

**SENATE . . . . . No. 1326**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

***Bruce E. Tarr, (BY REQUEST)***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to provide clarification to Mass General Laws.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Gracemarie Tomaselli</i>	<i>115 NORTH END BLVD SALISBURY, MA 01952</i>
<i>Joyce Tomaselli</i>	<i>125 HAVERHILL ST LAWRENCE, MA 01840</i>

**SENATE . . . . . No. 1326**

By Mr. Tarr (by request), a petition (accompanied by bill, Senate, No. 1326) of Gracemarie Tomaselli and Joyce Tomaselli for legislation to provide clarification of betterments with regard to sewer projects. Municipalities and Regional Government.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Third General Court  
(2023-2024)**

An Act to provide clarification to Mass General Laws.

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

1           Massachusetts General Laws Chapter 80 Section 1 as appearing in the 2020 edition is  
2 hereby amended by striking it in its entirety and replacing it with the following:-

3           Section 1. Whenever a limited and determinable area will receive a particular benefit or  
4 advantage, other than the general advantage to the community, from a single public project  
5 improvement made by or in accordance with the formal vote at Town Meeting or City Council or  
6 order of a board of officers of the commonwealth or of a county, city, town or district, and such  
7 original assessment order for construction of the sewer states that betterments are to be imposed  
8 as assessments for the construction of the sewer be assessed for the improvement. The board  
9 shall in the order for the construction of the sewer assessment designate as the owner of each  
10 parcel the person who was liable to assessment named in the order therefor on the preceding  
11 January first under the provisions of chapter fifty-nine. Starting the day after the assessment  
12 order vote the tax collector must include in all municipal lien certificates that improvements have

13 been voted, with regards to which there will probably be liens as an obligation chargeable upon  
14 the land as defined in MGL c. 60 s. 23, this certificate releases liability for new buyers whether  
15 or not this municipal lien certificate is recorded at the registry of deeds. Such assessing board  
16 shall within six months after the completion of the sewer project improvement determine the  
17 value of such benefit or advantage to the land within such area and determine final costs of  
18 construction, less grants, and send a notice of net actual assessment and assess upon each parcel  
19 thereof a proportionate share of the cost of such improvement, and shall include in such cost all  
20 damages awarded therefor under chapter seventy-nine; but no such assessment shall exceed the  
21 amount of such adjudged benefit or advantage.

22           Massachusetts General Laws Chapter 80 Section 2 as appearing in the 2020 edition is  
23 hereby amended by striking it in its entirety and replacing it with the following: -

24           Section 2. An assessment order for the construction of the sewer under section one which  
25 states that betterments are to be assessed for the improvement shall contain a description  
26 sufficiently accurate for identification of the area which it is expected will receive benefit or  
27 advantage, other than the general advantage to the community, from such improvement, and  
28 shall refer to a project plan of such area which includes only the contracts within the project, and  
29 shall contain an estimate of assessment for the betterments that will be assessed upon each parcel  
30 of land within such area; and such assessment order to construct, the project plan and estimated  
31 assessment shall be recorded, within ninety days from the adoption of this assessment order, or  
32 from the acceptance by a town of the laying out, relocation or alteration of a way in case such  
33 acceptance is required before the establishment thereof, in the registry of deeds of every county  
34 or district in which the benefited area is situated. No betterments shall be assessed for such  
35 improvement unless the order for the construction of the sewer project, project plan and estimate

36 are recorded at the Registry of Deeds to create a lien. The assessment lien for the construction of  
37 a sewer relates back from the time of the formal vote of the assessment order for construction of  
38 the sewer as herein provided, nor upon any parcel of land not within such area, nor for a greater  
39 amount than such estimate or actual final net construction costs. As to third persons without  
40 actual knowledge of the installation of the sewer improvement, such as subsequent mortgagees  
41 and purchasers, the assessment is only valid if the board complies with recording the assessment  
42 order of construction at the registry of deeds to create a lien.

43           Massachusetts General Laws Chapter 80 Section 4 as appearing in the 2020 edition is  
44 hereby amended by striking it in its entirety and replacing it with the following: -

45           Section 4. Within a reasonable time after making the net actual assessment the board  
46 shall certify to the assessors the list of final actual assessments upon land in each town who shall  
47 forthwith commit the net project cost less grants received actual assessment such assessments  
48 with their warrant to the collector of taxes thereof, and he shall forthwith send notice of final  
49 committed assessment in accordance, except as to the date of notice, with section three of  
50 chapter sixty, to the person designated under section one as the owner of each parcel named in  
51 the assessment order of construction assessed, and any demand for the payment of such final  
52 assessment shall be made upon such person. The notice of final committed actual assessment  
53 must be sent by certified mail to the liable owner named in the assessment order for the  
54 construction of the sewer, parcel address and ID, amount owed, the date of the assessment order  
55 vote to construct the sewer, the vote to construct the sewer with the area within the project plan  
56 and contracts included in the project. The date of the bill, payment due date and options, interest  
57 rate and abatement rights. The notice of final committed actual assessment shall also be sent by  
58 certified mail to the current property owner of record, if different from assessed liable owner,

59 with an explanation of the assessment purpose (project), and provided with a form to request an  
60 apportionment from the assessor and also notified of abatement rights. Except as otherwise  
61 herein provided, the collector shall have the same powers and be subject to the same duties with  
62 respect to such final assessments as in the case of the annual taxes upon real estate, and the law  
63 in regard to the collection of the annual taxes, to the sale of land for the non-payment thereof and  
64 to redemption therefrom shall apply to final assessments made under this chapter, so far as the  
65 same are applicable; but the owner of land shall not be personally liable for the assessment  
66 thereon, because a special assessment or betterment must be secured by a lien on the property  
67 benefited. To enforce collection, the Assessing Board must establish a valid lien at the Registry  
68 of Deeds of the assessment order to construct the sewer Every collector of taxes receiving a list  
69 of assessed owners named in the assessment order of construction and warrant from the assessors  
70 shall collect the final assessment therein set forth, and at such times as the assessors shall direct,  
71 or in the case of assessments relating to state funded projects, as the collector of taxes and the  
72 board determine shall pay over to the treasurer of the body politic on behalf of which the  
73 assessment was made the amounts collected by him.

74 Massachusetts General Laws Chapter 80 Section 5 as appearing in the 2020 edition is  
75 hereby amended by striking it in its entirety and replacing it with the following: -

76 Section 5. The liable owner of any real estate upon which betterments have been  
77 assessed whose name appears in the order of construction or the current owner not named  
78 in the order of construction and with an assessment order lien recorded at the registry of deeds,  
79 may, within six months after notice bill of such final assessment has been sent out by the  
80 collector, file with the board a petition for an abatement thereof, and the board shall grant such

81 abatement as may be necessary to make such assessment conform to section one. Such petition  
82 may be filed with the clerk or secretary of the board, or delivered by mail or otherwise at their  
83 office. The board shall within ten days after their decision upon the petition give written notice  
84 thereof to the petitioner. If a final actual assessment is abated by the board the assessment so  
85 determined shall stand as the final actual assessment upon the land, and if it has not been paid  
86 shall be collected in the same manner as the original assessment. If the original assessment has  
87 been paid, the person by whom it was paid shall be reimbursed by the body politic on behalf of  
88 which it was assessed to the amount of the abatement allowed, with interest at the rate of six per  
89 cent per annum from the time of payment.

90           Massachusetts General Laws Chapter 80 Section 12 as appearing in the 2020 edition is  
91 hereby amended by striking it in its entirety and replacing it with the following: -

92           Section 12. Betterment Assessments made under this chapter shall constitute a lien upon  
93 the land assessed. The lien shall take effect upon the recording at the Registry of Deeds the  
94 original order of assessment to construct the sewer stating that betterments or special  
95 assessments are to be assessed for the improvement. A special assessment or betterment is  
96 secured by a lien on the property benefited. To enforce collection, the assessing board (city/town  
97 council, board of selectmen, water/sewer/road commissioners) must establish a valid lien.

98           Notwithstanding any other provision of this section or chapter eighty-three, if a county,  
99 city, town, or district elects to send notice of the net committed assessment to the owner of the  
100 land assessed indicating the amount of the assessment for the betterment, and said owner pays  
101 the amount due, no lien shall be recorded. The assessors shall indicate on the next tax bill that the  
102 amount of the betterment assessment has been paid and no further notation or demand shall be

103 made on land so assessed. Except as otherwise provided, such lien shall terminate at the  
104 expiration of two years from October first in the year in which the assessment is first placed on  
105 the annual tax bill under section thirteen or, if an assessment has been apportioned, from October  
106 first in the year in which the last portion is so placed upon the annual tax bill, whichever is later,  
107 if in the meantime in either case the estate has been alienated and the instrument alienating the  
108 same has been recorded. If there is no recorded alienation within such period, the lien shall  
109 continue until there is a recorded alienation. If the validity of an assessment made under this  
110 chapter is called in question in any legal proceeding to which the board which made the  
111 assessment or the body politic for the benefit of which it was made is a party, instituted prior to  
112 the expiration of the lien therefor, the lien shall continue until one year after the validity of the  
113 assessment is finally determined, even though an alienation be recorded in the meantime. If at  
114 any time while a lien established by this section is in force, a sale or taking cannot in the opinion  
115 of the collector be legally made because of any federal or state law or because of any injunction  
116 or other action of, or proceeding in, any federal or state court or because of the action of any  
117 administrative body, the lien shall, if the statement provided for in section thirty-seven A of  
118 chapter sixty is filed, continue as provided in said section thirty-seven A, subject, however, to  
119 any lawful action under any paramount authority conferred by the constitution or laws of the  
120 United States or the constitution of the commonwealth. If the time for payment of an assessment  
121 is extended under section thirteen A or under any general or special law, the lien shall, if the  
122 statement provided for in section thirty-seven A of chapter sixty is filed, continue as provided in  
123 said section thirty-seven A. A lien under this section may be dissolved by filing for record in the  
124 registry of deeds of the county or district where the land subject to the lien lies a certificate, in a  
125 form approved by the commissioner of revenue, from the collector of taxes that the assessment,

126 constituting the lien, together with any interest and costs thereon, has been paid or legally abated.  
127 The collector of taxes shall charge four dollars for each certificate so issued, and the money so  
128 received shall be paid into the town treasury.

129 Mass General Law Chapter 83 Section 15 as appearing in the 2020 edition is hereby  
130 amended by striking it in its entirety and replacing it with the following: -

131 Section 15. The city council of a city or a town may adopt a system of sewerage for a part  
132 or the whole of its territory, and may provide that assessments under section fourteen shall be  
133 made upon owners of land within such territory by a fixed uniform rate or a rate based upon a  
134 uniform unit method. A municipality may not vote to adopt sewer betterment charges under this  
135 section. A municipality cannot vote to adopt sewer betterment charges or sewer assessment  
136 charges, after the particular project which included the contracts within the project are  
137 constructed, and a municipality cannot combine projects with other projects. No betterment  
138 assessment or special assessment can be assessed for a particular public improvement project  
139 unless the vote is a formal vote at Town Meeting or City Council which includes the order to  
140 construct the sewer to impose assessments, project plan including contracts, project estimate, per  
141 parcel estimate, and this vote is recorded at the Registry of Deeds to create a lien. The Order of  
142 Assessment shall state that betterments are to be assessed for the system extension. The Order of  
143 Assessment shall specify the area that the sewer is to be located, identify the properties specially  
144 benefited by the extension, identify the owners of said properties as appearing in the Assessor's  
145 record A fixed uniform rate shall be based upon the estimated average cost of all the sewers  
146 therein, according to the frontage of such land on any way in which a sewer is constructed, or  
147 according to the area of such land within a fixed depth from such way, or according to both such  
148 frontage and area; but no assessment in respect to any such land, which by reason of its grade or



149 level or any other cause cannot be drained into such sewer, shall be made until such incapacity is  
150 removed. If the assessment is according to the area within such fixed depth, the lien therefor  
151 shall attach to the parcel assessed in accordance with Chapter 80 section 2 and Chapter 83  
152 section 27. A uniform unit method shall be based upon sewerage construction costs divided  
153 among the total number of existing and potential sewer units to be served, after having  
154 proportioned the cost of special and general benefit facilities. Each sewer unit shall be equal to a  
155 single family residence. Potential sewer units shall be calculated on the basis of zoning then in  
156 effect. Existing and potential multifamily, commercial, industrial and semipublic uses shall be  
157 converted into sewer units on the basis of residential equivalents. A city by ordinance or a town  
158 by by-law may separate the costs of general benefit facilities, including but not limited to  
159 pumping stations, trunk and force mains, from that of special benefit facilities, including but not  
160 limited to the sewer mains, serving adjacent properties. A portion of costs of the general benefit  
161 facilities may be apportioned by the uniform unit method on all areas to receive benefits within  
162 the pumping district or combination of districts. The cost of the general benefit facilities,  
163 attributable to undeveloped land not abutting a sewer street, may not be assessed until  
164 properties are serviced by public sewerage. The proportional cost of the special benefit and  
165 general benefit facilities may be assessed against all properties abutting a sewer street.

166           Mass General Law Chapter 83 Section 16 as appearing in the 2020 edition is hereby  
167 amended by striking it in its entirety and replacing it with the following:-

168           Section 16. The aldermen of any city or the sewer commissioners, selectmen or road  
169 commissioners of a town, may from time to time establish just and equitable annual charges for  
170 the use of common sewers and main drains and related stormwater facilities, which shall be paid  
171 by every person who enters his particular sewer therein. The user fee xvi charge shall be based

172 on each sewer user's actual water use when water records are available. The money so received  
173 may be applied to the payment of the cost of maintenance and repairs of such sewers or of any  
174 debt contracted for sewer purposes. In establishing quarterly or annual charges for the use of  
175 main drains and related stormwater facilities, the city, town, or district may either charge a  
176 uniform fee for residential properties and a separate uniform fee for commercial properties or  
177 establish an annual charge based upon a uniform unit method; but, the charge shall be assessed in  
178 a fair and equitable manner. The annual charge shall be calculated to supplement other available  
179 funds as may be necessary to plan, construct, operate and maintain stormwater facilities and to  
180 conduct stormwater programs. The city, town or district may grant credits against the amount of  
181 the quarterly or annual charge to those property owners who maintain on-site functioning  
182 retention/detention basins or other filtration structures as approved by the stormwater utility,  
183 conservation commission, or other governmental entity with appropriate authority.

184           Mass General Law Chapter 83 Section 27 as appearing in the 2020 edition is hereby  
185 amended by striking it in its entirety and replacing it with the following: -

186           Section 27. Whenever the aldermen of a city or the sewer commissioners, selectmen or  
187 road commissioners of a town lay out or determine to construct a sewer or drain in a public way,  
188 or in a way opened or dedicated to the public use which has not become a public way, or adopt  
189 an order for the establishment or reconstruction of a sidewalk for such a way, and assessments  
190 may be made or charges imposed under this chapter for the construction of such improvement or  
191 the use thereof, they shall forthwith cause to be recorded in the registry of deeds of the county or  
192 district in which such city or town is situated a statement of their action, which shall specify the  
193 ways in which such sewer, drain or sidewalk is located. All assessments made or charges  
194 imposed under this chapter upon land which abuts upon any such way in which such sewer, drain

195 or sidewalk is located shall constitute a lien upon such land from the time such statement is  
196 recorded and all charges authorized by section sixteen shall from the time of assessment  
197 construction order constitute a lien upon the land connected with the common sewer. Liens under  
198 this section shall continue for the same period and under the same conditions as a lien established  
199 under chapter eighty.

200 Mass General Law Chapter 83 Section 28 as appearing in the 2020 edition is hereby  
201 amended by striking it in its entirety and replacing it with the following: -

202 Section 28 Application of betterment law FOR CONSTRUCTION OF SEWER  
203 PROJECTS Section 28. The provisions of chapter eighty relative to imposing assessment of  
204 costs of public improvement, order of construction, plan and estimate; recordation of liens,  
205 apportionment, division, reassessment, abatement and collection of assessments, and to interest,  
206 lien status of assessments, and duration of lien, shall apply to assessments made under this  
207 chapter.