

Chapter 243 of the Acts of 2010

AN ACT ESTABLISHING THE CENTER POND RESTORATION AND PROTECTION DISTRICT IN THE TOWN OF BECKET.

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. DEFINITIONS - As used in this act, the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“**Board of assessors**”, the board of assessors for the town of Becket.

“**Committee**”, prudential committee established in this act.

“**District**”, the Center Pond Restoration and Protection District established in this act.

“**District property**”, land assessed for real estate taxes by the town of Becket board of assessors not owned by the commonwealth or its political bodies which (a) abuts directly on the shoreline of the Center Pond or (b) has improved property that does not abut directly on the shoreline and has a deeded access to Center Pond.

“**Improved property**”, land on which there is a dwelling.

“**Proprietors**”, owners of district property, but not including the commonwealth or its political subdivisions.

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SECTION 2. ESTABLISHMENT OF THE DISTRICT - There is hereby established a district within the town of Becket, a body politic and corporate to be known as the Center Pond Restoration and Protection District. That district shall be generally bounded and comprised of district property that is owned by proprietors.

The district shall have the right to sue and be sued in its own name, and plead and be impleaded. The district shall be deemed to be a public employer and its members, officers and employees deemed to be public employees as defined in section 1 of chapter 258 of the General Laws; provided, however, that neither the district nor any officer or employee thereof shall be liable in tort except pursuant to the provisions of said chapter 258; and provided, further, that the district may indemnify its officers and employees to the extent provided in said chapter 258.

SECTION 3. DISTRICT POWERS - The district shall have the following powers:-

- (a) to inspect, investigate, repair, maintain, protect, improve, reconstruct and construct the Center Pond Dam subject to the obtaining of necessary approvals from and, as required, under the supervision of appropriate local, state and federal governmental agencies, departments and offices, including the town of Becket, the department of conservation and recreation, the office of dam safety, the department of environmental protection, the department of fish and game and the division of fisheries or divisions, boards and successors thereof;
- (b) to initiate and coordinate research and surveys in order to gather data on the lake, related shore lands, watershed and the drainage basin and other matters directly pertaining to the reclamation, protection and maintenance of the lake for general recreation use;
- (c) to manage, control and supervise the Center Pond Dam, equipment and facilities necessary or appropriate to accomplish the purposes for which the district is formed, including, but not limited to, weed control and water level control; provided, that the level of Center Pond shall be maintained at an adequate level, as determined by the prudential committee, between June 1 and October 15, unless dangerous to do so; provided, further, that, the district shall have no authority or right to limit the recreational use of Center Pond or land within the district or construct, maintain or repair any roads or other facilities except those necessary or advisable for the maintenance, repair, protection and improvement of the Center Pond Dam;
- (d) to make and enter into all manner of contracts and agreements necessary or incidental to the exercise of any power permitted to the district by this act;
- (e) to adopt an annual budget and to raise, appropriate and expend funds in such amount to carry out the purposes for which the district is formed;
- (f) to acquire, by gift, purchase or lease, dispose of, lease and encumber real and personal property for the purposes for which the district is formed;
- (g) to construct, acquire by lease or purchase, improve, maintain and operate such equipment and facilities and such other equipment, materials, supplies, facilities and services as are required to accomplish the purposes of this act, to the same extent and subject to the same limitations as shall apply to towns in the commonwealth under the General Laws;
- (h) to apply for, accept and expend financial assistance from the federal government, the commonwealth and the town of Becket either directly or jointly with and through the town;
- (i) to apply for, receive and expend funds from charitable foundations or other private entities and individuals in the form of grants, gifts, loans and advances for or in aid of the purposes for which the district is formed;
- (j) to employ and fix the compensation of such persons, including consultant experts as may be deemed necessary in the judgment of the committee;
- (k) to borrow at the first or any subsequent meeting of the district for the purpose of meeting preliminary or current expenses such sums as may be necessary and to issue therefore general obligation temporary notes for a period of not more than 2 years; provided that such notes shall be issued only in anticipation of assessments and other revenues of the district of the fiscal year in which such notes are issued or in anticipation of money to be received from the sale of longer term bonds or notes for such purposes as are otherwise permitted in this act;

(l) to invest any funds not required for the immediate use of the district in such manner and to the extent permitted under the General Laws for the investment of such funds by the treasurer of the district;

(m) to procure insurance against any loss or liability which may be sustained or incurred in carrying out the purposes of this act in such amount as the committee shall deem necessary and appropriate and with 1 or more insurer who shall be licensed to furnish such insurance in the commonwealth;

(n) to acquire by eminent domain the fee or such other interest in real estate as the committee shall elect for the purpose of inspecting, investigating, repairing, maintaining, protecting, improving, reconstructing and constructing the Center Pond Dam and for providing access to and from the Center Pond Dam; and

(o) to perform generally all acts which are necessary or convenient to implement the powers which are expressly or by necessary implication conferred upon the district by this act and which are not otherwise prohibited under any provision of the General Laws.

SECTION 4. FORMATION (a) Within 60 days of the effective date of this act, the selectmen of the town of Becket shall call a meeting of the proprietors of the lands to be included in the district. To establish an initial list of proprietors, the selectmen shall consult with the board of assessors, who shall furnish to the selectmen a listing of all property owners as of January 1, 2009 who are owners of district property or who, within the reasonable knowledge or belief of the assessors, are owners of district property.

(b) Upon receiving such lists, the selectmen shall prepare and mail to each such proprietor a notice, signed by the selectmen, stating a time and place of a meeting to occur within said 60 day period, but not less than 14 days from the date of mailing said notice. The notice shall be in the form of a warrant specifying the matters upon which action is to be taken at the meeting and shall further clearly state that the purpose of the meeting is to consider the organization of the district. The selectmen shall, not later than 14 days prior to the date of such meeting, cause a copy of the notice to be posted in 1 or more public access locations within the town of Becket. The meeting shall be held at a public access building in the town of Becket unless some other location within the town shall be agreed upon by a majority of the selectmen.

(c) At the first meeting of the district, 1 selectman from the town of Becket shall initially preside and shall call the meeting to order. That selectman shall thereupon determine whether a quorum is present. A quorum shall consist of a majority of the proprietors being present or represented by proxies duly executed and placed in the hands of the other proprietors prior to the first meeting of the district. Lacking a quorum, the proprietors shall have no power to act, but the selectmen of the town may, in the manner provided in subsection (b), call additional meetings for the same purpose within a further 60 day period.

(d) Provided that a quorum has been determined to be present under subsection (c), the meeting shall then proceed to the following matters:

(1) Election of a temporary clerk, who shall be sworn by 1 of the selectmen present, and a moderator who shall thereupon preside.

(2) The taking of a vote to determine whether the district authorized by this act shall be established and organized, which vote shall require an affirmative vote of two-thirds of the proprietors present or represented by proxy. If such vote shall be in the negative, the meeting shall thereupon adjourn. If such vote shall be in the affirmative and upon the required majority, the meeting shall next proceed to consider the order of business set forth in paragraphs (3) to (7), inclusive.

(3) The adoption of district by-laws and form of district seal.

(4) The election by ballot of a district clerk and a district treasurer, who may be the same person, and who shall be a proprietor, to hold office until 1 year from the next succeeding annual meeting. At each subsequent annual meeting a clerk and treasurer shall be elected by ballot for 1 year terms.

- (5) The election by ballot of an initial 3 member prudential committee, with 1 member to hold office for 3 years, 1 member to hold office for 2 years and 1 member to hold office for 1 year, all from the next succeeding annual meeting. At each annual meeting after the first, a member of the committee shall be elected by ballot for 3 years to replace the member whose term is expiring. The officers of the district, elected under paragraph (4) and this paragraph, shall each hold office until a successor is elected and qualified. Persons eligible for nomination and election to the prudential committee shall be at least 18 years of age and entitled to vote as proprietors.
- (6) The adoption of an initial budget for the remainder of the fiscal year and the appropriation of monies to be raised by assessment upon the real property within the district held by proprietors.
- (7) The consideration of such other business as shall be consistent with the power and authority conferred by this act.
- (e) The district clerk shall retain all proxy votes cast at the initial meeting, together with the minutes of the meeting as part of the permanent record of the district. The clerk shall further prepare a certificate of the vote taken to organize the district and shall affix thereto the form of seal, as adopted by the initial meeting of proprietors and shall obtain the endorsement of the selectman who initially presided at the meeting. Such certificate shall be forwarded to the attorney general of the commonwealth within 30 days of the adjournment of the meeting.

SECTION 5. VOTING (a) At the initial district meeting and at all subsequent annual and special district meetings, voting by proprietors shall be governed by the requirements of this section. There shall be 1 vote available to be cast for each district property parcel assessed for real estate taxes by the board of assessors of the town of Becket as set forth in section 1 irrespective of whether there is more than 1 owner for such parcel and excluding land owned by the commonwealth or its political bodies.

(b) In the event of more than 1 owner, the proprietors shall designate, in writing, to the clerk prior to the commencement of the meeting, the person authorized to vote on behalf of those proprietors at such meeting and such person shall be presumed as qualified and authorized to present signatories; provided, that each individual of a married couple which owns district property shall be presumed to be qualified to vote and no written proxy shall be required to be furnished for either individual.

(c) The authority of a person to cast a proxy vote on behalf of a proprietor shall be determined by the clerk.

(d) All proxies must be tendered, in writing, prior to the commencement of any district meeting and shall clearly set forth the name and address of the proprietor entering the proxy, the name and address of the person who is to exercise the proxy, the signature of the proprietor granting the proxy and the date of execution.

(e) The proprietors may adopt in the district by-laws an approved form of proxy to satisfy the requirements of this section. The duration of a proxy shall be as established by district by-law.

SECTION 6. ANNUAL & SPECIAL MEETINGS: Quorum Requirements (a) Unless otherwise provided in the district by-laws, annual meetings of the district shall be held on the last Saturday in May or at such other time as the committee shall establish.

(b) Annual or other special meetings of the district shall be called by warrant under the hands of the committee, notice of which shall be given at least 14 days before such meeting. The warrant shall be mailed first class, postage pre-paid to each proprietor of record in the district and a copy of the warrant shall be directed to a constable of the town of Becket or to some other person who shall cause a copy of the warrant to be posted in 1 or more public place within the town or cause it to be advertised in a newspaper published at least weekly within Berkshire county and having a general circulation within the town.

- (c) The warrant for all district meetings shall state the time and place of the meeting and the subjects to be acted upon thereat. The committee shall insert in the warrant:
- (1) of the annual meeting all subjects requested of them, in writing, by 10 or more proprietors; and
 - (2) for each special district meeting all subjects requested of them, in writing, by 20 or more proprietors.
- (d) The prudential committee shall call a special district meeting at its behest or upon request, in writing, of not fewer than 20 proprietors. Special meetings so requested shall be held not later than 30 days after the receipt of such request.
- (e) No action taken at the annual or any special district meeting shall be valid unless the subject matter thereof shall have been set forth in the warrant for such meeting. Two or more district meetings for district purposes may be called for by the same warrant.
- (f) At the initial district meeting and every annual meeting thereafter a moderator shall be chosen by ballot for a term of 1 year and shall have similar powers to those of the moderator of a town meeting.
- (g) District meetings shall be governed by chapter 39 of the General Laws except as otherwise expressly provided in this act.
- (h) The board of assessors of the town of Becket shall, at least 30 days prior to the annual district meeting, prepare and forward to the committee a true and complete alphabetical listing with addresses of the owners reflected in their records as of January 1 of that year and from the records maintained by the assessors pursuant to chapter 59 of the General Laws and other related provisions. A copy of such list shall be maintained in a manner accessible to the owners and the general public at all reasonable times by the committee and the district clerk and shall further be available for inspection at the annual meeting and any special meeting of the district. The board of assessors shall likewise maintain a list of owners by separate list or special designation on their list of all assessed parcels.
- (i) Quorum requirements for annual meetings and special meetings of the district shall be the same as those specified for the initial district meeting under subsection (c) of section 4 or otherwise as the committee shall determine in its by-laws, provided always that the quorum requirements for any meeting at which there may be a vote to amend the district's by-laws shall be no less than 50 per cent of the eligible and qualified proprietors in person or represented by proxy.
- (j) Any matter to be voted upon at an annual or special meeting of the district shall require only a majority of those proprietors present in person or represented by proxy and voting on the question, except for the following actions which shall require a two-thirds vote:
- (1) a vote to petition for dissolution of the district;
 - (2) a vote to purchase, to take by eminent domain or otherwise acquire real property;
 - (3) a vote to finance any undertaking which is authorized by this act to be financed in whole or in part by the issuance of long-term notes or bonds by the district; or
 - (4) a vote to amend the district by-laws.

SECTION 7. PRUDENTIAL COMMITTEE COMPOSITION & DUTIES - The prudential committee shall have and may exercise the following powers and duties:

- (a) to expend the money raised and borrowed by the district for the purposes permitted to the district;
- (b) to prepare an annual budget for the management and operation of the district and to submit that budget at the annual district meeting to the proprietors for their approval; provided, however, that the budget shall

include the committee's estimate of those monies required to be raised and appropriated by means of assessment upon the proprietors, by borrowing, or otherwise to be received;

(c) to apply in the name of the district for grants, loans and other assistance from both governmental and non-governmental entities;

(d) to enter into agreements and contracts, subject to prior appropriation, involving the purpose or lease of services, equipment and supplies consistent with the powers granted by this act;

(e) to hire, supervise, suspend and discharge such employees as the prudential committee shall deem necessary or appropriate for the conduct of the work to be performed by the district including, but not limited to, a district superintendent who shall have charge on a day-to-day basis of all district employees and who shall be responsible on behalf of the prudential committee for the conduct and supervision of all work to be performed by, or on behalf of, the district under this act; provided, however, that compensation and benefits for the district superintendent and all other employees shall be subject to prior appropriation as determined by vote of the prudential committee;

(f) to adopt by-laws for the regulation of the affairs of the district and the conduct of its business, which by-laws shall be consistent with the powers conferred by this act and with other applicable provisions of the General Laws;

(g) to expend money duly budgeted and appropriated by the proprietors; and

(h) to exercise the authority conferred upon it by district by-law.

SECTION 8. MEETINGS (a) The prudential committee shall meet as often as necessary, but in no event less frequently than every 6 months. A quorum of the prudential committee shall be required at all meetings for the conduct of any business, and shall consist of a majority of its voting members.

(b) The initial meeting of the prudential committee shall occur not later than 30 days following the establishment of the district. Thereafter the prudential committee shall schedule 1 meeting to occur in each year immediately following the adjournment of the annual district meeting.

(c) At the initial meeting and at all subsequent meetings immediately following the annual district meeting, the prudential committee shall elect from its members a chairman who shall preside at all committee meetings and shall serve until the chairman's successor shall be elected at the meeting following the annual district meeting.

(d) The prudential committee shall also elect a vice-chairman who shall be empowered to preside over committee meetings in the absence of the chairman and who shall serve for a like term.

(e) The district may, subject to a prior appropriation, provide appropriate compensation for district officers, including the expense of travel, meals and lodging for such officers residing outside the district. The prudential committee shall serve without compensation but shall be entitled to reasonable travel and lodging expenses.

SECTION 9. TREASURER - The district treasurer shall receive and take charge of all money belonging to the district, and pay over and account for that money according to the order of the district or of its prudential committee. No other persons shall pay any district bill; provided, however, that this provision shall not prohibit the treasurer from paying such bill by the use of a bank treasurer's or cashier's check. The treasurer shall further have the authority given to an auditor by section 50 of chapter 41 of the General Laws,

and shall annually render a true account of the treasurer's receipts and disbursements and report of the treasurer's official acts to the district. The treasurer shall give bond annually for the performance of the treasurer's duties in a form approved by the commissioner of revenue and in such sum, not less than the amount established by the commissioner of revenue, as shall be fixed by the prudential committee, and if the treasurer fails to give such bond within 10 days after being elected or appointed, or if within 10 days after the expiration of said bond or any renewal of said bond, the treasurer fails to file a renewal thereof, the prudential committee shall declare the office vacant and the vacancy shall be filled by the prudential committee in the manner set forth in section 11.

SECTION 10. CLERK - The district clerk shall, in addition to the other duties specified herein, take all minutes at district meetings and at meetings of the prudential committee and maintain a record of such minutes in a manner provided for the maintenance of records of minutes of town meetings and of meetings by the boards of selectmen in the commonwealth. The clerk shall further be the official responsible for certifying copies of all votes taken at a district meeting or a meeting of the prudential committee.

SECTION 11. VACANCIES - Any vacancy occurring in the office of clerk, treasurer or member of the prudential committee may be filled by the proprietors for the remainder of the unexpired term at any special district meeting called for that purpose, or in the case of a vacancy in the office of clerk or treasurer or disability effecting either of those officers, the prudential committee may appoint a person to fill the vacancy until an election can be held or the disability is removed. Such temporary appointee shall be sworn and shall perform the duties of the office to which he is appointed during his tenure thereof. A temporary treasurer appointed to fill a vacancy shall give bond in the same manner as the treasurer.

SECTION 12. DISTRICT ASSESSMENTS - (a) At its initial meeting, and at the annual meeting every year thereafter, the district shall adopt, by two-thirds vote, a method to be employed during the fiscal year for financing the share of its annual budget which is anticipated to be required to be funded by the district. The district may vote to adopt 1 or more of the following methods of financing:

- (1) The district may levy assessments upon the real estate situated within the district totaling the sum required to meet the district budget.
- (2) The district may incur debt by a temporary loan in anticipation of the collection of assessments during the fiscal year in which said debt is incurred or during the next succeeding fiscal year.
- (3) The district may incur debt, up to the amount determined by the committee, for district improvements or major equipment purchases and may issue notes or bonds for that purpose. If the committee approves, the district may issue those notes or bonds on the condition that the first payment on account of the principal shall be deferred for up to 5 years from the date of issue of such notes or bonds and that the whole amount of such debt shall be payable within a period of up to 25 years after such notes or bonds are issued. No such issue shall be for a term longer than the reasonably estimated useful life of the improvements, facilities and equipment to be so funded.

Indebtedness incurred by the district under subsection (3) shall be subject to chapter 44 and to other provisions of the General Laws applicable to notes and bonds of districts except as otherwise provided in this act. If the district issues notes or bonds and thereafter it shall receive an appropriation from another governmental entity to cover such part, if any, of the expenses of such improvements, the committee, unless otherwise mandated by the terms and conditions of the grant from such governmental unit, may make all or any part of such appropriation available to redeem notes or bonds of the district and shall hold the balance, if any, to the credit of the district to be used for the payment of the expense of such improvements, facilities and for equipment.

(b) Bonds or notes issued under this section shall be the general obligations of the district.

(c) That portion, if any, of the budgeted expense for the initial fiscal year and for each subsequent fiscal year which shall be required by the district for the payment of principal and interest on bonds and notes issued or to be issued by the district and which will be due during the ensuing fiscal year together with those amounts necessary to be raised by the district to maintain and operate the district during said fiscal year for capital outlay items, the costs of which is not otherwise funded, and all other budgeted expenses for which the district is authorized to raise money, the costs of which items the district shall have voted to raise by assessment upon land and improvements of the proprietors within the district shall be the subject of a separate vote at the initial district meeting. The schedule of assessed valuations of land and improvements established by the board of assessors for the same fiscal year under chapter 59 of the General Laws shall be relied upon as the basis for determination of the pro-rata share of the district budget voted to be raised and appropriated by the proprietors upon their lands and improvements lying within the district.

(d) Following the adjournment of the initial district meeting and each annual district meeting thereafter, the clerk of the district shall certify to the assessors of the town of Becket all sums of money voted to be raised by district assessment and the method and means of assessment duly voted upon at such meeting. The assessors of the town of Becket shall, without further vote, assess such amounts upon the lands of the proprietors within the district, which shall be collected by the town tax collector who shall act as collector for the district and have and exercise the same powers and duties in relation to the collection of such assessments as he has and exercises in relation to town taxes. The collector shall remit weekly to the district treasurer all sums collected by the collector on account of such assessments. An assessment made under this act shall be a lien upon the land assessed therefor, in the same manner as a lien for real estate taxes assessed by the town under section 37 of chapter 60, and other related provisions of the General Laws.

SECTION 13. FISCAL YEAR - The fiscal year of the district shall be the same fiscal year as established by the General Laws for cities and towns in the commonwealth.

SECTION 14. VOTE - Unless otherwise specified in this act, or otherwise required by the General Laws, all actions permitted to be taken at annual or special district meetings shall require a majority vote of those proprietors entitled to vote at that meeting who are present, or represented by proxy, so long as a quorum is present. Likewise, all actions permitted to be taken by the prudential committee shall require a majority vote of the committee members present at said meeting so long as a quorum is present.

SECTION 15. TOWN OFFICERS COMPENSATION - The district shall include in its initial, and in all subsequent annual appropriations, compensation for the board of assessors and the tax collector of the town of Becket, as the district shall annually establish.

SECTION 16. LIABILITY OF TOWN AND OF THE COMMONWEALTH - No member of the prudential committee, the town of Becket nor any agency or department of the commonwealth shall be obligated for any debts, liabilities, obligations or expenses made, suffered or incurred by the district. The proprietors of the district shall not be individually liable or obligated with respect to debts or other obligations made, suffered or incurred by the district except with respect to the payment as assessments upon their land as provided for in this act.

SECTION 17. JURISDICTIONS - No provision of this act shall be deemed to modify or amend any power, authority or jurisdiction now or hereafter vested in any agency, department or unit of state, local or federal government as it relates to the use, operation or enjoyment of Center Pond available for use by the general public for recreational use and other purposes now or hereafter permitted or required by federal, state or local law, regulation or by-law.

SECTION 18. OVERLAY ACCOUNTS - The district shall establish in its initial budget, and shall maintain in all subsequent fiscal year budgets, an overlay account and a reserve fund as provided for towns under section 25 of chapter 59 and section 5C of chapter 40 of the General Laws. The district may establish and maintain a stabilization fund under the provisions of section 5B of said chapter 40. The district shall be subject to an audit of its accounts in the manner provided in section 40 of chapter 44 of the General Laws.

SECTION 19. DISTRICT BOUNDARIES - Immediately upon being elected, and from time to time thereafter, the district clerk shall cause a review to be made of the records required to be maintained by the board of assessors for the town of Becket, including copies of deeds furnished to said board by the registry of deeds, and shall otherwise take such actions as shall be reasonably necessary to establish the district property and the proprietors. The clerk shall cause to be prepared 1 or more maps which shall show the location of all real estate within the district and shall be based, in whole or in part, upon the maps required to be maintained by said board of assessors. Thereafter, at any special meeting called for the purpose of establishing the district property and the proprietors and not later than the next annual meeting, the district clerk shall furnish the prudential committee with a list of owners and such maps depicting the approximate location and boundaries of such parcels as well as the existing parcels within the district.

SECTION 20. DISSOLUTION - The district shall continue until dissolved by law; provided, however, that no such law shall take effect so long as the district shall have obligations outstanding without adequate provision for the complete payment or satisfaction thereof. Such dissolution may be initiated by the general court or by two-thirds vote at a regular or special district meeting and shall provide for all assets to be transferred to either the town of Becket or the commonwealth as shall be provided in the dissolution vote.

SECTION 21. If the initial meeting of the district fails to occur or the certified vote evidencing the establishment of the district is not filed with the attorney general of the commonwealth within 1 year after this act takes effect, this act shall cease to be operative.

SECTION 22. This act shall take effect upon its passage.

Approved August 5, 2010

SECTION 1. DEFINITIONS - As used in this act, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“**Board of assessors**”, the board of assessors for the town of Becket.

“**Committee**”, prudential committee established in this act.

“**District**”, the Center Pond Restoration and Protection District established in this act.

“**District property**”, land assessed for real estate taxes by the town of Becket board of assessors not owned by the commonwealth or its political bodies which (a) abuts directly on the shoreline of the Center Pond or (b) has improved property that does not abut directly on the shoreline and has a deeded access to Center Pond.

“**Improved property**”, land on which there is a dwelling.

“**Proprietors**”, owners of district property, but not including the commonwealth or its political subdivisions.

SECTION 2. ESTABLISHMENT OF THE DISTRICT

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SECTION 14. SECTION 15. TOWN OFFICERS

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SECTION 19. DISTRICT

SECTION 20. DISSOLUTION

SECTION 21. OBLIGATIONS OF THE DISTRICT

SECTION 22. THIS ACT SHALL TAKE EFFECT UPON ITS PASSAGE. This act shall take effect upon its passage. Approved August 5, 2010