

# HOUSE . . . . . No. 159

## AN ACT RELATIVE TO SPECIAL DEVELOPMENT DISTRICTS.

*[[Note: Text in blue font is not part of the text of the original legislation. Bold fonts and additional paragraph breaks have been added to the text to assist the reader. ]]*

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# HOUSE . . . . . No. 159

By Mrs. Harkins of Needham, petition of Lida E. Harkins and others relative to special development districts. Community Development and Small Business.

## *The Commonwealth of Massachusetts*

PETITION OF:

Lida E. Harkins  
Richard T. Moore  
Joyce A. Spiliotis  
Scott P. Brown  
Willie Mae Allen  
Robert K. Coughlin  
John D. Keenan  
Alice Hanlon Peisch  
Michael E. Festa  
John V. Fernandes

In the Year Two Thousand and Seven.

### **AN ACT RELATIVE TO SPECIAL DEVELOPMENT DISTRICTS.**

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

#### **[[ SECTION 1]]**

SECTION 1. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

”**Agency**”, the Massachusetts Development Finance Agency established pursuant to section 2 of chapter 23G of the General Laws, as amended from time to time.

”**Amended improvement plan**” any change to the improvement plan with respect to the boundaries of a development zone, method of assessing costs, description of improvements or method of financing the improvements that is approved through the same procedures as the original improvement plan adopted pursuant to this chapter.

”**Assessing party**”, shall mean the municipality, the agency or the local improvement district, if any, as the party authorized in the improvement plan to assess any infrastructure assessments in the development zone.

**”Cost”**, shall include the cost of: (a) construction, reconstruction, renovation, demolition and acquisition of all lands, structures, real or personal property, rights, rights-of-way, utilities, franchises, easements, and interests acquired or to be acquired by the public facilities owner; (b) all labor and materials, machinery and equipment including machinery and equipment needed to expand or enhance services from the municipality, the commonwealth or any other political subdivision thereof to the development zone; (c) financing charges and interest prior to and during construction, and for 1 year after completion of the improvements, interest and reserves for principal and interest, including costs of municipal bond insurance and any other type of credit enhancement or financial guaranty and costs of issuance; (d) extensions, enlargements, additions, and enhancements to improvements; (e) architectural, engineering, financial and legal services; (f) plans, specifications, studies, surveys and estimates of costs and of revenues; (g) administrative expenses necessary or incident to the construction, acquisition, and financing of the improvements; and (h) other expenses as may be necessary or incident to the construction, acquisition, and financing of the improvements.

**”Development zone”**, one or more **contiguous** parcels of real estate in the municipality described in the improvement plan and to be benefited by the improvements and subject to infrastructure assessments as described in the improvement plan.

**”Economic development project”**, the acquisition, construction, expansion, improvement or equipping of improvements serving any commercial, industrial or mixed use residential project not qualifying as a local improvement project as certified by the agency after review of the improvement plan submitted in connection with a project.

**”Infrastructure assessments,”** assessments, betterments, special assessments, charges or fees as described in this chapter and assessed by the assessing party upon the real estate within the development zone to defray the cost of improvements financed in accordance with this chapter.

**”Improvement plan”**, a plan approved in the petition for the establishment of a development zone setting forth the proposed improvements, services and programs, revitalization strategy, the cost estimates for said improvements, the boundaries of the development zone, and, if a local improvement district is to be established, the specific powers the local improvement district shall adopt from those listed in section 3(d), the analysis of any costs of financing said improvements, the identification of the assessing party, the method and structure of the infrastructure assessments, the selection of any or all of the assessing powers listed in section 5 that shall be utilized by the assessing party within the development zone, the description of the project in a proposed development zone in such detail so as to determine if it is either an economic development or local improvement project, the proposed use of any bonds or notes to finance such project, provided that any bonds or notes financing an economic development project shall only be issued by the agency, and the designation of either the agency or the local improvement district as the issuer of any bonds or notes financing a local improvement project, the participation of the agency, if any, in a district improvement financing program as described in section 8, and if so, a description of any assessing powers to be

utilized, disclosures, if any, of potential **conflicts of interest** of members of a prudential committee of a local improvement district, if any, and the estimates of the costs and expenses to be levied and assessed on the real estate in the development zone.

**”Improvements”**, the acquiring, laying, constructing, improving and operating of capital improvements to be owned by a **public facilities owner**, such as, but not limited to, storm drainage systems, dams, sewage treatment plants, sewers, water and well systems, roads, bridges, culverts, tunnels, streets, sidewalks, lighting, traffic lights, signage and traffic control systems, parking, including garages, public safety and public works buildings, parks, landscaping of public facilities, cultural and performing arts facilities, recreational facilities, marine facilities such as piers, wharfs, bulkheads and sea walls, transportation stations and related facilities, shuttle transportation equipment, fiber and telecommunication systems, facilities to produce and distribute electricity, including alternate energy sources such as co-generation and solar installations, the investigation and remediation associated with the cleanup of actual or perceived environmental contamination within the development zone in accordance with applicable governmental regulations and provided that no such investigation or remediation shall impair the rights of the public facilities owner or any other person to contribution or reimbursement from any potentially responsible party for the costs thereof, and other improvements provided that improvements shall not include any improvements located in so-called **“gated communities”** that restrict access to the general public.

**”Issuer”**, either the local improvement district, if any, acting through its prudential committee or the agency acting through its board of directors, as designated in the improvement plan, as the issuer of notes or bonds financing the improvements, provided that the agency shall be the exclusive issuer of all bonds or notes financing an economic development project.

**”Local improvement district”**, a **body politic** and corporate and a **political subdivision** of the commonwealth created under this chapter pursuant to a petition to assist with economic or community development and located in a municipality and granted by the improvement plan with any of the following powers: to act as an assessing party, public facilities owner, or issuer of bonds or notes to finance a local improvement project located in a development zone; provided, however, that any local improvement district shall have the same boundaries as the development zone described in the improvement plan and shall be included within the definition of a “local governmental unit” as defined in chapter 29C and its bonds and notes shall be included within the definition of “local governmental obligations” as defined in said statute; and provided that a local improvement district shall be included within the definition of a “governmental entity” for purposes of owning public infrastructure improvements pursuant to chapter 293 of the acts of 2006.

**”Local improvement project”**, the acquisition, construction, expansion, improvement or equipping of improvements serving new or existing residential facilities and commercial facilities ancillary thereto.

”**Municipal governing body**”, in a city, the city council with the approval of the mayor, and in a city having a Plan D or E form of charter, the city council with the approval of the city manager, the town council in a town with a town council form of government, or otherwise the town meeting and the board of selectmen in a town with a town meeting form of government, except that in the case of a town when a petition or amended improvement plan is signed by 100 percent of the persons owning real estate in the development zone, the board of selectmen shall constitute the municipal governing body.

”**Municipality**”, a city or town, or cities and towns, if the development zone, is located in multiple municipalities.

”**Person**”, any natural or corporate person, including bodies politic and corporate, public departments, offices, agencies, authorities and political subdivisions of the commonwealth, corporations, trusts, limited liability companies, societies, associations, and partnerships and subordinate instrumentalities of any one or more political subdivisions of the commonwealth.

”**Petition**”, the document initiating the creation of a development zone and a local improvement district, if any, as described in section 2 (b).

”**Project**”, an economic development project or a local improvement project.

”**Prudential committee**” or “**committee**” established pursuant to this chapter in connection with establishment of a local improvement district.

”**Public facilities owner**”, means a local improvement district, the agency, the municipality, the commonwealth or any other political subdivision or public instrumentality, agency or public authority of the commonwealth as identified in the improvement plan.

## [[ SECTION 2]]

SECTION 2. (a) Each municipality in the commonwealth is authorized to establish 1 or more development zones pursuant to this chapter. There is further authorized in each municipality in the commonwealth, the establishment of 1 or more **local improvement districts, each a body politic and corporate and a political subdivision of the commonwealth**; provided, however, that no local improvement district shall be established, organized, transact any business, employ any personnel or exercise any powers until the **municipal governing body, pursuant to section 3, shall approve by a majority vote the petition for the creation** of a development zone and a local improvement district, if so requested, and notice of such approval has been filed with the records of the clerk of the municipality and the secretary of the commonwealth. In the event that 2 or more municipalities wish to jointly establish or consolidate contiguous development zones, the municipal governing body of each such municipality wherein said development zone or local improvement district shall be located, shall approve by a majority vote the petition for the establishment of such a development zone and a local

improvement district, if so stated in the petition.

(b) The establishment of a development zone and the optional establishment of a local improvement district shall both be initiated by **a petition of the persons owning real estate** within the proposed development zone; provided further, that said petition shall be filed in the office of the clerk of the municipality and the offices of the agency. The agency shall certify to the municipality within 30 days of the filing of the petition with the agency, whether the project described in the improvement plan is an economic development project or a local improvement project. The **petition, at a minimum, shall contain:** (1) a legal description of the boundaries of the development zone, and the local improvement district, if any; (2) the written consent to the establishment of the development zone, and the local improvement district, if any, or any amended improvement plan, of both the persons with the record ownership of at least **80 percent of the acreage** to be included in the development zone and by persons owning at least **80 per cent of the tax parcels** within the development zone; provided that any **real estate owned by the commonwealth**, or any agency thereof, or any political subdivision thereof included in the boundaries of the district **shall not be included in the count of persons owning tax parcels or acreage** of the development zone for the purposes of this clause; (3) if a local improvement district is to be established, the **designation by the petitioners of 5 persons** that are either record owners of real estate within said development zone or designees of said owner or owners to be **the initial members of the prudential committee**; provided further, that initial members of the committee shall serve for a term not to exceed **5 years** as specified in the petition or until replaced by members appointed as provided hereafter; provided, however, that **successor members of the prudential committee** shall be appointed by the **city manager** with the approval of the city council in the case of a city under Plan D or E forms of government, by the **mayor** with the approval of the city council in the case of all other cities, the town council in the case of a town with a town council form of government or the board of selectmen in the case of a town with a town meeting form of government upon the expiration of the member's term of office for the term specified in the petition and shall serve until their successors are appointed and qualified; (4) the official name of the development zone and the local improvement district, if any; (5) a map of the proposed development zone, and the local improvement district, if any, showing the boundaries, and any current public improvements as are already in existence which may be added to or modified by any improvements; (6) based upon available data, the proposed timetable for construction of the improvements and the estimated cost of completing said improvements; (7) the improvement plan for the development zone and the local improvement district, if any; and (8) the procedure by which the municipality will be reimbursed for any costs incurred by it in establishing the development zone, or the local improvement district, if any, and for any administrative costs to be incurred in the administration and collection of any infrastructure assessments imposed on the development zone.

### [[ SECTION 3]]

SECTION 3. (a) Upon receipt of a petition pursuant to section 2 and the certification by the agency that project qualifies as either an economic development or local improvement project, the city council in the case of cities, the town council in the case of towns with a town council form of government or the board of selectmen in the case of a town with a town meeting form of government shall, within 60 days of said receipt, hold a **public hearing** on said petition; provided further, that written notification of such hearing and a summary of the petition and the improvement plan, shall be provided by the clerk of the municipality to the record owner of each parcel within the boundaries of the proposed development zone no later than 14 days prior to such hearing, by mailing notice to the address listed in the municipality's property tax records. Notification of the hearing shall also be published for 2 consecutive weeks in a newspaper of general circulation in the municipality at least 14 days prior to the date of such hearing. Such public notice shall contain the proposed boundaries of the development zone and the local improvement district, if any, the proposed basis for determining any infrastructure assessments as well as the proposed benefits to be provided in the development zone and the local improvement district, if any, and the location or locations for viewing and copying the petition including the improvement plan.

(b) A hearing pursuant to subsection (a) shall determine if the petition satisfies the purposes set forth therein and the criteria of this chapter for a development zone and a local improvement district, if any, and shall obtain public comment regarding the improvement plan and the effect that the development zone and local improvement district, if any, will have on the record owners of real estate within said development zone, its tenants, or others within the development zone, and the municipality or adjacent communities; provided further, that within 60 days of said public hearing, the city manager with the approval of the city council in the case of a city under Plan D or E forms of government, the mayor with the approval of the city council in the case of all other cities, the town council in the case of towns with a town council form of government or otherwise the board of selectmen in the case of a town with a town meeting form of government shall issue recommendations on the petition; provided, however, that said recommendations shall include, but shall not be limited to, the following findings:—

(1) the establishment of the development zone and the local improvement district, if any, is in compliance with the provisions of this chapter;

(2) the establishment of the development zone and the local improvement district, if any, is **not inconsistent with any applicable element or portion of any master plan of the municipality**; and

(3) that the proposed improvements in the development zone will be compatible with the capacity and uses of existing **local and regional infrastructure** services and facilities.

(c) Within 21 days of the receipt of the recommendation required pursuant to subsection (b), the city council in the case of cities, the town council in the case of a town with a town council form of government, or otherwise, in the case of a town with a town meeting form of government, at the next available town meeting, except that in the case of a petition in a town that is signed by all the persons owning parcels within the proposed development zone, the board of selectmen, without town meeting approval, shall vote on the petition to establish the development zone and the local improvement district, if any.

(d) Upon the **approval of the petition**, by majority vote of the municipal governing body, or of the board of selectmen in the case of a petition in a town signed by all persons owning real estate within the proposed development zone pursuant to this chapter, and notice of such approval has been filed with the records of the clerk of the municipality, the agency, and the secretary of the commonwealth, the development zone and the local improvement district, if any, shall be deemed established and the local improvement district, if any, acting through its prudential committee, shall have all the rights and powers necessary or convenient to carry out and effectuate this chapter, not inconsistent with the improvement plan as approved by the municipal governing body including, but without limiting the generality of the foregoing, the following:

(1) **to adopt by-laws** for the regulation of its affairs and the conduct of its business, to promulgate rules, regulations and procedures in connection with the performance of its functions and duties, and to fix, enforce and collect penalties for the violation thereof that relate to the operation, and financing of the improvements: provided, however, that any by-laws, rules, regulations and procedures shall be consistent with the powers conferred by this chapter and with other applicable provisions of the General Laws;

(2) to adopt an official seal and alter the same at its pleasure;

(3) to maintain an office at such place or places within the development zone or the municipality as it may determine;

(4) to make and enter into all manner of contracts and agreements necessary or incidental to the exercise of any power granted to a local improvement district by this chapter including agreements with the municipality, the commonwealth, the agency and any other city, town or political entity or utility providing services that are necessary to the acquisition, construction, operation or financing of the improvements within the development zone;

(5) to **purchase or acquire** by lease, lease-purchase, sale and lease-back, gift or devise, or to obtain or grant options for the acquisition of any property, real or personal, tangible or intangible, or any interest therein, in the exercise of its powers and the performance of its duties; provided that the local improvement district may acquire real estate or any interest therein, within the boundaries of the development zone itself, if authorized in the improvement plan, except that the local improvement district, if authorized in the improvement plan, may acquire real estate or any interest therein **outside the boundaries**

of the development zone, necessary for the acquisition, construction, and operation of the improvements or services relating thereto that are located within the development zone or are related to, or provided by the local improvement district;

(6) to construct, improve, extend, equip, enlarge, repair and operate and administer the improvements for the benefit of the development zone within, or without the development zone; to acquire existing improvements or construct new improvements, including those located under or over any roads, public ways or parking areas, and to enter upon and dig up any private land within the development zone for the purpose of constructing said improvements and of repairing the same; provided further, that chapter 30B of the General Laws shall apply to the local improvement district and all its improvements as defined herein, except that **section 16 of said chapter 30B shall not apply**; provided further, that **chapter 31 shall not apply** to any person employed or engaged by the local improvement district under this chapter; provided further, that as relating to its improvements and any construction or repair work undertaken by it pursuant to this clause, the local improvement district shall be deemed to be a public agency for purposes of sections 26 to 27F, inclusive, and sections 44A to 44H, and the violation and penalty provisions in Section 44J inclusive of chapter 149; and provided further, that all other applicable provisions of the General Laws protecting public health, welfare and safety shall apply;

(7) to accept gifts or goods of funds, property or services from any source, public or private, and comply, subject to the provisions of this chapter and the terms and conditions hereof;

(8) to sell, lease, mortgage, exchange, transfer or otherwise dispose of, or grant options for any such purposes with respect to any property, real or personal, tangible or intangible, of the local improvement district, or any interest therein;

(9) to pledge or assign any money, infrastructure assessments or other revenues of the local improvement district and any proceeds derived by the local improvement district;

(10) to **borrow money** and incur indebtedness and issue bonds or notes as hereinafter provided:

(11) to enter into **contracts and agreements** with the municipality, the agency, the commonwealth or any political subdivisions thereof, the property owners of the development zone and any public or private utility with respect to all matters necessary, convenient or desirable for carrying out the purposes of this chapter including, without limiting the generality of the foregoing, the acquisition of existing improvements (including utilities or infrastructure outside the development zone but benefiting the development zone), collection of revenue, data processing, and other matters of management, administration and operation; to make other contracts of every name and nature; and to execute and deliver all instruments necessary or convenient for carrying out any of its purposes;

(12) to assess and collect infrastructure assessments as described in this chapter; to exercise the powers and privileges of, and to be subject to the limitations upon, municipalities provided in sections 38 to 42K, inclusive, of chapter 40, chapter 80 and chapter 83, in so far as such provisions may be applicable and are consistent with the provisions of this chapter; provided, however, that any requirement in said chapters for a vote by the governing body of a district, town or city or for a vote by the voters of a town, city or district **shall be satisfied by a vote or resolution duly adopted by an annual or special meeting of the prudential committee** in accordance herewith; provided that the municipality or the agency may assume and exercise all of the assessing powers described in this chapter to the exclusion of the local improvement district, if either is so authorized in the improvement plan, and, if so authorized, it shall follow the same procedures that are applicable to the local improvement district;

(13) to **sue and be sued** in its own name; provided, however, that neither the local improvement district nor any member of the prudential committee, officer or employee thereof shall be liable in tort except pursuant to the provisions of chapter 258; provided further, that the local improvement district may indemnify its officers and employees to the extent provided in said chapter 258; and provided further that the property of the local improvement district other than revenues pledged to the payment of notes or bonds shall not be subject to attachment, or be levied upon by execution or otherwise;

(14) to invest any funds of the local improvement district in such manner and to the extent permitted under the General Laws for the investment of such funds by the treasurer of a municipality;

(15) to employ such assistants, agents, employees and persons, including consulting experts as may be deemed necessary in the prudential committee's judgment, and to fix their compensation;

(16) to procure insurance against any loss or liability that may be sustained or incurred in carrying out the purposes of this chapter in such amount as the local improvement district shall deem necessary and appropriate with 1 or more insurers who shall be licensed to furnish such insurance in the commonwealth;

(17) to apply for any **loans, grants or other type of assistance** from the United States Government, the commonwealth or any political subdivision thereof;

(18) to adopt an annual budget and to raise, appropriate, and assess funds in amounts necessary to carry out the purposes for which the local improvement district is formed as described in this chapter; and

(19) to do all things necessary, convenient or desirable for carrying out the purposes of this chapter or the powers expressly granted or necessarily implied in this chapter.

#### **[[ SECTION 4]]**

SECTION 4. (a) Upon the **majority vote of the municipal governing body** approving a petition establishing a local improvement district, or amended improvement plan, as the case may be, filed pursuant to section 2, or the **board of selectmen** in the case of a town when a petition, or an amended improvement plan, as the case may be, is signed by all the persons owning tax parcels within the development zone, the prudential committee, after each member before entering upon his duties shall have taken an oath before the clerk of the municipality to administer the duties of his office faithfully, and a record of such oaths shall be filed in the office of the clerk of the municipality, shall, within 14 days meet and shall take the following actions: (1) elect a chairman and vice-chairman, who shall preside at all meetings of the prudential committee in the absence of the chairman or in the event of his inability to act or because of a conflict of interest and elect a clerk and treasurer; and, in addition, the prudential committee shall appoint an auditor who shall have the powers and duties set forth in sections 50 and 51 of chapter 41 of the General Laws. The prudential committee may otherwise hire, supervise, suspend and discharge such employees as the prudential committee shall deem necessary or appropriate for the conduct of the work to be performed by the local improvement district including, but not limited to, a local improvement district superintendent;

(2) to appoint other local improvement district officers, adopt local improvement district by-laws and other rules for the general conduct of its business; provided further, that said by-laws shall include a description of the duties and responsibilities of the local improvement district officers and a requirement that all meetings of the prudential committee shall be posted in the offices of the clerk of the municipality at least 48 hours prior to said meeting;

(3) adopt a local improvement district seal;

(4) adopt a budget for the fiscal year and appropriate monies to be raised pursuant to this chapter in support thereof; and include in its initial and in all subsequent annual appropriations, compensation, if any, for the municipality's assessors and tax collector, pursuant to the provisions of section 108B of chapter 41 of the General Laws, with respect to their duties and expenses hereunder; and

(5) consider such other business as shall be consistent with the power and authority conferred by this chapter.

(b) Said prudential committee shall meet not less than once every 6 months; provided further, that a minimum of **3 members** of the prudential committee shall be required for a quorum and that a quorum of the prudential committee shall be required for the conduct of any business; provided further, that all actions permitted to be taken by the prudential committee shall require a majority vote of its members present at said meeting who shall constitute a quorum in accordance with this chapter or the by-laws of the local improvement district; and provided further, that meetings of the prudential committee shall be governed by chapter 39 of the General Laws except as otherwise provided in this chapter and any action by the prudential committee shall take effect immediately unless otherwise provided and need not be published or posted. Any member of the prudential

committee may be removed from office for just cause by the municipality acting through its city council, town council or board of selectmen as the case may be.

## [[ SECTION 5]]

SECTION 5. (a) Consistent with the improvement plan, the assessing party is authorized and empowered to fix, revise, charge, collect and abate **infrastructure assessments** for the cost, and administration of the improvements imposed on the real estate, leaseholds or other interests therein, located in the development zone. In providing for the payment of the cost of the improvements or for the use of the improvements, the assessing party may avail itself of the provisions of the General Laws relative to the assessment, apportionment, division, fixing, reassessment, revision, abatement and collection of infrastructure assessments by cities and towns, or the establishment of liens therefore and interest thereon, and the procedures set forth in sections 5 and 6 of chapter 254 of the General Laws for the foreclosure of liens arising under section 6 of chapter 183A of the General Laws, as it shall deem necessary and appropriate for purposes of the assessment and collection of infrastructure assessments. Notwithstanding any general or special law to the contrary, the issuer may pay the entire cost of any improvements, including the acquisition thereof, during construction or after completion, or the debt service of notes or bonds used to fund such costs, from infrastructure assessments, and may establish said infrastructure assessments prior to, during, or within 1 year after completion of construction or acquisition of any improvements. The assessing party may establish a schedule for the payment of infrastructure assessments not to exceed 35 years. The assessing party may determine the circumstances under which the infrastructure assessments may be increased, if at all, as a consequence of delinquency or default by the owner of that parcel or any other parcel within the development zone. To provide for the collection and enforcement of its infrastructure assessments, the assessing party is hereby granted all the powers and privileges with respect thereto held by the municipality on the effective date of this chapter or as otherwise provided in this chapter, to be exercised concurrently with the municipality.

The infrastructure assessments of general application authorized by this chapter may only be increased for administrative expenses in excess of the infrastructure assessments described in the improvement plan, and shall be in accordance with the procedures to be established by the assessing party for assuring that interested persons are afforded notice and an opportunity to present data, views and arguments. The assessing party shall hold at least 1 public hearing on its schedule of infrastructure assessments or any revision thereof prior to adoption by the assessing party, notice of which shall be delivered to the municipality and be published in a newspaper of general circulation in the municipality at least 1 month in advance of the hearing. No later than the date of such publication, the assessing party shall make available to the public and deliver to the municipality the proposed schedule of infrastructure assessments.

The infrastructure assessments established by the assessing party **shall not be subject to supervision or regulation by any department, division, commission, board, bureau, or agency of the commonwealth or any of its political subdivisions**, including without

limitation, the municipality, if it is not the assessing party, nor shall the assessing party be subject to the provisions of sections 20A and 21C of chapter 59.

Notwithstanding any general or special law to the contrary, the assessing party may contract with one or more persons for any services required by the assessing party regarding the assessment, apportionment, division, fixing, reassessment, revision, collection and enforcement of infrastructure assessments hereunder, and the fees, costs and other expenses thereof shall be included in the calculation of the infrastructure assessments levied by the assessing party hereunder.

The infrastructure assessments established by the assessing party in accordance with this chapter shall be fixed and adjusted in respect of the aggregate thereof so as to provide revenues at least sufficient to: (i) to pay the administrative expenses of the assessing party, and the local improvement district, if any; (ii) to pay the principal of, premium, if any, and interest on bonds, notes or other evidences of indebtedness of the issuer under this chapter as the same becomes due and payable; (iii) to create and maintain such reasonable reserves as may be reasonably required by any trust agreement or resolution securing bonds; (iv) to provide funds for paying the cost of necessary repairs, replacements and renewals of the improvements; and (v) to pay or provide for any amounts that the issuer may be obligated to pay or provide for by law or contract, including any resolution or contract with or for the benefit of the holders of its bonds and notes, provided that the assessing party shall not be required to increase any infrastructure assessments by virtue of any individual property owner delinquencies.

(b) As an alternative to levying infrastructure assessments under any other provisions of this chapter or the General Laws, the assessing party may levy **special assessments** on real estate, leaseholds, or other interests therein within the development zone to finance the cost, and administration of the improvements. In determining the basis for and amount of the special assessment, the cost, and administration of the improvements, including the cost of the repayment of the debt issued or to be issued by the issuer to finance the improvements, may be calculated and levied using any of the following methods that result in fairly allocating the costs of the improvements to the real estate in the development zone:

(1) equally per length of frontage, or by lot, parcel, or dwelling unit, or by the square footage of a lot, parcel or dwelling unit; (2) according to the value of the property as determined by the municipality's board of assessors; or (3) in any other reasonable manner that results in fairly allocating the cost, administration and operation of the improvements, according to the benefit conferred or use received including, but not limited to, by **classification** of commercial or residential use or distance from the improvements. The assessing party, consistent with the improvement plan, may also provide for the following:

(1) a maximum amount to be assessed with respect to any parcel;

(2) a tax year or other date after which no further special assessments under this

section shall be levied or collected on a parcel;

(3) annual collection of the levy without subsequent approval of the assessing party;

(4) the circumstances under which the special assessment levied against any parcel may be increased, if at all, as a consequence of delinquency or default by the owner of that parcel or any other parcel within the development zone;

(5) the circumstances under which the special assessments may be reduced or abated; and

(6) the assessing party may establish procedures allowing for the prepayment of infrastructure assessments under this chapter.

(c) Infrastructure assessments, levied under this chapter shall be **collected and secured in the same manner as property taxes, betterments, and assessments and fees owed to the municipality** unless otherwise provided by the assessing party and shall be subject to the same penalties and the same procedure, sale, and lien priority in case of delinquency as is provided for such property taxes, betterments and liens owed to the municipality. Any liens imposed by the municipality for the payment of property taxes, betterments and assessments shall have priority in payment over any liens placed on real estate within the development zone.

(d) Notwithstanding any general or special act to the contrary, the agency, the municipality, the local improvement district, if any, or any other public facilities owner are each authorized to contract with 1 or more owners of real estate within a development zone to acquire or undertake improvements within the development zone. Upon completion, such improvements shall be conveyed to the public facilities owner, provided that the consideration for said conveyance shall be limited to the cost of said improvements.

SECTION 6. (a) In addition to the powers granted pursuant to chapter 23G and Chapter 40D of the General Laws, the agency, if it is designated as an issuer in the improvement plan, and if its board of directors accepts such designation, is hereby authorized to borrow money and issue and secure its bonds for the purpose of financing improvements as provided in and subject to, the provisions of this chapter; provided further that the provisions of said chapters 23G and 40D of the General Laws shall apply to bonds issued under this section, except that the provisions of subsection (b) of section 8 of said chapter 23G and section 12 of said chapter 40D shall not apply to bonds issued pursuant to this chapter or the improvements financed thereby; and provided further, that the improvements financed by the agency pursuant to this chapter shall constitute a project within the meaning of section 1 of said chapter 23G and section 1 of said chapter 40D, but shall not be considered facilities to be used in a commercial enterprise. With respect to the issuance of bonds or notes for the purposes of this chapter in the event of a conflict between this chapter and chapter 23G, this chapter shall control. Nothing in this chapter

shall be construed to limit or otherwise diminish the power of the agency to finance the costs of projects authorized pursuant to said chapter 23G and said chapter 40D within the development zone or the municipality upon compliance with the provisions of said chapter 23G and said chapter 40D.

(b) The issuer is hereby authorized and empowered to provide by resolution of its prudential committee, in the case of a local improvement district, or its board of directors, in the case of the agency, from time to time, for the issuance of bonds or notes of the issuer for any of the purposes set forth in this chapter. Bonds issued hereunder shall be special obligations payable solely from particular funds and revenues generated from infrastructure assessments levied pursuant to this chapter as provided in such resolution. No bonds or notes shall be issued by the agency or the local improvement district pursuant to this chapter until the agency's board of directors has determined that the bonds or notes, trust agreement and any related financing documents are reasonable and proper and comply with this chapter. The agency may charge a reasonable fee in connection with the review of such documentation by its staff and board of directors. Without limiting the generality of the foregoing, such bonds may be issued to pay or refund notes issued pursuant to this chapter, to pay the cost of acquiring, laying, constructing, and reconstructing the improvements. The bonds of each issue shall be dated, shall bear interest at the rates, including rates variable from time to time, and shall mature at the time or times not exceeding 35 years from their date or dates, as determined by the issuer, and may be redeemable before maturity, at the option of the issuer or the holder thereof, at the price or prices and under the terms and conditions fixed by the issuer before the issuance of the bonds. The issuer shall determine the form of the bonds, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the commonwealth and such other locations as designated by the issuer. In the event an officer whose signature or a facsimile of whose signature shall appear on any bonds shall cease to be an officer before the delivery of the bonds, the signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until the delivery. The bonds shall be issued in registered form. The issuer may sell the bonds in a manner and for a price, either at public or private sale, as it may determine to be for the best interests of the development zone. Before the preparation of definitive bonds, the issuer may, under like restrictions, issue interim receipts or temporary bonds exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The issuer may also provide for the replacement of any bonds that shall become mutilated or shall be destroyed or lost. The issue of the bonds, the maturities, and other details thereof, the rights of the holders thereof, and the duties of the local improvement district, if any, and the agency in respect of the same shall be governed by this chapter insofar as the same may be applicable.

While any bonds or notes issuer remain outstanding, its **powers, duties or existence shall not be diminished or impaired in any way that will affect adversely the interests and rights of the holders of such bonds or notes.** Bonds or notes issued under this chapter, unless otherwise authorized by law, shall not be deemed to constitute a debt

of the commonwealth or the municipality, or a pledge of the faith and credit of the commonwealth or of the municipality, but the bonds or notes shall be payable solely by the issuer as special obligations payable from particular funds collected from infrastructure assessments levied pursuant to this chapter. Any bonds or notes issued by the issuer under this chapter, shall contain on the face thereof a statement to the effect that neither the commonwealth nor the municipality shall be obliged to pay the same or the interest thereon, and that neither the faith and credit nor taxing power of the commonwealth or of the municipality is pledged to the payment of the bonds or notes. All bonds or notes issued under this chapter shall have and are hereby declared to have all the qualities and incidents of negotiable instruments as defined in sections 3-104 of chapter 106 of the General Laws.

Issuance by the issuer of 1 or more series of bonds or notes for 1 or more purposes shall not preclude it from issuing other bonds or notes in connection with the same project or any other project; provided, however, that the resolution or trust indenture wherein any subsequent bonds or notes may be issued shall recognize and protect any prior pledge made for any prior issue of bonds or notes unless in the resolution or trust indenture authorizing such prior issue the right is reserved to issue subsequent bonds on a parity with such prior issue.

(c) In the discretion of the issuer, bonds issued pursuant to this chapter may be secured by a **trust agreement** between the issuer and the bond owners or a corporate trustee which may be any trust company or bank having the powers of a trust company within or without the commonwealth. A trust agreement may pledge or assign, in whole or in part, the revenues, funds and other assets or property held or to be received by the assessing party, or the issuer including without limitation all monies and investments on deposit from time to time in any fund of the assessing party or the issuer or any account thereof and any contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the assessing party or the issuer, and the proceeds thereof. A trust agreement may pledge or assign, in whole or in part, development zone revenues, funds and other assets or property relating to the development zone held or to be received by the assessing party or the issuer. A trust agreement may contain, without limitation, provisions for protecting and enforcing the rights, security and remedies of the bondholders, provisions defining defaults and establishing remedies, which may include acceleration and may also contain restrictions on the remedies by individual bondholders. A trust agreement may also contain covenants of the issuer concerning the custody, investment and application of monies, the issue of additional or refunding bonds, the use of any surplus bond proceeds, the establishment of reserves and the regulation of other matters customarily treated in trust agreements. It shall be lawful for any bank or trust company to act as a depository of any fund of the assessing party or the issuer or trustee under a trust agreement, provided it furnishes indemnification and reasonable security as the issuer may require. Any assignment or pledge of revenues, funds and other assets and property made by the assessing party or the issuer shall be valid and binding and shall be deemed continuously perfected for the purposes of chapter 106 and other laws when made. The revenues, funds and other assets and property, rights therein and thereto and proceeds so pledged and then

held or thereafter acquired or received by the assessing party or the issuer shall immediately be subject to the lien of such pledge without any physical delivery or segregation or further act, and the lien of any such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the trust, whether or not such parties have notice thereof. The trust agreement by which a pledge is created need not be filed or recorded to perfect the pledge except in the records of the issuer and no filing need be made pursuant to said chapter 106. Any pledge or assignment made by the issuer is an exercise of its political and governmental powers, and revenues, funds, assets, property and contract or other rights to receive the same and the proceeds thereof which are subject to the lien of a pledge or assignment created under this chapter shall not be applied to any purposes not permitted by the pledge or assignment.

(d) The issuer is hereby authorized and empowered to issue, from time to time, **notes of the issuer** in anticipation of federal, state or local grants for the cost of acquiring, constructing or improving the development zone's improvements or in anticipation of bonds to be issued pursuant to this chapter. Said notes shall be authorized, issued and sold in the same manner as, and shall otherwise be subject to the other provisions of this chapter. Such notes shall mature at such time or times as provided by the issuing resolution of the issuer and may be renewed from time to time; provided, however, that all such notes and renewals thereof shall mature on or prior to 20 years from their date of issuance. (e) In addition to other security provided herein, or otherwise by law, bonds, notes or obligations issued by the issuer under any provision of this chapter, may be secured, in whole or in part, by a letter of credit, line of credit, bond insurance policy, liquidity facility or other credit facility for the purpose of providing funds for payments in respect of bonds, notes or other obligations required by the holder thereof to be redeemed or repurchased prior to maturity or for providing additional security for such bonds, notes or other obligations. In connection therewith, the issuer may enter into reimbursement agreements, remarketing agreements, standby bond purchase agreements and any other necessary or appropriate agreements. The assessing party may pledge or assign any of its revenues as security for the reimbursement by the it to the issuers or providers of such letters of credit, lines of credit, bond insurance policies, liquidity facilities or other credit facilities of any payments made under the letters of credit, lines of credit, bond insurance policies, liquidity facilities or other credit facilities.

(f) In connection with, or incidental to, the issuance of bonds, notes or other obligations, the issuer may enter into such contracts as the issuer may determine to be necessary or appropriate relative to the issuance thereof and the interest payable thereon or to place the bonds, notes or other obligations of the issuer, as represented by the bonds or notes, or other obligations in whole or in part, on such interest rate or cash flow basis as the issuer may determine appropriate, including without limitation, interest rate swap agreements, insurance agreements, forward payment conversion agreements, futures contracts, contracts providing for payments based on levels of, or changes in, interest rates or market indices, contracts to manage interest rate risk, including without limitation, interest rate floors or caps, options, puts, calls and similar arrangements. Such contracts shall contain such payment, security, default, remedy and other terms and conditions as

the district may deem appropriate and shall be entered into with such party or parties as the district may select, after giving due consideration, where applicable, for the credit worthiness of the counter party or counter parties, including any rating by a nationally recognized rating agency, the impact on any rating on outstanding bonds, notes or other obligations or any other criteria the issuer may deem appropriate.

(g) The issuer shall have the power out of any funds available therefore to purchase its bonds or notes. The issuer may hold, pledge, cancel or resell such bonds or notes, subject to and in accordance with agreements with bondholders. The issuer may issue refunding bonds for the purpose of paying any of its bonds at maturity or upon acceleration or redemption. Refunding bonds may be issued at such time or times prior to the maturity or redemption of the refunded bonds as the issuer deems to be in the public interest. Refunding bonds may be issued in sufficient amounts to pay or provide for the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expense of issuing the refunding bonds, the expense of redeeming bonds being refunded and such reserves for debt service or other capital from the proceeds of such refunding bonds as may be required by a trust agreement or resolution securing the bonds and, if considered advisable by the issuer, for the additional purpose of the acquisition, construction or reconstruction and extension or improvement of improvements. All other provisions relating to the issuance of refunding bonds shall be as set forth in this chapter insofar as the same may be applicable.

(h) All moneys received pursuant to the provisions of this chapter, whether as proceeds from the issue of bonds or notes, or as revenue or otherwise, shall be deemed trust funds to be held and applied solely as provided in this chapter.

(i) Bonds or notes issued under this chapter are hereby made securities in which all public officers and public bodies of the commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments and within the limits set by the General Laws, banking associations, investment companies, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds, including capital in their control and belonging to them; and the bonds are hereby made obligations that may properly and legally be made eligible for the investment of savings deposits and income thereof in the manner provided by section 2 of chapter 167E. The bonds or notes are hereby made securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the commonwealth for any purpose for which the deposit of bonds or other obligations of the commonwealth is now or may hereafter be authorized by law. Notwithstanding any general or special law to the contrary, or any provision in their respective charters, agreements of associations, articles or organization, or trust indentures, domestic corporations organized for the purpose of carrying on business within the commonwealth, including without implied limitation any electric or gas company as defined in section 1 of chapter 164, railroad corporations as defined in section 1 of chapter 160, financial institutions, trustees and the municipality may acquire,

purchase, hold, sell, assign, transfer, or otherwise dispose of any bonds, notes, securities or other evidence of indebtedness of the issuer provided that they are rated similarly to other governmental bonds or notes, and to make contributions to the issuer, all without the approval of any regulatory authority of the commonwealth.

(j) Any holder of bonds or notes issued under this chapter, and a trustee under a trust agreement, except to the extent its rights may be restricted by the trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce all rights under the laws of the commonwealth or granted hereunder or under the trust agreement, and may enforce and compel the performance of all duties required by this chapter or by the trust agreement, to be performed by the issuer or by any officer thereof.

(k) Notwithstanding any of the provisions of this chapter or any recitals in any bonds or notes issued under this chapter, all such bonds or notes shall be deemed to be investment securities under the provisions of chapter 106.

(l) Bonds or notes may be issued under this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the commonwealth or the municipality, and without any proceedings or the happening of any other conditions or things than those proceedings, conditions or things that are specifically required thereof by this chapter, and the validity of and security for any bonds or notes issued by the district or the agency shall not be affected by the existence or nonexistence of any such consent or other proceeding conditions, or things.

#### **[[ SECTION 7]]**

SECTION 7. A local improvement district, if established under this chapter and all its receipts, revenues, income and real and personal property shall be **exempt from taxation** and from betterments and assessments and the local improvement district **shall not be required to pay any tax, excise or assessment to or from the commonwealth or any of its political subdivisions**. Bonds or notes issued by the issuer and their transfer and their interest or income, including any profit on the sale thereof, shall at all times be exempt from taxation within the commonwealth, provided that nothing in this chapter shall act to limit or restrict the ability of the commonwealth or the municipality to otherwise tax the individuals and companies, or their real or personal property or any person living or business operating within the boundaries of the development zone or local improvement district, if any.

#### **[[ SECTION 8]]**

SECTION 8. For purposes of this chapter, the agency shall be the exclusive issuer of bonds secured by infrastructure assessments pursuant to and according to the terms of chapter 40Q of the General Laws. With the approval of the municipal governing body and the Massachusetts Economic Assistance Coordinating Council, the agency may issue its bonds in place of those of the municipality pursuant to, and according to the terms of

chapter 40Q, provided that the municipality has fulfilled all requirements set forth in said chapter 40Q that would be required of the municipality if it were itself issuing bonds pursuant to said chapter 40Q. Additionally, the municipality shall include in its "invested revenue district development program", as defined in said chapter 40Q, a description of the rights and responsibilities of the assessing party, the agency and the municipality with respect to said program. In such case, the municipality may designate the agency as the issuer of bonds pursuant to said chapter 40Q for the purpose of financing any of the "project costs" as defined in said chapter 40Q and that are located in, or functionally serving the needs of the development zone. The municipality shall determine the percentage of the "captured assessed valuation," as defined in said chapter 40Q, of property within the boundaries of the development zone that the municipality is pledging pursuant to an invested revenue district development program as defined in said chapter 40Q for the payment of the agency's bonds. With the written agreement of the person or persons owning 1 or more specific tax parcels in the development zone, the assessing party may adopt a plan whereby any of the assessing powers described in this chapter are made applicable exclusively to said parcels in order to secure and fund the debt service for the bonds. The "project costs" as defined in said chapter 40Q, shall not be reduced by the amount of the revenues derived pursuant to this chapter and said revenues derived from such a plan, may be made contingent upon or abated, in whole or in part, by the assessing party upon the receipt of the anticipated revenues generated through the pledged captured assessed valuation. At the option of the municipality, the adjustment for the "inflation factor" described in said chapter 40Q, may be waived in order to increase the captured assessed valuation available to the development zone. The assessing party, the agency and the municipality shall enter into an inter-municipal agreement delineating the rights and responsibilities of each pursuant to the district improvement financing.

## [[ SECTION 9]]

SECTION 9. The prudential committee and the local improvement district's officers, if any, shall at all times keep full and accurate accounts of the local improvement district's receipts, expenditures, disbursements, assets and liabilities, which shall be open to inspection by any record owner of land within the development zone, or duly appointed officer or duly appointed agent of the commonwealth or the municipality. The fiscal year of the local improvement district shall be the same fiscal year as established by the General Laws for cities and towns in the commonwealth. The local improvement district shall be subject to an audit of its accounts in the manner provided in section 40 of chapter 44. Before the issuance of any bonds or notes under the provisions of this chapter, any officer of the local improvement district or of the prudential committee charged with responsibility for the issuance thereof, shall each execute a surety bond in the sum of \$250,000 payable to the local improvement district, or in lieu thereof, the prudential committee shall obtain a blanket position bond covering any member of the prudential committee, or officer of the local improvement district, charged with responsibility for the issuance of any bond or notes, such surety bonds to be conditioned upon the faithful performance of the duties of their offices, to be executed by a surety company authorized to transact business in the commonwealth as a surety and approved by the prudential

committee.

#### **[[ SECTION 10]]**

SECTION 10. For the purposes of chapter 268A, **the local improvement district shall be considered a municipal agency**. The members of the prudential committee and the officers and employees of the local improvement district, together with any person who performs professional services for the local improvement district on a part-time, intermittent or consultant basis, such as an architect, attorney, engineer, planner, or construction, financial, or real estate expert, shall be **special municipal employees**; provided, however, that the provisions of said **chapter 268A, or any similar provision of any general or special law, shall not apply to any member of the prudential committee having a direct or indirect financial interest** in any contract or transaction entered into with the local improvement district pursuant to an improvement plan that has been submitted with the petition and approved by the municipality in accordance with section 5, if said improvement plan contains a statement making disclosure of said member's interest and the interests of his immediate family in said contract or transaction.

#### **[[ SECTION 11]]**

SECTION 11. The issuer may make representations and agreements for the benefit of the holders of the issuer's bonds and notes or other obligations to provide secondary market disclosure information. The prudential committee or an officer of the local improvement district authorized by the prudential committee may make the representations and agreements on behalf of the local improvement district or may delegate the authority to any other officer or employee of the local improvement district. The agreement may include: (1) covenants to provide secondary market disclosure information (2) arrangements for such information to be provided with the assistance of a paying agent, trustee, dissemination or other agent; and (3) remedies for breach of the agreements, which remedies may be limited to specific performance.

#### **[[ SECTION 12]]**

SECTION 12. The collector-treasurer of each municipality, at the option of the municipality and the issuer, may collect any infrastructure assessments including any recording fees, on behalf of the issuer pursuant to an agreement between the municipality and the issuer and to disburse the funds to any designated management entity or financial institution selected by the local improvement district or the agency. The collector-treasurer shall disburse revenues to the management entity or financial institution within 30 days of the collection of such fees, together with the interest earned on the holding of such fees.

### [[ SECTION 13]]

SECTION 13. (a) This chapter shall be considered to provide an exclusive, additional, alternative and complete method of accomplishing the purposes of this chapter and exercising the powers authorized hereby and shall be considered and construed to be supplemental and additional to, and not in derogation of, powers conferred upon the agency or the local improvement district, if any, by law; but, insofar as the proceedings of this chapter are inconsistent with any general or specific law, administrative order or regulation, or any resolution or ordinance of the municipality, this chapter shall be controlling. Without limiting the generality of the foregoing, no provision of any resolution or ordinance of the municipality requiring ratification by the voters of certain bond issues shall apply to the issuance of bonds or notes of a local improvement district, if any, pursuant to this chapter, nor shall be applicable to the manner of voting or the limitations as to the amount and time of payment of debts incurred by a local improvement district.

(b) Except as specifically provided in this chapter, all other statutes, ordinances, resolutions, rules and regulations of the commonwealth and the municipality shall be fully applicable to the property, property owners, residents and businesses located in the development zone. This chapter shall not obligate the municipality to pay any costs for the acquisition, construction, equipping or operation and administration of the improvements located within the development zone.

### [[ SECTION 14]]

SECTION 14. The local improvement district, if any, **is a distinct and separate entity from the municipality**, and the municipality shall not be subject to any claims, actions or liabilities as a result of the establishment of the local improvement district, its operations or the actions or inactions of its officers or its prudential committee or employees and there shall be no recourse against the municipality on account of, or arising from such obligations.

### [[ SECTION 15]]

SECTION 15. The local improvement district, if any, shall terminate **40 years** after the date of the local improvement district's establishment, **provided that** the local improvement district is no longer administering, or maintaining any improvements, and all of the local improvement district's or agency's bonds, notes and other obligations have been paid or satisfied. However, the municipal governing body by majority vote may **extend the existence** of the local improvement district for a fixed number of years as it shall determine appropriate. Upon such termination, all of the property of the local improvement district shall be deemed transferred to the municipality.