

PROPOSED CHAPTER 40T MASSACHUSETTS GENERAL LAWS:

FINANCING INFRASTRUCTURE COSTS FOR RESIDENTIAL AND COMMERCIAL REAL ESTATE

The proposed amendment to the General Laws, adding Chapter 40T, will enable property owners in newly created “Special Development Districts” (“SDDs”) to finance needed public infrastructure improvements without burdening the budgets of the Commonwealth or its cities and towns. This financing technique has been used with great success in other states and will prove to be a very powerful tool to reduce the cost of housing and commercial real estate development in Massachusetts. Last year, approximately \$5 billion from tax-exempt bond funds was used to finance roads, water, sewer and other infrastructure needs through such special districts. Massachusetts, currently, can only access this source of capital through districts established by special legislation. No State or local taxes or other financial assistance is required for this program.

Under the proposed legislation, the establishment of an SDD would require the approval of both the property owners within the boundaries of the proposed SDD and the host municipality. The SDD would be able to finance needed infrastructure through the issuance of its notes or bonds. This financing would be non-recourse to both the property owner and the municipality. The debt service on the bonds would be paid back through a schedule of special assessments on the real estate within the SDD that has been reviewed at a public hearing and approved by the Prudential Committee of the SDD. The Prudential Committee would be appointed by the host municipality.

Financing under the proposed Chapter 40T could be used by developers of commercial or residential projects with large infrastructure needs. It would also be available as a financing mechanism for existing neighborhoods with unmet sewer or water needs (such as Title V problems) if a city or town is unwilling or unable to finance such improvements itself. Chapter 40T could also play a role in providing security to, and enhance the marketability of, bonds issued under Chapter 40Q M.G.L. (District Improvement Financing).

The legislation has been drafted and reviewed by bond counsel and underwriters familiar with such financing.