

THE COMMONWEALTH OF MASSACHUSETTS

In the Year One Thousand Nine Hundred and Ninety-three

AN ACT CREATING THE DEVENS ENTERPRISE COMMISSION.

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

SECTION 1. Findings and Purpose. It is hereby found that there exists within the Commonwealth substantial unemployment which is detrimental to the welfare of the people of the Commonwealth; that the termination by the United States of certain activities at Fort Devens threatens to result in blight, economic dislocation and additional unemployment, all to the further detriment of the welfare of the people of the Commonwealth; that Fort Devens has operated as a federal enclave, independent of the four towns in which it is located since its inception; that the reuse of Fort Devens will require financial support from the Commonwealth due to the size and complexity of the Fort Devens property; that the towns of Ayer, Harvard and Shirley have a vital interest in the successful reuse of Fort Devens; that the withdrawal of the military from Fort Devens will have a detrimental effect on the towns of Ayer, Harvard and Shirley and on the north-central region of the Commonwealth without the assistance provided by this act; and that in order to facilitate the reuse of Fort Devens for non-military uses it will be necessary to establish various incentives to attract private businesses to locate and expand their operations at Fort Devens, including providing those businesses tax incentives, relief from inconsistent land use controls, and economic relief through the establishment of Fort Devens as an Economic Target Area and an Economic Opportunity Area, and application to establish Devens as a federal enterprise and free trade zone. Therefore, it is the purpose of this act to promote the expeditious and orderly conversion and redevelopment of Fort Devens for non-military uses, including, but not limited to, housing, industrial, institutional, educational, governmental, recreational, conservation, commercial or manufacturing uses, in order to prevent further blight, economic dislocation and additional unemployment, and to aid in strengthening the local economy, the regional economy and the economy of the Commonwealth.

SECTION 1A. Overall Goal Statement. The Devens reuse challenge demands a visionary planning effort grounded in environmental, social, and economic reality. It must be realistic, pragmatic, market driven, flexible, and future oriented and shall be based on the following goals and objectives:

- (1) Development must be sustainable, which means achieving a balance of economic, social and environmental needs while maintaining and enhancing the natural resource base.
- (2) Development must provide a diversity of uses to avoid dependence on one use, and to provide opportunities for a range of skills and experience levels.
- (3) Development must demonstrate the interdependence of economic development and environmental protection and the symbiosis of public and private uses.
- (4) Development must balance local, regional and Commonwealth interests.
- (5) Development must foster uses that will create, at minimum, the number of jobs and value of economic activity at Devens in the year one thousand nine hundred and ninety.
- (6) Development must take advantage of the skills and experience of the regional work force and work to match the skills of the future work force with the needs of industries of the future.
- (7) Development must foster a long term mix of uses which will enhance the regional economy through future growth potential.
- (8) Development must build on Devens' unique characteristics to complement the regional economy and expand the economic base.
- (9) Development must foster an attitude that supports reuse goals, successful redevelopment and the provision of economic activities for individual and collective prosperity.
- (10) Development must protect and enhance Devens' historical resources.
- (11) Development must promote public awareness and enjoyment of Devens' environment.
- (12) Development must protect and enhance the quality of life of the citizens in the host communities, the region and the Commonwealth.
- (13) Development must provide education, training and retraining tied to business, industry and institutions on base and in the region.

(14) Development must ensure an effective, expeditious and efficient clean-up of hazardous materials, including Superfund areas, tied to the needs of the Reuse Plan.

(15) Development must protect and enhance Devens ecological resources of all kinds, particularly the aquifer and the Nashua River system.

(16) Uses which may negatively impact regional natural resources will be allowed only with appropriate technology and proper mitigation.

(17) Development must minimize the off-base impacts of development in areas such as water resources, air quality, viewsheds, traffic and noise, limiting the impacts to those necessary to achieve reuse goals and objectives.

(18) Development must foster businesses which enhance the environment through technology.

SECTION 2. Definitions. In this act, the following words and phrases shall, unless the context requires otherwise, have the following meanings:

(1) "Bank" or "Government Land Bank," the Government Land Bank, established by chapter two hundred and twelve of the acts of nineteen hundred and seventy-five, as amended.

(2) "Commission," the commission established by section nine of this act.

(3) "Devens" or the "Devens Regional Enterprise Zone," the regional development zone created by this act, the boundaries of which include all the land area of Fort Devens, except the South Post, and certain land adjacent to Fort Devens owned by the Commonwealth, and certain land adjacent to Fort Devens currently owned by the Springfield Railway Terminal, Inc. or affiliate thereof or successor thereto, and currently used primarily for railroad purposes.

(4) "Devens Region," the municipalities within the Commonwealth described as follows: (a) the Towns as defined in this act, (b) all municipalities contiguous to the Towns and (c) all municipalities contiguous to those defined in (b) above.

(5) "Fort Devens," the lands, including all easements, reservations and rights appurtenant thereto, and all buildings, structures, utilities and improvements located thereon comprising all or a portion of the military base of that name presently located in the towns of Ayer, Harvard, Lancaster and Shirley and within the ownership, control and jurisdiction of the United States government.

(6) "Reuse Plan," the plan for the reuse of Devens being prepared by the Bank and the Towns, as approved pursuant to section ten of this act.

(7) "Secretary," the Secretary of the Executive Office of Administration and Finance.

(8) "South Post," that portion of Fort Devens located south of the sidelines of the state highway designated as route two.

(9) "Town," any one of the towns of Ayer, Harvard or Shirley.

(10) "Towns," the towns of Ayer, Harvard and Shirley.

SECTION 3. Section four of chapter two hundred and twelve of the acts of nineteen hundred and seventy-five, as most recently amended by section twenty-four of chapter nineteen of the acts of nineteen hundred and ninety-three, is hereby further amended by striking out clause (j) and inserting in place thereof the following clause: "(j) borrow money by the issuance of its debt obligations as provided in section eight E of this act;".

SECTION 4. Said chapter two hundred and twelve of the acts of nineteen hundred and seventy-five is hereby further amended by adding after section eight D thereof the following new section:-

"Section 8E. The Bank may provide by resolution for the issuance from time to time of debt obligations of the Bank for any of its corporate purposes, provided, however, that the Bank shall not issue debt obligations the principal amount of which, when added to the principal amount of debt obligations issued by the Bank and then outstanding, excluding debt obligations previously refunded or being or to be refunded thereby, shall not exceed two hundred and fifty million dollars, two hundred million dollars of which shall be for the exclusive use of the Devens project, so-called. All such debt obligations shall be negotiable for all purposes without regard to any other law, subject only to the provisions of any such debt obligations for registration; provided, however, that notwithstanding the provisions of any general or special law to the contrary, no debt obligations may be issued by the Bank for the purposes of the Devens project without (a) the prior approval of the General Court by a two-thirds majority pursuant to section three of article LXII of the Articles of Amendment to the Constitution; (b) the prior approval of a Reuse Plan and Bylaws by the commissioner of the division of capital planning and operations and the directors of the Bank; and (c) the prior adoption of said Reuse Plan and Bylaws by the towns of Ayer, Harvard and Shirley. Debt obligations issued hereunder may be secured by the full faith and credit of

the Bank, by a pledge of any revenues, receipts or other assets or funds of the Bank, by mortgages or other instruments covering all or any part of any and all real property of the Bank, including any additions, improvements, extensions to or enlargements of any real property thereafter made, or by any one or more of the foregoing, all as may be determined by the Bank. Debt obligations may be dated, may bear interest at such rate or rates, including rates variable from time to time, may be payable in any domestic or foreign currency and at any domestic or foreign location and may mature or otherwise be payable at such time or times as may be provided for by the Bank, and may be made redeemable or determinable prior to maturity at the option of the Bank or the holder thereof at such price or prices and under such terms and conditions as may be fixed by the Bank. The Bank shall determine the form of debt obligations and the manner of execution, denomination or denominations and place or places of payment thereof. In case any officer whose signature or a facsimile of whose signature shall appear on any debt obligations shall cease to be such officer before the delivery thereof, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until after such delivery. The Bank may provide for the authentication of debt obligations by a trustee, fiscal agent, registrar or transfer agent. The Bank may by resolution delegate to the executive director or any member or members of the board of directors of the Bank, or any combination of them, the power to determine any of the matters set forth in this section. In the discretion of the Bank, debt obligations of the Bank may be issued with such terms as will cause the interest thereon to be subject to federal income taxation. The Bank may sell its debt obligations in such manner, either at public or private sale, for such price, at such rate or rates of interest, or at discount in lieu of interest, as it determines will best effectuate its corporate purposes. In the discretion of the Bank, any debt obligations issued hereunder may be secured by a resolution of the Bank or by a trust agreement between the Bank and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth, and any such trust agreement shall be in such form and executed in such manner as may be determined by the Bank. Such trust agreement or resolution may pledge or assign, in whole or in part, any revenues and funds held or to be received, and any mortgages or other loan collateral held or to be acquired, by the Bank and any contract or other rights to receive the

same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the Bank, and the proceeds thereof.

Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights, security and remedies of holders of debt obligations as may be reasonable and proper, 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, restrictions on individual right of action by holders of debt obligations and covenants setting forth duties of and limitations on the Bank in relation to the conduct of its programs and the management of its property, the custody, safeguarding, investment and application of moneys, the issuance of additional or refunding debt obligations, the establishment of reserves and the making and amending of contracts. In addition to other security provided herein or otherwise by law, debt obligations issued by the Bank may be secured, in whole or in part, by financial guaranties, by insurance or by letters of credit issued to the Bank, or a trustee, or any other person by any bank, trust company, insurance or surety company or other financial institution, within or without the Commonwealth, and the Bank may pledge or assign, in whole or in part, any revenues and funds held or to be received, and any mortgages or other loan collateral held or to be acquired, by the Bank and any contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the Bank, and the proceeds thereof, as security for such guaranties or insurance or for the reimbursement by the Bank to the issuer of any such letter of credit of any payments made under such letter of credit. It shall be lawful for any bank or trust company to act as a depository or trustee of the proceeds of debt obligations, revenues or other moneys under any such trust agreement or resolution and to furnish such indemnification or to pledge such securities and issue such letters of credit as may be required by the Bank. Any such trust agreement or resolution may set forth the rights and remedies of holders of debt obligations and of the trustee and may restrict the individual right of action by holders of debt obligations. Any pledge of revenues or other property made by the Bank under the provisions of this act, including, without limitation, any pledge by the Bank of its rights to receive payments of any kind from or for the account of mortgagors under mortgages, participations therein or subsidy, guaranty, insurance or other contracts re-

lating thereto, and of its revenues and other property, and of the mortgages, notes, such participations, such subsidy, guaranty, insurance or other contracts or other collateral, and of the proceeds of any or all thereof, shall be valid and binding and shall be deemed continuously perfected for the purposes of the Uniform Commercial Code and other laws from the time when such pledge is made. The revenues, moneys, property, rights and proceeds so pledged and then held or thereafter acquired or received by the Bank shall immediately be subject to the lien of such pledge without any physical delivery or segregation thereof or further act, and the lien of any such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Bank, regardless of whether such parties have notice thereof. Neither the resolution, any trust agreement nor any other agreement by which a pledge is created need be filed or recorded except in the records of the Bank, and no filing need be made under the Uniform Commercial Code or any other law. Any holder of a debt obligation issued by the Bank under the provisions of this act and any trustee under a trust agreement or resolution securing the same, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may bring suit upon the debt obligations and may, either at law or in equity, by suit, action, mandamus or other proceeding for legal or equitable relief, including proceedings for the appointment of a receiver to take possession and control of the business and properties of the Bank, to operate and maintain the same, to make any necessary repair, renewals and replacements in respect thereof and to fix, revise and collect fees and charges, protect and enforce any and all rights under the laws of the Commonwealth or granted hereunder or under such trust agreement, resolution or other agreement and may enforce and compel the performance of all duties required by this act or by such trust agreement or resolution to be performed by the Bank or by any officer thereof. Debt obligations issued by the Bank under this act are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments, savings banks, cooperative banks, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such debt obligations are hereby made securities which may properly and legally be deposited with and received by any Commonwealth or municipal

officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations of the Commonwealth is now or may hereafter be authorized by law. Debt obligations issued by the Bank under the provisions of this act shall not be deemed to be a debt or a pledge of the faith and credit of the Commonwealth, except to the extent provided pursuant to the provisions of section eight B of this act, but, except as aforesaid, shall be payable solely from the funds of the Bank from which they are made payable pursuant to the provisions of this act. All debt obligations issued by the Bank under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind by the Commonwealth and by the cities, towns and other political subdivisions in the Commonwealth."

SECTION 5. Clause (k) of section four of said chapter two hundred and twelve of the acts of nineteen hundred and seventy-five, as most recently amended by section twenty-five of chapter nineteen of the acts of nineteen hundred and ninety-three, is hereby further amended by adding the following language thereafter: "and (S) from the United States, lands that were used for Fort Devens or a portion thereof."

SECTION 6. Section two of said chapter two hundred and twelve is hereby amended by striking out the fourth paragraph thereof, as most recently amended by section three of chapter seven hundred and sixty-two of the acts of nineteen hundred and seventy-nine, and inserting in place thereof the following paragraph:-

"The directors may, from time to time, appoint either for a definite term not to exceed four years, or to serve at the directors' pleasure, an executive director, who shall devote his full time during business hours to the duties of his office and who shall receive compensation as the directors shall determine, a treasurer who shall be the chief financial and accounting officer of the Bank and shall be in charge of its funds, books of accounts, and accounting records, and such other officers and employees as are necessary to the functioning of the Bank. Officers and employees of the Bank shall not be subject to the provisions of chapter thirty-one or section A of chapter thirty of the general laws. Salaries for employees, including the executive director and treasurer, shall be set by the directors."

SECTION 7. Section nineteen of said chapter two hundred and twelve, as most recently amended by section five hundred seventy-six of chapter one hun-

dred thirty-three of the acts of nineteen hundred and ninety-two, is hereby repealed.

SECTION 8. Boundaries. The Devens Regional Enterprise Zone is hereby created. Plans and descriptions detailing the precise boundaries and configuration of the Devens Regional Enterprise Zone will be prepared by the Bank, approved by the Board of Selectmen of each Town, and filed with the Secretary, the House and Senate Committees on Ways and Means and recorded in the Middlesex County Registry of Deeds and the Worcester County Registry of Deeds. Said filings shall take place within one hundred and eighty days of the effective date of this act.

SECTION 9. Devens Enterprise Commission. There shall be a body corporate known as the Devens Enterprise Commission, in this act called the "Commission." The exercise by the Commission of its powers and the discharge of its duties shall be deemed and held to be the performance of an essential government function. The Commission shall consist of twelve commissioners who shall be appointed as follows: (1) the board of selectmen of each of the Towns shall nominate two candidates for commissioner whom the Governor may, in each case and in his sole discretion, appoint or reject and, for any rejected nominee, the board of selectmen of the Town whose nominee was rejected shall nominate successive candidates for commissioner until a nominated candidate is accepted and appointed by the Governor; and (2) six commissioners shall be appointed by the Governor, of whom (a) no two shall be legal residents of the same town and (b) at least three shall reside in the Devens Region. All twelve commissioners shall have proven expertise in one or more of the following areas: industrial development, housing, finance, business, real estate, environment, planning, transportation or municipal government. The Governor shall appoint one commissioner to serve as the chairman of the Commission, and one commissioner to serve as vice-chairman of the Commission. Commissioners shall serve for terms of four years, provided, however, that of those initially appointed, three shall be appointed for a term of one year, three for two years, three for three years and three for four years, and provided further, that one nominee each of the boards of selectmen of the Towns of Ayer, Harvard and Shirley shall be initially appointed for a term of two years, and that one nominee each of the boards of selectmen of said Towns shall be initially appointed for a term of three years. No elected official of the federal government, the Commonwealth or any political subdivision of the Commonwealth may

serve hereunder as commissioner. Commissioners may be eligible for renomination at the expiration of their terms and may be removed by the Governor for cause. Vacancies arising otherwise than from the expiration of a term shall be filled by persons appointed by the Governor in the same manner and subject to the same qualifications as provided above for the remainder of the unexpired term. Commissioners shall serve without compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties. The Governor and the board of selectmen of each of the Towns may also each nominate one candidate for appointment as an associate member of the Commission in the same manner as for a member of the Commission, and the chairman of the Commission may designate any such associate member to sit on the Commission in case of absence, inability to act, or conflict of interest on the part of any commissioner, or in the event of a vacancy on the Commission until said vacancy is filled.

SECTION 10. Reuse Planning, Zoning and Regulations. The Bank and the Towns shall prepare a Reuse Plan and associated zoning bylaws for Devens as provided for in this section, hereinafter referred to as the "Reuse Plan and Bylaws". The purpose of the Reuse Plan and Bylaws will be to establish objectives, policies and standards to guide public and private decision-making and investment and to ensure the maintenance of quality of life and the protection of natural resources. To ensure that the interests of the Towns, the Devens Region and the Commonwealth are reflected in the Reuse Plan, participation of citizens and other interested parties in the planning process shall be encouraged. In formulating the Reuse Plan and Bylaws, the Bank and the Towns shall analyze factors relevant to the reuse of Devens, including the built environment, the natural environment, infrastructure and market conditions; identify the significant problems and opportunities concerning the reuse of Devens; establish objectives for the reuse of Devens and policies for achieving the objectives; and generate and assess alternative reuse options. The Reuse Plan and Bylaws shall establish and convey, through text, maps, illustrations or other media of communication, a comprehensive framework for the reuse of Devens. A principal concern of the Reuse Plan and Bylaws will be the allocation of land uses in Devens, including, but not limited to:

(i) the allocation of land that is expected to be developed primarily by private parties into zones or districts for industrial, commercial, residential and other basic uses, describing guidelines for the height, area and land

coverage of development within such zones or districts and the types or range of uses that will be permitted or prohibited within such zones or districts;

(ii) the allocation of land to be devoted to park and recreational uses and to conservation into appropriate zones or districts, and description of the types of regulatory measures to be applied to the use, preservation and protection of such land;

(iii) the allocation of land for public facilities such as schools, libraries, hospitals, police and fire stations, churches and playgrounds; and (iv) the allocation of land for transportation and circulation, including existing and proposed roads, rail and mass transit, parking, bicycling and pedestrian circulation.

The Reuse Plan shall also contain a utilities component, which shall describe the distribution of water, sewer, gas, electrical, telephone, cable television, refuse collection and disposal and other similar services, whether public or private, and an implementation component, which shall address methods for achieving realization of the Reuse Plan, including regulatory programs, tax and other economic incentives and inducements, and direct capital investment. To provide guidance to the mechanism for amending and modifying the Reuse Plan and Bylaws after final approval, as set forth herein, the Reuse Plan and Bylaws shall contain criteria for determining which amendments or modifications constitute substantial revisions to the approved Reuse Plan and Bylaws. Prior to submission of the Reuse Plan and Bylaws to the Towns for adoption, as set forth below, the Reuse Plan and Bylaws shall be approved by the board of directors of the Bank and the commissioner of the division of capital planning and operations. Before granting their approval, the Bank must find that the implementation of the Reuse Plan will provide for the development and redevelopment of Devens so as to eliminate blight, economic dislocation and unemployment, and to carry out the purposes of this act.

Before granting their approvals and adoption, the Bank and the Towns must hold two or more public hearings, as they determine appropriate, in the Devens Region to receive public comment on the proposed Reuse Plan and Bylaws. Notice of said public hearings shall be provided in a newspaper or newspapers of general circulation in the Devens Region at least fourteen days prior to the dates established for said hearings. The final public hearing on the proposed Reuse Plan and Bylaws shall be held not later than one year after the passage of this act.

Within thirty days of the last public hearing on the proposed Reuse Plan and Bylaws held by the Bank and the Towns, the Bank shall submit copies of the Reuse Plan and Bylaws to the Governor, the Secretary, the Clerk of the House and the Clerk of the Senate, the legislative representatives from the House and Senate of the Devens Region and to the Commission.

The Bank and Towns shall, within thirty days of the last public hearing held by the Bank and the Towns, submit the proposed Reuse Plan and Bylaws to the board of selectmen of each of the Towns. Within ninety days of receipt of the proposed Reuse Plan and Bylaws, the board of selectmen of each of the Towns shall convene a town meeting to be held at the same date and time in each of the Towns for the purpose of adopting or rejecting, by majority vote of each town meeting, the Reuse Plan and Bylaws. Each Town shall vote to adopt or disapprove the Reuse Plan and Bylaws as submitted. No amendments to the Reuse Plan and Bylaws shall be made by the Towns. Each Town shall, within thirty days of an adoption or rejection of the Reuse Plan and Bylaws at a town meeting, provide the Bank and the Commission with a written notification stating whether town meeting adopted or rejected the Reuse Plan and Bylaws. Until such time as all three of the Towns have adopted the Reuse Plan and Bylaws, said Reuse Plan and Bylaws shall have no force and effect. Adoption of the Reuse Plan and Bylaws by at least three of the Towns shall constitute final acceptance of the Reuse Plan and Bylaws for the purposes of this act. Furthermore, such final acceptance shall be considered to be an approval by the boards of selectmen of the Towns of a redevelopment plan, as provided in section six of chapter two hundred and twelve of the acts of nineteen hundred and seventy-five, as amended, and the one-year override provision in such section six shall have no force and effect.

Subsequent to final acceptance of the Reuse Plan and Bylaws, a substantial revision to the Reuse Plan and Bylaws shall not be effective until the Bank and the Towns, following public hearings, have approved said revision, and all three of the Towns have accepted said revision, pursuant to the procedures described in the preceding paragraph relating to the approval of the Reuse Plan and Bylaws. Revisions to the Reuse Plan and Bylaws not considered substantial pursuant to the guidelines contained in the Reuse Plan and Bylaws shall be effective upon approval thereof by the Commission. Notwithstanding any other provision of this act, the Bank and the Towns may submit the proposed Reuse Plan, prior to and after final approval thereof, to the Department of the Army

or any successor federal agency, and to the Executive Office of Environmental Affairs, as deemed necessary by the Bank in relation to the preparation of Environmental Impact Statements and other documentation under the National Environmental Policy Act, 42 U.S.C.A. subsection 4321 et seq., as amended, and Environmental Impact Reports and other documentation under the Massachusetts Environmental Policy Act, chapter thirty of the General Laws subsection 61 et seq., as amended.

The preexisting Town zoning and Town Interim Planning Overlay Districts shall apply under applicable law until the Reuse Plan and Bylaws as specified in this act are approved by the Bank and Towns.

Prior to the final acceptance of the Reuse Plan and Bylaws, (i) the Bank and the Towns shall not be prohibited from taking actions and entering into agreements necessary for the continued operation, maintenance, support, administration and redevelopment of Devens; (ii) the Bank may enter into licenses, agreements or leases with the Department of the Army or other appropriate agency of the federal government or other party, related to the reuse of Fort Devens; and (iii) the Towns, or any one or more of them, may enter into licenses or leases with the Department of the Army or other appropriate agency of the federal government or other party, related to the reuse of Fort Devens in conformance with the Reuse Plan for direct public purposes of the Town or Towns as provided for in section fifteen (3) of this act.

Regulations for the effective implementation and enforcement of the Reuse Plan and Bylaws shall be developed, and adopted by the Commission, pursuant to section eleven of this act.

Should final acceptance of the Reuse Plan and Bylaws by the Towns not occur by December 31, 1994, the Bank may, at its option, abandon its activities related to the operation, maintenance and redevelopment of Devens, in which event the provisions of this act shall be given no further force and effect. Such decision by the Bank to abandon its activities shall be evidenced by a certified copy of a vote of the board of directors of the Bank declaring such abandonment, which certificate shall be filed with the Secretary, the House and Senate Committees on Ways and Means and recorded with the Middlesex County Registry of Deeds and the Worcester County Registry of Deeds. The Bank may extend the aforementioned date for exercising its option to abandon activities at Devens related to the final acceptance of the Reuse Plan and Bylaws by the Towns, on a year-to-year basis, for a period of three additional years, which

extension shall, upon each occurrence, be evidenced by a certificate filed and recorded as provided above. Upon the Bank's exercising its option to abandon activities at Devens, the Bank may commence termination of its legal and other contractual obligations related to the operation, maintenance, and redevelopment of Devens, and any interests in real or personal property acquired by the Bank in relation to the planned redevelopment of Devens may be liquidated or disposed of over a reasonable period of time as determined by the Bank. Within sixty days after the Bank files the certificate of abandonment, funding authorized by section twenty-nine of this act for the operation, maintenance and redevelopment of Devens shall no longer be available for expenditure for such operation, maintenance and redevelopment, except as may be necessary to accomplish the aforementioned liquidation and disposal in a safe and orderly fashion.

SECTION 11. Powers and responsibilities of the Commission. (1) The Commission shall develop and adopt, by a two-thirds majority of the commissioners, a comprehensive set of regulations for the Devens Regional Enterprise Zone, which set of regulations shall be collectively identified as the Devens regulations, hereinafter referred to as the "Regulations." The Regulations shall, in conjunction with the Reuse Plan and Bylaws, carry out the purposes and intent of the General Laws relating to zoning, subdivision control and conservation commission regulatory powers, and shall be promulgated pursuant to chapter thirty A of the General Laws. The Reuse Plan and Bylaws and Regulations shall constitute the principal means for controlling and guiding the land development activities within Devens. The Regulations shall be promulgated no later than eighteen months after the passage of this act. Revisions to the Regulations shall be approved and promulgated in the same manner as the Regulations.

(2) The Commission shall administer and enforce the Reuse Plan and Bylaws and Regulations and in so doing may exercise the powers of a special permit granting authority and of a planning board for the purposes of regulating land use under chapter forty A of the General Laws and subdivision control under chapter forty-one of the General Laws, sections eighty-one X through eighty-one GG. The Commission shall also have all the powers and authority conferred upon planning boards by chapter forty-one of the General Laws, sections eighty-one A through eighty-one J. The Commission shall have all the powers and authority conferred upon conservation commissions for the purposes

of enforcing the provisions of chapter one hundred and thirty-one of the General Laws, sections forty and forty A, provided that the Commission shall administer its powers relating to the protection of wetlands in accordance with regulations issued by the Department of Environmental Protection for the implementation of the Wetlands Protection Act, provided further that any appeal of an order of conditions issued by the Commission shall be made to said Department. The Commission shall also have all the powers and authority conferred upon boards of health by chapter one hundred and eleven of the General Laws, sections twenty-six through thirty-two. The Commission shall also have all the powers and authority conferred upon zoning boards of appeals by chapter forty A of the General Laws, sections twelve through seventeen. The Commission shall also have all the powers and authority conferred upon historic district commissions by chapter forty C of the General Laws.

→ (3) Any party or Town aggrieved by a determination of the Commission pursuant to the Reuse Plan and Bylaws and Regulations may appeal to the Superior Court within twenty days after the Commission has recorded its decision in each of the three Towns' clerk's offices. The twenty day period begins after the decision is recorded in the last town clerk's office. The court shall hear all pertinent evidence and shall annul the determination of the Commission if it finds that said determination is unsupported by substantial evidence or exceeds the authority of the Commission, or it may remand the case for further action by the Commission or may make such other decree as is just and equitable.

(4) In addition to its land use regulatory and permitting powers as set forth herein, the Commission may adopt regulations related to performing such other permitting and licensing functions as set forth in this section. Said regulations shall be prepared and adopted in accordance with the provisions of chapter thirty A of the General Laws. These regulations shall be promulgated no later than June 30, 1995.

(5) In order to carry out its purposes and obligations under this act, the Commission may, in addition to the other powers set forth in this act, exercise the following enumerated powers in relation to the reuse of Devens:-

(a) exercise the rights provided to municipal governments and agencies under federal laws or regulations with regard to the powers of the Commission enumerated under this act;

(b) maintain an office at Devens;

(c) employ attorneys, consultants and other persons as necessary to carry out its responsibilities under this act;

(d) sue and be sued in its own name, plead and be impleaded;

(e) exercise the power of eminent domain within Devens, as provided in chapters seventy-nine, seventy-nine A, eighty and eighty A of the General Laws, with the approval of the Bank;

(f) acquire easements and other interest in land contiguous or adjacent to Devens in conformance with the Reuse Plan;

(g) issue licenses and permits as related to development and redevelopment allowed by provisions of General Laws granted to cities or towns, not including those issued by town clerks, and not including those issued under M.G.L., chapter 138, section two, except as provided in clause (h) below;

(h) issue two all-alcoholic beverage licenses to restaurants and said licenses shall not diminish the number of licenses permitted to be granted by the Towns;

(i) adopt rules, regulations and bylaws for the regulation of its affairs and the conduct of its business;

(j) approve such bylaws pursuant to section twenty-one of chapter forty of the General Laws, with regard to the powers of the Commission enumerated under this act;

(k) enforce all Commission bylaws;

(l) adopt and collect reasonable fees, including subdivision, plan and project review fees, to defray its operating expenditures;

(m) to the extent the fees received pursuant to the foregoing subparagraph (I) are insufficient to cover its operating expenditures, submit to the Secretary for his review and approval, an annual budget request for an appropriation from the commonwealth to cover such anticipated shortfall between the income generated from fees and its projected operating expenditures;

(n) establish, increase or decrease any tax, rate, fee, rental or other charge for any service or other activity performed by or under the jurisdiction of the Commission, as provided in section twenty-one of this act;

(o) receive for the purposes of exercising its powers under this act any funds or moneys from any source, including grants, bequests, gifts or contributions made by any individual, association, or corporation, or by municipal, county, state or federal governments, provided that whenever the terms of such grant, bequest, gift or contribution require the grantee to be a municipality,

municipal agency or unit of local government, the Commission shall be so considered;

(p) discontinue any street, public way or public use of a private way with the approval of the Bank.

(6) The Commission's accounts and expenditures shall be subject to audit by the state auditor.

SECTION 12. Powers and responsibilities of the Bank. The Bank is hereby designated as the public agency or instrumentality exclusively authorized and empowered to do all acts and things necessary or convenient to negotiate the acquisition of and acquire Fort Devens, or interests therein, improvements thereon, including, without limitation, buildings and utility systems, and equipment and personal property, from the federal government, provided that the Towns and other public agencies and institutions of the Commonwealth may also negotiate the acquisition of portions of Fort Devens as public benefit transfers in accordance with section fifteen of this act.

The Bank may, in its own name or in conjunction with others, license, lease or acquire title to the land, buildings and improvements that comprise all or any portion of Fort Devens upon the transfer or disposition of all, or any portion of, Fort Devens by the federal government pursuant to 40 U.S.C., section 484, the Defense Base Closure and Realignment Act of 1990 (part A of Title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as amended, or any other applicable statute. The Bank is hereby designated as the exclusive public agency or instrumentality authorized and empowered to maintain, operate, administer, manage and oversee the redevelopment of Devens, pursuant to the provisions of this act and the powers granted to the Bank pursuant to chapter two hundred and twelve of the acts of nineteen hundred and seventy-five, as amended, and subject to the Reuse Plan and Bylaws, and the authority of the Commission and the Towns hereunder. The Bank's authority with regard to the operation, maintenance and reuse of Devens shall be limited to the provisions of this act and chapter two hundred and twelve of the acts of nineteen hundred and seventy-five, as amended.

In order to carry out the provisions of this act, the Bank may, in addition to the other powers set forth in this act, exercise the following enumerated powers in relation to the redevelopment of Devens as provided by the Reuse Plan and Bylaws:

(a) establish a department of public works or develop alternative methods for providing services necessary to plan, lay out, construct and maintain the streets, public ways, private ways and other public facilities;

(b) contract for police services with one or more of the Town's police, state police or the military police, provided that the police appointed or employed by the Bank shall have within the borders of Devens all the powers of police officers and constables of the towns of the Commonwealth;

(c) establish a fire department pursuant to section forty-two A of chapter forty-eight of the General Laws;

(d) contract or enter into agreements with the Towns, or any one or more of them, the federal government, any agency thereof or any other person or entity, including, without limitation, the Commonwealth, other municipalities or regional entities, for the provision of services to Devens or for the provision of services on a regional basis including Devens, pursuant to the provisions of this act;

(e) enter into agreements with and provide licenses and easements to utility companies, other private or public persons or entities or the Towns to provide utility services, including, but not limited to, electricity, gas, cable television and telephone services;

(f) take any actions authorized by chapter forty of the General Laws, necessary to supply water to Devens, including the establishment of a water supply or water distribution system and to maintain and operate the same, provided that the Towns, or any of them, at its or their own expense, shall be permitted by the Bank to integrate its or their water supply and distribution systems with the water supply and distribution system of Devens, if such capacity exists;

(g) lay out, construct, maintain and operate a system or systems of common sewers and main drains in public and private ways, and a system or systems for sewage treatment and disposal, for all or a part of Devens, which system may be a part of a regional sewage treatment and disposal system in which the Towns or any one of them may be included, at its or their own expense, as required for the public or the public health, and determine assessments and other charges related to laying out, constructing and maintaining such sewerage systems, all as provided in chapter eighty-three of the General Laws;

(h) acquire, construct, maintain and operate refuse treatment and disposal facilities, as provided by the Reuse Plan;

(i) investigate, engineer, lay out and construct any street or private way;

(j) dispose of, by sale, license, lease, in fee or in any other manner any portion or all of Devens or any interest therein, building or improvement thereon, by gift or for such price, rental or other consideration payable over such term, and bearing such interest rate as to deferred payments and secured in such manner, by mortgage or otherwise, all as the Bank may determine to be desirable and consistent with the purposes of this act, notwithstanding the provisions of section six of chapter two hundred and twelve of the acts of nineteen hundred and seventy-five, as amended, relating to the disposition of federal surplus lands;

(k) receive for the purposes of this act any funds or moneys from any source, including grants, bequests, gifts or contributions made by any individual, association or corporation, or by municipal, county, state or federal governments, provided that whenever the terms of such grant, bequest, gift or contribution require the grantee to be a municipality, municipal agency or unit of local government, the Bank shall be so considered;

(l) acquire easements and other interest in land contiguous or adjacent to Devens in conformance with the Reuse Plan;

(m) in partnership with the Towns, develop and approve the Reuse Plan and Bylaws for Devens, as further described in section ten of this act;

(n) establish, increase or decrease any tax, rate, fee, rental or other charge for any service or other activity performed by or under the jurisdiction of the Bank, as provided in section twenty-one of this act; and

(o) exercise the power of eminent domain within Devens, as provided in chapters seventy-nine, seventy-nine A, eighty and eighty A of the General Laws, with the approval of the Commission.

(p) exercise the rights provided to municipal governments and agencies under federal laws and regulations with regard to the powers of the Bank enumerated under this act.

SECTION 13. The Bank shall solicit competitive proposals from the Towns and from other qualified businesses and entities to provide, on a contractual basis, the services required by the Bank for police protection and fire protection at Devens. Likewise, the Bank may solicit competitive proposals from the Towns and from qualified businesses and entities for any other services required by the Bank for the operation, maintenance or development of Devens.

A Town may submit a proposal to provide the Bank with the services requested in its own name, jointly with one or both of the other Towns, or jointly with another public or private entity or entities. The Bank shall select proposals that it determines will be in the best interests of operating and maintaining Devens, provided that the Bank shall select a proposal submitted jointly or individually by a Town if the Bank determines that said proposal is substantially equivalent to the proposal that would have otherwise been selected by the Bank.

SECTION 14. Notwithstanding any provision of this act, including section twenty-one, the portion of Devens currently owned by the Springfield Railway Terminal, Inc. or any affiliate thereof or successor thereto, hereinafter referred to as "Springfield," as more particularly described in section two of this act, shall continue to be subject to all municipal property taxes, assessments and other charges lawfully assessed by the town of Ayer, and shall not be subject to any tax, fee or charge assessed by the Bank or the Commission hereunder, except for a charge or fee assessed in relation to (i) the approval of a license or permit requested by Springfield from the Commission, or (ii) an improvement to such portion of Devens undertaken by the Bank. Furthermore, all municipal services provided to such portion of Devens will be provided by the town of Ayer, at the Town's expense, except as may be specifically agreed by the Bank and the Commission.

SECTION 15. Application for Devens Property. (1) The Towns, or any one or more of them in concert, following notification of and coordination with the Bank, or the Bank itself may submit a request to the Department of the Army, or any other appropriate agency of the federal government, for the transfer of a portion of Devens for a direct public use by the submitting entity, in conformance with the Reuse Plan, for which use said portion is eligible to be transferred as a public benefit transfer under the acts described in this section, hereinafter referred to as the "Eligible Acts."

(2) Any public agency or instrumentality of the Commonwealth with the written approval of the Bank may submit a request to the Department of the Army, or any other appropriate agency of the federal government, for the transfer of a portion of Devens for a direct public use by the submitting entity, in conformance with the Reuse Plan, for which use said portion is eligible to be transferred under the "Eligible Acts" described in this section.

(3) The Eligible Acts are as follows: 40 U.S.C.A. section 484(k) and (p); 50 U.S.C.A. subsection 1622(g), as amended; 16 U.S.C.A. subsection 667 b-d, as amended; 23 U.S.C.A. subsection 107 and subsection 317, as amended; and 40 U.S.C.A. subsection 345(c), as amended.

SECTION 16. Application for designation as a Federal Enterprise Zone. The Commission may, if appropriate, make application to the United States Department of Housing and Urban Development, or, as necessary, any other federal agency, to designate all or a portion of Devens as an enterprise zone, pursuant to 42 U.S.C. subsection 11501 et seq., as amended, or any existing or successor statute of similar import, for the purposes of creating jobs in the Devens Region of the Commonwealth and encouraging the economic redevelopment of Devens.

SECTION 17. Application for designation as a Federal Foreign Trade Zone. The Commission may, if appropriate, make application to the Secretary of Commerce of the United States, or, as necessary, any other federal agency, for the purposes of establishing, operating and maintaining foreign trade zones at Devens; pursuant to the Foreign Trade Zone Act, 19 U.S.C. subsection 81a et seq., as amended, or any existing or successor statute of similar import, in order to expedite and encourage foreign commerce and trade opportunities in the Commonwealth and for other purposes.

SECTION 18. Designation as Commonwealth Economic Target and Opportunity Areas. Devens and the town of Ayer are hereby designated Economic Target Areas and Economic Opportunity Areas as defined in section three of chapter twenty-three A of the General Laws. Pursuant to such designations, certain development projects within Devens and the town of Ayer shall be eligible for tax deductions, credits and abatements and other economic incentives as provided for in chapter nineteen of the acts of nineteen hundred and ninety-three. The designation of Devens and the town of Ayer as Economic Target Areas shall be in addition to the twenty Economic Target Areas that are authorized to be established throughout the Commonwealth pursuant to section six of chapter one hundred ten of the acts of nineteen hundred and ninety-three.

SECTION 19. One-stop state permitting. Each executive office of state government in the Commonwealth shall identify a senior staff member who shall cooperate with the Bank and the Commission in establishing a method for coordinated one-stop licensing for all businesses and developments to be located

within Devens for the purposes of expediting the process for obtaining Commonwealth licenses, permits, certificates, approvals, registrations, charters and meeting other requirements of law. The Bank may assist prospective developers by centrally coordinating the submission of licensing and permitting requests to the permitting agencies.

SECTION 20. One-stop development and financing. Each public agency in the Commonwealth involved in the development or financing of economic development projects shall endeavor to develop a coordinated one-stop program for businesses, institutions and private parties that may intend to locate in Devens in order to enable development activity within Devens to be more effectively promoted by the Commonwealth.

SECTION 21. Taxes and user fees. The Commission and the Bank shall, with the assistance of the Secretary and the Commissioner of Revenue, determine an appropriate plan for assessing property taxes, other taxes available to be levied or assessed by municipalities under the General Laws, and user fees for the maintenance and operation of Devens, which plan shall provide for the imposition and levy of proportional and reasonable assessments, rates, property taxes and user fees upon persons, residents and estates lying within Devens. Upon approval of such plan by the Secretary, the Commission and the Bank shall exercise all the powers granted to cities and towns to enable the collection of such taxes and other charges. The Towns shall not be entitled to assess any fees or taxes on property, persons or businesses located in Devens. The Towns shall not be required to incur any costs or expenses related to the provision of municipal services within Devens, or to provide municipal services within Devens, except with regard to any land within Devens owned or leased by a Town. In order to encourage job creation within Devens, the Commission or the Bank may, with the assistance of said commissioner and the Secretary, develop recommendations for consideration of the general court regarding adjusting or modifying existing laws relating to taxation by the Commonwealth of businesses, industries and commercial enterprises that locate at Devens.

SECTION 22. Public health and safety and inspection services. The Commission shall have the right to establish a department or contract for services for inspections relating to public health and safety and inspection services. The Commission may designate the Division of Inspection in the Department of Public Safety to review and grant permits and other licenses and to conduct inspections and enforce such permits and licenses relating to the

state building code, the issuance of building permits, the wire code, plumbing and gas code, state sanitary code, the fire code and elevator operations, to the same extent as provided to Commonwealth-owned buildings and property pursuant to the General Laws. The Commission may designate the Department of Public Health to be responsible for reviewing and granting permits and other licenses and conducting inspections and enforcing laws related to the protection of the public health at Devens, to the same extent provided to a local board of health pursuant to the General Laws. The division and the department shall, with the approval of the Commission, establish reasonable fees for such permits and licenses, based upon the costs expended in the review of such permits and licenses. The division and the department shall designate persons who shall perform, in a timely manner, the inspections and issue the licenses, permits and other approvals required by this section and shall, with the approval of the Commission, establish reasonable fees for such permits and licenses, based upon the costs expended in the review of such permits and licenses.

SECTION 23. On or before July 1, 2033, the Commission, the boards of selectmen of the Towns, and the Bank shall submit a joint report to the Governor, the Secretary and to the Clerk of the House and the Clerk of the Senate recommending a permanent government structure for the ongoing operation and administration of Devens. Such report shall also identify any surplus funds that have been generated during the development of Devens, after considering the costs of funding appropriate reserve accounts, costs of retiring all bonds, notes and other debt instruments issued to maintain and develop Devens, and all the Commission's and Bank's unreimbursed costs related in any way to the redevelopment of Fort Devens, including, without limitation, all costs incurred in the operation, maintenance and development of Devens, and recommend how any such surplus funds and any future surplus funds shall be distributed, which recommendation shall include distributing all or a portion of such surplus to the Towns.

SECTION 24. Notwithstanding the provisions of any general or special law to the contrary, the provisions of the General Laws establishing a civil service system shall not apply to any positions or employees hired by the Commission or the Bank to carry out the provisions of this act.

SECTION 25. The residents of Devens who are entitled to vote, shall be entitled to vote in all federal, state, local and regional elections and, in

the case of local elections, shall be entitled to vote in the Town in which their residence is located.

SECTION 26. Public schools. The commissioner of education, with the participation of the school committees of the Towns, shall undertake a study and submit a recommendation to the general court for the provision of public education to persons residing within the boundaries of Devens who are entitled to receive a public education pursuant to the applicable provisions of the General Laws. Said report shall be filed with the clerk of the senate and the clerk of the house of representatives on or before January 1, 1995.

SECTION 27. Reports and audits. On or before November thirtieth each year, the Bank and the Commission shall each prepare an annual report of its activities at Devens during the preceding fiscal year and submit such report to the Governor, the Secretary, the General Court, the Towns, and each other. Each such report shall set forth a complete operating and financial statement covering the Bank's and the Commission's operations at Devens during the previous year, including, but not limited to a detailed account of the receipt of any federal funds by the Commission or the Bank for the purposes of the Devens project or pursuant to 40 U.S.C., section 484, the Defense Base Closure and Realignment Act of 1990 (part A of Title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as amended. The Bank and the Commission shall each cause an audit of its books and accounts relating to Devens to be made at least once in each fiscal year by certified public accountants. The state auditor shall likewise audit said books and accounts at least once every two fiscal years. Such audits shall be deemed to be public records.

SECTION 28. In addition to any other duties set forth in any provision of this act, the Bank and the Commission shall, and the Towns may, coordinate with, and provide information to the United States Department of Defense and any official or employee thereof, regarding any matter related to the ownership, condition, closure, conversion, redevelopment or future use or operation of Fort Devens. Notwithstanding any other provision of law, and except as provided in sections twelve and fifteen of this act, the Bank shall be the only person or entity in the Commonwealth authorized to negotiate, purchase or otherwise obtain on behalf of itself, the Commonwealth or any of its political subdivisions, agencies or authorities any fee ownership, easement, lease, license or other property interest in any property in, or on a part of, Fort Devens.

S 1881

SECTION 29. The provisions of this act are severable and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

ENDORSEMENTS FOLLOW ON PAGE 26

House of Representatives, January 4, 1994.

Passed to be enacted,

Robert F. Ashby Speaker.

In Senate, January 4, 1994.

Passed to be enacted,

William H. Bulger, President.

14 January, 1994.

Approved,

4:56 PM

William F. Weld

Governor.

Chapter 266 of the Acts of 1998

AN ACT RELATIVE TO THE MASSACHUSETTS GOVERNMENT LAND BANK REGARDING THE DEVENS ENTERPRISE COMMISSION.

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

SECTION 1. The first paragraph of section 12 of chapter 498 of the acts of 1993 is hereby amended by adding the following sentence:- For purposes of chapter 40D of the General Laws, Devens shall be deemed a municipality and, until July 1, 2033, the bank shall be deemed the industrial development financing authority for Devens.

SECTION 2. Said section 12 of said chapter 498 is hereby further amended by inserting after the first paragraph the following paragraph:-

Until July 1, 2033, the bank shall have the authority to promulgate reasonable regulations to maintain the public health, welfare and safety of the residents of Devens including, but not limited to, regulations concerning the use of motor vehicles and parking; provided, however, that such rules and regulations shall be promulgated pursuant to the provisions of sections 2 to 7, inclusive, of chapter 30A of the General Laws; provided, further, that the bank shall be deemed to be an agency for purposes of said sections 2 to 7, inclusive; provided further, that the maximum penalty for violation of such regulations shall be \$500 for each offense; provided, further, that any such penalties collected by the bank shall be deposited in a separate account which shall be available for expenditure by the bank for the operation of Devens so long as the bank submits a report to the house and senate committees on ways and means on the first day of each quarter as to the source and amount of the deposits to said account and the purpose and amount of any expenditures from said account; and provided, further, that such regulations shall be enforceable in the courts to the same extent and in the same manner as other agency regulations or municipal by-laws.

SECTION 3. Section 13 of said chapter 498 is hereby amended by adding the following paragraph:-

Any design, construction, reconstruction, or modification of the Devens wastewater treatment facilities and sewage system at Devens may be carried out in its own name and right or may be contracted by it, in whole or in part, with any other public or any private party. After a competitive process which, among other things, takes into consideration price, qualifications, and performance goals and which is consistent with the competitive procurement rules established by the board of directors of the bank, the bank may enter into contracts, not to exceed 30 years in duration, with any public or private party relating to any development or redevelopment of the Devens wastewater treatment and sewerage system, and which may provide for payments by the bank which are guaranteed as to amount or duration, with or without regard to whether any particular service or utility is provided, constructed or undertaken, or, if provided, constructed or undertaken to make available for the purposes thereof such buildings, structures, utility systems, including pipes, drains, pumping stations, conduits, wires, cables, and similar ancillary installations, and other works as may be required for the redevelopment of such wastewater treatment and sewage system. The provisions of

any general or special law or regulation relating to the advertising, bidding, or award of contracts, to the procurement of services or to the construction and design of such improvements, shall not be applicable to any contract or work entered into or undertaken pursuant to this section for the development or redevelopment of said system at Devens except that the provisions of sections 26 to 27H, inclusive, of chapter 149 of the General Laws shall be applicable and in any contract which requires or permits any contracting party to independently undertake to provide any public building or public work required for the wastewater treatment facilities and sewage system at Devens, the bank shall require such contracting party to comply with the provisions of said sections 26 to 27H, inclusive; provided, however, that no such contract shall be or constitute an obligation of the commonwealth beyond any amount appropriated therefor; and provided, further, that the provision of services or other works contemplated thereby shall remain subject to all provisions of law and regulation intended to regulate the provision of such services or works, including, but not limited to, all laws and regulations relating to the protection of the environment and all public health laws and regulations.

SECTION 4. All actions directly taken by the Massachusetts government land bank or through the Devens commerce center established by said bank to prepare, publish, receive responses under and conduct evaluations of responses and commence preliminary negotiations with certain responders to the request for statements of qualification and expressions of interest for purchase or lease, management, operation, and maintenance, of the Devens wastewater treatment facilities and sewage system, dated October 25, 1996, are validated and confirmed and, under and pursuant to this act the Massachusetts government land bank is authorized to continue and to bring to completion the procurement process represented thereby.

Approved August 10, 1998.

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Chapter 173 of the Acts of 2006**AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2006 TO PROVIDE FUNDING TO PROMOTE THE REDEVELOPMENT OF FORT DEVENS.**

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to compensate forthwith certain court employees, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

SECTION 1. To provide for certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations, and to meet certain requirements of law, the sums set forth in section 2A are hereby appropriated from the General Fund unless specifically designated otherwise, for the several purposes and subject to the conditions specified in this act, and subject to the laws regulating the disbursement of public funds for the fiscal year ending June 30, 2006; provided, that said sums shall be in addition to any amounts previously appropriated and made available for the purposes of said items; and provided further, that all funds appropriated in section 2A shall be available for expenditure until June 30, 2007.

NO SECTION 2.**SECTION 2A.****DEPARTMENT OF BUSINESS AND TECHNOLOGY**

7007-1400

For the Massachusetts Development Finance Agency for infrastructure investments to support the construction of a large-scale biologics pharmaceutical manufacturing facility to be located at the Devens Regional Enterprise Zone; provided, that not more than \$20,000,000 shall be expended for the planning, design, permitting, construction, site preparation and development of a wastewater pre-treatment facility, and ancillary improvements, to support this manufacturing facility; and provided further, that not more than \$11,000,000 shall be expended for the design, planning, permitting, site preparation, construction, and development, of infrastructure and other improvements, and upgrades to the existing electric and gas utility systems, to support the operation of this manufacturing facility..... \$31,000,000

7007-1002

For the Massachusetts Development Finance Agency for capital improvements at the Devens Regional Enterprise Zone, provided that these funds shall be in addition to any amounts previously appropriated or otherwise given to Massachusetts Development Finance Agency; and provided further, that these funds shall be deposited by the Massachusetts Development Finance Agency into its Devens Fund and shall be used to support capital activities in connection with its statutory mandate under chapter 498 of the acts of 1993..... \$3,000,000

SECTION 3. Notwithstanding subsections (b) to (d), inclusive, of section 38N of chapter 63 of the General Laws, in the event that a credit allowed under said section 38N of said chapter 63 exceeds the tax otherwise due under said chapter 63, the balance of that credit shall be refundable to the taxpayer in the taxable year in which qualified property giving rise to that credit is placed in service, but:

(a) this section shall apply only to credits generated by projects in the biotechnology industry, certified on or after

June 1, 2006 and before June 1, 2008;

(b) over a period not to exceed 8 years, the taxpayer shall commit in writing to the cumulative investment of not less than \$650 million in the project, and the creation, cumulatively, of not fewer than 550 new jobs involving permanent full-time employees, both direct and contracted, and these jobs shall be located at the project site;

(c) if the commissioner determines at any point within 3 years after the period specified in paragraph (b) that the taxpayer has not fulfilled the new job commitments specified in this section, the commissioner shall, at the time of this determination and without regard to limitations on the period of assessment otherwise applicable under section 26 of chapter 62C of the General Laws, assess the taxpayer an amount of tax equal to:

(i) if the taxpayer has not created at least 350 new jobs in the 8-year period in connection with the project, the cumulative credits refunded to the taxpayer under section 38N of chapter 63 of the General Laws in connection with the project; or

(ii) if the taxpayer has created at least 350 new jobs in the 8-year period in connection with the project but fewer than 550 new jobs, the cumulative credits refunded to the taxpayer under said section 38N of said chapter 63 multiplied by a ratio, the numerator of which is the number by which the new jobs created is less than 550 and the denominator of which is 550;

(d) in the event that the taxpayer is assessed a tax under paragraph (c), the taxpayer shall be allowed to offset the tax using any credits to which the taxpayer would have otherwise been entitled, before the commissioner's determination, in the absence of this section, and shall be entitled to carry over any additional credits to which the taxpayer would have otherwise been entitled as provided in subsections (b) and (d) of said section 38N of said chapter 63;

(5) at any point during the period specified in paragraph (c), the taxpayer shall promptly make available to the commissioner, upon his request, records that the commissioner may require to confirm compliance with the commitments and other provisions of this section; and

(6) nothing in this section shall limit the potential recapture of credits taken by a taxpayer, as provided in subsection (a) and in subsection (e) of section 31A of said chapter 63.

SECTION 4. As used in the act, the following terms shall, unless otherwise required, have the following meanings:

"Project", the design, planning, permitting, site preparation, construction, development, and operation of infrastructure and other improvements, including demolition of existing structures and design and construction of necessary replacement structures on adjacent or proximate land, and upgrades to the existing electric and gas utility systems serving the Devens Regional Enterprise Zone, as established by chapter 498 of the acts of 1993, to support the operation of a large scale biologics pharmaceutical manufacturing facility, or reasonably required to facilitate complete development, construction, and operation of such a facility;

"MassDevelopment", the Massachusetts Development Finance Agency, created and existing under chapter 23G of the General Laws.

SECTION 5. Notwithstanding any general or special law, rule, or regulation to the contrary, MassDevelopment shall be considered to be exercising its powers under clause (6) of section 3 of chapter 23G of the General Laws, in connection with any actions taken in accordance with this act. MassDevelopment may further expend the funds appropriated in this act through grant, direct payment, reimbursement, loan or other financial assistance.

SECTION 6. (a) Notwithstanding any general or special law, rule, or regulation to the contrary, MassDevelopment is authorized to employ alternative methods of procurement relative to the design, demolition, construction, reconstruction, improvement, renovation, enlargement, expansion, remodeling, repair or build-out of any and all improvements, that may be useful or necessary from time to time in connection with the project, including, without limitation, turnkey, design-build, lease, or lease purchase.

(b) The acquisition, procurement, construction, reconstruction, improvement, renovation, enlargement, expansion, remodeling, alteration, repair, build-out, development, financing, management, maintenance, operation or leasing of all or any portion of lands in furtherance of the project and any contract for construction and design or other consulting services for or relating to, the construction, reconstruction, improvement, renovation, enlargement, expansion, remodeling, alteration, repair, build-out, development, financing, management, maintenance, operation or leasing of all or any portion of other lands in furtherance of the project shall be exempt from section 38A½ to 38O, inclusive, of

chapter 7 of the General Laws, section 44A to 44J, inclusive, of chapter 149 of the General Laws, and section 39M of chapter 30 of the General Laws or any other special or general law or rule or regulation providing for the advertising, procurement, or bidding of construction, design, planning, consulting, materials purchasing, development, financing, management, leasing or improvements to, or the acquisition of, or disposition of interest in real or personal property.

(c) All actions taken by MassDevelopment under this section 6 before the effective date of this act are hereby ratified and approved.

SECTION 7. (a) There shall be a Devens Biologics Pharmaceutical Manufacturing Development Site, in this act called the site. The boundaries of the site shall be defined as follows: A certain parcel of real property comprised of approximately 100.5 acres of land, more or less, located within that portion of the Innovation & Technology Business District within the Devens Regional Enterprise Zone and located north of Patton Road, beginning at a point at the southeasterly corner of Queenstown Street at Patton Road; thence, westerly along Patton Road to a point at the southeast corner of Parcel 9-4-500; thence, northerly and westerly along Parcel 9-4-500 to a point at the easterly sideline of Jackson Road; thence, northerly along Jackson Road to a point at the southwest corner of Parcel 13-4-600; thence, easterly, northeasterly and northwesterly along Parcel 13-4-600 to a point on the northeasterly sideline of Parcel 13-4-600 perpendicular to the southwesterly corner of Parcel 14-4-900; thence northeasterly along the southerly sideline of Parcel 14-4-900 to a point on the southerly sideline of Parcel 14-4-100; thence, southeasterly, northeasterly, southeasterly, southwesterly, southeasterly, and northeasterly along Parcel 14-4-100 to a point at the southwesterly corner of Parcel 14-4-800, thence southerly along the easterly sideline of Parcel 14-4-800 to the northerly corner of Parcel 10-4-1700; thence southerly along the easterly sideline of Parcel 10-4-1700 to a point on the easterly sideline of Queenstown Street; thence, southerly along the easterly sideline of Queenstown Street to the point of beginning.

(b) Notwithstanding any general or special law or rule or regulation, by-law or ordinance to the contrary, and to advance the regional development objectives for which the Devens Regional Enterprise Zone was established, the buildings permitted for a biologics pharmaceutical manufacturing facility located within the site shall be exempt from the height limits otherwise applicable within the Devens Regional Enterprise Zone but shall not exceed 120 feet, and, in no event shall the building height be greater than 478 feet above sea level, as referenced by the National Geodetic Vertical Datum (NGVD) of 1929, and the boundaries of Devens Zoning District #4 (Innovation and Technology Business) shall be modified to be 50 feet from and parallel to Patton Road between Queenstown Street and Parcel 9-4-500.

(c) All other applicable provisions of chapter 498 of the acts of 1993, as amended, the zoning by-laws for the Devens Regional Enterprise Zone, the rules and regulations of the Devens Enterprise Commission, and the Reuse Plan of the Devens Regional Enterprise Zone not inconsistent with this act shall apply to the Devens Biologics Pharmaceutical Manufacturing Development Site.

(d) The privileges, immunities, rights, and obligations afforded by this act shall lapse 2 years after the effective date of this act, unless, before that date, an initial building permit for a pharmaceutical manufacturing facility is issued by the Devens Enterprise Commission established under chapter 498 of the acts of 1993.

SECTION 8. The board of selectmen of the town of Harvard shall have the option of convening an advisory committee of persons concerned with the effects of development at the site, as defined in section 7. The advisory committee shall make recommendations to ensure that the visual impact of development at the site is mitigated to the greatest extent reasonably possible.

SECTION 9. This act shall take effect upon its passage.

Approved, July 21, 2006.

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