

HOUSE No. 3222

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas P. Walsh

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to hillside protection.

PETITION OF:

NAME:

Thomas P. Walsh

DISTRICT/ADDRESS:

12th Essex

HOUSE No. 3222

By Mr. Walsh of Peabody, a petition (accompanied by bill, House, No. 3222) of Thomas P. Walsh for legislation to authorized cities and towns to establish ridgeline and hillside protection district review boards. Municipalities and Regional Government.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to hillside protection.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserted after chapter 40W the
2 following chapter:-

3 CHAPTER 40X. RIDGELINE AND HILLSIDE PROTECTION

4 Section 1. For purposes of this chapter the following words shall, unless the context
5 clearly requires otherwise, have the following meanings:

6 “Board”, the ridgeline and hillside protection district review board established pursuant to
7 section 3.

8 “District”, a ridgeline and hillside protection district.

9 “Hillside”, land having an average grade of 15 per cent or greater for 200 feet.

10 “Ridgeline” the long, narrow crest or horizontal line of hills or mountains, usually at the
11 highest elevation.

12 “Selective cutting”, no more than 50 per cent of the mature trees on a site cut under a
13 selective cutting plan.

14 “Substantial exterior alteration”, any alteration which increases the assessed value by
15 15%, or which adds to the height of a structure, or which substantially alters the visual profile of
16 the property or structures thereon.

17 Section 2. The purpose of this chapter is to promote the health, safety and general welfare
18 of the cities and towns that accept it by:

19 (i) insuring that any development that takes place within the ridgeline and hillside
20 protection district preserves and protects critical natural resource areas, minimizes visual impact
21 of man-made features and enhances the economic values of the properties located therein;

22 (ii) minimizing the removal of native vegetation, especially large timber, and regulating
23 the excavation and alteration of land in order to minimize any danger of erosion, flooding or
24 pollution of the ground or surface water supply, whether public or private, within the district or
25 any adjacent low lying areas;

26 (iii) insuring that all proposed development activities do not reduce property values
27 within the district or adjacent to by unnecessarily detracting from the visual setting or obstructing
28 significant views; and

29 (iv) protecting existing historical physical features and the preservation and development
30 of linkages from 1 open space area to another.

31 Section 3. This chapter shall take effect in any city and town upon the approval by the
32 legislative body.

33 A city or town that has voted to accept this chapter shall establish a ridgeline and hillside
34 protection district review board, consisting of no more than 5 members, chosen by the chief
35 executive officer of the city or town. Members of the board may also serve as members of the
36 planning board for the city or town but shall not be members of a board of appeals under a
37 subdivision control law or local zoning ordinance or by-law.

38 Section 4. Any area of a city or town that has accepted this chapter having a slope of
39 greater than 15 per cent or greater over 200 feet or any elevation of 600 or more above sea level
40 shall be designated as a ridgeline and hillside protection district by the city or town. The
41 boundaries of each district shall be recorded on an overlay map to be kept on file with the city or
42 town clerk.

43 Section 5. All uses of land included in a district that is not permitted pursuant to section 6
44 or section 7 shall be prohibited.

45 Section 6. The following uses shall be permitted in a ridgeline and hillside protection
46 district without the need for application and review of the board:

47 (i) agricultural production, including but not limited to the raising of crops, livestock,
48 poultry, nurseries, orchards, and hay;

49 (ii) recreational uses, provided there is minimal disruption of wildlife habitat;

50 (iii) maintenance and repair usual and necessary for continuance of an existing use,
51 including work incidental to construction and the construction or alteration of any dwelling or

52 structure that does not affect the exterior appearance of the dwelling or structure or any
53 construction or alternation to the exterior of a dwelling or structure that would not result in a
54 substantial exterior alteration;

55 (iv) conservation of water, plants, and wildlife, including the raising and management of
56 wildlife;

57 (v) non-commercial cutting of trees for fuel;

58 (vi) uses permitted under section 3 of chapter 40A;

59 (vii) selective timber cutting shall be permitted within the area of a designated building
60 envelope wherein principal and accessory structures have been approved. Timber cutting for the
61 purpose of clearing land for legitimate agricultural purposes shall be permitted subject to
62 satisfactory evidence of such intended use. Selective commercial timber cutting may be
63 permitted, in accordance with chapter 132; and

64 (viii) selective cutting of trees or vegetation for normal maintenance purposes on less
65 than one half acre of land, provided that no additional cutting shall be done on the parcel, or on
66 adjoining parcels in common ownership, for a period of 2 years, except for selective cutting
67 specified in a cutting plan approved in accordance with sections 40 to 46, inclusive, of chapter
68 132.

69 Section 7. The following uses shall be permitted in a district, subject to review and
70 approval by the board pursuant to sections 8 and 9, prior to the issuance of a building permit,
71 special permit or approval of a definitive plan under the city's or town's bylaws and ordinances
72 governing subdivisions:

- 73 (i) the construction for a new dwelling or principal structure;
- 74 (ii) any construction or alteration that would result in a substantial exterior alteration to
75 the dwelling or structure;
- 76 (iii) any commercial or industrial use allowed by special permit in the underlying district;
77 and
- 78 (iv) any subdivision which requires approval under the city or town's bylaws or
79 ordinances governing subdivisions;

80 The board may waive the requirement that it review and approve uses pursuant to this
81 section for dwelling additions, and or accessory buildings of 400 square feet or less.

82 Section 8. Buildings and landscaping permitted under section 7 shall be designed and
83 located on the site to blend with the natural terrain and vegetation, and to preserve the scenic
84 character of the site, conforming to the following standards:

- 85 (i) Building height shall not exceed 35 feet.
- 86 (ii) Exposed foundation walls shall not exceed 2 feet above the proposed finished grade;
- 87 (iii) Building, alterations, additions, or structures should be placed downgrade of the
88 ridgeline where possible;
- 89 (iv) Building materials shall blend with the natural landscape.

90

91 (v) Removal of native vegetation, especially large timber, shall be minimized and the
92 replacement of vegetation and landscaping shall be generally compatible with the vegetation of
93 the designated area.

94 (vi) Trees may only be removed for location and construction of streets, driveways or
95 structures. Selective clearing for views is permitted where the view is obstructed by dense
96 vegetation.

97 (vii) Retaining walls, of natural materials only, may be used to create usable yard space
98 in the side and rear yard.

99 (viii) Landscaping and plantings shall be utilized to screen major buildings in open or
100 prominent areas from significant views, both when installed and when mature.

101

102 (ix) Any grading or earth moving operation is to be planned and executed in such a
103 manner that final contours appear to be consistent with the existing terrain, both on and adjacent
104 to the site.

105

106 (x) Storage or transmission of petroleum or other refined petroleum products is prohibited
107 except within buildings which will be heated or in quantities of 50 gallons or less. Petroleum
108 products stored within a building shall be placed on a diked or impermeable surface to prevent
109 spills or leaks from reaching groundwater.

110 (xi) All run-off from impervious surfaces shall be recharged on the site by being diverted
111 to storm water infiltration basins covered with natural vegetation. Storm water infiltration basins

112 must be designed to handle a 25-year storm. Dry wells shall be used only where other methods
113 are infeasible, and shall be preceded by oil, grease, and sediment traps to facilitate removal of
114 contamination. Any and all recharge areas shall be permanently maintained in full working order
115 by the owner.

116 (xii) No area or areas totaling 2 acres or more on any parcel or contiguous parcels in the
117 same ownership shall have existing vegetation stripped or be filled 6 inches or more so as to
118 destroy existing vegetation unless in conjunction with agricultural activity or unless necessarily
119 incidental to construction on the premises under a currently valid building permit or unless
120 within streets which are either public or designated on an approved subdivision plan or unless a
121 special permit is approved by the zoning board of appeals on the condition that run-off will be
122 controlled, erosion avoided and either a constructed surface or cover vegetation will be provided
123 not later than the first full spring season immediately following completion of the stripping
124 operation. No stripped area or areas which are allowed by special permit shall remain through the
125 winter without a temporary cover or winter rye or similar plant materials being provided for soil
126 control, except in the case of agricultural activity where such temporary cover would be
127 infeasible.

128 (xiii) Sediment and erosion control measures shall be employed to minimize such impacts
129 during and after construction, in accordance with guidelines established by the United States
130 Natural Resources Conservation Service "Guidelines for Soil and Water Conservation in
131 Urbanizing Areas of Massachusetts."

132

133 (xiv) Utilities shall be constructed and routed underground except in those situations
134 where natural features prevent the underground siting or where safety considerations necessitate
135 above ground construction and routing. The Review Board may waive this requirement.

136 (xv) Above ground utilities shall be constructed and routed to minimize detrimental
137 effects on the visual setting.

138

139 (xvi) In the building of more than 1 structure, variable setbacks, multiple orientations,
140 and other site planning techniques shall be incorporated in order to avoid the appearance of a
141 solid line of development.

142

143 (xvii) Construction of a tower, satellite dish, windmill, any type of antenna, or other
144 installation shall not obstruct the view of a public way, or from a public way, or from an
145 abutter's dwelling.

146 Section 9. (a) Prior to undertaking any work in a ridgeline and hillside protection district,
147 including clearing and removal of vegetation, grading or construction, but not including any use
148 permitted pursuant to section 6, and prior to applying for a building permit, landowners shall
149 submit an application for ridgeline and hillside protection review to the board. The building
150 inspector shall not accept an application for a building permit without an attached application for
151 ridgeline and hillside protection review, previously reviewed and approved by the board, unless
152 the inspector determines that the work being undertaken by the application would be considered
153 a permitted use pursuant to section 6. To assist in making such a determination, the building

154 inspector may request the board to provide an opinion, in writing, as to whether the landowner's
155 proposed work under the building permit constitutes a permitted use pursuant to section 6 or
156 requires application and review pursuant to subsection 7. If the board fails to respond to the
157 building inspector within 20 days, the building inspector shall conclude that the landowner's
158 proposed work constitutes a permitted use pursuant to section 6. If the board determines that the
159 landowner's proposed work under the building permit requires the review and approval of the
160 board pursuant to subsection 7, the board shall immediately notify the building inspector and the
161 landowner in writing.

162 (b) Within 35 days of the receipt of the application for ridgeline and hillside protection
163 review from a landowner, the board shall review the application and return its recommendations
164 in writing to the building inspector. If the application for ridgeline and hillside protection review
165 is associated with an application for a variance, special permit, or subdivision review, the board
166 shall immediately transmit their recommendations to the planning board or zoning board of
167 appeals as appropriate. If the board does not submit its recommendations within 35 days, such
168 failure to act shall constitute approval of the application.

169 (c) Applications for ridgeline and hillside protection district review of proposed
170 development in the district must be accompanied by the following:

171 (i) Plot Plan;

172 (ii) Photographs of the development site taken from points along the street, together with
173 a map indicating the distance between these points and the site; and

174 (iii) Placement, height and physical characteristics of all existing and proposed buildings
175 and structures located on the development site.

176 (d) After review of an application the board may:

177 (i) determine that the proposed work constitutes a suitable development or construction
178 project entirely in compliance with the criteria set forth in section 8;

179 (ii) approve the work, subject to conditions, modifications, and restrictions as the board
180 may deem necessary;

181 (iii) determine that the work, as a whole, is not permitted under the chapter or is
182 otherwise wholly inconsistent with the terms of section 8.

183 (e) A landowner aggrieved by a decision of the board may appeal to the zoning board of
184 appeals. If the zoning board of appeals finds that a literal enforcement of the provisions of this
185 chapter would involve substantial hardship, financial or otherwise, to the landowner, and that
186 desirable relief may be granted without substantial detriment to the public good and without
187 nullifying or substantially derogating from the intent or purpose of this chapter, it may exempt a
188 landowner from the provisions of this chapter. The board of appeals may adopt rules to
189 implement this subsection.

190 Section 10. The board may adopt rules, not inconsistent with the provisions of this
191 chapter, for the conduct of its business and for the purposes of this chapter. Any such rules shall
192 be filed with the city or town clerk.

193 SECTION 2. This act shall not apply to any work or project completed prior to the
194 effective date of this act.