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### **A New Machine for Debt: Will We Buy It?**

What if some property owners in your neighborhood wanted to build a Recreation Center—and they had the power to bill you for your “share” of the cost, year after year? What if you went shopping for a home, and discovered that in all the new subdivisions, you’d be getting regular bills for the cost of your sewers and roads and streetlights—in addition to your property tax bills? Under a proposed law being touted on Beacon Hill, such schemes could take place in any city or town that voted to approve them.

House bill 159/Senate bill 146 would establish a new Chapter 40T of the Massachusetts General Laws, allowing creation of “Special Development Districts,” empowered to build projects from roads and sewers to parking garages and recreational facilities and to provide “services and programs.” These projects would be financed through the issuance of bonds, to be repaid through “assessments” made upon all properties in the district. Proponents of this bill boast that it bypasses the limitations of Proposition 2 ½, even though the 40T assessments would function like taxes, resulting in liens upon property, if unpaid, and thereby accelerating foreclosure.

Here’s how 40T would work: private landowners could petition their municipality to approve creation of a Local Improvement District, as mapped by the petitioners, and to authorize such construction and services as the petitioners propose. 80% of the owners of acreage and tax parcels in the proposed district must consent to its creation. The municipal governing body then has a limited time to hold a public hearing, and to vote whether to approve establishment of the District.

The temptation for a municipality to authorize creation of one or more such Districts could be quite strong. Most communities have wish lists of improvements they’d like to see, but are up against the limit of debt service they can afford on their municipal bonds. 40T proponents sing the sirens’ song—“build at no cost to taxpayers”—and several municipalities have endorsed the bill.

Once approved, Local Improvement Districts could start lives of their own, as governmental players. 40T districts, run by self-appointed “prudential committees,” become “bodies politic and corporate, and political subdivisions of the Commonwealth,” empowered to open offices, take a name and official seal, hire employees, and adopt rules and regulations. Districts could then commence the business of issuing bonds, and carrying out their plans.

Districts would also start collecting assessments to pay off principal, interest, and other costs of debt, and the costs of operating the district, including paying staff and consultants. Property owners in districts would get the benefit of improvements included in districts’ approved plans—say, the roads in their new subdivision. They would continue also to pay property taxes to maintain the rest of the roads in the town.

Proponents of 40T assert that other allow special districts, issuing billions of dollars' worth of bonds annually. Florida is the biggest issuer of such debt, about \$1 billion worth each year, followed by California. Coincidentally, Florida and California—along with Nevada, which also authorizes special development districts—are experiencing some of the nation's highest foreclosure rates.

There is some evidence of a connection between the burden of paying special assessments, and increased vulnerability to foreclosure. Historically, as one author notes, “[l]ocal governments in the United States commonly used special assessments to finance public investment until the Great Depression led to widespread defaults and foreclosures on special assessment tax liens.” Since the rise of modern special district legislation in the 1980s, however, there has been little data collected, or analysis done, on the fiscal and political impacts of such districts over time, including downturns in economic cycles.

The 40T bills before the legislature don't even contain provisions for notifying tenants or buyers of property in Special Districts that real estate there is subject to decades of assessments to pay off debt. Beyond the burdens on Special District property owners, though, the hazards of 40T financing affect us all. At some point, we have to face the question of just how much debt the people of the Commonwealth can bear.

This question came into sharp focus at a January 31, 2008 hearing before the Joint Committee on Bonding, Capital Expenditures, and State Assets. While Administration and Finance Undersecretary Jay Gonzalez admirably justified Governor Patrick's ambitious capital spending program and proposed bond cap increase, the hearing also highlighted the amount of public debt in Massachusetts issued not on the credit of the Commonwealth, but by various quasi-governmental agencies. Massachusetts is, unfortunately, one of the nation's leaders in public debt liability: Moody's Investor's Service in 2007 placed Massachusetts number one in net tax-supported debt per capita; number two in tax-supported debt as a percentage of personal income; and number three in gross tax-supported debt.

Authorizing special districts empowered to issue assessment-backed debt may not increase Massachusetts' "tax supported debt" standing, but it will increase the total indebtedness that that taxpayers of Massachusetts will have to repay. Even in states experiencing fast population growth, debt issued by special districts is proving to be a burden. Slow-growth Massachusetts can ill afford to spawn unlimited quasi-autonomous districts, issuing their own public debt—the end-run around Proposition 2 ½ offered by 40T.