



**MMA** | Massachusetts  
Municipal  
Association



November 17, 2022

His Excellency Charles D. Baker  
Governor of the Commonwealth  
State House  
Boston, MA 02133

*Delivered Electronically*

Dear Governor Baker,

On behalf of the 351 cities and towns of the Commonwealth, we would like to offer comments on H. 5381, *An Act Preserving Open Space in the Commonwealth*. The Massachusetts Municipal Association (MMA) is proud to join the Massachusetts Municipal Lawyers Association (MMLA) to offer the municipal perspective on this very important matter. The MMA and MMLA have long opposed this legislation as an unnecessary measure given the current process articulated by Article 97 of the Constitution. While our preference is for no change at all, at a minimum we strongly believe H. 5381 could be improved to better support municipal governments.

As you know, the current practice under Article 97 protects land by requiring a two-thirds vote of the Legislature and a state review that prioritizes a “no net loss” policy when proposing a disposition or change of any protected open space, after an extensive local process that involves the public, the local municipal executive, and the local legislative body. The language before you would impose a further requirement in the form of a feasibility study to identify and purchase replacement land. This alternatives analysis would be costly for municipalities and their taxpayers who are already experiencing significant shortfalls in funding for existing state-mandated services.

Done well, a cash in lieu of replacement land provision could promote additional and important flexibility in land purpose changes and transfers for local governments and public entities, and reduce the likelihood of the inevitable consequences that would result from a more rigid “one-size-fits-all” approach. Unfortunately, the constraints and criteria imposed in H. 5381 would make this alternative unrealistic and impractical for public entities.

The requirement that the funding in lieu of replacement land be greater than or equal to 110% of the fair market value of the protected land is not reasonable and is far too expensive for taxpayers. This provision would be extremely difficult to apply to 351 unique municipalities, as comparable land, let alone land of greater natural resource value, can be incredibly expensive or inaccessible within a “comparable location.”

This language fails to acknowledge the danger of such an approach, especially when combined with the provision that requires the cash payment to be spent on replacement land within three years. It remains unclear how communities who pursue this cash in lieu of land option should proceed if they fail to identify or acquire suitable replacement land within this three-year timeline. Whether communities are unable to purchase land with the funding set aside, or if that land remains unobtainable as it was at the time of the modification, H. 5381 would unnecessarily complicate the Article 97 process.

For these reasons, we respectfully ask you to reject H. 5381 as written and offer language similar to the Senate version of the bill, S. 2381. S. 2381 incorporates more options while maintaining the original interest of the legislation and Article 97's no net loss policy. Each opportunity to change a parcel of land's ownership or use can have an impact on the natural infrastructure and ecosystems of a community. The added flexibility and options provided to municipalities in S. 2831 would better protect the interests of residents and the historical protections provided by Article 97 of the Constitution.

We have consistently supported the need for municipalities to maintain the flexibility to use land in a way that most benefits their community, whether that is to protect the environment, facilitate recreation, create housing, invest in education or other public infrastructure, increase economic development, pursue solar projects, or to advance other public needs. H. 5381 would severely complicate that necessary flexibility, and impose impractical constraints to an already successful no net loss practice.

We deeply appreciate your thorough review of this bill and your continued attention to this important issue for cities and towns across the Commonwealth.

If you have any questions or need additional information, please do not hesitate to contact us or MMA Legislative Director David Koffman at [dkoffman@mma.org](mailto:dkoffman@mma.org), MMA Legislative Analyst Josie Ahlberg at [jahlberg@mma.org](mailto:jahlberg@mma.org), or MMLA Executive Director James Lampke at [jlampke@massmunilaw.org](mailto:jlampke@massmunilaw.org).

Thank you very much.

Sincerely,



Geoffrey C. Beckwith  
Executive Director & CEO, MMA



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