

Dear Colleagues:

On July 1, 2008, Senator Moore sent out a written response to points I raised about H. 159. Those comments themselves bear response. My remarks on the first five points, "Governmental Concerns," are below; the next five will follow.

- 1.) My point: H. 159...could generate unlimited public debt.

July 1 Comment: "Bonds issued pursuant to the proposed Chapter 40T (H. 159) are specifically NOT the debt of the Commonwealth of any city or town."

My response: So what? 40T debt ultimately will have to be repaid by some group of Massachusetts taxpayers. Also, there will be pressure on state and/or local government to bail out a special district in danger of default.

- 2.) My point: Special district financing has been historically adopted by fast-growing states like FL and CA – there's no fiscal analysis of the ability of MA to support such debt.

July 1 Comment: "The underlying financing concept of Ch. 40T is based on the Commonwealth's long history and experience with betterments and assessments."

My response: This non-responsive answer seeks to mask the character of 40T districts. For a clearer view, go to the website for Hal Davis' New England Economic Development; <http://www.govincentives.com/>. Click on "Programs." Under "Creating Special District Financing," you will see this statement of purpose: "providing developers tax-exempt financing rates for commercial/residential infrastructure, i.e. roads, water, sewer."

Click then on "Special District Finance," Davis admits that "this structure has been widely used in such states as CA, TX, and FL."

- 3.) My point: The burden of 40T assessments can easily "max out" fiscal capacity of community residents, affecting political appetite for property tax increases/overrides.

July 1 Comment: "H. 159 offers a voluntary option to fund needed infrastructure improvements..."

My response: With its requirement that 80% of property owners consent to formation of a 40T district, H. 159 would appear to be somewhat "voluntary." Curious, I've researched how such districts operate in practice. Some insight comes from the most comprehensive published article on special district financing, Darien Shanske's "Public Tax Dollars for Private Suburban Development: A First Report on a National Phenomenon," which appeared in the Virginia Tax Journal in the winter of 2007 (contact my office if you'd like an electronic copy).

Examining the Mello-Roos districts in California, Shanske finds that, typically, a district is created "on the basis of an election in which the one current landowner, namely the developer, agreed to be so taxed....[T]he new homeowners [buying property in the district] will pay the vast majority of the tax in the coming decades." [Id. at 117] Shanske argues that this infrastructure-financing mechanism "undermines local participatory democracy along almost every dimension and generally accelerates the baneful effects of Proposition 13 [CA's version of Proposition 2 ½]....Mello-Roos taxes thus represent a privatization and balkanization of the tax base down to the sub-local level and in a manner that is fixed for decades at a time." [Id. at 717]

Moving from the academic level to the popular press, consider articles like "Homeowners stunned with Mello-Roos taxes," (Merced Sun-Star (Merced, CA) June 9, 2007). CA law requires that two-thirds of voters consent to the formation of a Mello-Roos district, "which is also called a community facilities district, or CFD." [Id.] This article highlights a typical situation, where a single developer "consented" to formation of the district, and subsequent buyers pay off the infrastructure debt, in addition to their property taxes.

4.) My point: H. 159 is structured to facilitate “sprawl” type development.

July 1 Comment: “There is absolutely nothing in H. 159 that would favor infrastructure supporting “sprawl” over “smart growth.”

My response: There are at least two elements in H. 159 that would tend to encourage “sprawl.” The first is structural: it is easier to form a district when landowners are few. It is simplest of all when there is a single landowner.

In CA and FL, such districts are usually formed by owners of large tracts of land, who issue bonds to fund the roads, sewers, and other amenities needed to create new residential subdivisions. Special districts are politically easy to create on “green fields”; undeveloped or agricultural land – areas that require all new infrastructure. This pattern of “sprawl development,” outside existing urban and town centers, is clearly visible in FL, CA, and TX.

Secondly, H. 159 neither prohibits subsidies for sprawl, requires “smart” development that utilizes existing infrastructure and conserves land, nor gives any guidance or support to communities that aim for smart growth. This omission is especially odd in light of this legislature’s amendments to MGL Chapter 43D, made in the 2005 – 2006 session. Those amendments require state approval before a municipality can designate a single parcel eligible for “expedited permitting” – yet H. 159 would confer complete authority to create new political subdivisions, able to issue debt to build their “improvement plans.”

5.) My point: At the Bonding Committee’s public hearing on H. 159, both the Massachusetts Municipal Association (MMA) and the Patrick Administration submitted testimony that they could not support the bill unless it was amended.

July 1 Comment: “MMA has now moved into a neutral position...Undersecretary Bialecki...had some issues with the use of a Local Improvement District for existing neighborhood projects.”

My response: MMA’s letter of testimony, dated June 27, 2008, states that “the MMA originally opposed this legislation, but would withdraw its opposition if all the recommended enhancements [amendments] listed above are incorporated into the bill.” Bonding Committee staff has confirmed that H. 159 has not been amended in any way. I would infer from this fact that MMA has, consequently, not withdrawn its opposition.

On November 19, 2007, Undersecretary Bialecki wrote a letter to the Chairs of the Joint Committee on Bonding, which states, “I am writing today to ask that you defer action on Senate bill 146 and House bill 159, An Act Relative to Special Development Districts. Although the concept of infrastructure financing secured by special assessments is a promising one, we do have concerns about the scope and breadth of the current bills...[W]e are optimistic that continued dialogue can lead to a consensus resolution that will have broad support.” To my knowledge, the Administration’s position on the bill is unchanged. I am happy to supply copies of both letters.

As always, I am happy to discuss any aspect of this bill with you. Thank you for your time and attention.

Best regards,

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