

## **AN ACT RELATIVE TO THE ESTABLISHMENT AND POWERS OF 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.** The General Laws are hereby amended by inserting after Chapter 40S the following chapter: -- CHAPTER 40T SPECIAL DEVELOPMENT DISTRICTS

### **Section 1. Definitions**

In this chapter, unless a different meaning appears from the context, the following words and phrases shall have the following meanings:--

- (1) "Committee", the prudential committee established pursuant to this chapter.
- (2) "District", a special development district created by a municipality pursuant to this chapter.
- (3) "Improvement plan", a plan setting forth the proposed improvements, services and programs, revitalization strategy, update mechanism, the cost estimates for said improvements, the specific powers the district shall adopt from those listed in section 7, the analysis of any costs of financing said improvements, the method and structure of any assessments, betterments, special assessments or fees, the selection of any or all of the assessing powers listed in sections 11 and 12 that shall be utilized, the participation, if any, in a district improvement financing program as described in section 25, and if so, a description of any assessing powers to be utilized, disclosures, if any, of potential conflicts of interest of members of the prudential committee, and the initial district budget to be levied on the real estate in the district.
- (4) "Improvements", the acquiring, laying, constructing, maintaining, improving and operating of capital improvements, such as, but not limited to, storm drainage systems, dams, sewage treatment plants, sewers, water systems, roads, bridges, culverts, tunnels, streets, sidewalks, lighting, parking, including garages, public safety and public works buildings, parks and recreational facilities, marine facilities such as piers, wharfs, bulkheads and sea walls, transportation stations and facilities, fiber and telecommunication systems, the investigation and remediation associated with the cleanup of actual or perceived environmental

contamination within the district in accordance with applicable governmental regulations and provided that no such investigation or remediation shall impair the rights of the district or any other person to contribution or reimbursement from any potentially responsible party for the costs thereof, and other infrastructure improvements.

(5) “Municipal governing body”, 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, or a town council with the approval of the mayor, if required, or the town meeting in a town with a town meeting form of government.

(6) “Municipality”, a Massachusetts city or town or cities and towns, if the district is located in more than 1 town or city.

(7) “Proprietors”, the record owner, from time to time, of 1 or more assessed parcels of land lying within the district. For the purposes of this chapter, a proprietor shall be deemed to include not only natural persons, but also entities empowered to own real estate in the commonwealth including corporations, partnerships, realty trusts, limited liability companies, associations and federal, state and local governmental units. Persons or entities who shall jointly own a lot within the district shall collectively constitute a proprietor of that lot for all purposes hereunder.

(8) “Special development district”, a district created pursuant to this chapter and located in a municipality.

## **Section 2. Legislative declarations**

It is hereby found and declared that the inability of the Commonwealth and its cities and towns to fully finance essential governmental functions relating to infrastructure capital improvements, such as, but not limited to, storm drainage systems, dams, sewage treatment plants, sewers, water systems, roads, bridges, culverts, tunnels, streets, sidewalks, lighting, parking, including garages, public safety and public works buildings, parks and recreational facilities, marine facilities such as piers, wharfs, bulkheads and sea walls, fiber optic and telecommunication systems, the investigation and remediation associated with the cleanup of actual or perceived environmental contamination within the district in accordance with applicable governmental regulations and provided that no such investigation or remediation shall impair the rights of the district or any other person to contribution or reimbursement from any potentially responsible party for the costs thereof, and other infrastructure improvements necessary to support residential, commercial and industrial development affects the safety and welfare

of the residents of the Commonwealth; that such inability to fully finance such infrastructure improvements constitutes an economic liability, substantially impairing or arresting the growth of the Commonwealth's housing stock and retards the economic well being of the Commonwealth; that such lack of public investment for such infrastructure improvements decreases the value of private investments and threatens the sources of public revenue; that such inability to fully finance such infrastructure improvements inhibits the attraction of new private investment necessary to increase the Commonwealth's housing stock, the retention of existing industries and the attraction of new industries and the promotion of the sound economic growth of the Commonwealth and its cities and towns; that the exercise of the powers of a special development district created pursuant to this section and any assistance given by a municipality or the Commonwealth, or any other public body in connection therewith are public uses and purposes for which public money may be expended for the good and welfare of the municipality establishing said special development district and of this Commonwealth.

### **Section 3. Establishment of special development districts**

There is hereby authorized in each municipality in the Commonwealth, the organization of 1 or more special development districts, each a body politic and corporate and a political subdivision of the commonwealth. No special development district, however, shall be organized, transact any business, employ any personnel or exercise any powers until the municipal governing body shall by vote, as described hereafter, declare a need for such district and authorize its creation.

In the event that 2 or more municipalities wish to jointly establish or consolidate their districts, each such municipality desirous of such a joint establishment or consolidation shall so vote as a municipality in the manner herein described. Such a vote may be made at the same time as the vote to organize the district or may be made at a time subsequent thereto.

### **Section 4. Initiation of organization of district; contents of petition**

The organization of a special development district shall be initiated by a petition of the proprietors owning real estate within the proposed district that shall be filed in the office of the clerk of the municipality.

Such petition shall contain:

1. A legal description of the boundaries of the district which may include non-contiguous parcels.
2. The written consent to the establishment of the district by the proprietors of at least 80 percent of the real property acreage to be included in the district, or

documentation demonstrating that the petitioners have control by deed, trust agreement, or contract of said acreage. If the district includes parcels owned by 200 or more proprietors, the written consent of a least 15 percent of the proprietors may be substituted. If real property to be included in the district is owned by a governmental entity, and it will be assessed by the district, the written consent of such governmental entity shall be required.

3. A designation of 5 persons that are proprietors or representatives of proprietors to be the initial members of the prudential committee, who shall serve in that office for an initial term of years not to exceed 7 years as specified in the petition (which may include staggered terms) until replaced by members appointed as provided hereafter.
4. The name of the district.
5. A map of the proposed district showing its boundaries, current roads, major trunk water mains and sewer interceptors and outfalls if in existence.
6. Based upon available data, the proposed timetable for construction of the district improvements and the estimated cost of completing the proposed improvements. These estimates shall be submitted in good faith but shall not be binding and may be subject to change.
7. The improvement plan for the district.
8. The description of the mechanism for reimbursing the municipality for any costs incurred in establishing the district, and for costs to be incurred in collecting any future district fees on behalf of the district.

#### **Section 5. Hearing on petition; findings; declaration of organization; notice**

The municipality's city council, town council, or board of selectmen, as the case may be, shall hold a public hearing within 30 days of the receipt by the clerk of the municipality, of a petition described in section 4. Written notification of such hearing and a summary of the improvement plan shall be sent by the clerk of the municipality to each proprietor within the boundaries of the proposed district at least 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 such hearing. Such public notice shall contain the proposed boundaries of the district, the proposed basis for determining any betterments, assessments, special assessments, and fees, as well as the proposed benefits to be provided by the district and the location or locations for viewing and copying the improvement plan.

At the public hearing, the city council, town council or board of selectmen, as the case may be, shall determine if the petition satisfies the purposes set forth therein and the district establishment criteria of this chapter and shall obtain public comment regarding the improvement plan and the affect that the proposed district will have on the proprietors, tenants, and others within the district, the municipality or adjacent communities. If it appears that said petition is not in conformity with the purposes and establishment criteria, the city council, town council or board of selectmen, as the case may be, shall deny the petition.

Within 45 days after the close of the public hearing, or if a town meeting is required, at the next available town meeting, the municipal governing body, except that in the case of a petition in a town that is signed, or consented to, by all the proprietors within the proposed district, the board of selectmen, without town meeting approval, shall consider approving the establishment of the district and make the following findings:

1. All statements contained within the petition have been found to be true and correct.
2. The establishment of the district is consistent with any applicable element or portion of any master plan of the municipality.
3. The area of land within the proposed district is of sufficient size, is sufficiently compact, and is sufficiently contiguous to be developable as outlined in the improvement plan.
4. That the powers of the district provide a reasonable method for financing the improvements and delivering the services to the area that will be served by the district as described in the improvement plan.
5. That the proposed improvements in the district will be compatible with the capacity and uses of existing local and regional infrastructure services and facilities.
6. That the area that will be served by the district is amenable to separate, limited purpose, special district government.
7. That the initial prudential committee shall serve in office for the term specified in the petition.

Any petition for the establishment of a district with 200 or more proprietors submitted with the written consent of a least 15 percent of the proprietors but lacking the written consent of proprietors owning 80 percent or more of the district acreage, shall require approval by a two-thirds vote of the municipal governing body. Petitions submitted with the written consent to the establishment of the district by the proprietors of at least 80 percent of the real property acreage

to be included in the district, shall require the approval of a majority of the municipal governing body. If the municipal governing body, or the board of selectmen in the case of a petition signed by all the proprietors of the proposed district, makes all of the above findings, it shall by a vote declare that the district is needed and organized and describe the boundaries of the district. Upon such declaration, the special development district may commence operations. Notice of the establishment of the district shall be filed with the municipal clerk, the Attorney General and the Secretary of the Commonwealth and shall be published for 2 consecutive weeks in a newspaper of general circulation in the municipality.

Notwithstanding anything to the contrary contained above, in any situation in which a petition in a town is signed, or consented to, by all the proprietors within the proposed district, the board of selectmen, may, in lieu of making the findings and passing the vote described above, submit the petition to a duly called town meeting for the purpose of making such findings and passing such vote.

#### **SECTION 6. Purpose**

The purpose of the district shall be in general to provide essential governmental functions and enhance its economic development and, more specifically, to serve the needs of its residents, proprietors, tenants and the general public visiting the district, by: acquiring, laying, constructing, maintaining, improving and operating the improvements, whether located within the district or outside the district, if reasonably related to the improvements within the district or that provide a service to the property within the district or its residents or businesses, contracting with the municipality, the Commonwealth, cities or towns or other political entities and private and public utilities serving the district and the municipality in connection with the improvements, and financing, refinancing, or reimbursing the cost of the design, acquisition or construction of the improvements, and assessing and raising revenues for such economic and community development purposes and the construction, acquisition, operation and maintenance of the improvements and the district itself, in such manner as the proprietors and prudential committee may determine are in the best interest of the district.

#### **SECTION 7. Powers**

The district, acting through its prudential committee, upon establishment in the manner set forth hereinbefore, 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 rights and powers:

(a) 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; 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, and that any by-laws with respect to the removal of members of the prudential committee shall be consistent with the laws, statutes, and ordinances applicable to the municipality;

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

(c) to maintain an office at such place or places within the district or the municipality as it may determine;

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

(e) to acquire by eminent domain, with the approval of the municipal governing body, under the provisions of chapters 79, 79A, 80 and 80A of the General Laws, subject to the provisions of this chapter, and as provided for in clause (f), real and personal property located within the district, and 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 district may only acquire real estate or any interest therein, within the boundaries of the district itself, except that the district may acquire real estate or any interest therein outside the boundaries of the district, other than by eminent domain, necessary for the acquisition, construction, maintenance and operation of the improvements or services relating thereto that are located within the district or are related to, or provided by the district;

(f) to construct, improve, extend, equip, enlarge, rehabilitate, maintain and repair improvements for the benefit of the district within, or (subject to clause (e) above) without the district; 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 district for the purpose of constructing said improvements and of maintaining and repairing the same. Chapter 30B of the General Laws shall apply to the district, except that section 16 of said chapter 30B shall not apply. Chapter 31 of the General Laws shall not apply to any person employed or engaged by the district under this chapter. With respect to any construction or repair work undertaken by it pursuant to this clause, the district shall be deemed to be a public agency for purposes of section 26 and sections 44A to 44H, inclusive of chapter 149 of the General Laws. Said provisions of chapters 30B and 149 shall not be applicable to improvements acquired by but not constructed by the district itself. All other applicable provisions of the General Laws protecting public health, welfare and safety shall be applicable;

(g) 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;

(h) 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 district, or any interest therein;

(i) to pledge or assign any money, fees, charges, receipts, betterment fees, assessment fees, and special assessments, or other revenues of the district and any proceeds derived by the district;

(j) to borrow money and incur indebtedness and issue bonds or notes as hereinafter provided;

(k) to enter into contracts and agreements with, but not limited to, the municipality, the proprietors of the district 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 district but benefiting the district), 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;

(l) to assess and collect betterments, assessments and special assessments, and fees as described in this chapter; to exercise the powers and privileges of, and to be subject to the limitations upon, towns and cities provided by provisions of sections 38 to 42K, inclusive, of chapter 40 of the General Laws, chapter 80 of the General Laws and chapter 83 of the General Laws, 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 sections or 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;

(m) to sue and be sued in its own name; provided, however, that neither the 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 of the General Laws; provided, further, that the district may indemnify its officers and employees to the extent provided in said chapter 258; and provided further that the property of the 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;

(n) to invest any funds of the 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;

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

(p) 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 district shall deem necessary and appropriate and with 1 or more insurers who shall be licensed to furnish such insurance in the Commonwealth;

(q) to apply for any loans, grants or other type of assistance from the United States Government, the Commonwealth of Massachusetts or any other government or agency thereof;

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

(s) 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 8. The prudential committee**

The prudential committee shall initially consist of the 5 persons listed in the petition, who shall serve from the date of the declaration of approval of the district by the municipal governing body, until their successors are appointed and qualified. Successor members of the prudential committee shall be appointed by the mayor, town council or board of selectmen, as the case may be, in the municipality upon the expiration of the member's term of office for a term not to exceed 7 years and shall serve until their successors are appointed and qualified. Each member before entering upon his official duties shall be sworn to the faithful performance thereof by the clerk of the municipality.

Within 14 days of the declaration of approval of the municipal governing body and thereafter, according to its by-laws, the prudential committee shall meet and shall take the following actions:

(a) 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;

(b) adopt district by-laws and other rules for the general conduct of its business and adopt a district seal;

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

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

The prudential committee shall otherwise meet as necessary, and according to its by-laws, but in no event less frequently than every 6 months. A quorum of the prudential committee shall be required at all meetings for the conduct of any business thereat and shall consist of a majority of its members.

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 district.

Meetings of the prudential committee shall be governed by chapter 39 of the General Laws except as otherwise provided in this chapter. Any action by the prudential committee shall take effect immediately unless otherwise provided and need not be published or posted.

#### **SECTION 9. Powers and duties of the prudential committee; expenditures; auditor**

The prudential committee shall have and shall exercise all of the powers of the district as described in section 7 and in addition thereto shall enjoy the following powers and duties:

(a) to expend money appropriated, raised, borrowed and collected by the district, for the purposes permitted to the district;

(b) to prepare, annually, a budget for the management and operation of the district;

(c) to apply, in the name of the district, for grants, loans and other assistance from both governmental and non-governmental entities;

(d) subject to its prior appropriation therefor, to enter into agreements and contracts involving the purchase or lease of real and personal property,

services, equipment and supplies consistent with the powers granted by this chapter;

(e) subject to its prior appropriation therefore, to hire, supervise, suspend and discharge such employees as the committee shall deem necessary or appropriate for the conduct of the work to be performed by the district including, but not limited to, a district superintendent;

(f) to exercise such other authority conferred upon it by the district's by-laws, except as otherwise expressly provided in this chapter.

(g) to take such other actions as they deem reasonably necessary or appropriate to effectuate the intent of this chapter.

No monies shall be drawn from the district treasury except upon signature of the district treasurer and upon prior authorization by the prudential committee. In addition, the prudential committee shall appoint an auditor who shall have the powers and duties set forth in sections 50 to 52 of chapter 41 of the General Laws.

#### **SECTION 10. Duties and responsibilities; notice of meetings**

The duties and responsibilities of the district officers shall be as provided in the district by-laws. 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.

**SECTION 11. Betterments, assessments, special assessments, and fees; public hearing; other governmental agencies and bodies; sufficiency to cover financing and other expenses**

Consistent with the improvement plan, the prudential committee is authorized and empowered to fix, revise, charge, collect and abate betterments, assessments, special assessments, and fees, and other charges for the cost of the improvements and other services and commodities furnished or supplied to the real property, its proprietors and tenants in the district. In providing for the payment of the cost of the improvements or for the use of the improvements, the prudential committee may avail itself of the provisions of the General Laws relative to the assessment, apportionment, division, fixing, reassessment, revision, abatement and collection of infrastructure charges, including betterments, assessments, special assessments, and fees, or the establishment of liens therefor and interest thereon.

Notwithstanding any provisions of the General Laws to the contrary, the district 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 betterments, assessments, special assessments or fees, and may establish said betterments, assessments, special assessments or fees, prior to, during, or within 1 year after completion of construction or acquisition of any improvements. The prudential committee may establish a schedule for the payment of betterments, assessments, special assessments or fees of up to 30 years. The prudential committee may determine the circumstances under which the betterments, assessments, special assessments, and fees, and other charges, may be increased, if at all, as a consequence of delinquency or default by the proprietor of that parcel or any other parcel within the district. In order to provide for the collection and enforcement of its betterments, assessments, special assessments, and fees, the prudential committee 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 special assessments, fees, assessments, betterments and other charges of general application may be increased in accordance with the procedures to be established by the prudential committee for assuring that interested persons are afforded notice and an opportunity to present data, views and arguments. The prudential committee shall hold at least 1 public hearing on its schedule of special assessments, fees, betterments and assessments and other charges or any revision thereof prior to adoption by the prudential committee, notice of which shall be delivered to the municipality and be published in a newspaper of substantial circulation in the municipality at least 1 month in advance of the hearing. No later than the date of such publication, the prudential committee shall make available to the public and deliver to the municipality the proposed schedule of special assessments, fees, betterments, assessments and other charges.

The betterments, assessments, special assessments, and fees, and other charges established by the prudential committee 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, nor shall the district be subject to the provisions of section 20A of chapter 59 of the General Laws.

The betterments, assessments, special assessments, fees, and other charges established by the prudential committee in accordance with this chapter shall be fixed and adjusted in respect of the aggregate thereof so as to provide revenues at least sufficient (i) to pay the current expenses of the district, (ii) to pay the principal of, premium, if any, and interest on bonds, notes or other evidences of indebtedness issued by the district 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 infrastructure system or systems and (v) to pay or provide for any amounts that the district 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 district shall not be required to increase any mandatory assessments, special assessments, betterments, fees or other charges by virtue of any individual proprietor delinquencies.

**SECTION 12. Special assessments; method of calculation; details of assessments; prepayment; collection and security**

As an alternative to levying betterments, assessments, and fees, under any other provisions of this chapter or the General Laws, the district may levy special assessments on real estate in the district to finance the cost of improvements. In determining the basis for and amount of the special assessment, the cost of improvements, including the cost of the repayment of the debt issued or to be issued 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 district:

- (a) Equally per length of frontage, or by lot, parcel, or dwelling unit, or by the square footage of a lot, parcel or dwelling unit; or
- (b) According to the value of the property as determined by the municipality's board of assessors.

The district may also provide for the following:

- (a) A maximum amount to be assessed with respect to any parcel;
- (b) A tax year or other date after which no further special assessments under this section shall be levied or collected on a parcel;

- (c) The levy can be collected annually without subsequent approval of the district; and
- (d) 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 proprietor of that parcel or any other parcel within the district.

The district may establish procedures allowing for the prepayment of special assessments, assessments, betterments, and fees, under this chapter.

Special assessments, betterments, assessments, and fees, levied under this chapter shall be collected and secured in the same manner as property taxes, betterments, and assessments owed to the municipality unless otherwise provided by the district 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 shall have priority in payment over any liens of the district.

### **SECTION 13. District bonds**

The district is hereby authorized and empowered to provide by resolution of its prudential committee from time to time, for the issuance of bonds of the district for any of its corporate purposes. Bonds issued hereunder shall be special obligations payable solely from particular funds and revenues as provided in such resolution. 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, maintaining, and reconstructing the improvements. "Cost" shall include the cost of: (a) Construction, reconstruction, renovation and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or to be acquired by the district, the municipality, the Commonwealth or any other Massachusetts governmental entity; (b) All machinery and equipment including machinery and equipment needed to expand or enhance services from the municipality, the Commonwealth or any other Massachusetts governmental entity to the district; (c) Financing charges and interest prior to and during construction, and for a limited time after completion of the construction, interest and reserves for principal and interest, including costs of municipal bond insurance and any other type of 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. 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 30 years from their date or dates, as determined by the prudential committee, and may be redeemable before maturity, at the option of the prudential committee or the holder thereof, at the price or prices and under the terms and conditions fixed by the prudential committee before the issuance of the bonds. The prudential committee 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 the Commonwealth and such other locations as designated by the prudential committee. In case any 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 prudential committee 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 district.

Before the preparation of definitive bonds, the prudential committee 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 prudential committee 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 district in respect of the same shall be governed by this chapter insofar as the same may be applicable.

While any bonds or notes issued by the district remain outstanding, the powers, duties or existence of the district or the prudential committee 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 district or as special obligations payable from particular district funds. Any bonds or notes issued by the district 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 district 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.

#### **SECTION 14. Trust agreement**

In the discretion of the prudential committee the bonds may be secured by a trust agreement between the district 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 district, including without limitation all monies and investments on deposit from time to time in any fund of the district 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 district, and the proceeds thereof. 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 district 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 district or trustee under a trust agreement, provided it furnishes indemnification and reasonable security as the prudential committee may require. Any assignment or pledge of revenues, funds and other assets and property made by the district 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 district 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 prudential committee and no filing need be made pursuant to said chapter 106. Any pledge or assignment made by the district 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.

### **SECTION 15. Notes in anticipation of aid and bonds**

The district is hereby authorized and empowered to issue, from time to time, notes of the district in anticipation of federal, state or local grants for the cost of acquiring, constructing or improving the district's improvements and utilities 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 prudential committee 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.

### **SECTION 16. Credit enhancements**

In addition to other security provided herein, or otherwise by law, bonds, notes or obligations issued by the district 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 district may enter into reimbursement agreements, remarketing agreements, standby bond purchase agreements and any other necessary or appropriate agreements. The prudential committee may pledge or assign any of the district's revenues as security for the reimbursement by the district 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.

### **SECTION 17. Other financing agreements**

In connection with or incidental to the issuance of bonds, notes or other obligations the district may enter into such contracts as the prudential committee may determine to be necessary or appropriate to place the bonds, notes or other obligations of the district, 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 prudential committee may determine, 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 prudential committee 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 prudential committee may deem appropriate.

### **SECTION 18. Purchasing and refunding district bonds**

The district shall have the power out of any funds available therefore to purchase its bonds or notes. The district may hold, pledge, cancel or resell such bonds or notes, subject to and in accordance with agreements with bondholders. The prudential committee 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 prudential committee 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 or current expenses from the proceeds of such refunding bonds as may be required by a trust agreement or resolution securing the bonds. All other provisions relating to the issuance of refunding bonds shall be as set forth in this chapter.

### **SECTION 19. Trust funds**

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.

### **SECTION 20. Bonds and notes as legal investments**

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 of the General Laws. 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 rule at common law or any authorization, limitation or any such other provision of any general or special law, 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 of the General Laws, railroad corporations as defined in section 1 of chapter 160 of the General Laws, 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 district provided that they are rated similarly to other governmental bonds or notes, and to make contributions to the district, all without the approval of any regulatory authority of the Commonwealth.

#### **SECTION 21. Bond or note holder rights**

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 district or by any officer thereof.

#### **SECTION 22. Bonds and notes as investment securities**

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 of the General Laws.

### **SECTION 23. Other approvals for bonds or notes**

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 shall not be affected by the existence or nonexistence of any such consent or other proceeding conditions, or things.

### **SECTION 24. Exemption from taxation**

The district and all its receipts, revenues, income and real and personal property shall be exempt from taxation and from betterments and assessments and the 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 district 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 district.

### **SECTION 25. District improvement financing**

With the approval of the municipal governing body and the Massachusetts Economic Assistance Coordinating Council, the district may issue its bonds pursuant to, and according to the terms of chapter 40Q of the Massachusetts General Laws, 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 both the district and the municipality with respect to said program. In such case, the municipality may designate the district as the issuer of bonds pursuant to said chapter 40Q for the purpose of financing any “project costs” as defined in said chapter 40Q and that are located in, or functionally serving the needs of the district. The municipality shall determine the percentage of the “captured assessed valuation,” as defined in said chapter 40Q, of property within the boundaries of the district that the municipality is pledging pursuant to an invested revenue district development program as defined in said chapter 40Q for the payment of the district’s bonds. With the written agreement of the proprietor or

proprietors of 1 or more specific parcels in the district, the district 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 sections 11 and 12 of this chapter and said revenues may be made contingent upon or abated, in whole or in part, by the district 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 district. The district and the municipality shall enter into an intermunicipal agreement delineating the rights and responsibilities of each pursuant to the district improvement financing.

### **SECTION 26. Water pollution abatement revolving loan program**

The district shall be included within the definition of a “local governmental unit” as defined in chapter 29C of the General Laws and its bonds and notes shall be included within the definition of “local governmental obligations” as defined in said statute.

### **SECTION 27. Records; accounts; audits; conflicts**

The prudential committee and the district’s officers shall at all times keep full and accurate accounts of the district’s receipts, expenditures, disbursements, assets and liabilities, which shall be open to inspection by a proprietor, or duly appointed officer or duly appointed agent or the Commonwealth or the municipality. The fiscal year of the district shall be the same fiscal year as established by the General Laws for cities and towns in the Commonwealth. The district shall be subject to an audit of its accounts in the manner provided in section 40 of chapter 44 of the General Laws. Before the issuance of any bonds or notes under the provisions of this chapter, any officer of the district or of the prudential committee charged with responsibility of the issuance thereof, shall each execute a surety bond in the sum of \$250,000 payable to the 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 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. For the purposes of chapter 268A of the General Laws, the district shall be considered a municipal agency. The members of the prudential committee and employees of the district, together with any person who performs professional services for the district on a part-time, intermittent or consultant basis, such as those of an

architect, attorney, engineer, planner, or construction, financial, or real estate expert, shall be special municipal employees. However, 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 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 28. Representations and information**

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

#### **SECTION 29. Collection of fees; disbursement of funds; liens**

The collector-treasurer of each municipality, at the option of the municipality, is authorized to collect any district betterments, assessments, special assessments, and fees, including any recording fees, on behalf of the district pursuant to an agreement between the municipality and the district and to disburse the funds to any designated management entity or financial institution selected by the prudential committee. 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.

Following establishment of the district, all betterments, assessments, special assessments, and fees, including any recording fees, billed by or on behalf of the district and unpaid after 30 days from the date of billing shall become a lien on the property within the district, if notice of the lien is duly recorded by the district in the appropriate registry of deeds or land court registry district.

#### **SECTION 30. Remedy; municipal resolutions and ordinances; chapter 44 inapplicable**

The provisions of this chapter shall be deemed 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 deemed and construed to be supplemental and additional to, and not in derogation of, powers conferred upon the district by law; provided, however, that insofar as the proceedings of this chapter are inconsistent with the provisions of any general or specific law, administrative order or regulation, or any resolution or ordinance of the municipality, the provisions of 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 the district pursuant to this chapter, nor shall the provisions of chapter 44 of the General Laws be applicable to the manner of voting or the limitations as to the amount and time of payment of debts incurred by the district.

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, proprietors, residents and businesses located in the district. Nothing in this chapter, by itself, shall in any way obligate the municipality to pay any costs for the acquisition, construction, equipping or operation and administration of the improvements located within the district.

### **SECTION 31. Liability of the municipality**

The district 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 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 32. Termination of the district; district property**

Provided that all district bonds, notes and other obligations have been paid or satisfied, the municipal governing board of the municipality in which the district is located, on petition of proprietors owning 80 percent of the real property acreage within the district, may vote to terminate the district at any time after 35 years from the date of the declaration of the district's existence by the municipality. Upon such termination all of the property of the district shall be deemed transferred to the municipality.

### **SECTION 33. Liberal construction**

This chapter, being necessary for the welfare of the district, the municipality and its inhabitants, shall be liberally construed to affect the purposes hereof.