

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.

