Summary: Overlap between HB 5429 and Section 3A of Mass. Gen. Law c. 40A

- HB 5429 and Massachusetts’ Section 3A both require towns with transit stations to zone for moderately dense housing at 15 units per acre.
- While HB 5429 sets out in the legislation what geographies must be zoned at this density explicitly, Section 3A leaves it up to administrative agencies to establish “a district of reasonable size” within a half-mile of transit.
- Preliminary guidelines indicate that Section 3A will require greater density than HB 5429 would in some areas (including Westport), while it is possible that HB 5429 will require greater density than Section 3A in certain towns with multiple transit stations, extensive sewer and water infrastructure, and a low number of housing units – that is, those areas where zoning reform is most needed and beneficial.

Background

DesegregateCT’s top priority this legislative session is promoting transit-oriented communities. Last year, Senate Bill 1024 contained provisions for transit-oriented development that would require towns to allow four-plus unit multifamily housing by right on 50% of the land within a half-mile radius of transit stations. Responding to feedback from legislators and stakeholders, DesegregateCT and its coalition members worked to develop a proposal that would promote those same ends, while affording towns greater flexibility.

We also looked to other states to see what worked there. We were particularly drawn to a Massachusetts reform, Section 3A of the Massachusetts Zoning Act. This reform – enacted in January 2021 with near-unanimous bipartisan majorities and championed by Governor Baker – requires towns with Massachusetts Bay Transportation Authority (MBTA) stations to zone for an area with a minimum residential density of 15 units per acre. That density struck us as an appropriate benchmark, one that all transit towns could achieve through a modest mix of duplexes, townhomes, and single-family homes on small lots. That density also offers towns the flexibility to concentrate low and mid-rise multifamily housing in one part of the zone, while maintaining lower densities elsewhere.

Similarities and Differences between HB 5429 and Section 3A

HB 5429 is modeled after Section 3A. Both bills require towns with transit stations to zone for moderate residential density. The core similarity between the two provisions is that they use the same density metric: 15 dwelling units per acre. Importantly, this number refers to zoned capacity: in other words, the maximum homes that could be built within zoning rules. Invariably, the number of homes actually built will be far lower, since not everyone will subdivide their
property, convert their single-family into a duplex, or otherwise max out the density allowed under the rules. As Massachusetts’ compliance guidelines lay out, “There is no requirement nor expectation that a multi-family district will be built out to its full unit capacity.” Beyond the 15 units per acre metric, the other central tenets are the same:

- Residential units counting toward the requirement must be permitted as of right.
- The transit-oriented development zone must be located within a half-mile radius of the transit station.
- There must be no age restrictions.
- Housing must be suitable for families with children.

The most salient difference between the two bills is the allocation of decision-making power between the legislature and executive agencies. Massachusetts’ Section 3A requires that transit-oriented development area be allowed in “at least one district of reasonable size.” That provision, purposefully, leaves it up to the Massachusetts Department of Housing and Community Development (DHCD), in consultation with the Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation, to determine what an area of “reasonable size” is through administrative guidelines.

In contrast, HB 5429 spells out in greater detail what the area covered should be. DesegregateCT opted to diverge from the Massachusetts provision on this point given the intense interest in this issue from legislators and the public, so that elected representatives would be in the position to set this policy. Further, the proximity of Connecticut’s transit stations to the coastline made it more important to spell out explicit environmental protections within the statute. With those distinctions in mind, HB 5429 starts with the entire area within a half-mile of transit, and then exempts large swaths of area that may be less suited for new development, including:

- Roadways, railways, regulated inland wetlands, and watercourse areas;
- Sleep slopes of fifteen percent or more and ledges;
- Special flood hazard areas defined by FEMA;
- Wetlands defined in section 22a-19 of the general statutes;
- Public parkland;
- Land subject to conservation or preservation restrictions;
- Costal resources protected by the Connecticut Coastal Management Act;
- Areas necessary for the protection of drinking water supplies;
- Areas identified by CIRCA as likely to be inundated during a thirty-year flood event; and
- Areas not served by water and sewer infrastructure.
Massachusetts has not yet finalized any guidelines for how municipalities should interpret the “reasonable size” language. DHCD did release draft guidelines for public comment in mid-December 2021. Those guidelines are somewhat complex, but essentially boil down to the following:

- A district’s multifamily unit capacity must be equal to or greater than a specified percentage of the total number of housing units within the community:
  - 25% for rapid transit communities
  - 20% for bus service communities
  - 15% for commuter rail communities
  - 10% for adjacent communities
- Zones must be 50 acres at an absolute minimum, though the area may ultimately need to be much larger to accommodate the required housing density.

Comparing the Effect of HB 5429 and Section 3A Draft Guidelines on CT Municipalities

Given the myriad exemptions embedded in HB 5429, it is impossible to project precisely how many dwelling units the statute would require in each covered municipality. The numbers cited by bill opponents during public hearing testimony are wildly exaggerated and off-base. First, this testimony frequently mischaracterized the bill as requiring an additional 15 units per acre in zoned capacity, without acknowledging that existing zoned capacity counts toward the requirement. Second, that testimony does not account at all for the capacious exemptions in the bill, which exclude the entire area around several stations and the vast majority of the area around several more.

The effects of HB 5429 and Section 3A on similarly situated communities are likely to diverge somewhat based on their distinct methodologies – in some instances, Section 3A may require greater density. In other instances, HB 5429 may set higher requirements. Take Westport’s train stations for example:
This screenshot, from the DesegregateCT Zoning Atlas, highlights areas served by public sewer in yellow. At most, HB 5429 would apply the 15 dwelling unit per acre requirement to the sliver of yellow within a half-mile of the Westport station, pictured at left. The other exemptions will shrink that area even further, conservatively to 10% of the total radius (50 acres) or likely even lower. At 15 dwelling units per acre, HB 5429 would thus require Westport to zone for 750 units by right. As a “commuter rail community” under Section 3A, Westport would have to zone for 1,608 units (15% of its 10,718 total housing units, as of 2020). Section 3A’s requirements are therefore twice as high than those under HB 5429.

Westport is hardly an outlier in this regard – HB 5429 would entirely exempt several towns with transit stations entirely, whereas Massachusetts’ Draft Guidelines informing the creation of an “area of reasonable size” would require several hundred units in zoned capacity in those communities:

<table>
<thead>
<tr>
<th>Transit town</th>
<th>HB 5429 Requirement</th>
<th>Section 3A Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Redding</td>
<td>0</td>
<td>586</td>
</tr>
<tr>
<td>Guilford</td>
<td>0</td>
<td>1,377</td>
</tr>
<tr>
<td>Madison</td>
<td>0</td>
<td>1,224</td>
</tr>
<tr>
<td>Clinton</td>
<td>0</td>
<td>935</td>
</tr>
<tr>
<td>Westbrook</td>
<td>0</td>
<td>632</td>
</tr>
<tr>
<td>Old Saybrook</td>
<td>0</td>
<td>870</td>
</tr>
</tbody>
</table>
In some towns, it is possible – but by no means certain – that HB 5429 may require greater residential density. That would most likely be the case in communities with multiple transit stations, extensive water and sewer infrastructure, and a low number of housing units overall. In other words, relative to Massachusetts’ Section 3A, HB 5429 prioritizes increasing zoned capacity in the communities that are best able to accommodate new housing but that have not built much housing.