HOUSE DOCKET, NO. 3675 FILED ON: 1/20/2023

HOUSE . . . . . No. 3802

The Commonwealth of Massachusetts

PRESENTED BY:

Natalie M. Blais

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

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

An Act creating a municipal and public safety building authority.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Natalie M. Blais	*1st Franklin*	*1/20/2023*
Rodney M. Elliott	*16th Middlesex*	*1/20/2023*
Mindy Domb	*3rd Hampshire*	*1/20/2023*
Lindsay N. Sabadosa	*1st Hampshire*	*1/20/2023*
Josh S. Cutler	*6th Plymouth*	*1/20/2023*
Smitty Pignatelli	*3rd Berkshire*	*1/25/2023*
David Henry Argosky LeBoeuf	*17th Worcester*	*1/25/2023*
David F. DeCoste	*5th Plymouth*	*1/26/2023*
Aaron L. Saunders	*7th Hampden*	*1/26/2023*
Meghan K. Kilcoyne	*12th Worcester*	*1/27/2023*
Carol A. Doherty	*3rd Bristol*	*1/29/2023*
Brian W. Murray	*10th Worcester*	*1/29/2023*
Vanna Howard	*17th Middlesex*	*2/1/2023*
Tricia Farley-Bouvier	*2nd Berkshire*	*2/8/2023*
Susannah M. Whipps	*2nd Franklin*	*2/13/2023*
Jason M. Lewis	*Fifth Middlesex*	*2/22/2023*
Kate Lipper-Garabedian	*32nd Middlesex*	*2/22/2023*
Patricia A. Duffy	*5th Hampden*	*2/22/2023*

Colleen M. Garry	*36th Middlesex*	*2/26/2023*
Bruce E. Tarr	*First Essex and Middlesex*	*3/9/2023*
Susan Williams Gifford	*2nd Plymouth*	*3/21/2023*
Margaret R. Scarsdale	*1st Middlesex*	*5/8/2023*
Joan B. Lovely	*Second Essex*	*5/22/2023*
Jonathan D. Zlotnik	*2nd Worcester*	*9/18/2023*
Carmine Lawrence Gentile	*13th Middlesex*	*10/5/2023*
Kate Donaghue	*19th Worcester*	*12/19/2023*

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HOUSE . . . . . No. 3802

By Representative Blais of Deerfield, a petition (subject to Joint Rule 9) of Natalie M. Blais and others relative to creating a municipal and public safety building authority. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

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

An Act creating a municipal and public safety building authority.

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. Chapter 10 of the General Laws is hereby amended by inserting after section 35SSS the following section:-

Section 35TTT. (a) As used in this section, the following words shall, unless the context requires otherwise, have the following meanings:-

"Authority", the Massachusetts Municipal and Public Safety Building Authority, established under section 1 of chapter 40Y.

"Dedicated marijuana sales tax revenue amount", all moneys received by the commonwealth equal to 33 per cent of the receipts from the excise tax imposed on sales of marijuana and marijuana products under section 2 of chapter 64N.

(b) There is hereby established and set up on the books of the Commonwealth a separate fund, to be known as the Municipal and Public Safety Building Modernization and

Reconstruction Trust Fund. The authority shall administer the fund for the purpose of assisting municipalities with the construction of or improvements to municipal or public safety buildings including, but not limited to, police stations, fire stations, city or town offices, city or town halls and department of public works facilities. There shall be credited to the fund the dedicated marijuana sales tax revenue amount. Annual receipts into the fund on account of any fiscal year shall be considered to meet the full obligation of the commonwealth to the authority for such fiscal year.

(c) Amounts in the fund shall be held by the state treasurer or a designee, as trustee and not on account of the commonwealth, exclusively for the purposes of the authority, and the state treasurer shall disburse amounts in the fund to the authority, without further appropriation, upon the request from time to time of the executive director of the authority. All amounts in the fund, including investment earnings, shall be available for expenditure by the authority for any lawful purpose, including without limitation payment of debt service on debt obligations issued by the authority, and may be pledged to secure debt of the authority in such manner and according to such priority as the authority may determine.

(d) The authority shall certify annually to the treasurer as trustee with copies provided to the clerks of the house and senate and to the house and senate committees on ways and means that it has made provision in its annual budget and its capital plan under section 8 of chapter 40Y for sufficient amounts to be available to meet debt service payments or other payments due under financing obligations, including, without limitation, leases or grant obligations.

(e) Subject to applicable restrictions contained in any bond resolution, trust or security agreement or credit enhancement agreement, surety bond or insurance policy related to

indebtedness incurred by the authority, including without limitation coverage requirements, if the authority shall determine that the balance of the fund exceeds the amount necessary to achieve the purposes of the authority, including, without limitation, to meet debt service payments, lease payments and grant obligations, the authority may transfer the excess amount to the commonwealth.

(f) In order to increase the marketability of any bonds or notes of the trust which may be secured by or payable from amounts held in the fund, the sums to be credited to the fund are hereby impressed with a trust for the benefit of the trust and the holders from time to time of the bonds or notes, and in consideration of the acceptance of payment for the bonds or notes, the commonwealth covenants with the purchasers and all subsequent holders and transferees of the bonds or notes that while the bond or note shall remain outstanding, and so long as the principal of or interest on the bond or note shall remain unpaid, the sums to be credited to the fund shall not be diverted from the control of the trust and, so long as the sums are necessary, as determined by the authority in accordance with any applicable bond resolution, trust or security agreement or credit enhancement agreement, surety bond or insurance policy related to indebtedness incurred by the trust, for the purposes for which they have been pledged, the rates of the excises imposed by section 2 of chapter 64N shall not be reduced below the rates prescribed by this section.

SECTION 2. The General Laws are hereby amended by inserting after chapter 40X the following chapter:-

CHAPTER 40Y.

Section 1. For the purposes of this chapter, the following words shall have the following meanings:-

“Advisory board”, the municipal and public safety building assistance advisory board.

"Authority", the Massachusetts Municipal and Public Safety Building Authority.

“Municipal building,” any building owned and operated by a city or town.

“Public safety services”, city or town police, fire, and emergency medical service departments.

“Public safety project”, any capital construction or major reconstruction project; the lease of buildings or modular facilities; or arrangements with other nonprofit or municipal entities to build, provide or improve a public safety facility.

“Public safety facility”, a building or portion of a building that contains providers of public safety services.

“Rural”, a municipality with a population density of less than 500 persons per square mile.

Section 2. (a) There is hereby created a body politic and corporate and a public instrumentality to be known as the Massachusetts Municipal and Public Safety Building Authority, which shall be an independent public authority not subject to the supervision and control of any other executive office, department, commission, board, bureau, agency or political subdivision of the commonwealth except as specifically provided in any general or special law. The exercise by the authority of the powers conferred by this chapter shall be considered to be the performance of an essential public function.

(b) The authority shall consist of the state treasurer, who shall serve as chair, the secretary of administration and finance or designee, the secretary of the executive office of

public safety or designee and security, the Senior Deputy Commissioner of the Division of Local Services or designee, and 5 additional members appointed by the state treasurer, 1 of whom shall have practical experience in public safety facilities planning, design, or construction, 1 of whom shall be a person in the field of firefighting, law enforcement or emergency medical services, 1 of whom shall have practical experience in public building planning, design, or construction, 1 of whom shall be a serving or former municipal official, 1 of whom shall be in the field of municipal management or municipal public works with demonstrated knowledge of Massachusetts facility needs and relevant federal and state building standards, each of whom shall serve a term of 2 years; but, a person appointed to fill a vacancy shall serve only for the unexpired term. An appointed member of the authority shall be eligible for reappointment. The authority shall annually elect 1 of its members to serve as vice-chairperson. Each member of the authority serving ex officio may appoint a designee pursuant to section 6A of chapter 30. In making appointments, the treasurer shall maximize geographic, racial and ethnic diversity among members of the authority.

(c) Five members of the authority shall constitute a quorum, and the affirmative vote of 5 members of the authority shall be necessary and sufficient for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and duties of the authority. Members shall serve without pay but shall be reimbursed for actual expenses necessarily incurred in the performance of their duties. The chairperson of the authority shall report to the governor and to the general court no less than annually, to assist the executive and legislative branches in understanding the municipal and public safety, community development and fiscal policies of the commonwealth.

(d) Any action of the authority may take effect immediately and need not be published or posted unless otherwise provided by law. The authority shall be subject to all provisions of chapter 30A, and records pertaining to the administration of the authority shall be subject to section 42 of chapter 30 and section 10 of chapter 66. All moneys of the authority shall be considered to be public funds for purposes of chapter 12A. The operations of the authority shall be subject to chapter 268A and chapter 268B and all other operational or administrative standards or requirements to the same extent as the office of the state treasurer.

Section 3. There is hereby established a municipal and public safety building assistance program. The purpose of the program shall be to assist cities and towns with the costs of municipal building and public safety projects; to conduct surveys and studies relative thereto; and to administer the provisions of this chapter relative to grants and loans to cities and towns for the planning, construction or improvement of municipal building and and public safety projects.

The purposes of the program shall be the provision of financial assistance to cities and towns as beneficiaries of the trust to finance and refinance the costs of approved municipal building and public safety projects as provided in, and as necessary to implement this chapter, including without limitation providing for the payment of grants approved pursuant to this chapter and the payment of all costs of the authority, including professional and financial services incident to the conduct of its operations.

The authority shall establish general policy and review standards regarding municipal building and public safety facility construction, renovation, maintenance and facility space, and administer, oversee and manage the municipal and public safety building assistance program in accordance with this chapter. In carrying out its duties, the authority shall be guided by the

following principles: preservation of open space and minimization of loss of such open space, emphasis on thoughtful community development, environmental and health benefits, and project flexibility that addresses the needs of individual communities and municipalities. The authority shall promote regional equity in its grants and other activities, and shall prioritize assistance to cities and towns with less financial resources, those that are regionalizing services, and those that disproportionately contain environmental justice populations, as defined by section 62 of chapter 30; provided, that the authority shall provide no less than 10 per cent of its financial assistance to municipal building and public safety projects in rural cities and towns. The authority shall establish standards, and a funding formula for local contributions and assistance amounts based on a municipality's ability to pay and that reflect available funds and the principles, priorities and powers of the authority under this chapter.

In accordance with the terms of any bond resolution, trust or security agreement or credit enhancement agreement, surety bond or insurance policy related to indebtedness incurred by the authority secured by amounts provided to the trust in accordance with section 35TTT of chapter 10, the holders of indebtedness and the providers of any credit enhancement, surety bond or insurance policy shall also be beneficiaries of the trust. The authority shall apply and disburse moneys and revenues of the trust without further appropriation or allotment.

Specific powers of the authority shall include, but not be limited to, the following:

(a) review, approve or deny grant applications, waivers and other requests submitted to the program; review, approve and recommend changes to grant payment schedules or suspend said schedules for program projects such as refinancings, audit findings and such other circumstances that may warrant such action;

(b) provide architectural or other technical advice and assistance, training and education, to cities and towns or to joint committees thereof and to general contractors, subcontractors, construction or project managers, designers and others in the planning, maintenance and establishment of municipal buildings or public safety facilities;

(c) recommend to the general court such legislation as it may deem desirable or necessary to further the purposes of this chapter;

(d) develop or use an existing municipal building or public safety facility needs projection model;

(e) to apply for, receive, administer and comply with the conditions and requirements respecting any grant, gift or appropriation of property, services or moneys;

(f) to enter into contracts, arrangements and agreements with other persons and execute and deliver all trust agreements, grant agreements and other instruments necessary or convenient to the exercise of the powers of the trust;

(g) to borrow and repay money by issuing bonds or notes of the trust, to apply the proceeds thereof as provided in this chapter and to pledge or assign or create security interests in any revenues, receipts or other assets or funds of the trust to secure bonds or notes;

(h) develop a project priority system;

(i) collect and maintain a clearinghouse of prototypical municipal building and public safety facility plans which may be consulted by eligible applicants;

(j) determine eligibility of cost components of projects for reimbursement, including partial or full eligibility for project components for which the benefit is shared between a public safety entity and municipal entities;

(k) establish appropriate rules and regulations as may be necessary to carry out the purposes of this chapter;

(l) prepare an annual budget for the administration of the program;

(m) collect and maintain data on all municipal building and public safety facilities in the commonwealth, including information on size, services, number of employees, available facility space, and maintenance;

(n) perform or commission a needs survey to ascertain the capital construction, reconstruction, maintenance and other capital needs for municipal building and public safety services in the commonwealth;

(o) develop a long term capital plan in accordance with needs and projected funding;

(p) adopt and amend bylaws and such rules, regulations and procedures for the conduct of the business of the trust as the board shall deem necessary to carry out the provisions of this chapter;

(q) establish and maintain reserves;

(r) disburse amounts due to cities and towns under grants approved by the authority to finance or refinance costs of approved municipal building and public safety projects and, in conjunction therewith, finance or refinance the local share of costs of these projects, through the purchase of bonds, notes or other evidences of local indebtedness, at the rates and on the terms

that the authority may in its discretion determine, and provide for the payment of all costs of the authority, including professional and financial services incident to the conduct of its operations;

(s) invest the funds of the trust in such investments as may be legal investments for funds of the commonwealth or any fiduciary in the commonwealth;

(t) obtain insurance and enter into agreements of indemnification necessary or convenient to the exercise of the powers of the trust;

(u) sue and be sued and to prosecute and defend actions relating to the affairs of the trust; but the trust shall not be authorized to become a debtor under the United States Bankruptcy Code;

(v) engage accounting, management, legal, financial, consulting and other professional services necessary to the operations of the trust; and

(w) do all things necessary or convenient to carry out the purposes of this chapter.

The chair of the authority shall appoint an executive director, who shall supervise the administrative affairs and general management and operations of the authority and who shall also serve as secretary of the authority, ex officio. The executive director shall receive a salary commensurate with the duties of the office, and may be removed by the board for cause. The executive director may appoint other officers of the authority necessary to the functioning of the authority. The executive director shall designate no fewer than 1 employee to be a municipal liaison to assist cities and towns with concerns regarding the construction of municipal and public safety buildings. Sections 9A, 45, 46, and 46C of chapter 30, chapter 31 and chapter 150E shall not apply to the executive director or any other employees of the authority. The executive

director shall, with the approval of the authority: (i) plan, direct, coordinate and execute administrative functions in conformity with the policies and directives of the authority; (ii) employ professional and clerical staff as necessary; (iii) report to the authority on all operations under his control and supervision; (iv) prepare an annual budget and manage the administrative expenses of the authority; and (v) undertake any other activities necessary to implement the powers and duties set forth in this chapter.

Section 4. There shall be a municipal and public safety building assistance advisory board comprised of: the state auditor or a designee; the inspector general or a designee; the superintendent of the state police or a designee; the state fire marshal or a designee; the director of the Massachusetts emergency management agency or a designee; a representative of the Rural Policy Advisory Commission, the executive director of the authority, who shall serve as the secretary to the advisory board and shall be a nonvoting member of the board; and 13 members to be appointed by the chair to represent the following organizations: the Massachusetts Municipal Association, Small Town Administrators of Massachusetts, the Massachusetts Association of Regional Planning Agencies, the Metropolitan Area Planning Council, the Massachusetts Public Health Association, the Massachusetts Mayors Association, Inc., the Massachusetts Police Association, the Massachusetts Coalition of Police, the Massachusetts Chiefs of Police Association, the Professional Fire Fighters of Massachusetts, Fire Chiefs' Association of Massachusetts, Massachusetts Taxpayers Foundation, and the American Institute of Architects-Massachusetts. The advisory board shall assist the authority in the development of general policy regarding municipal and public safety building construction, renovation, reconstruction, maintenance and facility space, regional equity, protection of public safety, preservation of open space and minimization of loss of open space, thoughtful community

development, cost management, and shall provide technical advice and input to the authority. The advisory board shall meet at least quarterly. In making appointments, the chair shall maximize geographic, racial and ethnic diversity among members of the advisory board.

Section 5. The authority, in cooperation with the state treasurer, shall at all times keep accounts of all receipts, expenditures and disbursements and all assets and liabilities of the authority, which shall be open to inspection by any officer or duly appointed agent of the commonwealth.

Section 6. Any eligible applicant may apply to the authority for reimbursement, in whole or in part, of any expenses incurred for educational, engineering and architectural services incidental to the planning of a municipal building or public safety project or any expenses incurred for surveys made of municipal or public safety building needs and conditions, the contract for which has been approved by the authority. Such application shall be accompanied by information and documentation that the authority may require.

Section 7. An eligible applicant may submit to the authority a statement of interest which shall be approved by a vote of the applicable local governing body or bodies as set forth and in a form prescribed by the authority, and which shall state what the eligible applicant believes are the deficiencies in said eligible applicant's municipal building and public safety facilities that meet one or more of the priorities established by the authority. Said statement of interest shall be accompanied by such additional forms, documents, and information as the authority shall deem necessary to review the statement. The submission for a statement of interest shall not commit the authority to accept any further application materials, approve an application, or provide a grant or any other type of funding, or place any other obligation or requirement upon the

authority. The authority shall notify an eligible applicant if the authority determines that the statement of interest has not met the criteria established by the authority.

If the authority determines that the statement of interest and associated material merits further consideration, the authority may, in its discretion, invite the eligible applicant to apply to the authority for a project grant to meet in part the cost of a municipal or public safety building project; but, a city or town shall not have an entitlement to funds under this chapter except at the discretion of the authority in accordance with this chapter. An application shall include documents, forms, letters, statements, certifications, plans, studies, drawings, and other data and information required by the authority to be submitted within the deadlines and in the format prescribed by the authority and shall be accompanied or supplemented by drawings, plans, estimates of cost and proposals for defraying the costs or any additional information the authority may require, before construction is undertaken. The authority shall require a maintenance plan to be submitted as part of the application to address any required updates to the public safety building following the completion of construction. The authority shall promulgate regulations establishing the procedural steps by which applications must be made and reviewed, and may at any time during the application process determine that the application does not warrant further consideration, pursuant to the priority criteria established by the authority. In the event that an eligible applicant undertakes construction before approval is obtained, the eligible applicant shall remain subject to the authority's approval process as if the construction were not undertaken.

Section 8. (a) Upon receipt of an application under section 7, from time to time, the authority may designate approved municipal building and public safety projects. The authority shall examine forthwith the applications and any facts, estimates, or other information relative

thereto, and shall make the following findings in order to designate a public safety project as an approved municipal building or public safety project:

(1) The municipal building or public safety project is in the best interests of the commonwealth and the eligible applicant, with respect to its site, type of construction, sufficiency of accommodations, open space preservation, urban development, urban sprawl, benefits to a rural region, energy efficiency, impact of building on the health of occupants and otherwise.

(2) The municipal building or public safety project will address the needs of the municipality and improve the lives of residents.

(3) The municipal building or public safety project has a value over its useful life commensurate with the lifecycle cost of building, operating, and maintaining the project.

(4) The municipal building or public safety project is within the capacity of the authority to finance within revenues projected to be available to the trust, established pursuant to section 35TT of chapter 10.

The authority shall also consider the availability of funds projected in the trust and other financial obligations of the authority, the authority's long term capital plan, the results of needs surveys, and standards under section 9 and otherwise as prescribed by law and regulation.

(b) Within a reasonable time after receipt of the application the authority shall notify the applicant of its approval or rejection of the application, and, in the event of its rejection, of the reasons for the decision. The notice of approval shall be accompanied by a statement of the

estimated approved cost as determined by the authority, and an estimate of the amount of total assistance amount which the applicant may be eligible to receive, based on approved costs

(c) Any municipality which has received, in accordance with subsection (b), notice of approval and an estimate of the amount of a project grant, may borrow from time to time to finance that portion of the cost of the approved municipal building or public safety project not being paid by such project grant, in such amount approved by the board of selectmen, mayor or city manager of the city or town, and may issue bonds or notes therefor which shall bear on their face the words --(name of city, town or) “Municipal Building Project Loan, chapter 40Y” or “Public Safety Facility Project Loan, chapter 40Y”. Each authorized issue shall constitute a separate loan, and the loans shall be paid in not more than 25 years from their dates or up to 30 years if consistent with the guidelines established by the director of accounts pursuant to section 38 of chapter 44. Any city or town which has received, in accordance with subsections (b), notice of approval and an estimate of the amount of a project grant may issue and renew temporary notes. The authority shall issue regulations relative to issuance of temporary notes for public safety facilities construction. Indebtedness incurred under this chapter shall be outside the statutory debt limit but shall, except as herein provided, be subject to chapter 44.

(d) A city or town may borrow for a term of not more than 5 years for the cost of feasibility studies as may be required to apply for a project grant under this chapter.

Section 9. (a) In order to maximize the cost effective production of efficient and creative municipal building and public safety projects, the authority shall require that every municipal building and public safety project conform to standards and procedures as the authority considers appropriate including, not but limited to, the following: (1) that the applicant fully consider all

available options for satisfying the described need, including acquisition and any necessary rehabilitation or usage modification of any existing building which could be made available for municipal or public safety use; (2) that the applicant's site selection is based on the cost and environmental factors, including an awareness of soil conditions and their probable effect on foundation and site development costs, transportation effects, dislocation of site occupants and relationship to other community facilities; (3) that the applicant enter into contracts, using forms satisfactory to the authority for such competent architectural, engineering and other services as may be required; and (4) that procedures satisfactory to the board are followed by the applicant throughout the planning and construction of the project such as will assure maximum attention to the operating and capital cost effects of program and design decisions, materials and systems selections.

(b) The authority shall issue annually, as hereinafter provided, maximum eligible cost standards and size standards for municipal building and public safety projects. The program standards shall define prototype design and space recommendations for public safety projects eligible for state financial assistance. The program standards shall, in the judgment of the authority, be in conformity with the minimum requirements of state law and shall be based on the price experience of recently completed and recently bid municipal and public safety projects, taking into account the cost effectiveness of design and construction, differences in cost due to geographic location, consideration of facility size, and other factors used in the projects.

(c) On or before March 1 each year, the authority shall adopt interim regulations, including program and maximum cost standards for the implementation of this chapter. Upon the adoption of such regulations, the authority shall file copies thereof with the clerk of the house of representatives who shall refer such regulations to an appropriate committee of the general court.

Within 30 days after the filing, said committee may hold a public hearing on the regulations, shall issue a report, and file a copy thereof with the board. The board shall adopt final regulations making such revisions in the interim regulations as it deems appropriate in view of the committee report and shall forthwith file a copy of the regulations with the chairs of the committee of the general court to which the interim regulations were referred. Not earlier than 30 days after the date of such filing, the board shall file the final regulations with the state secretary and the regulations shall then take effect.

(d) A city or town shall not have entitlement to funds under this chapter except at the discretion of the authority in accordance with this chapter.

Section 10. The authority may determine by regulation any effect if a city or town sells or leases a municipal building or public safety facility that received financial assistance for a public safety project.

Section 11. (a) On or before June 30 of each year, the authority shall submit a report to the governor, the house and senate committees on ways and means, the joint committee on public safety and homeland security, the joint committee on bonding, capital expenditures and state assets, and the joint committee on municipalities and regional government, that includes financial statements relating to the operations, assets and expenditures of the authority maintained in accordance with generally accepted accounting principles so far as applicable and audited by an independent certified public accountant firm. The report shall analyze the anticipated financial needs for municipal and public safety facilities projects of the kind that qualify for assistance under this chapter. The report shall include a listing of each municipal or public safety building, together with a description of its municipal building or public safety

services, number of population served, age and state of maintenance and whether it is likely to require construction, enlargement, reconstruction, rehabilitation or improvement due to such factors as deterioration, lack of adequate facilities to meet public needs and changing number of population served.

(b) The authority shall conduct periodic surveys of the cities and towns to determine the need for new municipal building and public safety facility construction to meet demand.

(c) The authority shall develop a long-term capital plan in accordance with needs and funding projected to be available in the trust under this chapter for purposes of planning and guiding the policies of the authority.

(d) The capital plans, needs surveys and reports of the authority shall not give rise to any claim, legal or moral, or enforceable right in any party to benefits or funds from the trust or from other sources.