

HOUSE No. 4710

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel Cahill

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 relating to improvements to residential properties.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Daniel Cahill</i>	<i>10th Essex</i>	<i>5/15/2024</i>

HOUSE No. 4710

By Representative Cahill of Lynn, a petition (subject to Joint Rule 12) of Daniel Cahill relative to the financing of qualifying improvements to residential property. Revenue.

The Commonwealth of Massachusetts

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

An Act relating to improvements to residential properties.

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

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 80A
2 the following chapter:-

3 Chapter 80B

4 Section 1. As used in this chapter, the following words shall, unless the context clearly
5 requires otherwise, have the following meanings:-

6 “Benefitted property owner”, an owner of qualifying residential property who desires to
7 install qualifying improvements and who provides free and willing consent to the betterment
8 assessment against the qualifying residential property.

9 “Betterment Assessment”, an assessment of a betterment on qualified residential
10 property in relation to qualifying improvements that have been duly assessed in accordance with
11 chapter 80.

12 “Municipality”, a city, town, or county.

13 “Participating municipality”, a municipality that has determined to participate in a
14 program for financing qualifying improvements to residential property.

15 “Program administrator”, means a municipality or a separate legal entity created
16 pursuant to the provisions of this legislation that directly operates a program for financing
17 qualifying improvements and is authorized pursuant to the provisions of this legislation.

18 “Property owner”, means the owner or owners of record of real property. The term
19 includes real property held in trust for the benefit of one or more individuals, in which case the
20 individual or individuals may be considered as the property owner or owners, provided that the
21 trustee provides written consent. The term does not include persons renting, using, living in, or
22 otherwise occupying real property.

23 “Qualifying improvement”, shall include, but shall not be limited to, the following
24 permanent improvements located on residential property: : (i) repairing, replacing, or improving
25 a central sewerage system, converting an onsite sewage treatment and disposal system to a
26 central sewerage system, or, if no central sewerage system is available, removing, repairing,
27 replacing, or improving an onsite sewage treatment and disposal system to an advanced system
28 or technology; (ii) repairing, replacing, or improving a roof, including improvements that
29 strengthen the roof deck attachment; create a secondary water barrier to prevent water intrusion;
30 install wind-resistant shingles or gable-end bracing; or reinforce roof-to-wall connections; (iii)
31 providing flood and water damage mitigation and resiliency improvements, prioritizing repairs,
32 replacement, or improvements that qualify for reductions in flood insurance premiums, including
33 raising a structure above the base flood elevation to reduce flood damage; constructing a flood

34 diversion apparatus, drainage gate, or seawall improvement, including seawall repairs and
35 seawall replacements; purchasing flood damage-resistant building materials; or making
36 electrical, mechanical, plumbing, or other system improvements that reduce flood damage;
37 (iv) replacing windows or doors, including garage doors, with energy-efficient, impact-resistant,
38 wind-resistant, or hurricane windows or doors or installing storm shutters (v) installing energy-
39 efficient heating, cooling, or ventilation systems; (vi) replacing or installing insulation; (vii)
40 replacing or installing energy-efficient water heaters: (viii) installing and affixing a permanent
41 generator; (ix) providing a renewable energy improvement, including the installation of any
42 system in which the electrical, mechanical, or thermal energy is produced from a method that
43 uses solar, geothermal, bioenergy, wind, or hydrogen; (x) energy conservation and efficiency
44 improvements, which are measures to reduce consumption through efficient use or conservation
45 of electricity, natural gas, propane, or other forms of energy, including but not limited to, air
46 sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation
47 systems; building modification to increase the use of daylight; window replacement; windows;
48 energy controls or energy recovery systems; installation of electric vehicle charging equipment;
49 installation of efficient lighting equipment; or any other improvements necessary to achieve a
50 sustainable building rating or compliance with a national model green building code; and (xi)
51 water conservation efficiency improvements, which are measures to reduce consumption through
52 efficient use or conservation of water.

53 “Qualifying improvement contractor”, means a licensed or registered contractor who has
54 been registered to participate by a program administrator pursuant to the provisions of this
55 legislation to install or otherwise perform work to make qualifying improvements on residential
56 property financed pursuant to a program authorized pursuant to the provisions of this legislation.

57 “Residential property”, means real property zoned as residential or multifamily
58 residential and composed of four or fewer dwelling units.

59 “Third-party administrator”, means an entity under contract with a program
60 administrator.

61 Section 2. (a) (1) Each municipality in the commonwealth shall have the option to
62 participate in the program for financing qualifying improvements to residential property as a
63 participating municipality by a majority vote of the city or town council, by a majority vote of
64 the board of selectmen or by resolution of its legislative body, as may be appropriate, pursuant to
65 which the municipality shall assess, collect, remit and assign betterment assessments, in return
66 for qualifying improvements for a benefitted property owner located within such municipality
67 and for costs reasonably incurred in performing such acts.

68 (2) A program administrator may only offer a program for financing qualifying
69 improvements to residential property within the jurisdiction of a municipality if the municipality
70 has authorized the program administrator to administer the program for financing qualifying
71 improvements to residential property by a majority vote of the city or town council, by a
72 majority vote of the board of selectmen or by resolution of its legislative body, as may be
73 appropriate. The authorized program must, at a minimum, meet the requirements of this section.

74 (3) Pursuant to this section or as otherwise provided by law, a municipality may enter
75 into an interlocal agreement providing for a partnership between one or more municipalities for
76 the purpose of facilitating a program to finance qualifying improvements to residential property
77 located within the jurisdiction of the municipalities that are party to the agreement.

78 (4) A municipality may deauthorize a program administrator through repeal of the vote
79 or the resolution adopted pursuant to paragraph (b) or other action. Any recorded financing
80 agreements at the time of deauthorization shall continue, except as otherwise provided herein.

81 (5) An authorized program administrator may contract with one or more third-party
82 administrators to implement the program as provided herein.

83 (6) An authorized program administrator may levy betterment assessments to facilitate
84 repayment of financing qualifying improvements. Costs incurred by the program administrator
85 for such purpose may be collected as a betterment assessment.

86 (7) In accordance with Chapter 80, betterment assessments levied pursuant to this section
87 and the interest, fees and any penalties thereon shall constitute a lien against the qualifying
88 residential property until they are paid, notwithstanding the provisions of section 12 of chapter
89 80, and shall continue notwithstanding any alienation or conveyance of the qualifying residential
90 property by one property owner to a new property owner. Betterment assessments have fixed
91 interest rates based on market conditions and those rates are not capped by statutes or regulations
92 intended to cover the interest rates of unsecured, credit-based finance options, neither are they
93 limited by restrictions on other betterment financings. A new property owner shall take title to
94 the qualifying residential property subject to the betterment assessment and related lien. The lien
95 shall be levied and collected in the same manner as the property taxes of the participating
96 municipality on real property, including, in the event of default or delinquency, with respect to
97 any penalties, fees and lien priorities. Each lien may be continued, recorded and released upon
98 repayment in full of the betterment assessment in the manner provided for property tax liens.
99 Each lien shall take precedence over all other liens or encumbrances, except a lien for taxes of

100 the municipality on real property. If a lien for property taxes of the municipality is foreclosed,
101 the betterment assessment lien shall be extinguished solely with regard to any installments that
102 were due and owing on the date of foreclosure of such tax lien, but the betterment assessment
103 lien shall otherwise survive the foreclosure. To the extent betterment assessments are paid in
104 installments and any such installment is not paid when due, the betterment assessment lien may
105 be foreclosed to the extent of any unpaid installment payments and any penalties, interest and
106 fees related thereto. In the event such betterment assessment lien is foreclosed, such lien shall
107 survive the foreclosure to the extent of any unpaid installment payments of the betterment
108 assessment secured by such lien that were not the subject of such foreclosure.

109 (8) A program administrator may incur debt for the purpose of providing financing for
110 qualifying improvements, which debt is payable from revenues received from the improved
111 property or any other available revenue source authorized by law.

112 (b) The owner of record of the residential property within the jurisdiction of an
113 authorized program may apply to the authorized program administrator to finance a qualifying
114 improvement. The program administrator may only enter into a financing agreement with the
115 property owner.

116 Section 3. (a) Before entering into a financing agreement, the program administrator
117 must make each of the following findings based on a review of public records derived from a
118 commercially accepted source and the property owner's statements, records, and credit reports:
119 (1) the total amount of any betterment assessment for a residential property under this section
120 does not exceed 20 percent of the fair market value of the property as determined by customary
121 methods; (2) the financing agreement does not utilize a negative amortization schedule, a balloon

122 payment, or prepayment fees or fines other than nominal administrative costs; (3) capitalized
123 interest included in the original balance of the assessment financing agreement does not
124 constitute negative amortization; (4) all property taxes and any other assessments, including
125 betterment assessments, levied on the same bill as the property taxes are current and have not
126 been delinquent for the preceding 3 years, or the property owner's period of ownership,
127 whichever is less (5) there are no outstanding fines or fees related to zoning or code enforcement
128 violations issued by a municipality, unless the qualifying improvement will remedy the zoning or
129 code violation; (6) there are no involuntary liens, including, but not limited to, construction liens
130 on the residential property; (7) no notices of default or other evidence of property based debt
131 delinquency have been recorded and not released during the preceding 3 years or the property
132 owner's period of ownership, whichever is less; (8) the property owner is current on all mortgage
133 debt on the residential property; (9) the property owner has not been subject to a bankruptcy
134 proceeding within the last 5 years unless it was discharged or dismissed more than 2 years before
135 the date on which the property owner applied for financing; (10) the residential property is not
136 subject to an existing home equity conversion mortgage or reverse mortgage product; (11) the
137 term of the financing agreement does not exceed the weighted average useful life of the qualified
138 improvements to which the greatest portion of funds disbursed under the assessment contract is
139 attributable, not to exceed 30 years; (12) the program administrator shall determine the useful
140 life of a qualifying improvement using established standards, including certification criteria from
141 government agencies or nationally recognized standards and testing organizations; (13) the total
142 estimated annual payment amount for all betterment assessments entered into under this section
143 on the residential property does not exceed 10 percent of the property owner's annual household
144 income; (14) income must be confirmed using reasonable evidence and not solely by a property

145 owner's statement; and (15) if the qualifying improvement is for the conversion of an onsite
146 sewage treatment and disposal system to a central sewerage system, the property owner has
147 utilized all available local government funding for such conversions and is unable to obtain
148 financing for the improvement on more favorable terms through a local government program
149 designed to support such conversions.

150 (b) A property owner and the program administrator may agree to include in the
151 financing agreement provisions for allowing change orders necessary to complete the qualifying
152 improvement. Any financing agreement or contract for qualifying improvements which includes
153 such provisions must meet the requirements of this paragraph. If a proposed change order on a
154 qualifying improvement will increase the original cost of the qualifying improvement by 20
155 percent or more or will expand the scope of the qualifying improvement by more than 20
156 percent, before the change order may be executed which would result in an increase in the
157 amount financed through the program administrator for the qualifying improvement, the program
158 administrator must notify the property owner, provide an updated written disclosure form as
159 described in section 4 to the property owner, and obtain written approval of the change from the
160 property owner.

161 (c) A financing agreement may not be entered into if the total cost of the qualifying
162 improvement, including program fees and interest, is less than \$5,000.

163 (d) A financing agreement may not be entered into for qualifying improvements in
164 buildings or facilities under new construction or construction for which a certificate of
165 occupancy or similar evidence of substantial completion of new construction or improvement has
166 not been issued.

167 Section 4. (a) In addition to the requirements of sections 3 and 4 , a financing agreement
168 may not be executed unless the program administrator first provides, including via electronic
169 means, a written financing estimate and disclosure to the property owner which includes all of
170 the following, each of which must be individually acknowledged in writing by the property
171 owner: (1) the estimated total amount to be financed, including the total and itemized cost of the
172 qualifying improvement, program fees, and capitalized interest; (2) the estimated annual
173 betterment assessment; (3) the term of the financing agreement and the schedule for the
174 betterment assessments; (4) the interest charged and estimated annual percentage rate; (5 a
175 description of the qualifying improvement; (6) the total estimated annual costs that will be
176 required to be paid under the assessment contract, including program fees; (7) the total estimated
177 average monthly equivalent amount of funds that would need to be saved in order to pay the
178 annual costs of the betterment assessment, including program fees; (8) the estimated due date of
179 the first payment that includes the betterment assessment; (9) a disclosure that the financing
180 agreement may be canceled within 3 business days after signing the financing agreement without
181 any financial penalty for doing so; (10 a disclosure that the property owner may repay any
182 remaining amount owed, at any time, without penalty or imposition of additional prepayment
183 fees or fines other than nominal administrative costs; (11) s disclosure that if the property
184 owner sells or refinances the residential property, the property owner may be required by a
185 mortgage lender to pay off the full amount owed under each financing agreement under this
186 section; (12) a disclosure that the assessment will be collected along with the property owner's
187 property taxes, and will result in a lien on the property from the date the financing agreement is
188 recorded; (13) a disclosure that potential utility or insurance savings are not guaranteed, and will
189 not reduce the assessment amount; and (14) a disclosure that failure to pay the assessment may

190 result in penalties, fees, including attorney fees, court costs, and the issuance of a tax certificate
191 that could result in the property owner losing the property and a judgment against the property
192 owner, and may affect the property owner's credit rating.

193 (b) Prior to the financing agreement being approved, the program administrator must
194 conduct an oral, recorded telephone call with the property owner during which the program
195 administrator must confirm each finding or disclosure required in section 3 and this section.

196 Section 5. At least 5 business days before entering into a financing agreement, the
197 property owner must provide to the holders or loan servicers of any existing mortgages
198 encumbering or otherwise secured by the residential property a written notice of the owner's
199 intent to enter into a financing agreement together with the maximum amount to be financed,
200 including the amount of any fees and interest, and the maximum annual assessment necessary to
201 repay the total. A verified copy or other proof of such notice must be provided to the program
202 administrator. A provision in any agreement between a mortgagor or other lienholder and a
203 property owner, or otherwise now or hereafter binding upon a property owner, which allows for
204 acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a
205 result of entering into a financing agreement as provided for in this section is unenforceable. This
206 subsection does not limit the authority of the holder or loan servicer to increase the required
207 monthly escrow by an amount necessary to pay the annual assessment.

208 Section 6. A property owner may cancel a financing agreement on a form established by
209 the program administrator within 3 business days after signing the financing agreement without
210 any financial penalty for doing so.

211 Section 7. Any financing agreement executed pursuant to this section, or a summary
212 memorandum of such agreement, shall be submitted for recording in the appropriate public
213 records of the municipality within which the residential property is located by the program
214 administrator within 10 business days after execution of the agreement and the 3-day
215 cancellation period. A notice of lien for the full amount of the financing may be recorded in the
216 public records of the county where the property is located. Such lien is not enforceable in a
217 manner that results in the acceleration of the remaining nondelinquent unpaid balance under the
218 assessment financing agreement.

219 Section 8. At or before the time a seller executes a contract for the sale of any residential
220 property for which a betterment assessment has been levied under this section and has an unpaid
221 balance due, the seller shall give the prospective purchaser a written disclosure statement in the
222 following form, which must be set forth in the contract or in a separate writing:

223 QUALIFYING IMPROVEMENTS.—The property being purchased is subject to an
224 assessment on the property pursuant to chapter 80 of the Massachusetts General Laws. The
225 assessment is for a qualifying improvement to the property and is not based on the value of the
226 property. You are encouraged to contact the property appraiser’s office to learn more about this
227 and other assessments that may be provided by law.

228 Section 9. Before disbursing any funds to a qualifying improvement contractor for a
229 qualifying improvement on residential property, the program administrator shall confirm that the
230 applicable work or service has been completed by verifying, either through TruePic or a similar
231 geolocational verification application, or as applicable, that the final permit for the qualifying

232 improvement has been closed with all permit requirements satisfied or a certificate of occupancy
233 or similar evidence of substantial completion of construction or improvement has been issued .

234 Section 10. (a) A program administrator or its third party administrator shall establish a
235 process to register contractors for participation in a program authorized by a municipality
236 pursuant to the provisions of this legislation. A qualifying improvement contractor may only
237 perform such work that the contractor is appropriately licensed, registered, and permitted to
238 conduct. At the time of application to participate and during participation in the program,
239 contractors must: (1) hold all necessary licenses or registrations for the work to be performed
240 which are in good standing; (2) comply with all applicable federal, state, and local laws and
241 regulations, including obtaining and maintaining any other permits, licenses, or registrations
242 required for engaging in business in the jurisdiction in which it operates and maintaining all
243 state-required bond and insurance coverage; and (3) file with the program administrator a written
244 statement that the contractor will comply with applicable laws and rules and qualifying
245 improvement program policies and procedures, including those on advertising and marketing.

246 (b) A third-party administrator or a program administrator, either directly or through an
247 affiliate, may not be registered as a qualifying improvement contractor.

248 (c) A program administrator shall establish and maintain: (1) a process to monitor
249 qualifying improvement contractors for performance and compliance with requirements of the
250 program and must conduct regular reviews of qualifying improvement contractors to confirm
251 that each qualifying improvement contractor is in good standing; and (2) procedures for notice
252 and imposition of penalties upon a finding of violation, which may consist of placement of the

253 qualifying improvement contractor in a probationary status that places conditions for continued
254 participation, suspension, or termination from participation in the program.

255 Section 11. (a) A program administrator may contract with one or more third-party
256 administrators to administer a program authorized by a municipality pursuant to the provisions of
257 this legislation on behalf of and at the discretion of the program administrator.

258 (b) The third-party administrator must be independent of the program administrator and
259 have no conflicts of interest between managers or owners of the third-party administrator and
260 program administrator managers, owners, officials, or employees with oversight over the
261 contract. A program administrator, either directly or through an affiliate, may not act as a third
262 party administrator for itself or for another program administrator.

263 (c) The contract must provide for the entity to administer the program according to the
264 requirements set forth herein and the terms of the vote or resolution by which the municipality
265 authorized the program. However, only the program administrator may levy or administer
266 betterment assessments.

267 The program administrator must include in any contract with the third-party administrator
268 the right to perform annual reviews of the administrator to confirm compliance with the
269 requirements set forth herein, the terms of the vote or resolution by which the municipality
270 authorized the program, and the contract with the program administrator.

271 Section 12. (a) When communicating with a property owner, a program administrator,
272 qualifying improvement contractor, or third-party administrator may not suggest or imply: (1)
273 that a betterment assessment authorized under the provisions of this legislation is a government
274 assistance program; (2) that qualifying improvements are free or provided at no cost, or that the

275 financing related to a betterment assessment authorized under the provisions of this legislation is
276 free or provided at no cost; or (3) that the financing of a qualifying improvement using the
277 program authorized pursuant to this legislation does not require repayment of the financial
278 obligation.

279 (b) When communicating with a property owner, a program administrator, qualifying
280 improvement contractor, or third-party administrator may not (1) make any representation as to
281 the tax deductibility of a betterment assessment; (2) provide to a qualifying improvement
282 contractor any information that discloses the amount of financing for which a property owner is
283 eligible for qualifying improvements or the amount of equity in a residential property; (3)
284 advertise the availability of betterment assessments for, or solicit program participation on behalf
285 of, the program administrator unless the contractor is registered by the program administrator to
286 participate in the program and is in good standing with the program administrator; (4) provide
287 any payment, fee, or kickback to a qualifying improvement contractor for referring property
288 owners to the program administrator or third-party administrator. However, a program
289 administrator or third-party administrator may provide information to a qualifying improvement
290 contractor to facilitate the installation of a qualifying improvement for a property owner; (5)
291 reimburse a qualifying improvement contractor for its expenses in advertising and marketing
292 campaigns and materials; or (6) provide any direct cash payment or other thing of material value
293 to a property owner which is explicitly conditioned upon the property owner entering into a
294 financing agreement. However, a program administrator or third-party administrator may offer
295 programs or promotions on a nondiscriminatory basis that provide reduced fees or interest rates
296 if the reduced fees or interest rates are reflected in the betterment assessments and are not
297 provided to the property owner as cash consideration.

298 (c) A program administrator, qualifying improvement contractor, or third-party
299 administrator may encourage a property owner to seek the advice of a tax professional regarding
300 tax matters related to assessments.

301 Section 13. (a) A recorded financing agreement may not be removed from attachment to
302 a residential property if the property owner fraudulently obtained funding pursuant to the
303 provisions of this legislation. A financing agreement may not be enforced, and a recorded
304 financing agreement may be removed from attachment to a residential property and deemed null
305 and void, if: (1)the property owner applied for, accepted, and canceled a financing agreement
306 within the 3-business-day period pursuant to the provisions of this legislation. A qualifying
307 improvement contractor may not begin work under a canceled contract; (2) a person other than
308 the property owner obtained the recorded financing agreement. The court may enter an order
309 which holds that person or persons personally liable for the debt; or (3)the program
310 administrator, third-party administrator, or qualifying improvement contractor approved or
311 obtained funding through fraudulent means and in violation of the provisions of this legislation
312 for qualifying improvements on the residential property.

313 (b)If a qualifying improvement contractor has initiated work on residential property
314 under a contract deemed unenforceable under this section, the qualifying improvement
315 contractor: (1) may not receive compensation for that work under the financing agreement;
316 (2)must restore the residential property to its original condition at no cost to the property owner;
317 and (3) must immediately return any funds, property, and other consideration given by the
318 property owner. If the property owner provided any property and the qualifying improvement
319 contractor does not or cannot return it, the qualifying improvement contractor must immediately

320 return the fair market value of the property or its value as designated in the contract, whichever is
321 greater.

322 (c) If the qualifying improvement contractor has delivered chattel or fixtures to
323 residential property pursuant to a contract deemed unenforceable under this section, the
324 qualifying improvement contractor has 90 days after the date on which the contract was executed
325 to retrieve the chattel or fixtures, provided that: (1) the qualifying improvement contractor has
326 fulfilled the requirements of paragraphs (3)(a) and (b); and (2) the chattel and fixtures can
327 be removed at the qualifying improvement contractor's expense without damaging the residential
328 property.

329 (d) If a qualifying improvement contractor fails to comply with this section, the
330 property owner may retain any chattel or fixtures provided pursuant to a contract deemed
331 unenforceable under this section.

332 (e) A contract that is otherwise unenforceable under this section remains enforceable if
333 the property owner waives his or her right to cancel the contract or cancels the financing
334 agreement pursuant to the provisions of this legislation, but allows the qualifying improvement
335 contractor to proceed with the installation of the qualifying improvement.

336 Section 14. (a) Each program administrator that is authorized to administer a program for
337 financing qualifying improvements to residential property under the provisions of this
338 legislation shall post on its website an annual report within 45 days after the end of its fiscal year
339 containing the following information from the previous year for each program authorized under
340 the provisions of this legislation: (1) the number and types of qualifying improvements funded;
341 and (2) the aggregate, average, and median dollar amounts of annual betterment assessments and

342 the total number of betterment assessments collected pursuant to financing agreements for
343 qualifying improvements.