomic" condition to now state that a 5% reduction in the proposed number of units shall constitute a "rebuttable presumption that the developer will not be able to achieve a reasonable return and shift the burden of proof from the developer to the local board..." Again, DHCD continues to clearly display its bias in favor of developers by stating that a developer's profits are more valuable and important than a local board's ability to make a decision in the best interest of its community. This regulatory change also creates a significant new Catch-22 for the local boards. One on hand, DHCD has prohibited local boards from even looking at a project's basic financial statements prior to issuing project conditions. Yet DHCD is now requiring these same local boards to prove that these blindly-authored conditions won't impact a project's overall profitability.

The proposed regulations also ignore the Senate Committee's recommendation that DHCD properly define project density to reflect the traditional rule-of-thumb that projects do not exceed 8 units per acre, or 4 times the underlying zoning, whichever is greater. Instead, the regulations as proposed maintain the existing guideline definition of appropriateness as up to 40 units per acre for low-rise/townhouses, 70 units per acre for garden style apartments, and 160 units per acre for a mid-rise development. I agree fully with the Committee report that this definition, as currently worded, provides developers with legal protection to propose projects with outrageous and wholly inappropriate densities.

Finally, I am disappointed that DHCD, in the wake of multiple lawsuits brought by the Attorney General against developers caught pocketing excess profits, does not find the need to strengthen its existing cost certification guidelines. This oversight is particularly egregious since the state Inspector General, the person who has done most to shine light on these fraudulent practices, has stated publically on a number of occasions he feels the current guidelines will actually make the problems worse. It was also the conclusion of the Senate Committee report that the existing guidelines needed to be strengthened beyond merely requiring that cost certifications be

submitted under the pains of penalties of perjury, and specifically called on the adoption of my bill, S 646, An Act Relative to 40B Cost Certification.

However, despite a past willingness to make dramatic policy changes through the regulatory process, none of the reform provisions contained within my bill are reflected in these proposed regulations. There are still no specific sanctions for developers who flout existing cost certification guidelines, developers still don't have to provide any back-up materials to substantiate their filings, and communities still do not have any significant oversight role.

Frankly, I consider the proposed definitions of uneconomic and appropriate density, and the lack of action on the cost certification process, to be wholly unacceptable, unfair, and borderline spiteful towards our local communities. It reeks of arrogance on behalf of a state agency that shows little interest in listening to the legitimate concerns of the communities and citizens it represents. This feeling is hardened by the fact that DHCD chose to hold this hearing four days before Christmas, at a time of day when the average homeowner and volunteer town official is unable to attend. It is no wonder that enough resentment has built up among the voters of the Commonwealth that a question calling for the repeal of Chapter 40B will likely appear on the ballot next fall.

Again, I urge DHCD to shelve these proposed regulations and come back with new regulations that reflect the real and documented problems with this law, and will start to restore faith in a much-needed program.

Sincerely,

Robert L. Hedlund
State Senator
Plymouth/Norfolk District
Member, Senate Committee on Post Audit & Oversight
Member, Joint Committee on Housing

PatriotLedger.com

ROBERT L. HEDLUND, state senator: Chesto understated problems with state affordable housing laws

The Patriot Ledger

Posted Mar 26, 2010 @ 07:07 AM

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WEYMOUTH — While I appreciate the Patriot Ledger's efforts to not sensationalize the news, I do think that Jon Chesto's March 20 Mass Market column actually understates the seriousness of problems uncovered with Chapter 40B.

In his column, Chesto says simply that "concerns were raised" over whether developers were breaking the law and keeping an excessive amount of profits.

However, state Inspector General Gregory Sullivan's actual words upon the completion of his investigation – "the Commonwealth's biggest financial scandal of the past 20 years" – paint a more accurate picture of the extent of this problem.

More disturbing, however, has been the response to both the inspector general's findings, as well as last year's Senate Committee on Post Audit and Oversight report that I helped to initiate.

In the view of the inspector general, myself and other observers, the Patrick administration's Department of Housing and Community Development has merely legalized some of the identified problems through administration changes, while the Legislature remains complicit by its inaction.

Chesto does accurately point out that 40B has resulted in little growth in the number of affordable units in recent years, another reason why this law is drastically in need of reform.

ROBERT L. HEDLUND

Weymouth

State senator,

Plymouth and Norfolk District

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chasbogle

3 years ago

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Way to go Bobby - you get all my support.

HEDLUND REPORT: Herring Brook decision shows 40B's weakness

By Robert Hedlund

GateHouse News Service

Posted Apr 23, 2010 @ 02:37 PM

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Scituate — The recent state Housing Appeals Committee decision that forces the Town of Scituate to permit the controversial Herring Brook Meadow 40B project is further proof that the state's affordable housing law is broken and that the game is rigged in favor of developers.

Despite acknowledging that the development site routinely floods during coastal storms, and that several acres of fill must be hauled in just to make much of the land buildable, the committee still overturned the Scituate Zoning Board of Appeals' denial of the comprehensive permit.

The committee disregarded the facts on the ground in favor of theories from technical manuals. Sworn testimony from an abutter regarding the amount of floodwater that regularly inundates the property and the presence of wetland vegetation was simply dismissed as "not relevant" and not credible since she lacked the technical credentials of an engineer.

It is this dismissive, ivory-tower attitude that has Chapter 40B on the verge of being wiped off the books.

Many of those who continue to support 40B in its current form still believe it is a noble, progressive tool that forces "snobbish" communities to allow working-class families within their boundaries. However, as my constituents know, the reality is that this well-intentioned law has become hijacked by greedy developers solely interested in maximizing development densities and, as a result, maximizing their profits. This is why the percentage of affordable units built per development has plummeted over the past decade from more than 75 percent to less than 30 percent.

These same 40B preservationists continue to dismiss reports that 40B developers took advantage of lax state oversight to perpetuate a \$100 million fraud on our local communities as little more than collateral damage that should be ignored, and maybe even legalized. Tougher auditing standards, after all, would only dissuade developers from taking advantage of the law, they argue.

It's this same attitude that prompts state housing officials and the Housing Appeals Committee to dismiss local conservation bylaws as extensions of "snob zoning rules" rather than as a series of deliberate and eco-friendly measures designed to protect a community's natural resources.

The reason the Herring Brook Meadow property is considered a floodplain by the Town of Scituate is that 300 years of observation led local officials to determine the area is subject to frequent flooding. However, the committee's presiding officer agreed with the developer's engineers, who classified the property as no different than a hayfield with a depression in the middle of it.

I continue to try to address these issues here on Beacon Hill, hoping to restore some balance between developers and communities. For example, I have filed legislation requiring 40B projects to meet local wetlands rules, as well as regulations that govern formal historic districts. I have filed a major overhaul of the financial reporting requirements for 40B projects to ensure that developers play by the rules and don't cheat our towns. And I am pushing to recognize that not all affordable housing has to be located in newly constructed, state-subsidized luxury townhouse or condominium complexes — that accessory dwellings, mobile homes and Habitat for Humanity homes are affordable housing, too.

Chapter 40B is drastically in need of reform. However, those who support 40B, rather than working to make this law better, continue to circle the wagons and dismiss local concerns. It's this attitude that may ultimately lead to its repeal in November.

Republican State Sen. Robert Hedlund represents the eight-town Plymouth-Norfolk District that includes Weymouth, Hingham, Hull, Norwell, Cohasset, Scituate, Marshfield and Duxbury.

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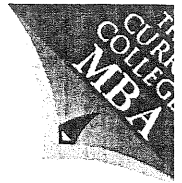
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Repeal sought for Massachusetts 40B affordable housing law

By Kyle Cheney

State House News Service

Posted May 03, 2010 @ 05:14 PM

Last update May 03, 2010 @ 05:16 PM

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What's this?

Boston — Arguing that more than 200 proposed bills to improve the state's chief affordable housing law had been left to die without debate in recent years, critics of the 41-year-old housing statute say their only remaining option is to seek its repeal.

Testifying before the Committee on Housing, advocates for repealing the law - Chapter 40B of the Massachusetts General Laws - say their years-old efforts at reform have been met with inaction, even as reports have emerged showing that the affordable housing law has been misused by developers.

Repeal advocates say the 1969 law has been mismanaged by the government and transformed into a "developers' welfare program."

"I'd like to put it next to an atomic bomb and blow it into as many little pieces as I can," said Greg Chemaly, director of the Slow Growth Initiative and a supporter of repealing a statute that some have called the anti-snob zoning law.

Chemaly was responding to opponents of repeal, who argued that repeal supporters are attempting to "blow up" the state's most successful tool for creating affordable housing.

Chapter 40B permits housing, condominium and apartment developers to skirt local zoning restrictions in communities that have not reached affordable housing thresholds if they guarantee that 20 to 25 percent of their units. Buyers of such properties must make less than 80 percent of the median income of the community that hosts the affordable units. Similarly, for rental units, only residents earning below 50 percent of the median income of the host city or town are eligible. Developers are limited to 20 percent profits of for-sale units and 10 percent profits on rentals.

The aim of the law is to bring the state's total affordable housing stock to 10 percent of available units.

Supporters of the law say 51 cities and towns have met that minimum threshold, most within the last decade. Four in five affordable units in Massachusetts have been created through 40B. Supporters of 40B also say the law has directly led to the creation of 58,000 affordable units since 1969. Without it, they argued, middle class workers and the elderly would be priced out of the Massachusetts housing market.

"No law is perfect ... there's more that can be done," said Tripp Jones, who is leading a coalition against repealing the law. "Unfortunately, we're here talking about whether we ought to blow up the state's primary tool to build affordable housing at a point in time where housing's as expensive and difficult to find."

Jones said reports of abuse were limited when compared to the more than 1,000 40B developments that have been completed over the years. He called the repeal effort a "reckless, radical proposal."

Prior to the hearing, Jones and his backers packed a separate State House hearing room and showcased a an array of supporters, including the Greater Boston Chamber of Commerce, Associated Industries of Massachusetts, the Greater Boston Real Estate Board, the Jewish Alliance for Law and Social Action, about 20 municipal leaders, five environmental groups, and advocates for seniors, veterans and people with disabilities.

Anti-repeal advocates boasted the support of the three leading candidates for governor, Democratic incumbent Deval Patrick, Republican Charles Baker and Independent Tim Cahill.

At their own rally prior, about two dozen supporters of repeal wielded signs in front of the State House that read "Stop destroying our neighborhood" and "Stop forced development (People before profit)."

"[40B] is a sledgehammer and it doesn't end up having more affordable housing. It's not working and we're pissed," said John Gersh, an Arlington resident. "I say it can't be fixed because the status quo is just getting too much out of this. And they're not going to fix it. They've given lip service to that for 40 years and it hasn't gone anywhere."

With no middle ground in sight, repeal advocates are poised to take their effort to the voters in November, and their opponents, led by Jones, are pulling together the coalition to preserve the existing law. Having already cleared earlier hurdles, proponents of repeal must now gather 11,099 signatures to place their question on the ballot in November.

Lawmakers remained largely silent during Monday's hearing, their last chance to weigh in before the issue heads to the ballot. The Legislature is required to hold hearings on ballot questions by the first Wednesday

in May. If lawmakers were to enact the proposed measure by that deadline, the ballot initiative could be obviated. Legislators are also permitted to offer an alternative proposal.

Just six members of the 16-member Committee on Housing attended all or part of the hearing. Other than a handful of clarifying questions, committee co-chairs - Rep. Kevin Honan (D-Brighton) and Sen. Susan Tucker (D-Andover) - said nothing during the hearing. Honan strictly enforced a three-minute time limit on testimony before he ducked out, about 2.5 hours into the hearing, to attend the governor's signing of anti-bullying legislation.

"Reform is an unrealistic dream through this committee," said John Belskis, the head of the repeal effort.

Belskis described legislative inaction on efforts to reform state housing laws as "embarrassing" and charged lawmakers with "abdication to the executive branch" their authority to manage housing policy.

Supporters of repeal said that over the past three legislative sessions, more than 200 bills had been filed to improve affordable housing policies and eliminate abuses.

Belskis headed a similar repeal effort in 2008 but failed to gather enough signatures to place it on the ballot.

The committee members that did weigh in during the hearing - Sen. Robert Hedlund (R-Weymouth) and Rep. William Greene (D-Billerica) - were sharply skeptical of the law and its benefits.

"40B has nothing to do with poor people. It has to do with profit," Greene said, responding to testimony from supporters of the law. "It is a horrible law. The only way that it's going to be changed is to be repealed."

Hedlund questioned advocates for realtors for opposing repeal but being reluctant to endorse reforms to 40B. He called on the realtor community to join critics of the law and work to change it.

Critics of the law say shoddy oversight has permitted developers to bilk cities and towns of millions of dollars, which they recorded as profits but actually should've been recouped to municipal coffers. That conclusion was endorsed by the state Inspector General Greg Sullivan, who issued a report in 2008 that found abuse in a handful 40B developments, which he estimated were overpaid \$6 million and had manufactured numerous expenses to report lower profits. Extrapolating that amount for all 40B projects, Sullivan, at the time, estimated that cities and towns may be owed as much as \$100 million.

In the same review, Sullivan found that just 53 of the hundreds of 40B developments that had taken place had gone through a "cost certification" process to determine the validity of developers' expenses.

At the time, the Patrick administration beat back his criticism, arguing they had implemented the law in an open and fair manner.

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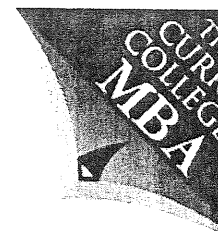
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jasbrown888
4 years ago
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This law should be blown to bits! Why should taxpayers have to supply welfare to developers which is exactly what is happening here. Those individuals who testified this morning in favor of 40B have everything to lose if the law is repealed. Tripp Jones states that no law is perfect and more can be done, however, LAWS SHOULD BE FAIR. The 40B law allows developers to come into a community and bully their way in. They ruin neighborhoods and compromise other properties. They are allowed to build on wetlands which not only create flooding issues but destroy animal/plant habitats. This law is a disgrace. I for one plan to vote it out when it gets on the ballot.
Random
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40B is indeed a bad law that should be repealed. It has allowed developers to destroy sensitive environmental wetlands as well as irreplaceable historic buildings. It is applied unevenly, with over-development crowded into neighborhoods that cannot afford to fight back against the banks, developers, and political cronies who support the real estate development machine. The chief beneficiaries are banks and developers; the losers are neighborhoods and homeowners. The 'low income' people who end up buying the 'affordable' condos are usually rich, smart, people who know how to game the system.
splem
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Hedlund bill calls for audit of 40B projects

By Matthew Nadler

GateHouse News Service

Posted May 27, 2010 @ 03:23 PM

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DUXBURY — Millions in revenue could be returning to cities and towns if all affordable housing projects completed since 2004 are subject to a state audit under a measure recently adopted by the state Senate.

"When the inspector general says this is the biggest financial scandal in the last 20 years, that's pretty significant in my opinion," said Republican state Sen. Robert Hedlund of Weymouth, who represents Duxbury.

The measure, which he filed, is part of the Municipal Relief Act, which is meant to offer municipalities financial relief. If the House adopts the measure to the bill, it could make its way to the governor's desk later in July, Hedlund said.

Under Chapter 40B, which is the state's affordable housing law, developers are allowed to bypass local planning and zoning regulations if the project is more than 25 percent affordable and the town has less than 10 percent affordable housing. Developers must file a cost certification report demonstrating that the project's profit margin did not exceed 20 percent.

"This is the first time we've moved the ball up the field on 40B," Hedlund said, noting that the measure was filed in response to ongoing revelations that some 40B developers routinely inflate expenses and deflate costs in an effort to pocket excess profits.

Gregory Sullivan, the state's inspector general, audited 10 random 40B cost certification projects in 2009 and found that six of them owed more than \$7 million to the cities and towns that they built in.

"This gives the IG the authority to do it," said Hedlund, referring to the cost certifications.

According to some of Sullivan's findings, fraudulent tactics used by those developers to artificially deflate profits included claiming to have paid workers an average of \$53 per hour, instead of the \$21 they actually received; claiming employees worked 125 days on-site, when they only worked 46; and paying a "rental fee" to use equipment the developers already owned.

Hedlund said future cost certifications could be conducted at no extra cost to the taxpayer.

"Ten percent of the excess profits will be used to fund the audit and 90 percent will go back to the host community."

Democratic state Rep. Jim Cantwell of Marshfield said legislators on both sides of the aisle are in agreement that 40B needs to be reformed.

"This is an important amendment that Bob got passed," he said, noting that he would be working with fellow House members to support the measure. "There's definitely a need to have this kind of work proceed."

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Ballot Question 2 is latest clash over Chapter 40B

The Lowell Sun Lowell Sun

Updated:

LowellSun.com

Second in a series

By Sarah Favot

Sun Correspondent

BOSTON -- A law that has created more than 20,000 housing units across the state since 2000 is under attack again, this time in Question 2, a ballot referendum to end the controversial Chapter 40B.

Supporters of the 41-year-old law say its repeal would have a devastating effect on affordable housing in the state. The advocates behind the referendum cite problems with the law, including lapses in accounting by developers who have been accused of working the system for financial advantage.

John Belskis, chairman of the Coalition to Repeal 40B, said the law is "abusive and it's not doing what it intended to do because it's in the pocket of bankers, real-estate developers."

But David Turcotte, director of the Institute for Housing Sustainability at UMass Lowell, calls it "irresponsible" to repeal the law.

"Based on development practices and zoning requirements, only a small percent of affordable housing would have been built without 40B," said Turcotte. "The state would have been in worse shape without 40B."

The law was intended to create affordable housing in cities and towns where less than 10 percent of housing meets the state's affordability formula. Massachusetts ranks as one of the worst states in affordable housing.

The Chelmsford Housing Authority has used the law to build more than 150 low-income elderly housing units over the past decade, according to Executive Director David Hedison.

Hedison said many think that developers have a "pigfest" with 40B, but he has seen regulations put in place that have created more oversight.

"It's a whole different day regarding 40B oversight and regulation," said Hedison. "If you only keep looking at the past, you're not going to see the changes that have occurred."

The law isn't effective for cities like Lowell and Lawrence because they already have more than 10 percent affordable housing. But Chapter 40B is responsible for most of the affordable housing built in 17 surrounding towns such as Dracut, Tewksbury and Tyngsboro, according to data from the state.

Examples of 40B projects include Avalon at Bedford Center, Elm Court in Concord and the Village Green in Tewksbury.

Habitat for Humanity of Greater Lowell is opposed to repeal because the law allows the nonprofit agency to build on land that would not be available under local zoning restrictions.

Francy Ronayne, spokeswoman for the Vote No on 2 campaign, said the coalition to maintain the law has broad-based support. "All three candidates for governor are on our side, and they rarely agree on anything," said Ronayne.

Ronayne said that 12,000 housing projects now in the pipeline would be halted if Question 2 is passed in November.

Many homeowners and municipal officials oppose Chapter 40B because it allows developers to bypass cities' and towns' zoning laws. Housing projects are exempt from local control if 25 percent of the units can be afforded by people who earn less than 80 percent of the area's median income or 20 percent of the units are within the reach of people who earn less than 50 percent of the median income.

State Inspector General Gregory Sullivan conducted reviews beginning in 2006 of several Chapter 40B projects throughout the state and discovered abuses by developers who downplayed their profits. Developers are supposed to give profits over 20 percent of the costs to municipalities.

Sullivan called for more oversight by the Department of Housing and Community Development (DHCD) over these projects because too much power is given to banks who subsidize these projects.

But regulations and legislation have changed things, according to state Sen. Susan Tucker, D-Andover, chairwoman of the Joint Committee on Housing.

"Generally, those changes have been to give communities more control or to hold the developers' feet to the fire when it comes to their cost certification process," she said.

State Sen. Robert Hedlund, R-Hingham, who supports the repeal, called these changes merely "tinkering."

"The DHCD upped the cap on profit margin for developers," said Hedlund. "It's like a guy who's caught speeding and instead of making him pay the fine, raising the speed limit."

Belskis thinks the solution is to start over with new ideas for affordable housing.

A State House News Service telephone poll of 400 voters conducted at the end of August showed that 36 percent support a repeal of the housing law, 54 percent want to keep the law and 10 percent are undecided.

The anti-repeal forces are also leading the money race. According to the state's election data, repeal forces have collected more than \$550,000 this year, with the biggest supporters being housing, Realtors and developers associations.

The committee for the repeal has collected about \$5,000, and its main supporters are private citizens and the Slow Growth Initiative, which promotes sustainable energy, development and economic policies.

In March, the Chelmsford-based Slow Growth Initiative was told to stop soliciting money because it was not registered with the state as a nonprofit organization.

PatriotLedger.com

COMMENTARY: Killing 40B clears way for something better

GateHouse News Service

Posted Oct 28, 2010 @ 01:06 PM

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would support.

Nature abhors a vacuum, as does politics. Arguing that repealing the law would result in an end to affordable housing in the suburbs presumes that nothing would be proposed in its place. Sometimes it's cheaper and more efficient to simply gut the house, then try rebuilding it room by room. Repealing the law would finally force affordable housing advocates to work with our communities to create a more balanced law that we all can support.

GOP state Sen. Robert Hedlund is seeking re-election in the Plymouth and Norfolk District.

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AAnderson2006

3 years ago

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... ..

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I'm tired of hearing the argument that Beacon Hill hasn't done enough to protect affordable housing from people who want to take away the only real tool for building affordable housing. You don't trust them to fix it but you trust them to come up with something completely new? And in the meantime, people like me suffer because there's NOTHING to build affordable housing? Give me a break. What planet do you live on? And, BTW, what's stopping them from coming up with something better while this is in place? Last I checked, nothing. So, why exactly do you think Beacon Hill's suddenly going to come up with the perfect solution?

If the law is repealed, homes in Mass will be more expensive. That's great for people who make \$200k a year, but for the rest of us who are struggling to get by, that makes no sense. How am I supposed to raise my family here when we can't even find a decent home to buy in our community?

Vote NO on 2. The Patriot Ledger had it right the first time. They shouldn't have bothered publishing this crap.

stopGOPnuts

3 years ago

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COMMENTARY STATE SEN. ROBERT L. HEDLUND — *The Ledger* has offered candidates in this election the opportunity to write one opinion piece for the paper between now and Nov. 2. Guidelines can be found at www.patriotledger.com/opinions/opinions_columnists.

As someone who has fought to reform Chapter 40B and the impact the law has had on South Shore communities for the past decade, I was disappointed to read the Patriot Ledger editorial opposing Question 2, as well as the special report on the law published this past weekend.

The editorial in particular did not seem to reflect the experiences such as Norwell's and its volunteer zoning board of appeal being overwhelmed by four simultaneous 40B projects with their \$200-an-hour attorneys, or the local communities threatened by developers with a 40B if the town did not give the developer his way.

The state Inspector General has determined that the fraud associated with 40B projects amounted to the "state's biggest financial scandal of the past 20 years" due in part to a Braintree case where developers defrauded the town of more than \$1 million that should have been used to create additional affordable units. Furthermore, the Inspector General said he felt the regulatory changes made by the state in response to his findings simply "legalize" the fraud and make the problem worse.

And why no mention of the fact that the only type of development that can legally destroy an intermittent stream, or a vernal pool, or a barrier beach is a 40B development?

What about the 22,000 units about to lose their "affordable" status due to expiring deed restrictions, and that they will have to be replaced by thousands of new units as part of a never-ending cycle of subsidies and development?

And why no mention of the fact that I and other legislators have been working to fix these problems for a decade in hopes of making 40B actually produce affordable units, only to be stonewalled at every turn.

The last issue, more than any other, is why this law deserves to be repealed. In all my years in the Legislature, I can't think of another issue where even the smallest change has been so fiercely and completely blocked. The opposition has been so uniform and concrete that the head of the main 40B advocacy group, during a public hearing, couldn't name one of the 60 proposed 40B reform bills that he

DUXBURY, HINGHAM, HULL, MARSHFIELD, NORWELL, SCITUATE, WEYMOUTH

Hedlund looks ahead to new term in state Senate

Posted by Jessica Bartlett

November 7, 2012 01:32 PM

By Jessica Bartlett, Town Correspondent

Republican incumbent Robert Hudlund was re-elected as state senator for the Plymouth and Norfolk District Tuesday, beating out Genevieve Davis with 68 percent of the vote.

Hedlund more than doubled the tally of Davis, winning 55,561 to 25,647.

"I was pretty confident," Hedlund said on Wednesday. "As a candidate, you have a sixth sense of what's going on out there, and I was getting good feedback from people I would encounter."

According to the candidate -- who represents Cohasset, Duxbury, Hull, Hingham, Marshfield, Norwell, Scituate, and Weymouth -- the fact that he won by such a big margin was not too surprising, especially as Hedlund has had similar success against strong candidates in the past, he said.

"In my '02 race, I had someone who outspent me significantly, and the results were the same," he said. "The precedent was there to win big against candidates who have been stronger and those who have been weaker than Davis."

Hedlund's reelection secured a 10th consecutive term for the Republican, who is currently one of four of his party in the State Senate. He also won a term in 1990.

Hedlund said that while the big turnout hurt some of his fellow Republicans, including US Senator Scott Brown, who lost Democrat Elizabeth Warren, Hedlund came through well.

Yet moving into a new term, Hedlund wishes there were more Republicans at the Statehouse.

"If anyone spends any time at the Statehouse and actually sees what goes on up there, they would want to have a bigger Republican presence," Hedlund said. "We really are, in a lot of ways, the watchdogs up there on some of the spending practices and some of the so called 'good government' stuff."

"We're not involved in some of the shenanigans that the probation department and other departments [are in], and a lot of our fiscal efforts have been vindicated in a lot of ways," he said.

As such, the budget will continue to be a big issue moving into the next term, especially as state receipts are falling short of projections.

"We'll have a brutal budget to deal with the coming fiscal year. It's going to be tough. And a lot of the issues I've been working on, [there] will be a continuation of that: 40B [affordable housing] reform, we've had funding for capital projects ongoing, the Fore River Bridge project, I've had some successes with a lot of immigration reform measures, the water rate bill initiative. Some of the things we haven't got across the finish line we will still be working on."

In the meantime, this week's Democratic victories still smart for the Republican as politicians at all levels of government look to the next term.

According to Hedlund, who went to watch Romney's concession speech after his own victory party at Hingham Beer Works, it's disappointing.

"I really thought Mitt Romney would make a great president after dealing with him as governor. There was a side that didn't go out into the media...the polls indicated he wasn't popular in Massachusetts, but working in the building, I saw a side of him that showed me a lot, and I wish that had come out in this campaign. Obama did a good job defining Mitt into something I believe he's not," Hedlund said.

As for Warren's defeat of Brown, Hedlund said he wished the incumbent had been given a full term, "But [Warren] won and we will be interacting with her office in my capacity as state senator, so I wish her well," he said.

To learn more about Hedlund, visit his website.

[To view the results of all the State Senate elections, click here.](#)

NORWOOD

Veteran lawmakers clash over efforts to curb affordable-housing law

By Jean Lang | GLOBE CORRESPONDENT AUGUST 01, 2013

Two veteran legislators from the south suburbs were feuding this week over a proposed affordable-housing project in Norwood, after one stalled the other's legislative attempt to block the development.

Representative John Rogers, a Norwood Democrat, blasted Senator Robert Hedlund, Republican of Weymouth, for putting up the roadblock to his plan to force developers to make good on economic incentive agreements and not drop them in favor of another state program that gives developers leeway to build housing in commercial areas.

The affordable-housing project proposed in Norwood is targeted for land designated for economic development. Rogers's plan against the development came in the form of an amendment to a \$1.4 billion housing bond bill being considered by the Legislature.

Hedlund said he used a legislative motion to keep the bill off the Senate floor last week after he found out that the amendment, which was tacked onto the bill and passed by the House, was about to be approved by the Senate, even as dozens of other amendments aimed at changing the Chapter 40B affordable-housing law filed by himself and others were not likely to be discussed. Debate on the housing bond bill was halted until Tuesday, during which Hedlund tried to substitute his own amendment for Rogers'.

Ultimately, Hedlund's amendment failed in a 16-22 vote, while the Rogers amendment was approved, 23-15. The bond bill passed 39-0 and was headed to Governor Deval Patrick for approval.

Hedlund said he did not have anything against Norwood lawmakers, nor was his maneuver based on the merits of the Norwood project. He said he was told by colleagues that the way Rogers' amendment was written, it would only apply to the one project in Norwood.

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"I applaud them in a sense for trying to respond to the wishes of their community, but so are the rest of us," Hedlund said, adding he could give a tour of unwelcomed 40B developments in his district and some communities he represents have spent tens of thousands of dollars fighting them.

He suggested Norwood lawmakers — the bill was sponsored in the Senate by Senator Michael Rush, a West Roxbury Democrat whose district includes Norwood — work for a broader solution.

But Rogers, a 20-year lawmaker and a former House majority leader, said his amendment was aimed at ensuring one section of the law was not superseding another and it would protect all such agreements in districts with tax incentive financing agreements.

He criticized Hedlund's explanation. "It's hypocritical for any politician to campaign on jobs, jobs, jobs, and subsequently allow greedy 40B developers to erode and undo an economic development area in any legislative district in the commonwealth," Rogers said. "Senator Hedlund doesn't corner the market on trying to change 40B."

Hedlund, the assistant minority leader among the four Republicans in the Senate, said it would be hypocritical of the Senate to allow the amendment to bypass the committee process when he and others have been told that is the way they must get their proposals through. He said it was "politics over policy in this case."

The 296-unit development in Norwood, Upland Woods, is proposed by the Campanelli company of Braintree on land formerly owned by Polaroid.

Two of the partners in the company, whose addresses are listed in campaign finance reports as being in Hedlund's district, contributed \$1,500 to his campaign from 2003 to 2012.

Hedlund said he was unaware of the contributions, adding that most 40B developers are no fans of his because of his opposition to the statute and that they are more often contributors to his opponents. He said it is not uncommon for developers to donate to several campaigns.

Hedlund said he learned of the amendment just hours before the bill was to be considered by the Senate on July 25. "We're backdooring one amendment to benefit one town; meanwhile, 50 40B reform bills are bottled up in the housing committee," he said.

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Among the changes Hedlund said he is trying to get passed is one that would subject all 40B projects to an audit by the state inspector general. He said a random audit years ago by the inspector general's office found that some 40B developers were inflating expenses and underreporting income to keep profits that should have been returned to communities.

Under the proposed amendment, the inspector general's office could subpoena all records, reports, audits, and other relevant materials.

Another change suggested by Hedlund would give communities more power in rejecting proposals in environmentally sensitive areas, such as watersheds, rivers, and marshes.

Under Chapter 40B, developers are exempt from many local restrictions. Developers can apply for 40B permits in communities that have not met their 10 percent threshold of affordable housing as measured by the state.

E-mail Jean Lang at jeanmcmillanlang@gmail.com

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