

## Review of House 60

# Legislation for Fast Track Public Land Disposal

The basic thrust of House 60 is to substitute an expedited state-driven land disposal process for the current Chapter 7 process (which tends to be more community-driven). The bill also institutes a “pay-to-play” framework in which local communities have to pay the state at least half of the market value of state property if they want to secure a community-based planning process.

### What the bill does:

- 1. Takes away existing community planning rights, substituting a state-driven bureaucratic process that lacks democratic safeguards and is vulnerable to corruption.**
- 2. Asks municipalities to pay increased taxes to purchase land the public already owns.**
- 3. Eliminates the local legislator’s accountability for the outcome, thus removing a critical counterweight against insider influence-peddling.**
- 4. Lacks safeguards for the environment, affordable housing and smart growth.**

*(see explanations below)*

### **1. The bill takes away existing community planning rights, substituting a state-driven bureaucratic process that lacks democratic safeguards and is vulnerable to corruption.**

- **House 60 eliminates the ability of communities to guide the reuse of surplus land that is sold to private parties.** That’s because the bill eliminates the Chapter 7 process involving transfer legislation based on a locally-approved reuse plan that is sponsored by a local legislator accountable to the local community. Instead the bill allows the legislature to vote to dispose of the land without having held a community hearing, without a locally sponsored bill, and without a plan for the reuse of the property.
- **House 60 minimizes public inputs to the disposition process.** It limits local planners and concerned citizens to merely testifying before powerful, unaccountable, state authorities AFTER the key decision has already been made to dispose of the property. The public hearings of the type required in the bill generally provide conflicting testimony and no clear community consensus, which allows bureaucrats to pick and choose to find comments which justify their wishes. This is quite different from the Chapter 7 process in which a plan produced by local reuse committees provides an authoritative voice for the community (which local legislators ignore at their peril).

- **The new State Surplus Land Coordinating Committee would consist mostly of gubernatorial appointees.** It meets every few months to make decisions on all lands in the 351 communities across the state. The ability of local communities to influence the decision of such groups is very minimal.

### **2. The bill asks municipalities to pay increased taxes to purchase land the public already owns.**

- House 60 asks municipalities that want to see public land remain in the public domain to pay government 50% or more of its appraised value. **In effect, communities are asked to pay a steep fee to secure their local planning rights.** Given the spiraling cost of land, and the fiscal crisis that exists in most municipalities, few communities would be able to raise the revenues needed to make major land purchases. Less wealthy communities would generally be forced to surrender their local planning rights. The bill allows municipalities to assign the right to discounted purchase to an outside nonprofit entity, but this would seldom be effective, since nonprofits formed for genuine public purposes are generally not able to afford real estate purchases. **The bill tilts the playing field toward privatization and against municipalities who have critical public needs for land.**
- **The attempt by state authorities to squeeze revenues out of municipalities is problematic for several reasons.**

Many municipalities are in fiscal crisis because of burdens imposed upon them by state laws and because of local aid cuts imposed by the Legislature. Municipalities should not be viewed as convenient sources of cash for the Legislature. It should be noted that host municipalities have usually forgone property taxes on state parcels for decades, and have often provided services at local expense. The overdevelopment encouraged by House 60 will often impose additional costs upon municipalities as they provide services to the new development. House 60 wastes an opportunity to fairly compensate communities for their hosting of state facilities and to use public land assets to help meet urgent community needs (for affordable housing, open space protection and community economic development).

### **3. The bill eliminates the local legislator's accountability. This removes a critical counterweight against influence-peddling and lobbying by developers.**

- Under the existing Chapter 7, the local legislator traditionally sponsors legislation to sell off or reuse surplus property. Thus the local legislator has the power to stop a bad plan, and is accountable if harmful development is allowed. That accountability is a strong incentive for the local legislator to serve his community – and not just go along with developers who are often among the biggest donors to election campaigns. **Under House 60, the key role of the local legislator is eliminated.** Authorizing legislation comes before reuse planning, and subsequent development proposals would be selected by DCAM and other appointees of the governor. Thus, **the bill gets the local legislator "off the hook"** if they give go along with harmful development.

- **Under House 60, legislative authorization of the disposal takes place without a community hearing, without a plan for the reuse of the property, and without a smart growth review.** The absence of a specific reuse plan at the time of the legislative vote allows the legislature to dispose of the property on the basis of vague promises and potentially misleading reassurances about mitigation of harmful effects. There will not even be a community hearing prior to the vote at which questions can be asked by the public. House 60 greatly weakens the ability of the local community to win environmental safeguards, affordable housing, traffic mitigation, or other measures as a condition of the disposition.

### **4. House 60 lacks adequate safeguards for the environment, affordable housing and smart growth.**

Proponents of House 60 claim the measure encourages "smart growth". But upon closer inspection, it becomes clear that the smart growth provisions are mostly just window dressing and that the bill is stacked against the application of true smart growth principles.

- House 60 **bypasses the most informed, committed and experienced planners of all** - the planning boards, conservation commissions, fair housing commissions, and agriculture commissions of local municipality. These experts have often conducted planning for sites on all sides of the surplus land site, and have an in-depth understanding of community needs. H60 replaces this with the judgment of state bureaucrats - many of whom have never set foot in the community in question. Historically the worst possible growth decisions are made when Beacon Hill insiders call the shots.

- House 60 puts the key power in the hands of a **fiscal agency** (The Office of Administration and Finance) whose primary

interest is in generating maximum revenues for the state from each liquidation. This bias was made abundantly clear in the way EOAF administered the notorious fast-track auction law (Outside Section 548) in 2003-2005. Maximizing the generation of quick money is the antithesis of careful smart growth planning.

- House 60 imposes an **excessively expedited disposition process** with fixed timelines regardless of the complexity of the disposition or the problems uncovered at the sites. Experience shows that some site problems (e.g. discovery of buried hazardous waste) take months to investigate and months to resolve. Sound planning for larger sites often takes more than a year as issues such as traffic flow, rezoning needs, clean-up, etc. are resolved. It should be noted that real estate developers often require years of planning before development begins - and their get in- get out planning is much simpler than that of public authorities. Another effect of expediting is to make it easier for Beacon Hill insiders to flip the property to well-connected friends. By leaking inside information in advance to certain parties, those parties are able to draw up development plans, secure financing, set up relationships with elected officials, and influence the time the disposition is launched. Thus, they are well-prepared to bid for the property while bidders who are alerted through public announcements are at a severe disadvantage. A process with an expedited, rigid timeline is inherently unfriendly to the public interest.

- **The opportunity for smart growth oversight (provided by the SLCC and RPA) evades democratic reviews and comes AFTER the critical vote by the legislature to dispose of the property.** Thus, legislators will not have the benefit of openly-derived "smart growth" input to inform their decision to dispose of the property. The specific, focused restrictions that achieve environmental, housing or other smart growth goals have generally come from the open community planning process, and this has not even begun at the time the legislature votes.

- **The study by the Regional Planning Authority is a dead end.** It doesn't have any binding authority or any guaranteed impact on the real decision-making. Furthermore, officers of the RPA (which is headed by a gubernatorial appointee) sometimes have conflicts of interest due to their business relationships with real estate developers. Communities cannot rely upon them to advocate for community needs. This may undermine the credibility of the "smart growth review" and force communities to fund their own studies to answer that done by the RPA.

- **The bill puts key power in the hands of state agencies that have seldom demonstrated a commitment to true smart growth.** Experience with state bureaucracies such as Massport, DCAM, MassDevelopment and the Mass Turnpike Authority, has shown that centralized state control over development tends to be unaccountable, nontransparent, and manipulated by for-profit business interests with close connections to Beacon Hill power brokers. It frequently fails to produce true smart growth or sustainable, just land use. In many cases it is driven by decisions that are wired from the inside to benefit politically-connected developers. Marginalizing the people in the community who will live with the decisions is the opposite of what true smart growth seeks.

- **Unlike Chapter 7, the bill does not require that decisions made by the state be consistent with existing local planning.** This means that state decisions can conflict with local plans into which considerable time and money have been invested. This is a prescription for conflicting, fragmented development, not smart growth.

- **If a municipality or its assignee purchases the property, smart growth is no longer required.** Once the state has their

money, the House 60 process terminates. There is no oversight of the subsequent development and no funding for the studies that might be required to adequately plan for reuse. It should be noted that some "nonprofit" assignees could be economic development organizations that are operating to further the interest of private parties. A true smart growth process would have checks and balances to protect the public interest no matter who purchases the property.

- Early in the process, the **shortcomings in the state agency polling process mitigate against fair consideration of alternatives for state use of the land.** Agencies are given only 30 days to respond. This is a generally insufficient time to put together a sound argument for state reuse. Furthermore, if the Governor wants to surplus the property, it would be practically an act of insubordination for one of his agency appointees to attempt to stop the disposition by submitting a competing reuse proposal. The Romney Administration discouraged state agency reuse by declaring that agencies who acquired a surplus site would have to accept a cut to their budget equivalent to the value of the property. Since most state agencies are in fiscal crisis, this was an effective way to discourage any application for state reuse. The Senate surplus land bill contains explicit language preventing this type of fiscal pressure. However, there are many other ways a governor can discourage agencies from blocking a favored disposition. There is a need for an open polling process in which citizens can work with state agencies to define state reuse options (such as transferring environmentally sensitive properties to state conservation agencies, using a property for state health services, etc.).

- **Even when a state agency requests the property, the process is biased against approval.** The decision to approve a request is made by a committee consisting of the agency opposing disposal, DCAM and the Office of Administration and Finance, (DCAM's parent agency). This ensures that any agency opposing disposal is automatically outnumbered by the fiscal authorities

- **Implied housing commitments for DMR/DMH clients are of questionable value.** For former DMH or DMR properties, the bill earmarks 25% of any housing units to be affordable housing for current or former clients (who earn 15% of median income). This appears to be contingent on the availability of additional funding to support such living arrangements. When no housing is built at a DMH/DMR site, the bill stipulates that "no more than 25% of the sale price shall support the development of affordable and supportive housing at another location". This language proposes only a maximum commitment, and not a minimum. Current residents who are in danger of being displaced by the closure of their facilities are unlikely to benefit from these provisions. In considering such earmarks, it should be noted that fiscal committees on Beacon Hill have been quick to cut general appropriations to an agency that is given "self-funding" opportunities. Thus, it is not clear that earmarks of this sort will increase the actual funding available for needy clients. It certainly does not provide a reliable source of funding due to the episodic nature of surplus land sales.

- **House 60 tilts toward overdevelopment rather than truly balanced smart growth planning.** It automatically designates surplus land as an "economic target area", and takes other steps to **encourage intense private development** as a priority. This places up to 42,000 acres of public land at risk for poorly planned, potentially harmful overdevelopment. Indicators suggest that many areas in Massachusetts are **significantly overdeveloped already**, with human health and the environment paying the price. Massachusetts has the third highest population density, some of the worst surface water quality and highest asthma rates in the nation, and is

experiencing an ongoing loss of 44 acres of open space each day. Consequently, any further development of public land needs to be carefully considered and planned – in a process that provides for balanced consideration of all possible reuse options, checks and balances against insider manipulations, accountability and transparency. Without this, any land disposal bill will place a significant portion of our public land resources at risk of poorly planned, potentially harmful, expedited development.

#### **FOR MORE INFORMATION :**

For text of the legislation, flowcharts of the disposal process, and additional analyses go to [www.masschc.org](http://www.masschc.org).

*(Material prepared for Massachusetts Coalition for Healthy Communities, [www.masschc.org](http://www.masschc.org))* [70618]