

HOUSE No. 4546

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 30, 2018.

The committee on Ways and Means, to whom was referred the Bill relative to community benefit districts (House, No. 4385), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4546).

For the committee,

JEFFREY SÁNCHEZ.

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**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to community benefit districts.

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

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 40W the
2 following chapter:-

3 CHAPTER 40X.

4 COMMUNITY BENEFIT DISTRICTS

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

7 “Beneficial owner”, a natural person or entity that controls multiple properties with
8 different owners of record.

9 “Board of directors”, the persons designated to oversee the operation of the community
10 benefit district corporation as set forth in chapter 180.

11 “Community benefit district”, or “district”, a contiguous geographic area with clearly-
12 defined boundaries formed pursuant to this chapter.

13 “Community benefit district corporation”, or “corporation”, a nonprofit corporation
14 organized pursuant to chapter 180, designated to receive district fees, provide district services
15 and otherwise implement the management plan for the district.

16 “Community benefit district fee”, or “district fee”, a payment for services or
17 improvements specified by the management plan.

18 “District fee formula”, a formula used to calculate the district fee owed by each
19 participating property owner.

20 “Exempt property”, any property whose owner is not required to pay the district fee,
21 which shall include property owned by a non-profit corporation and is exempted from real
22 property tax; all property owned by the commonwealth, a municipality or another governmental
23 entity; and any other property exempted from real property tax by statute or local ordinance or
24 bylaw. A municipality may classify all owner-occupied residential property as exempt property
25 when approving the petition to establish a new community benefit district.

26 “Formation threshold”, the requirement that a new community benefit district may be
27 established, a community benefit district may be renewed, or a community benefit district may
28 have a change of boundaries, only if the petition signers will pay more than 50 per cent of the
29 proposed yearly assessment; provided that the amount of the yearly assessment attributable to
30 property owned by the same property owner that is in excess of 40 per cent of the amount of the
31 yearly assessment proposed shall not count toward the threshold for formation of the district;
32 provided further that in such instances the percentage attributable to each of the other properties
33 shall be increased proportionately so that the properties total 100 per cent.

34 “Management plan”, the initial strategic and operating plan for the district approved by
35 the municipal governing body as part of the petition to create the community benefit district, or
36 any subsequent, updated version of the initial management plan that is approved by the board of
37 directors.

38 “Municipal governing body”, the city council or board of aldermen in a city or the board
39 of selectmen or town council in a town.

40 “Participating property owner”, a property owner who is required to pay the community
41 benefit district fee and any exempt property owner who voluntarily enters into a binding written
42 agreement to support the district activities by making a cash payment or providing in-kind
43 services; provided that no property owner shall be deemed to be a participating property owner
44 during the period said property owner has not timely paid such fee or made such voluntary
45 contribution, or while such property owner has the benefit of a hardship waiver as contemplated
46 in subsection (b) of section 6.

47 “Petition signer”, a participating property owner or a designee who voluntarily signs a
48 petition to establish a community benefit district or amend the district boundaries of a
49 community benefit district; provided, however, that when a property is owned by an entity other
50 than a natural person, a petition signer for that property shall include the petition signer’s title
51 and shall submit an affidavit signed under the pains and penalties of perjury that the petition
52 signer has authority to sign on behalf of the property owner; and provided further that each
53 petition signer shall disclose if any properties owned by the petition signer have the same
54 beneficial owner.

55 “Property”, real property located within the community benefit district.

56 “Property owner”, the owner of record of property.

57 “Standard government services”, governmental functions, programs, activities, facilities,
58 improvements and other services that a municipality is authorized to perform or provide and that
59 are paid for out of the municipal government budget.

60 “Supplemental services”, the provision of programs, public rights of way services,
61 activities, amenities or information in addition to the standard governmental services provided to
62 the community benefit district.

63 “Yearly assessment”, the total amount of money to be paid by participating property
64 owners in a fiscal year, including community benefit district fees and voluntary payments in cash
65 or in-kind services by otherwise exempt property owners.

66 Section 2. The rights and powers of a community benefit district corporation approved by
67 the municipal governing body pursuant to section 4 shall include the authority to undertake any
68 of the following activities within the district: (i) retain or recruit business; (ii) administer and
69 manage central and neighborhood business districts; (iii) promote economic development; (iv)
70 manage parking; (v) design, engineer, construct, maintain or operate buildings, facilities, urban
71 streetscapes or infrastructure to further economic development and public purposes; (vi) conduct
72 historic preservation activities; (vii) lease, own, acquire or option real property; (viii) own and
73 manage parks, public spaces and community facilities; (ix) supplement maintenance, security
74 and sanitation; (x) plan and design services; (xi) formulate a fee structure; (xii) accumulate
75 interest; (xiii) incur costs or indebtedness; (xiv) enter into contracts; (xv) sue and be sued; (xvi)
76 employ legal and accounting services; (xvii) undertake planning, feasibility and market analyses;
77 (xviii) develop common marketing and promotional activities; (xix) engage in placemaking,

78 programming and event management within the district; (xx) solicit donations, sponsorships and
79 grants; (xxi) operate transit services; and (xxii) support public art, human and environmental
80 services related to the enhancement of the district or other supplemental services or programs
81 that would further the purposes of this chapter.

82 Section 3. (a) The organization of a community benefit district shall be initiated by a
83 petition of property owners within the proposed community benefit district, which shall be filed
84 in the office of the clerk of the municipality and with the department of housing and community
85 development. Each petition shall contain:

86 (i) a list of each property and corresponding property owner within the proposed district;

87 (ii) the proposed yearly assessment, with a description of the proposed district fee
88 formula and a schedule of participating property owners, the district fees to be paid by each
89 participating property owner, and the voluntary payments or monetary value of any in-kind
90 services to be provided by otherwise exempt property owners;

91 (iii) the signatures of petition signers, which meet the formation threshold; provided,
92 however, that if there are not more than 4 participating property owners in the proposed district,
93 all such participating property owners shall sign the petition;

94 (iv) a description of and a site map delineating the boundaries of the proposed community
95 benefit district;

96 (v) the identity and address of the community benefit district corporation, including its
97 initial set of directors and officers and copies of its articles of incorporation and by-laws;

98 (vi) a management plan which shall set forth the supplemental services and programs,
99 vision, strategy, fee collection mechanism and budget proposed for the community benefit
100 district;

101 (vii) the criteria for a temporary waiver of the fee for a participating property owner
102 within the community benefit district who can provide evidence that the imposition of such a fee
103 would create a significant financial hardship;

104 (viii) a staffing plan which may include private nonprofit, for profit or public agency
105 contractors or subcontractors;

106 (ix) a mechanism for reimbursing the municipality for the costs, if any, incurred in
107 establishing the community benefit district;

108 (x) a description of the responsibility, if any, the municipality will have to invoice and
109 collect district fees, and a mechanism for reimbursing the municipality for costs incurred in
110 collecting the district fees or a valuation of those services if the services are intended as an in-
111 kind contribution to the district; and

112 (xi) a copy of a proposed memorandum of understanding, if any, with the municipality.

113 (b) A copy of the petition shall be filed by the clerk of the municipality with the
114 undersecretary of housing and community development and the secretary of housing and
115 economic development not more than 30 days following receipt of the petition by the clerk.

116 Section 4. (a) The municipal governing body shall commence a public hearing not more
117 than 60 days following receipt of a petition by the clerk of the municipality. Written notification
118 of the hearing shall be sent by the clerk of the municipality to each property owner at least 30

119 days before the opening of the hearing by mailing notice to the address listed in the property tax
120 records. Notification of the hearing shall be published by the clerk for 2 consecutive weeks in a
121 newspaper of general circulation in the area, the last publication of which shall be not less than
122 14 days before the hearing and listed on the municipality's website. The public notice shall
123 contain the proposed boundaries of the community benefit district, the proposed district fee
124 formula, a summary of supplemental programs and services provided by the petitioners, and
125 where the property owner may obtain a full copy of the petition and the management plan.

126 (b) Prior to the public hearing, the municipal governing body shall direct the clerk of the
127 municipality or a designee to inform the municipal governing body whether the formation
128 threshold and other petition requirements have been met, as set forth in section 3.

129 (c) Not more than 45 days after the close of the public hearing, and not more than 180
130 days after the filing of the petition, the municipal governing body shall approve or disapprove the
131 petition by majority vote. Action on the petition shall be by vote of the city council with the
132 approval of the mayor in a city, except in any city operating under a Plan D or Plan E charter, in
133 which case, by vote of the city council with the approval of the city manager, and by a vote of
134 the board of selectmen in a town; provided, however, that in a town with a population of not
135 more than 10,000 residents, there shall be a vote by the board of selectmen and a town meeting.
136 If approved, the municipal governing body shall declare the district organized, and describe the
137 boundaries and service area of the district. If the community benefit district corporation has not
138 already entered into a memorandum of understanding with the municipality, the declaration of
139 organization shall include, if required, authorization for the municipal executive to enter into
140 such a memorandum in the form submitted with the petition, or with such modifications as the

141 municipal governing body shall determine. Upon such declaration, the community benefit
142 district corporation may commence operations as set forth in the management plan.

143 (d) Not later than 30 days after a municipal governing authority votes to approve a new
144 community benefit district, the clerk of said municipality shall mail notice of the declaration of
145 the organization of the community benefit district to each property owner within the district. The
146 notice shall include: (i) a statement that participation for property owners subject to the
147 community benefit district fee is mandatory for so long as the district is in existence, (ii) a
148 description of the district fee formula, (iii) the district fees to be paid by each property owner,
149 (iv) the cash payments or in-kind services, if any, to be provided by otherwise exempt property
150 owners, and (v) a description of the services to be provided within the district. The notice shall
151 be published by the clerk for 2 consecutive weeks in a newspaper of general circulation in the
152 area, the last publication being not more than 30 days after the vote to declare the district
153 organized.

154 (e) Once established, a community benefit district shall have continuing legal existence
155 until the failure to renew the district as provided in subsection (f) of this section, or until the
156 district is dissolved pursuant to section 10. All participating property owners shall make
157 payments in accordance with the district fee formula as outlined in the petition or management
158 plan, or in the case of an otherwise exempt property owner, consistent with the binding written
159 agreement between that property owner and the corporation.

160 (f) Within 60 days of the tenth anniversary of the organization of a community benefit
161 district and within 60 days of the tenth anniversary thereafter of the date of the most recent
162 renewal of the district, the board of directors of the community benefit district corporation shall

163 call a renewal meeting of the participating property owners to (i) review the preceding 10-year
164 history of the district, (ii) propose an updated management plan to succeed the then current
165 management plan, and (iii) consider whether to continue the district. The meeting shall be held at
166 a location within the district. Notice of the meeting, including a statement of the purposes set
167 forth in the preceding sentence, shall be given to participating property owners by the
168 corporation in the manner provided in the by-laws, at least 30 days prior to the meeting. The
169 district shall continue in existence after each renewal meeting if continuation of the district is
170 approved by participating property owners who pay more than 50 per cent of the yearly
171 assessment proposed to be assessed in the next fiscal year following the renewal meeting. Votes
172 to renew a district shall be made by participating property owners at the renewal meeting unless
173 the by-laws shall provide for vote by proxy. This must meet the formation threshold, provided
174 however, if there are not more than 4 participating property owners in the district, the district
175 shall continue in existence only if all such participating property owners shall vote in favor of
176 renewal.

177 (g) If the eligible participating property owners elect not to continue the district, the
178 board shall conclude the business of the district prior to the next anniversary of the district's
179 creation, or of the prior renewal vote and proceed to discontinue the district and dissolve the
180 corporation in accordance with the requirements set forth in section 10.

181 Section 5. (a) Each community benefit district corporation shall have a board of directors
182 that shall oversee its operations to ensure the implementation of the management plan. Not less
183 than 51 per cent of the board members shall be participating property owners or their designees.
184 The remaining members of the board may represent the community including residents,
185 municipal government, business tenants and nonprofits.

186 (b) The management plan shall be updated not less than once every 3 years by the
187 community benefit district corporation's board of directors. The corporation shall mail, email or
188 hand-deliver a copy of each update to the management plan to each participating property owner,
189 and shall file a copy of such update with the municipal governing body and the department of
190 housing and community development.

191 (c) The community benefit district corporation shall comply with the requirements
192 applicable to public charities, including without limitation sections 8 and 8F of chapter 12 and
193 sections 18 to 35, inclusive, of chapter 68.

194 (d) The corporation shall keep a complete copy of the following items: (i) a true and
195 accurate copy of the management plan; (ii) the by-laws, including amendments thereto, as
196 recorded; (iii) a book of the minutes of board meetings; and (iv) financial records, including the
197 following: (a) records of all receipts, expenditures, invoices and vouchers authorizing payments,
198 receivables, and bank statements relating thereto; (b) audits, reviews, accounting statements and
199 financial reports relating to the finances of the corporation; (c) contracts for work to be
200 performed for or services to be provided to the district; and (d) all current insurance policies, or
201 policies which name the corporation as insured or obligee. Such records shall be kept in an up-
202 to-date manner and shall be available for reasonable inspection by any participating property
203 owner during regular business hours. Access to said records shall include the right to photocopy
204 said records at the expense of the person or entity making the request.

205 (e) The bylaws of the corporation shall provide that the board of directors shall be
206 selected by the participating property owners and shall specify the number of board members,

207 provide for board terms not to exceed 3 years, and state whether the voting rights of each
208 participating property owner are weighted to reflect the percentage of the yearly assessment paid.

209 Section 6. (a) Exempt property owners shall not be required to pay the district fee, but
210 may elect to do so by entering into a written agreement with the community benefit district
211 corporation. Exempt property owners may also enter into written agreement with the corporation
212 in lieu of, or to supplement, monetary payments, including: space for events, loans of equipment
213 or vehicles, volunteers or volunteer management, staff time, programs and services to the
214 community or another contribution deemed appropriate to support implementation of the
215 management plan. An exempt property owner who agrees to pay the community district fee or
216 provide in-kind services shall be deemed to be a participating property owner.

217 (b) The community benefit district corporation may grant a financial hardship waiver to a
218 participating property owner pursuant to the waiver criteria established within the petition or
219 management plan. A waiver shall not be intended to be permanent, shall be requested and
220 granted on an annual basis and shall be based upon temporary, extraordinary circumstances.

221 Section 7. (a) The yearly assessment shall not exceed $\frac{1}{2}$ of 1 per cent of the sum of the
222 assessed valuation of the property owned by participating property owners who are required to
223 pay the district fee. The district fee formula shall utilize at least 1 or may utilize a combination of
224 the following methodologies: (i) different levels for varying classifications of real property; (ii)
225 benefit zones; (iii) assessed valuation; (iv) building or parcel square footage; (v) street frontage;
226 or (vi) another formula that meets the objectives of the community benefit district. The
227 community benefit district corporation, through its management plan, shall have the option to
228 limit or cap the district fee derived from individual properties or to set a lower cap on the total

229 yearly assessment. The management plan may also propose a phase-in period of not more than 3
230 years in which the yearly assessment and community district fees increase over the stated period.
231 The district fee formula shall be set forth in the original petition as required by section 3.

232 (b) The community benefit district corporation may change the district fee formula or the
233 district fee set forth in the management plan by majority vote of its board of directors, ratified by
234 a vote of the participating property owners who will pay at least $\frac{2}{3}$ of the newly proposed yearly
235 assessment; provided, that if the district petition was approved on the condition that owner-
236 occupied residential property shall be deemed to be exempt property, then the board may not
237 make such owner-occupied property subject to the district fee without prior approval of the
238 municipal governing body. Not more than 30 days after amendment of the formula or fee level,
239 the community benefit district corporation shall file notice of the changes with the municipal
240 governing body and the department of housing and community development.

241 (c) In addition to receiving the district fees, the community benefit district corporation
242 may receive grants, donations, revenues generated from parking fees, community benefit district
243 activities or gifts on behalf of the community benefit district.

244 (d) District fees and other revenues received by the community benefit district
245 corporation shall be used solely to fund items to further the goals identified and approved in the
246 management plan for the community benefit district.

247 Section 8. (a) A memorandum of understanding with the municipality may provide that
248 the collector or treasurer of the municipality will collect district fees in designated community
249 benefit districts and disburse the funds to the community benefit district corporation. In addition
250 to the items identified in section 3A of chapter 60, the collector or treasurer may include notices

251 for district fees in the envelope or electronic message in which a real property tax bill is sent.
252 Unless otherwise provided in the memorandum of understanding, the collector or treasurer shall
253 disburse fee revenues to the community benefit district corporation not later than 30 days after
254 the collection of such fees, together with any interest earned on those fees. In the event that the
255 municipal collector or treasurer shall receive a partial payment and such payment does not
256 specify how it is to be applied, the amount received shall be applied first to municipal tax due
257 and the remainder shall be applied to the community benefit district fee.

258 (b) Following establishment of the community benefit district, the fees billed by or on
259 behalf of the community benefit district and unpaid after 30 days from the date of billing shall
260 become a lien on the property, which shall have priority over all other liens except municipal tax
261 liens and mortgages of record prior to the recording of a notice of lien, if notice of the lien is
262 duly recorded by the community benefit district corporation in the appropriate registry of deeds
263 or land court registry district.

264 Section 9. (a) After the establishment of a community benefit district pursuant to this
265 chapter, the district boundaries upon which the establishment was based may, upon majority vote
266 of the community benefit district corporation board of directors, be amended by the municipal
267 governing body after compliance with the procedures set forth in this section.

268 (b) The community benefit district corporation may prepare a petition to expand or
269 reduce the area, consistent with the requirements set forth in section 3. The petition shall include
270 all of the signatures and information required for a petition to establish a new district as set forth
271 in section 3.

272 (c) The municipal governing body shall open a public hearing not more than 60 days after
273 its receipt of a petition to amend the district boundaries. In the case of an expansion petition,
274 written notification of the hearing shall be sent by the clerk of the municipality to each property
275 owner within the existing district and the proposed expansion area at least 30 days before the
276 hearing by mailing notice to the address listed in the property tax records. In the case of a
277 petition to reduce the area of a district, the notice shall be sent to each property owner in the
278 existing district. For either an expansion or reduction petition, notification of the hearing shall
279 also be published by the clerk for 2 consecutive weeks in a newspaper of general circulation in
280 the area with the last publication being not less than 14 days before the hearing and shall be
281 listed on the municipality's website. The municipal governing body may request a determination
282 from the municipal clerk as to whether the newly configured district complies with the formation
283 threshold and other petition requirements set forth in section 3. Not more than 30 days after the
284 close of the hearing, and not more than 180 days after the filing of the petition, the municipal
285 governing body shall vote on whether to declare the district boundaries amended. Upon the
286 adoption of an amendment to the district boundaries, owners of property within the existing
287 district and any property owners to be added to the district shall be notified of the new
288 boundaries of the district in accordance with section 4.

289 Section 10. (a) A community benefit district may be dissolved by a majority vote by the
290 corporation's board of directors, ratified by the participating property owners paying more than
291 $\frac{2}{3}$ of the yearly assessment; provided, that the amount of the yearly assessment attributable to
292 property owned by the same property owner that is in excess of 40 per cent of the amount of the
293 yearly assessment shall not be counted toward the dissolution threshold; and provided further,
294 that the community benefit district shall not be dissolved until the corporation has satisfied or

295 paid in full its outstanding indebtedness, obligations and liabilities, until funds are on deposit and
296 available therefore, or until a repayment schedule has been formulated and approved by the
297 municipal governing body. Upon a vote for dissolution, the community benefit district
298 corporation shall not incur any new or increased financial obligations. Any liabilities, either
299 current or future, incurred as a result of action to accomplish the purposes of the management
300 plan shall not be an obligation of the municipality. Liabilities shall be paid for entirely from
301 revenue gained from the project or facilities authorized or from the fees on the properties in the
302 community benefit district.

303 (b) Upon a vote to dissolve a community benefit district, the community benefit district
304 corporation shall windup its affairs as set forth in chapter 180. Any remaining revenues derived
305 from the sale of assets acquired with fees collected shall be refunded to the participating property
306 owners by applying the district fee formula used in the fiscal year in which the community
307 benefit district is dissolved. After the community benefit district corporation's liabilities have
308 been fully paid and assets fully distributed, the corporation shall be dissolved. Nothing in this
309 section shall prevent the filing of a subsequent petition to create a similar community benefit
310 district.