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Date: April 1, 2006



Massachusetts District Improvement Financing

PART I. ADMINISTRATION OF THE GOVERNMENT TITLE VII. CITIES, TOWNS AND DISTRICTS CHAPTER 40Q. DISTRICT IMPROVEMENT FINANCING

Chapter 40Q: Section 1. Definitions

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

“Base date”, the last assessment date of the real property tax immediately preceding the creation of the district.

“Captured assessed value”, the valuation amount by which the current assessed value of an invested revenue district exceeds the original assessed value of the district. If the current assessed value is equal to or less than the original, there is no captured assessed value.

“Development district”, a specified area within the corporate limits of a city or town which has been designated as provided in section 2 and which is to be developed by the city or town under a development program.

“Development program”, a statement of means and objectives designed to improve the quality of life, the physical facilities and structures and the quality of pedestrian and vehicular traffic control and transportation within a development district. Means and objectives designed to increase or improve residential housing, both affordable and market rate, may also be addressed within a district and shall be considered part of a development program. The statement shall include:

- (1) a financial plan;
- (2) a complete list of public facilities to be constructed;

- (3) the use of private property;
- (4) plans for the relocation of persons displaced by the development activities;
- (5) plans, if any, for the development of housing, both affordable and market rate;
- (6) the proposed regulations and facilities to improve transportation;
- (7) the proposed operation of the district after the planned capital improvements are completed; and
- (8) the duration of the program which shall not exceed 30 years from the date of designation of the district.

“Financial plan”, a statement of the costs and sources of revenue required to accomplish the development programs which shall include: (1) cost estimates for the development program; (2) the amount of indebtedness to be incurred; and (3) sources of anticipated capital.

“Inflation factor”, a ratio: (1) the numerator of which shall be the total assessed value of all parcels of all residential and commercial real estate that are assessed at full and fair cash value for the current fiscal year minus the new growth adjustment factor for the current fiscal year attributable to the residential and commercial real estate as determined by the commissioner of revenue pursuant to paragraph (f) of section 21C of chapter 59 ; and (2) the denominator of which shall be the total assessed value for the preceding fiscal year of all the parcels included in the numerator; provided, however, the ratio shall not be less than 1.

“Invested revenue district”, a type of development district or portion of a district that uses tax increment financing under section 3.

“Invested revenue district development program”, a statement which, in addition to the information required for a development program, shall also include: (1) estimates of the captured assessed value of the district; (2) a projection of the tax revenues to be derived from the invested revenue district in the absence of a development program; (3) the method of calculating the tax increment together with any provisions for adjustment of the method of calculation; (4) the board or officer of the city or town responsible for calculating the tax increment; (5) a statement as to whether the issuance of bonds contemplated under this chapter shall be general or special obligation bonds; (6) the portion of the captured assessed value to be applied to the development program and resulting tax increments in each year of the program; and (7) a statement of the estimated impact of tax increment financing on all taxing jurisdictions in which the district is located.

“Original assessed value”, the aggregate assessed value of the district as of the base date, increased each year by a percentage equal to the inflation factor. The original assessed

value shall be increased or decreased annually as a result of a change in the tax-exempt status of property within the district.

“Project”, a project to be undertaken in accordance with the development program.

“Project costs”, any expenditure made or estimated to be made or monetary obligations incurred or estimated to be incurred by the city or town which are listed in a project plan as costs of improvements including, but not limited to, public works, acquisition, construction or rehabilitation of land or improvements for sale or lease to residential, commercial or industrial users within a development district plus any costs incidental to those improvements, reduced by any income, special assessments or other revenues, other than tax increments, received or reasonably expected to be received by the city or town in connection with the implementation of this plan.

Project costs shall include, but not be limited to:—

- (1) “administrative costs”, any reasonable charges for the time spent by city or town employees in connection with the implementation of a project plan;
- (2) “capital costs”, the actual costs of the construction of public works or improvements, new buildings, structures and fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures; the acquisition of equipment; and the grading and clearing of land;
- (3) “discretionary costs”, those payments made by the appropriate body of a city or town that in its discretion are found to be necessary or convenient to the creation of development districts or the implementation of project plans.
- (4) “financing costs”, including, but not be limited to, all interest paid to holders of evidences of indebtedness issued to pay for project costs and any premium paid over the principal amount of that indebtedness because of the redemption of the obligations before maturity;
- (5) “improvement costs”, those costs associated with developing new employment opportunities, promoting public events, advertising cultural, educational and commercial activities, providing public safety, establishing and maintaining administrative and managerial support and such other services as are necessary or appropriate to carry out the development program;
- (6) “organizational costs”, all reasonable costs relating to the conduct of environmental impact and other studies and informing the public about the creation of development districts and the implementation of project plans;
- (7) “professional service costs”, including, but not limited to, those costs incurred for architectural, planning, engineering and legal advice or services;

(8) “real property assembly costs”, any deficit incurred resulting from the sale or lease by the city or town, as lessor, of real or personal property within a development district for consideration which is less than its cost to the city or town;

(9) “relocation costs”, all reasonable relocation payments made pursuant to a condemnation;

(10) “training costs”, costs associated with providing skills, development and training for employees of businesses within the development district; provided, however, that these costs shall not exceed 20 per cent of the total project costs and shall be designated as training funds within 5 years of the issuance of bonds pursuant to this chapter for the project or the designation of the district, whichever occurs later; and

(11) “water and sewer line costs”, which shall include the costs related to the construction or alteration of sewage treatment plants, water treatment plants or other environmental protection devices, storm or sanitary sewer lines, water lines or amenities on streets or the rebuilding or expansion thereto so long as required by the project plan for a development district, whether or not the construction, alteration, rebuilding or expansion is within the development district;

Project costs shall not include the cost of a building or a portion of a building used predominantly for the general conduct of government, such as a city hall, courthouse, jail, police or fire station or other state or local government office buildings.

“Project revenues”, receipts of a city or town with respect to a project including, without limitation, tax increments, investment earnings and proceeds of insurance or disposition of property.

“Tax increment”, that portion of all real and personal property taxes assessed by a city or town upon the captured assessed value of property in the development district. The portion of the tax levy attributable to the increased valuation after the base date shall be calculated using the same classification factors as were used as of the base date, or without classification factors, if property was not classified for tax purposes as of the base date. If the base date is earlier than the date as of which the commissioner of revenue makes the certification required by subsection (c) of section 2A of chapter 59, the project plan may provide for such further adjustment in calculating the tax increment as may be deemed appropriate to reflect changes of practice after the base date with respect to the valuation of property in order to achieve assessment at full and fair cash valuation.

Chapter 40Q: Section 2. Development districts

Section 2. (a) Notwithstanding any general or special law to the contrary, any city or town by vote of its town meeting, town council or city council with the approval of the mayor where required by law may designate development districts within the boundaries

of the city or town provided, however, that: (1) a development district may consist of 1 or more parcels or lots of land, whether or not contiguous, or 1 or more buildings or structures, whether or not adjacent, on 1 or more parcels of land, provided that the total area of all development districts shall not exceed 25 per cent of the total area of a city or town; and provided that the boundaries of a development district may be altered only after meeting the requirements for adoption under this subsection; (2) the development district has been certified as an approved development district by the economic assistance coordinating council established in section 3B of chapter 23A and pursuant to regulations adopted by said council. The economic assistance coordinating council shall find, based on the information submitted to it in support of the designation of the development district by the city or town and additional investigation as the economic assistance coordinating council shall make, and incorporate into its minutes, that the designation of the development district is consistent with the requirements of this section and will further the public purpose of encouraging increased residential, industrial and commercial activity in the commonwealth.

(b) The city or town shall adopt a development program for each development district. The program shall be adopted at the same time as the district, as part of the district adoption proceedings or, if at a different time, in the same manner as adoption of the district, with the same certification requirements of subsection (a). Once approved, the program shall be altered or amended only after meeting the requirements for adoption.

(c) Within development districts and consistent with the development program, the city or town may acquire, construct, reconstruct, improve, preserve, alter, extend, operate, maintain or promote development intended to meet the objectives of the development program. In addition to the powers granted by any other law, for the purpose of carrying on a project as authorized by this chapter, a city or town may:

(1) incur indebtedness as hereinafter provided and pledge tax increments and other project revenues for repayment thereof;

(2) create a department, designate an existing department, board officer, agency, municipal housing or redevelopment authority of the city or town or enter into a contractual agreement with a private entity to administer the activities authorized by this chapter;

(3) make and enter into all contracts and agreements necessary in order to carry out the development program;

(4) receive from the federal government or the commonwealth loans or grants for, or in aid of, a project and receive contributions from any other source to defray project costs;

(5) purchase or acquire by eminent domain pursuant to chapter 79 or chapter 80A, insofar as those laws may be applicable, and pursuant to all preliminary requirements prescribed by law, such property or interests therein within a district as the city or town may deem necessary in order to carry out the development program; provided, however, that any

taking of property by eminent domain for any purpose for which the taking by the city or town could not be made in the absence of this chapter shall be authorized by a two-thirds vote as defined in section 1 of chapter 44;

(6) make relocation payments to persons, businesses or organizations that may be displaced as a result of carrying out the development program;

(7) clear and improve property acquired by it pursuant to the development program and construct public facilities thereon, or contract for the construction, development, redevelopment, rehabilitation, remodeling, alteration or repair of such property;

(8) cause parks, playgrounds or schools, water or sewer drainage facilities or any other public improvements that it is otherwise authorized to undertake, to be laid out, constructed or furnished in connection with the development program;

(9) lay out, construct, alter, relocate, change the grade of, make specific repairs upon or discontinue public ways and sidewalks in or adjacent to the development district;

(10) cause private ways, sidewalks, ways for vehicular travel and similar improvements to be constructed within the development district for the particular use of the development district or those dwelling or working therein;

(11) adopt ordinances or by-laws under section 5 of chapter 40A, or repeal or modify the ordinances or by-laws or establish exceptions to existing ordinances and by-laws, regulating the design, construction and use of buildings;

(12) sell, mortgage, lease as lessor, transfer or dispose of any property or interest therein acquired by it pursuant to the project plan for development, redevelopment or rehabilitation in accordance with the development program;

(13) invest project revenue as hereinafter provided; and

(14) do all things reasonably necessary or convenient to carry out the powers granted in this chapter.

Chapter 40Q: Section 3. Tax increment revenue for financing development program

Section 3. (a) The city or town may retain all or part of the tax increment of an invested revenue district for the purpose of financing the development program. The amount of tax increment to be retained shall be determined by designating the amount of captured assessed value to be retained. When a development program for an invested revenue district is adopted, the city or town shall adopt a statement of the percentage of captured assessed value to be retained in accordance with the development program. The statement of percentage may establish a specific percentage or percentages or may describe a

method or formula for determination of the percentage. The assessor shall certify the amount of the captured assessed value to the city or town each year.

(b) On or after the formation of an invested revenue district, the assessor of the city or town in which it is located shall, on request of the city or town, certify the original assessed value of the taxable property within the boundaries of the invested revenue district. Each year, after the formation of an invested revenue district, the assessor of the city or town shall certify the amount by which the assessed value has increased or decreased from the original value.

(c) If a city or town has elected to retain all or a percentage of the retained captured assessed value under subsection (a), the city or town shall:

(1) establish a development program fund that consists of: (i) a development sinking fund account that is pledged to and charged with the payment of the interest and principal as the interest and principal fall due and the necessary charges of paying interest and principal on any notes, bonds or other evidences of indebtedness that were issued to fund or refund the costs of the development program fund; and (ii) a project cost account that is pledged to and charged with the payment of project costs as outlined in the financial plan and paid in a manner other than as described in subclause (i).

(2) set aside annually all tax increment revenues on retained captured assessed values and deposit all such revenues in the appropriate development program fund account in the following priority:

(i) to the development sinking fund account, an amount sufficient, together with estimated future revenues to be deposited to the account and earnings on the amount, to satisfy all annual debt service on bonds and notes issued under section 4 and the financial plan; and

(ii) to the project cost account, an amount sufficient, together with estimated future revenues to be deposited to the account and earnings on the amount, to satisfy all annual project costs to be paid from the account;

(3) to be permitted to make transfers between development program fund accounts as required; provided, however, that the transfers shall not result in a balance in the development sinking fund account that is insufficient to cover the annual obligations of that account; and

(4) annually return to the general fund of the city or town any tax increment revenue in excess of those estimated to be required to satisfy the obligations of the development sinking fund account.

Chapter 40Q: Section 4. Revenue bonds for financing development program

Section 4. (a) A city or town may, by a two-thirds vote as defined in section 1 of chapter 44, authorize, issue and sell bonds including, but not limited to, general obligation or revenue bonds or notes, to finance all project costs needed to carry out the development program within a development district. Without limiting the generality of the foregoing, such bonds may be issued for the payment of project costs, which may include interest before and during the carrying out of a project and, for a reasonable time thereafter, such reserves as may be required by any agreement securing the bonds and all other expenses incidental to planning, carrying out and financing the project.

(b) The bonds of each issue shall be dated and may be made redeemable before maturity with or without premium. Subject to the authorizing vote, the officers authorized to sell the bonds shall determine: the date of the bonds which shall mature within 30 years from their respective dates; their denomination; the place of payment of the principal and interest, which may be at a bank or trust company within or without the commonwealth; their interest rate; maturity; redemption privileges, if any, and the form and other details of the bonds. Notwithstanding a municipal charter or any general or special law to the contrary, bonds issued hereunder may provide for annual or more frequent installments of principal in equal, diminishing or increasing amounts with the first installment of principal to be due at any time within 5 years after the date of issuance of the bonds and, subject to the authorizing vote, may provide for such rates of interest as the officers authorized to sell the bonds shall deem proper, including rates variable from time to time as determined by such index, banker's loan rate or other method as may be specified in such bond. The bond shall be signed by the mayor or city manager as the case may be of a city or by a majority of the board of selectmen or town council of a town either manually or by facsimile thereof. Any coupons attached thereto shall bear the facsimile signature of the city or town treasurer.

(c) If an officer whose signature, or a facsimile of whose signature, shall appear on any bonds, coupons or notes issued under this chapter shall cease to be such officer before the delivery thereof, his signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until such delivery.

(d) The bonds shall be issued in registered form. Subject to the authorizing vote, the officers authorized to sell the bonds may sell the bonds in such manner, either at public or private sale, and for such price as they may determine shall best effect the purposes of this chapter.

(e) Before the preparation of definitive bonds, the city or town may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. Provision may be made for the replacement of any bonds that shall have become mutilated or shall have been destroyed or lost.

(f) Bonds or notes issued hereunder may be secured in whole or in part by letters or lines of credit or other credit facilities. An insurance letter or line of credit or credit facility

may provide for reimbursement to be made over a period of time, not to exceed 2 years, beyond the maturity date of the bonds or notes so secured.

(g) In the discretion of the officers authorized to sell the bonds but subject to the vote authorizing the bonds, bonds issued hereunder may be secured by trust agreements between the city or town and a corporate trustee, which may be a trust company or bank having the powers of a trust company within or without the commonwealth. A trust agreement hereunder shall be in such form and executed in such manner as may be determined by such officers. A trust agreement may pledge or assign project revenue, in whole or in part, and may provide that the owner or holder of bonds issued thereunder may have a lien or mortgage on a facility acquired, improved or constructed with the proceeds of the tax increment bonds, may contain provisions for protecting and enforcing the rights, security and remedies of the bondholders as may be reasonable and proper and not in violation of the law including, without limiting the generality of the foregoing: provisions defining defaults and providing for remedies in the event thereof, which may include the acceleration of maturities, and covenants setting forth the duties of, and limitations on, the city or town in relation to carrying out and otherwise administering the projects; the custody, safeguarding, investment and application of project revenues; the issuance of additional bonds hereunder; the determination of tax increments; the fixing of fees and charges, if any, in relation to the projects; the collection of project revenues; the use of any surplus bond proceeds; the establishment of reserve and the replacement of bonds or coupons which shall become mutilated, destroyed or lost. Subject to this chapter, moneys subject to the trust agreement shall be held, invested and applied as provided therein, but moneys not deposited in trust with a corporate trustee shall be in the custody of the city or town treasurer.

(h) A bank or trust company may act as a depository or trustee of proceeds of bonds or of other monies under a trust agreement and furnish such indemnifying bonds or pledge securities required by the trust agreement. Any such trust agreement or resolution may set the rights and remedies of the bondholders and of the trustees and may restrict the individual right of action by a bondholder. All expenses incurred in carrying out the trust agreement or resolution may be treated as operating expenses.

(i) Notwithstanding chapter 106 or any other general or special law to the contrary: (1) any pledge hereunder shall be valid and binding and shall be deemed continuously perfected from the time it is made; (2) no filing shall be required under said chapter 106 or otherwise; (3) unless otherwise provided in the financing instruments, a pledge of project revenues shall be deemed to include a pledge of any accounts or general intangibles from which such revenues are derived whether existing at the time of the pledge or thereafter acquired by the city or town and the proceeds of such accounts or general intangibles; and (4) the pledged project revenue accounts and general intangibles shall be subject to the lien of the pledge without delivery or segregating and the lien of the pledge shall be valid and binding against all parties having claims in contract, tort or otherwise against the city or town.

(j) A pledge of project revenues under this chapter shall constitute a sufficient appropriation thereof for the purposes of any provision for appropriation and such revenues may be applied as required by the pledge without further appropriation. Notwithstanding this subsection, administrative expenses shall be subject to appropriation.

(k) In anticipation of the issuance of bonds under this chapter and subject to the vote authorizing the bonds, the officers authorized to sell bonds may without further authorization issue temporary notes. The notes may be secured as in the case of bonds, and except as otherwise provided in this section, subsections (i), (k), (l) and (n) referring to bonds shall also be deemed to refer to the notes. The notes shall not require the seal of the city or town or a facsimile thereof. The notes shall be payable within 2 years from their respective dates, but the principal of and interest on notes issued for a short period may be refunded from time to time by the issuance of other notes maturing within 2 years from the original date of issuance of the indebtedness being refunded.

(l) A city or town may, when authorized by a majority vote as defined in section 1 of chapter 44, issue refunding bonds for the purpose of paying any of its bonds issued hereunder at maturity or upon acceleration of redemption. The refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the city or town deems to be in the public interest. The refunding bonds may be issued in sufficient amounts to pay or provide 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 the bonds, the expense of issuance of the refunding bonds, the expenses of redeeming the bonds being refunded and such reserves for debt service or other purposes from the proceeds of such refunding bonds as may be required by an agreement securing the bonds. The issuance of refunding bonds, the maturities and other details thereof, the security thereof, the rights of holders thereof and the rights, duties and obligations of the city or town with respect thereto shall be governed by this chapter relating to the issuance of bonds other than refunding bonds insofar as the same may be applicable.

(m) The bonds and notes issued under this chapter shall not at any time be included in the debt of the city or town for the purpose of ascertaining its legal borrowing capacity. Except as otherwise provided in this chapter, such bonds and notes shall not be subject to chapter 44.

(n) Subject to an agreement securing bonds or notes issued under this chapter, the proceeds of bonds or notes pledged for tax increments and other project revenues may be deposited or invested in such investments as may be lawful for fiduciaries in the commonwealth.

(o) All project revenues received pursuant to this chapter shall be deemed to be trust funds to be held and applied solely as provided in this chapter.

(p) A holder of bonds or notes issued under this chapter, or of any of the coupons appertaining thereto, and the trustee under any trust agreement securing the same, except

to the extent the rights herein given may be restricted by an agreement securing the same, may bring suit upon the bonds, notes or coupons and 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 under this chapter or under any such agreement and may enforce or comply with the performance of all duties required by this chapter or by an agreement to be performed by the city or town or by any officer thereof.

(q) Bonds and notes issued under this chapter shall be securities in which insurance companies, trust companies, banking associations, savings banks, cooperative banks, investment companies, executors, trustees and other fiduciaries and all other persons whatsoever who are or may hereafter be authorized to invest in bonds or notes or other obligations of a similar nature may properly and legally invest funds, including capital deposits or other funds in their control and belonging to them. The debt obligations shall be securities which may properly and legally be deposited with and received by a state or municipal office, agency or political subdivision of the commonwealth for any purpose for which the deposits of bonds or other obligations of the commonwealth may now or hereafter be authorized by law.

(r) Notwithstanding this chapter or any recitals in any bonds or notes issued under this chapter, all bonds and notes shall be deemed to be investment securities under chapter 106.

(s) The bonds and notes issued under this chapter, their transfer and the income therefrom, including any profits made on the sale thereof, shall be at all times free from taxation within the commonwealth.