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Massachusetts Department of Revenue  
Division of Local Services

Current Developments  
in  
Municipal Law



2007

Legislation & Agency Decisions

Book 1

Henry Dormitzer, Commissioner  
Robert G. Nunes, Deputy Commissioner

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# WHAT'S NEW IN MUNICIPAL LAW?

## 2007

<b>INTRODUCTION</b> Robert G. Nunes Kathleen Colleary	9:00 a.m. - 9:15 a.m.
<b>LEGISLATION</b> Daniel J. Murphy Kathleen Colleary Gary A. Blau	9:15 a.m. - 9:40 a.m. 9:40 a.m. - 10:05 a.m. 10:05 a.m. - 10:15 a.m.
<b>COURT DECISIONS</b> Gary A. Blau	10:15 a.m. - 10:30 a.m.
<b>BREAK</b>	10:30 a.m. - 11:00 a.m.
<b>COURT DECISIONS</b> Christopher M. Hinchey Mary C. Mitchell James F. Crowley	11:00 a.m. - 11:25 a.m. 11:25 a.m. - 11:50 a.m. 11:50 a.m. - 12:15 p.m.
<b>LUNCH</b>	12:15 p.m. - 1:30 p.m.
<b>WORKSHOPS</b>	1:30 p.m. - 3:00 p.m.
<b>A. CLASSIFIED LANDS.</b> Frequently asked questions about the classified forest, farm and recreational land chapters. Daniel J. Murphy James F. Crowley	
<b>B. COMMUNITY PRESERVATION FUND.</b> Frequently asked questions about budgeting, accounting and spending under the Community Preservation Act. Kathleen Colleary Gary A. Blau	
<b>C. COLLECTIONS.</b> Frequently asked questions about the collection of municipal taxes and charges. Christopher M. Hinchey Mary C. Mitchell	

### BUREAU OF MUNICIPAL FINANCE LAW

617-626-2400 (phone)

617-626-2379 (fax)

[DLSLAW@dor.state.ma.us](mailto:DLSLAW@dor.state.ma.us)



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**Classified Forest, Farm &  
Recreational Lands**

**Chapter 394 of 2006**

- Amends G.L. c. 61, 61A & 61B
- Special Property Tax Programs for Qualifying Forest, Farm and Recreational Land Uses

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Chapter 394 of 2006 (continued)

- Effective FY09, Chapter 61 Forest Land Valued at Current Use
- Assessors Guided by Valuation Ranges Set by Farmland Valuation Advisory Commission (FVAC)
- Commissioner of DCR on FVAC
- After FY08, 8% Forest Products Tax Eliminated

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Chapter 394 of 2006 (continued)

- New Local Option to Classify Land under Chapters as Class 2, Open Space
- Acceptance by Majority Vote of Legislative Body, Subject to Charter – G.L. c. 4, §4

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Chapter 394 of 2006 (continued)

- State Forester May Classify Accessory Land
- Withdrawal Penalty Tax Replaced with Conveyance & Roll-back Taxes

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Chapter 394 of 2006 (continued)

- Standardizes Penalty Taxes
- Conveyance & 5 Year Roll-back Taxes
- 5% Simple Interest on Roll-back Taxes
- Penalty Free Transfers to Other Chapter
- No Penalty Tax on Transfer to Conservation Organization unless Developed within 5 Years

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Chapter 394 of 2006 (continued)

- Standardizes Betterment Provisions
- Assessment Based on Benefit to Land for Forestry, Farming or Recreational Use or Personal Benefit to Landowner
- Assessments Suspended while Property Used for Program Purposes

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Chapter 394 of 2006 (continued)

- Standardizes Right of First Refusal Option (ROFR) Requirements
- Extends ROFR for 1 Year after Removal from Classification
- Defines Bona Fide Offer, Details Notice Requirements & Appraisal Procedures for Conversions

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Chapter 394 of 2006 (continued)

- Recreational Land Now Includes:
  - Pasture Land
  - Managed Forest under Certified Management Plan
  - Land Used for Commercial Horseback Riding & Boarding

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Chapter 394 of 2006 (continued)

- Grandfather Provisions:
  - Landowner in Chapter 61 before FY09 Exempt from Conveyance Tax
  - 7/1/2006 Landowner (or Relatives) of Chapter 61A Parcel Classified for FY07 Exempt from Interest on Roll-back Tax

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## CHAPTER LANDS COMPARISON As Amended by Chapter 394 of the Acts of 2006

COMPARISON	CHAPTER 61 - FOREST LAND	CHAPTER 61 A AGRICULTURAL/HORTICULTURAL	CHAPTER 61B - RECREATIONAL LAND
<b>QUALIFICATIONS</b>	10 contiguous acres – Same ownership 10 year management plan certified by state forester Recertified every <u>10 years</u> Timely application <i>c.394, no more fee to state.</i> <i>c.394, state forester has sole responsibility for determining land use, may include "accessory" land.</i>	<u>5</u> acres, same ownership, "actively devoted" to A/H. 2 prior years A/H use. Gross sales in the regular course of business, starts at \$500 for initial 5 acres, \$5 per extra acre, and .50 for forest land. Additional, <u>contiguous</u> and non-productive land may qualify but only up to 100% of productive land. Forest land, certified by state forester, will qualify.	5 acres, same ownership, and: <u>Condition</u> - natural, wild, open or landscaped or <u>Use</u> -devoted to a recreational use as listed in the statute and available to the general public or to the members of a non-profit organization. <i>c. 394, adds "commercial horseback riding and equine boarding" c. 394 adds "managed forest" land with a state forester's certification.</i>
<b>APPLICATION PROCEDURE</b>	(prior to) JULY 1- application to state forester <i>c.394, prior to OCTOBER 1 (no longer September 1) certificate &amp; plan submitted to assessors.</i> JAN 1- listed as classified JULY 1- taxation under Ch 61 commences	Annual Application by <u>October 1</u> to Board of Assessors on Form CL-1 Revaluation year filing extension provided. Application deemed allowed if no action in 3 months	Annual Application by <u>October 1</u> to Board of Assessors on Form CL-1. Revaluation year filing extension provided. Application disallowed if no action in 3 months.
<b>RECORDING REQUIREMENTS</b>	RECORD a statement of lien on Form CL-3 Collect recording fees Copies of lien to landowner and state forester.	RECORD a statement of lien on Form CL-3, if first application, after a lapse when not classified, or after a change of record ownership.	RECORD a statement of lien on Form CL-3, if first application, after a lapse when not classified, or after a change of record ownership.
<b>APPEAL OF DETERMINATION</b>	(on or before) DECEMBER 1- to state forester MARCH 1- forester's decision will issue APRIL 15- appeal to 3 person regional panel MAY 15- panel hearing Appeal to ATB or Superior Court within 45 days of notice of decision.	Collect all recording fees. Landowner may appeal a determination to: <i>c. 394, Board of Assessors-within 30 days (previously 60 days) of notice, then to Appellate Tax Board-within 30 days of notice of decision or 3 months of application, whichever is later</i>	<i>c.394, Collect all recording fees.</i> landowner may appeal a determination to: Board of Assessors-within 60 days of notice (not changed by c. 394), then to Appellate Tax Board-within 30 days of notice of decision or 3 months of application, whichever is later
<b>TAXATION</b>	SPECIALIZED VALUATION <i>c. 394, new provisions begin for FY 2009.</i> <i>c. 394, Assessed at its FOREST "USE" VALUE. Values for forestland will now be published annually by the FYAC, and be used as a guide. (After FY 2008, no longer any stumpage tax)</i> Commercial rate (class 3) applied to Forest "USE" value. Buildings, residences and land accessory to their use are taxed at regular, full value.	SPECIALIZED VALUATION Assessed at its A/H "USE" VALUE. Values published annually by F.V.A.C., used as a guide. Commercial rate applied to A/H Use value. Buildings, residences and land accessory to their use are taxed at regular, full value. Change in ownership alone will not affect classification.	SPECIALIZED VALUATION Assessed at its RECREATIONAL "USE" VALUE However, assessed "use" value may not exceed 25% of the full and fair cash value. Commercial rate applied to CH61B value. Buildings, residences and land accessory to their use are taxed at regular, full value. Change in ownership alone will not affect classification.
	<i>c. 394, "OPEN SPACE" local option. If city or town accepts c.61, §2A, classified forest land will be classified as "open space" and taxed at residential tax rate.</i>	<i>c. 394, "OPEN SPACE" local option. If city or town accepts c.61A, §4A, classified farmland will be classified as "open space" and taxed at residential tax rate.</i>	<i>c. 394, "OPEN SPACE" local option. If city or town accepts c.61B, §2A, classified recreational land will be classified as "open space" and taxed at residential tax rate.</i>

<b>PENALTY TAXES</b>	<p>c. 394, <u>replaces the prior withdrawal penalty tax plus compounded interest with alternative roll-back or conveyance tax provisions.</u></p> <p>c. 394, <u>Roll-back tax imposed upon a change to a non-qualifying use of the land.</u> c. 394, <u>A non-qualifying use means a use or condition that would not qualify under the definitions of either 61, 61A or 61B.</u></p> <p>c. 394, <u>Roll-back recovery period is FIVE (5) YEARS.</u> (previously up to 10 years) c. 394, <u>SIMPLE INTEREST at 5% over recovery period.</u></p> <p>c. 394, <u>Conveyance tax, imposed when sold for or converted to non-qualifying use (61, 61A or 61B) within 10 years of acquisition. Tax = price or value x conveyance tax rate. C.T. rate 10% to 1% (rate decreases 1% per year of ownership.) Only assessed if more than roll-back.</u></p> <p>c. 394, <u>“grandfather” exemption from conveyance tax for an owner in program for/before FY 2008.</u></p>	<p>Alternative taxes-only the greater will be imposed</p> <p>Roll-back tax imposed upon a change to a non-qualifying use. c. 394, <u>A non-qualifying use means a use or condition that would not qualify under the definitions of either 61, 61A or 61B.</u> Roll-back recovery period is FIVE (5) YEARS. c.394, <u>SIMPLE INTEREST at 5% over recovery period.</u></p> <p>Roll-back tax for each year: TAX: Ch 59, full value taxes - Ch 61A, reduced A/H “use” taxes = the difference (with 5% interest)</p> <p>c. 394, <u>“grandfather” exemption from INTEREST on roll-back tax for a parcel classified for FY 2007 and still owned by 7/1/2006 owner or certain specified close relatives.</u></p> <p>Conveyance tax, c. 394, <u>imposed when sold for or converted to non-qualifying use (61, 61A or 61B) within 10 years of acquisition. Tax = price or value x conveyance tax rate. C.T. rate 10% to 1% (rate decreases 1% per year of ownership.) Only assessed if more than roll-back.</u></p>	<p>Alternative taxes-only the greater will be imposed.</p> <p>Roll-back tax imposed upon a change to a non-qualifying use. c. 394, <u>A non-qualifying use means a use or condition that would not qualify under the definitions of either 61, 61A or 61B.</u></p> <p>c.394, <u>Roll-back recovery period is FIVE (5) YEARS.</u> (previously 10 years) c.394, <u>SIMPLE INTEREST at 5% over recovery period.</u></p> <p>Roll-back tax for each year: TAX: Ch 59, full value taxes - Ch 61B, reduced rec. “use” taxes = the difference (with 5% interest)</p> <p>Conveyance tax., c. 394, <u>imposed when sold for or converted to non-qualifying use (61, 61A or 61B) within 10 years of first classification. Tax = price or value x conveyance tax rate. C.T. rate 10% within first 5 years, 5% within years 6-10. Only assessed if more than roll-back.</u></p>
<b>APPEAL OF ASSESSMENT</b>	<p>c. 394, <u>ABATEMENT-apply to Board of Assessors within 30 days (previously 60 days) of notice of tax</u></p> <p>APPEAL TO A.T.B.-within the later of 30 days of the notice of decision, or 3 months of application.</p>	<p>c. 394, <u>ABATEMENT-apply to Board of Assessors within 60 days of notice of tax.</u> (not changed by c. 394)</p> <p>APPEAL TO A.T.B.-within the later of 30 days of the notice of decision, or 3 months of application.</p>	<p>ABATEMENT-apply to Board of Assessors within 60 days of notice of tax. (not changed by c. 394)</p> <p>APPEAL TO A.T.B.-within the later of 30 days of the notice of decision, or 3 months of application.</p>
<b>BETTERMENT AND SPECIAL ASSESSMENTS</b>	<p>c. 394, <u>subject to assessment only to “pro-rata” extent improves forest use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during forest use. Suspended amount due and payable upon a change in use of land.</u></p> <p>not applicable</p>	<p>c. 394, <u>subject to assessment only to “pro-rata” extent improves A/H use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during A/H use. Suspended amount due and payable upon a change in use of land.</u></p> <p>Indicates potential conveyance or roll-back tax liability. Must be issued within 20 days of request. \$6 charge. If recorded, fixes liability and payment terminates all liens.</p>	<p>c. 394, <u>subject to assessment only to “pro-rata” extent improves recreational use capability or provides personal benefit to the landowner. Assessment may be suspended without interest during recreational use. Suspended amount due and payable upon a change in use of land.</u></p> <p>Indicates potential conveyance or roll-back tax liability. Must be issued within 20 days of request. \$6 charge. If recorded, fixes liability and payment terminates all liens.</p>
<b>CERTIFICATE OF TAXES DUE</b>	<p>MUNICIPALITY’S RIGHT OF FIRST REFUSAL: c. 394 makes significant changes to the “first refusal option” that applies when a landowner decides to sell classified land for a residential, commercial or industrial use, or convert it to such a use, and makes the option provision uniform in all three chapters. It also extends the operation of the first refusal option for one full tax year after a property is removed from classification. This protects the municipality’s opportunity for acquisition in the event the landowner removes the land from classification and immediately decides to develop the land. It also spells out in greater detail than before the notices required, the definition of a bona fide offer and the appraisal procedures that apply in cases of conversion. The revised assignment provision now authorizes a city or town to assign its option to a nonprofit conservation organization or to the Commonwealth or any of its political subdivisions under the terms or conditions that the mayor or board of selectmen may consider appropriate, provided that no less than 70% of the land is maintained in forest, agricultural or recreational use.</p>		

**Constable Fees**

Chapter 341 of 2006

- Amends G.L. c. 41, §95A
- Civil Process Fees Turned Over to Treasurer where Constable Elected or Appointed
- Quarterly Turnover Schedule

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**Tax Title Payments**

Chapter 354 of 2006

- Amends G.L. c. 60, §62
- Eliminates 25% Minimum Partial Payment Amount for Redemption
- Allows Treasurer to Extend Period before Foreclosure by 2 Years

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**Notice of Overdue Taxes & Charges**

Chapter 354 of 2007

- Amends G.L. c. 59, §§57 & 57C
- Clarifies Notice of Past Due Taxes & Charges that are Liens on Parcel Only Needed on Actual Tax Bill
- Excludes Utility Charges if Multiple Suppliers or Supplier Located in Another Jurisdiction

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**Community Preservation  
Surcharge Exemptions**

Chapter 393 of 2006

- Adds Local Acceptance Paragraph (i) to G.L. c. 44B, §3
- Acceptance by Majority Vote of Legislative Body, Subject to Charter – G.L. c. 4, §4

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Chapter 393 of 2006 (continued)

- Allows Housing Cooperative Members to Benefit from CPA Surcharge Exemptions
- Benefit Based on Member's Share of Cooperative Stock

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**Capital Expenditure Exclusions**

Chapter 91 of 2007

- Amends G.L. c. 59, §21C(i)½ )
- Allows City or Town Member of Regional Entity to Exclude Portion of Annual Assessment for Capital Spending Not Financed by Debt
- Separate Referendum for Each Year

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OCPF AO-07-03 (continued)

- Municipal Finance Law Standard – Cannot Spend for Purposes Outside Scope of Appropriation
- Departmental Appropriations Ordinarily for Direct Operating Expenses
- Election Publicity Ordinarily by Clerk or Other Election Officer

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**Identity Theft Prevention**

Chapter 82 of 2007

- Adds G.L. c. 93H
- Requires Businesses & Governments to Notify Individuals & Businesses when Personal Information is Lost or Stolen
- Personal Information is Name with Social Security, Driver's License or Financial Account Number
- Does Not Apply to Data in Public Records

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Chapter 82 of 2007 (continued)

- Adds G.L. c. 93I – Effective 2/3/2008
- Sets Standards for Disposal of Records with Personal Information
- Personal Information is Name with Social Security, Driver's License or Financial Account Number, or Biometric Indicator

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**FY2008 State Budget**

Chapter 61, §67 of 2007

- FY08 Ed Reform Waivers
- Allows DOR to Adjust Minimum Required Contribution for Local & Regional School Districts for FY08
- Application Due 10/1/2007
- See IGR 07-302

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**Municipal  
Group Insurance Coverage**

Chapter 67 of 2007

- Part of Municipal Partnership Bill
- Amends G.L. c. 32, 32A & 32B
- Allows City, Town, District, County, Regional Council of Government (RCG), Regional Planning Agency (RPA), Educational Collaborative or Charter School to Join State Group Health Insurance Pool

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Chapter 67 of 2007 (continued)

- Acceptance of G.L. c. 32B, §19 Required for City, Town, District or County to Join
- Acceptance by Majority Vote of City Council & Approved by Mayor or Manager, Board of Selectmen, Regional School District Committee, District Meeting, County Commissioners

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Chapter 67 of 2007 (continued)

- **Unionized Employer – Acceptance Also Needs Written Agreement with Public Employee Committee (PEC)**
- **Agreement Covers Decision to Join, Subscriber Premium Contribution Ratios for Plan Types (Medicare, PPO, HMO or Indemnity) & Revocation Terms**

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Chapter 67 of 2007 (continued)

- **PEC Includes Representative of Each Union & a Retiree**
- **Retiree Has 10% Voting Rights, Each Union has Weighted Vote Based on its Proportion of Eligible Union Employees**
- **70% of Weighted Votes Needed for Agreement**

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Chapter 67 of 2007 (continued)

- **Agreement Binding on All Subscribers**
- **Interpretation of Agreement Subject to Binding Arbitration**

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Chapter 67 of 2007 (continued)

- Non-unionized Employer – Decision by City, Town or District Chief Executive Officer, Educational Collaborative or Charter School Board of Trustees RCG or RPA Governing Body
- Non-union Collaborative, Charter School, RCG & RPA Same Premium Contribution Ratios as State

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Chapter 67 of 2007 (continued)

- State Group Insurance Commission (GIC) Decides Benefits & Carriers, Eligibility, Payment Methods
- Employer Must Notify GIC of Intent to Join by 10/1
- Employer May Withdraw at 3 or 6 Years Intervals
- Employer Pays Costs + 1% Fee

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Chapter 67 of 2007 (continued)

- Local Union & Management Representatives Added to GIC
- Retirement Boards to Deduct Premiums from Retirees & Submit to GIC
- Requires Alternative Coverage for Subscribers Outside Carrier Coverage Areas

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**Underperforming  
Local Pension Systems**

**Chapter 68 of 2007**

- Amends G.L. c. 32, §22 & Adds G.L. c. 32, §22(c½)
- Part of Municipal Partnership Bill
- Underperforming Local Pension Systems Must Transfer Ownership & Control of Assets to PRIM Board
- Mandatory Provisions Effective 10/1/2007

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**Chapter 68 of 2007 (continued)**

- Underperforming Defined As:
  - Funding Ratio < 65%
  - Average Rate of Return During Prior 10 Years of 2 percentage points or less than PRIT Fund Return During Same Period

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**Chapter 68 of 2007 (continued)**

- Annual Review of Retirement Board Investment Performance by PERAC by 7/1
- PRIM Board to Notify Local Board of Underperformance & Provide Schedule for Transfer of System Assets

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Chapter 68 of 2007 (continued)

- PRIM Board Holds Assets in Trust
- Local Board Continues Other Functions & Notifies PRIM Board of Annual Funding Requirement
- May Seek Exemption from 4 Member Review Board
- Approval of 3 Members Required

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Chapter 68 of 2007 (continued)

- Exemption May be Allowed if Rate of Return Exceeds PRIT Fund for Prior 2 Years or Impacted by Extenuating Circumstances
- Review Board May Consider Management Costs, Risk Return Ratio & Other Factors
- Decision Subject to Judicial Review

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Chapter 68 of 2007 (continued)

- Exemption Effective Only if Approved by City Council & Manager or Mayor, Board of Selectmen, Regional Retirement Board Advisory Board of Governing Board
- Underperforming System May Voluntarily Transfer Ownership of Assets to PRIM Board Before 10/1/2007

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**Funeral & Burial Expenses for  
Fallen Firefighters & Police Officers**  
Chapter 110 of 2007

- Amends Local Option G.L. c. 41,  
§100G¼
- Increases to \$15,000 Amount Paid by  
City or Town for Funeral & Burial  
Expenses for Fallen Firefighter or  
Police Officer
- Effective 8/15/2007

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## **2006 LEGISLATION**

### **CHAPTER 341 – CONSTABLE FEES**

*Effective November 1, 2006*

Amends G.L. c. 41, §95A, which requires constables to turn over each month to the municipal treasurer 25% of all civil process fees collected the previous month.

The amendments clarify that the turnover is to be made to the treasurer of the municipality in which the constable is elected or appointed.

In addition, the turnover will now be made on a quarterly basis with payment due January 15, April 15, July 15 and October 15. If the amount to be paid on a scheduled date is less than \$500, the constable does not have to make the turnover until October 15, or other quarterly due date when the receipts equal or exceed \$500, whichever is earlier.

Chapter 341

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Six

AN ACT MODIFYING THE SCHEDULE FOR DEPOSITS OF REVENUE FOR THE SERVICE OF CIVIL PROCESS BY CONSTABLES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to modify forthwith the schedule for paying certain fees by constables, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

Chapter 41 of the General Laws is hereby amended by striking out section 95A, as appearing in the 2004 Official Edition, and inserting in place thereof the following section:-

Section 95A. Constables appointed under sections 91, 91A, and 91B or otherwise elected to serve as constables in a city or town shall periodically pay the city or town in which the constable is appointed or elected 25 per cent of all fees the constable collects for the service of civil process under the fee structure established in section 8 of chapter 262. This payment shall be made in installments to be deposited with the city or town treasurer not later than January 15, April 15, July 15 and October 15 of each year, but a constable having less than \$500 to deposit at that time shall hold the share for deposit until the sooner of October 15 or the time when the amount due to the city or town under this section equals or exceeds \$500. A treasurer receiving funds under this section shall deposit them into the general fund of the city or town, and they shall be expended, subject to appropriation by a majority vote of the city council in a city or by a majority vote of town meeting in a town, for any purpose which the city or town considers necessary.

House of Representatives, October 19, 2006.

Paul J. Donato

Acting Speaker.

Preamble adopted,

In Senate, October 23, 2006.

H 3576

Preamble adopted,



Acting  
President.

House of Representatives, October 26, 2006.

Bill passed to be re-enacted,



Acting  
Speaker.

In Senate, October 26, 2006.

Bill passed to be re-enacted,



Acting  
President.

11-1, 2006.

Approved,

at 11 o'clock and 16 minutes, A. M.



Governor.

## **CHAPTER 354 – TAX TITLE PAYMENTS**

*Effective February 7, 2007*

Amends G.L. c. 60, §62, which deals with the redemption of real property in tax title for delinquent municipal taxes and other charges, in order to give treasurers greater flexibility in working out reasonable payment plans with delinquent taxpayers.

Under current law, a taxpayer making a partial payment must pay at least 25% of the full amount needed to redeem the tax title. The amendment would eliminate any minimum partial payment.

In addition, a treasurer accepting a partial payment will be able to extend by two years the period within which foreclosure proceedings cannot be initiated. Under G.L. c. 60, §65, that period is generally six months after the tax taking. Currently, any extension is limited to one year.

Chapter 354

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Six

AN ACT FURTHER REGULATING PAYMENT AGREEMENTS FOR LOCAL TAXES.

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. Section 62 of chapter 60 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out, in lines 14 and 15, the words ", each of which except the last, shall be in an amount of not less than twenty-five per cent of the sum for which the land was originally sold".

SECTION 2. Said section 62 of said chapter 60, as so appearing, is hereby further amended by striking out, in lines 25 and 26, the words "one year beyond the time period provided by section sixty-five; but not more than one such extension shall be granted" and inserting in place thereof the following words:- 2 years beyond the time period provided by section 65.

House of Representatives, October 19, 2006.

Passed to be enacted,

*Paul Donato*

Acting Speaker.

In Senate, November 2, 2006.

Passed to be enacted,

*Frank Salem*

Acting President.

11-9, 2006.

Approved, at 7:00 PM

*M. T. Romney*  
Governor.

## **CHAPTER 394 – COMMUNITY PRESERVATION SURCHARGE EXEMPTIONS**

*Effective March 22, 2007*

Adds a local acceptance provision, paragraph (i), to Section 3 of G.L. c. 44B, the Community Preservation Act (CPA).

If G.L. c. 44B, §3(i) is accepted, units leased to members of housing cooperatives and occupied as their domiciles will be considered owned by the members solely for the purpose of allowing them to benefit from CPA surcharge exemptions adopted by the community if they otherwise qualify for the exemption. Acceptance is by majority vote of the municipal legislative body, subject to local charter. G.L. c. 4, §4.

Ordinarily, occupants of a cooperative housing development are not eligible for any property tax or CPA surcharge exemptions because units in a cooperative are not individually owned and taxed like condominium units. G.L. c. 183A, §14. The property is owned by the cooperative housing corporation, not the occupants, and is assessed to the corporation as a single unit. This legislation gives communities the same option to treat cooperative members' units as owned by the members for purposes of CPA exemptions that they have for personal and residential exemptions from property taxes. G.L. c. 59, §5, Clause 55 and §5C. The portion of the property considered owned by a member would be the same proportion the member's share of stock in the cooperative bears to the total outstanding stock of the corporation. If accepted, any surcharge exemption the member qualifies for on his or her "property" will be credited to that portion of the surcharge assessed to the cooperative that the member would otherwise owe.

Chapter 393

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Six

AN ACT REGULATING EXEMPTIONS FOR COOPERATIVE CORPORATIONS UNDER THE COMMUNITY PRESERVATION ACT.

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

Section 3 of chapter 44B of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following subsection:-

(i) With respect to real property owned by a cooperative corporation, as defined in section 4 of chapter 157B, that portion which is occupied by a member under a proprietary lease as the member's domicile shall be considered real property owned by that member for the purposes of exemptions provided under this section. The member's portion of the real estate shall be represented by the member's share or shares of stock in the cooperative corporation, and the percentage of that portion to the whole shall be determined by the percentage of the member's shares to the total outstanding stock of the corporation, including shares owned by the corporation. This portion of the real property shall be eligible for any exemption provided in this section if the member meets all requirements for the exemption. Any exemption so provided shall reduce the taxable valuation of the real property owned by the cooperative corporation, and the reduction in taxes realized by this exemption shall be credited by the cooperative corporation against the amount of the taxes otherwise payable by or chargeable to the member. Nothing in this subsection shall be construed to affect the tax status of any manufactured home or mobile home under this chapter, but this subsection shall apply to the land on which the manufactured home or mobile home is located if all other requirements of this clause are met. This subsection shall take effect in a city or town upon its acceptance by the city or town.

House of Representatives, December 11, 2006.

Passed to be enacted,

*[Signature]*, Acting Speaker.

In Senate, December 14, 2006.

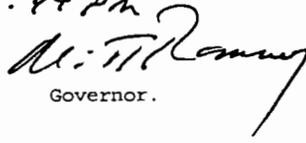
Passed to be enacted,

*[Signature]*, Acting President.

12-22, 2006.

Approved,

at 1:44 PM

A handwritten signature in cursive script, appearing to read "M. T. Romney".

Governor.

## **CHAPTER 394 – CLASSIFIED FOREST, FARM AND RECREATIONAL LANDS**

*Effective March 22, 2007*

Makes several changes to the laws that provide special property tax treatment for qualifying forest, farm and recreational land. G.L. c. 61, Classification and Taxation of Forest Lands and Forest Products; G.L. c. 61A, Classification and Taxation of Agricultural and Horticultural Lands; G.L. c. 61B, Classification and Taxation of Recreational Land. Classified land used for qualifying forest, farm and recreational uses is valued for local property tax purposes based on its current use, rather than its full and fair cash value (at its highest and best use). In addition to reduced property taxes, classified land is entitled to certain special benefits regarding the assessment of betterments. Owners of classified land who sell it for, or convert it to, other uses are subject to penalty taxes, which provide for a recapture by a municipality of tax benefits of certain prior years. In addition, any sale or conversion of classified land for development by the landowner triggers a right of first refusal in the municipality to match a bona fide offer if being sold, or pay fair market value based on an impartial appraisal if being converted.

First, the act adds local option sections to each of the three chapters that if accepted, will include land classified under that chapter in the definition of Class two, open space under G.L. c. 59, §2A, which defines the four classes of real property (residential, open space, commercial and industrial). G.L. c. 61, §2A; G.L. c. 61A, §4A; G.L. c. 61B, §2A. Currently, classified lands are included in the definition of Class three, commercial property. These changes will allow communities that shift the property tax burden by using different tax rates for residential and business properties to opt to place classified land in the Class two, open space category. As a result, the classified land would not only have the tax benefit of reduced valuations, but would also further benefit from having that reduced value taxed at the lower residential and open space tax rate. As Class two, open space, classified properties may also receive an "open space discount" if a discount is used in the community. Acceptance is by majority vote of the municipal legislative body, subject to local charter. G.L. c. 4, §4.

Second, the act changes the annual taxation of Chapter 61 forest land parcels. As with agricultural and horticultural land classified under Chapter 61A, assessors will now assess the property at its current use value after giving consideration to the ranges of use value recommended by the Farmland Valuation Advisory Commission (G.L. c. 61A, §11), which must now establish such ranges for forest as well as farm uses. The Commissioner of the Department of Conservation and Recreation, which includes the State Forester, has been added as a member of the commission. Currently, classified forest land is assessed at 5% of fair cash value and landowners are subject to an 8% products tax when timber is cut from the land. The products tax is repealed.

Third, the act eliminates the "withdrawal" penalty tax assessed under G.L. c. 61, §7 and replaces it with conveyance and roll-back penalty tax provisions similar to those under Chapters 61A and 61B. Currently, a landowner who does not renew the 10-year forest classification plan is assessed a withdrawal tax even if the owner continues to maintain the land as forest or seeks to have the property classified under Chapter 61A or 61B instead. Both Chapters 61A and 61B have a "conveyance" and "roll-back" tax, which serve as alternative penalties and are assessed upon a change in use or sale for another use. The applicable tax depends on a number of factors including how long the person has owned

the property and how long it has been classified. The act standardizes the penalty tax provisions for all three chapters so that each has a conveyance tax and a five year recapture period for the roll-back tax. Previously, the roll-back recapture period for Chapter 61B was 10 years. The computation of interest on any roll-back tax assessed is standardized and simplified, with a simple interest rate of 5% per year adopted for each chapter instead of the current inconsistent provisions among the three chapters.

Landowners may now make a penalty tax free transfer of classified land to another chapter if the land also qualifies for classification under that statute. Acquisitions of classified parcels for a natural resource purpose by the city or town, the commonwealth or a nonprofit conservation organization are exempted from penalty taxes, but if the non-profit conservation organization turns the land over for development within 5 years of the acquisition, the tax will then become due. Forest land classified under Chapter 61 before the filing date immediately after the effective date of the act is not subject to the new conveyance tax provisions until the land has been transferred to another owner.

Fourth, the act clarifies the assessment of betterments on classified land and makes the betterment provisions uniform in all three chapters. Classified parcels are subject to betterment assessments only to the extent that the betterment supports the forestry, farm or recreational use of the land. Additionally, the assessment is suspended while the land is so used, and only becomes due upon a later change in use.

Fifth, the act makes significant changes in the "first refusal option" that applies when a landowner decides to sell classified land for, or convert the land to, a residential, commercial or industrial use and makes the option provision uniform in all three chapters. It extends the operation of the first refusal option for one full tax year after a property is removed from classification. Currently, it only applies while the property is classified. This protects the municipality's opportunity for acquisition in the event the landowner removes the land from classification and immediately decides to develop the land. It also spells out in greater detail than in current law the notices required, the definition of a bona fide offer and the appraisal procedures that apply in cases of conversion.

Finally, the act expands the definition of recreational land for Chapter 61B to include land in a pasture condition, a managed forest condition under a certified forest management plan, and land used for commercial horseback riding and equine boarding. Forest land under Chapter 61 may now include accessory land as determined by the state forester.

Chapter 394

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Six

AN ACT RELATIVE TO THE TAXATION OF FOREST, FARM, AND RECREATION LAND.

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

SECTION 1. The definition of "class two, open-space" of subsection (b) of section 2A of chapter 59 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following sentence:- In a city or town that has elected to adopt section 2A of chapter 61, section 4A of chapter 61A or section 2A of chapter 61B, class two, open-space shall include land taxable under chapter 61, 61A or 61B.

SECTION 2. Section 1 of chapter 61 of the General Laws, as so appearing, is hereby amended by striking out the definition of "Forest land," and inserting in place thereof the following definition:-

"Forest land", land devoted to the growth of forest products. Upon application, the state forester may allow accessory land devoted to other non-timber uses to be included in certification.

SECTION 3. Said section 1 of said chapter 61, as so appearing, is hereby further amended by striking out the definition of "Forest products" and inserting in place thereof the following definition:-

"Forest products", wood, timber, Christmas trees, other tree forest growth and any other product produced by forest vegetation.

SECTION 4. Said section 1 of said chapter 61, as so appearing, is hereby further amended by striking out the definition of "Owner" and inserting in place thereof the following definition:-

"Owner", person, persons, or another legal entity holding title to a parcel of forest land.

SECTION 5. Said section 1 of said chapter 61, as so appearing, is hereby further amended by striking out the definition of "Parcel" and inserting in place thereof the following definition:-

"Parcel", land held by the same owner under a deed of title which has no encumbrance incompatible with this chapter.

SECTION 6. Said section 1 of said chapter 61, as so appearing, is hereby further amended by striking out the definition of "Stumpage value".

SECTION 7. Section 2 of said chapter 61, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following 2 paragraphs:-

Except as otherwise herein provided, all forest land, parcels of not less than 10 contiguous acres in area, used for forest production shall be classified by the assessors as forest land upon written application sufficient for identification and certification by the state forester. Such application shall be accompanied by a forest management plan. The state forester will have sole responsibility for review and certification with regard to forest land and forest production.

The rate of tax applicable to certified forest land shall be the rate determined to be applicable to class three, commercial property under chapter 59.

SECTION 8. The third paragraph of said section 2 of said chapter 61, as so appearing, is hereby amended by striking out the second sentence.

SECTION 9. Said section 2 of said chapter 61, as so appearing, is hereby further amended by striking out, in line 41, the word "September" and inserting in place thereof the following word:- October.

SECTION 10. The fifth paragraph of said section 2 of said chapter 61, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:- Classification shall take effect on January first of the year following certification and taxation under this chapter and shall commence with the fiscal year beginning after said January first.

SECTION 11. Said section 2 of said chapter 61, as so appearing, is hereby further amended by striking out the sixth paragraph.

SECTION 12. Said chapter 61 is hereby further amended by inserting after section 2 the following section:-

Section 2A. In a city or town that accepts this section, the rate of tax applicable to certified forest land shall be the rate determined to be applicable to class two, open space.

SECTION 13. Said chapter 61 is hereby further amended by striking out section 3, as appearing in the 2004 Official Edition, and inserting in place thereof the following section:-

Section 3. For general property tax purposes, the value of land that is actively devoted to forest production use during the tax year in issue and has not been used for purposes incompatible with forest production in the 2 immediately preceding tax years, shall, upon application of the owner of that land and approval of that application, be the value that the land has for forest production purposes.

The board of assessors of a city or town, in valuing land with respect to which timely application has been made and approved as provided in this chapter, shall consider only those indicia of value which the land has for forest production. The board, in establishing the use value of land, shall use the list of ranges published under section 11 of chapter 61A and its personal knowledge, judgment and experience as to forest land values, but these factors shall be limited to data specific to forest production.

The land tax shall be committed to the collector for collection in the same manner as taxes assessed under chapter 59. The collector shall notify the person assessed of the amount of the tax in the manner provided in section 3 of chapter 60. For the collection of taxes under this chapter the collector shall have all the remedies provided by chapter 60. Taxes so assessed shall be due and payable on October first of the year in which the return is required to be made, and, if not paid on or before November first of the year of assessment, or within 30 days after notification of the taxes if the notice is given after October first, shall bear interest at the rate as provided in section 57 of chapter 59. Any person aggrieved by the assessment of a tax under this section may, within 30 days after the date of notice of the tax, apply in writing to the assessors upon a form approved by the commissioner of revenue for abatement of that tax, and if the assessors, after hearing, find that the tax is excessive, they shall abate it in whole or in part. If the tax has been paid, the town treasurer shall repay to the person assessed the amount of the abatement with interest on that amount at the current rate provided in section 69 of said chapter 59. Any person aggrieved by the refusal of the assessors to abate a tax in whole or in part or by their failure to act upon an application may appeal to the appellate tax board within 30 days after the date of notice of decision of the assessors or within 3 months after the date of the application for abatement, whichever date is later. Any overpayment of tax determined by decision of the appellate tax board shall be reimbursed by the town treasurer with interest at the current rate as provided in said section 69.

SECTION 14. Said chapter 61 is hereby further amended by striking out section 4, as so appearing, and inserting in place thereof the following section:-

Section 4. All buildings located on land which is valued, assessed and taxed on the basis of its forest production use in accordance with this chapter and all land occupied by a dwelling or regularly used for family living shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable property.

SECTION 15. Said chapter 61 is hereby further amended by striking out section 5, as so appearing, and inserting in place thereof the following section:-

Section 5. Land qualifying for valuation, assessment and taxation under this chapter shall be subject to special assessments or betterment assessments to the pro rata extent that the service or facility financed by the assessment is used for improving the forest production use capability of the land or for the personal benefit of the owner of the land. These assessments shall, upon application, be suspended during the time the land is in forest production use and shall become due and payable as of the date when the use of the land is changed. Payment of the assessment and interest on it shall be made in accordance with section 13 of chapter 80, but interest shall be computed from the date of the change in use. In the event only a portion of a tract of land which benefits from a suspension of payment is changed from this use, the assessment shall become due and payable as of the date when the use was changed only to the extent of and in the proportion that the frontage of that portion bears to the street frontage of the entire tract of land which originally benefited from a suspension of payment. Upon receipt of full payment of a portion of a suspended assessment, the tax collector shall dissolve the lien for the assessment insofar as it affects the portion of the land changed from forest production use. The lien for the portion of the original assessment which remains unpaid shall continue and remain in full force and effect until dissolved in accordance with law. A request for a release shall be made in writing to the tax collector and shall be accompanied by a plan and any other information that is required in the case of a request for a division of an assessment under section 4.

SECTION 16. Said chapter 61 is hereby further amended by striking out section 6, as so appearing, and inserting in place thereof the following section:-

Section 6. Any land in forest production use which is valued, assessed and taxed under this chapter, if sold for other use within a period of 10 years after the date of its acquisition or after the earliest date of its uninterrupted use by the current owner in forest production, whichever is earlier, shall be subject to a conveyance tax applicable to the total sales price of that land, which tax shall be in addition to taxes that may be imposed under any other law. Notwithstanding the previous sentence, no conveyance tax shall be assessed if the land involved, or a lesser interest in that land, is acquired for a natural resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold or converted to commercial, residential or

industrial use within 5 years after acquisition by a nonprofit conservation organization, the conveyance tax shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had such transaction been subject to a conveyance tax. The conveyance tax shall be assessed on only that portion of land whose use has changed. The conveyance tax shall be at the following rate: 10 per cent if sold within the first year of ownership; 9 per cent if sold within the second year of ownership; 8 per cent if sold within the third year of ownership; 7 per cent if sold within the fourth year of ownership; 6 per cent if sold within the fifth year of ownership; 5 per cent if sold within the sixth year of ownership; 4 per cent if sold within the seventh year of ownership; 3 per cent if sold within the eighth year of ownership; 2 per cent if sold within the ninth year of ownership; and 1 per cent if sold within the tenth year of ownership. No conveyance tax shall be imposed under this section after the end of the tenth year of ownership. The conveyance tax shall be due and payable by the grantor at the time of transfer of the property by deed or other instrument of conveyance and shall be payable to the tax collector of the city or town in which the property is entered upon the tax list, but in the case of taking by eminent domain, the value of the property taken shall be determined in accordance with chapter 79, and the amount of conveyance tax, if any, shall be added as an added value. If there is filed with the board of assessors an affidavit by the purchaser that the land is being purchased for forest production use, no conveyance tax shall be payable by the seller by reasons of the sale, but if the land is not in fact continued in this use for at least 5 consecutive years, the purchaser shall be liable for any conveyance tax that would have been payable on the sale as a sale for other use. The conveyance tax shall be assessed on only that portion of land for which the use has changed.

Except with respect to eminent domain takings, this section shall not be applicable to the following: mortgage deeds; deeds to or by the city or town in which the land is located; deeds which correct, modify, supplement or confirm a deed previously recorded; deeds between husband and wife and parent and child when no consideration is received; tax deeds; deeds releasing any property which is a security for a debt or other obligation; deeds for division of property between owners without monetary consideration; foreclosures of mortgages and conveyances by the foreclosing parties; deeds made under a merger of a corporation or by a subsidiary corporation to its parent corporation for no consideration other than the cancellation and surrender of capital stock of

the subsidiary which do not change beneficial ownership; and property transferred by devise or otherwise as a result of death.

A nonexempt transfer after any exempt transfer or transfers shall be subject to this section. Upon the nonexempt transfer, the date of acquisition by the grantor, for purposes of this section, shall be considered to be the date of the last preceding transfer not excluded by the foregoing provisions from application of this section, but in the case of transfer by a grantor who has acquired the property from a foreclosing mortgagee, the date of acquisition shall be considered to be the date of the acquisition. Any land in forest production use which is valued, assessed and taxed under this chapter, if changed by the owner of the land to another use within a period of 10 years after the date of its acquisition by that owner, shall be subject to the conveyance tax applicable under this section at the time of the change in use as if there had been an actual conveyance, and the value of the land for the purpose of determining a total sales price shall be fair market value as determined by the board of assessors of the city or town involved for all other property.

If any tax imposed under this section should not be paid, the collector of taxes shall have the same powers and be subject to the same duties with respect to these taxes as in the case of the annual taxes upon real estate, and the law in regard to the collection of the annual taxes, the sale of land for the nonpayment of taxes and redemption shall apply to these taxes.

No conveyance tax imposed by this section will be assessed on land that is considered to be in agricultural use under sections 1 and 3 of chapter 61A, in horticultural use under sections 2 and 3 of said chapter 61A or recreational land under section 1 of chapter 61B.

SECTION 17. Said chapter 61 is hereby further amended by striking out section 7, as so appearing, and inserting in place thereof the following section:-

Section 7. Whenever land which is valued, assessed and taxed under this chapter no longer meets the definition of forest land, it shall be subject to additional taxes, in this section called roll-back taxes, in the tax year in which it is disqualified and in each of the 4 immediately preceding tax years in which the land was so valued, assessed and taxed, but these roll-back taxes shall not apply unless the amount of the taxes, as computed under this section, exceeds the amount, imposed under section 6 and, in that case, the land shall not be subject to the conveyance tax imposed under said section 6. For each tax year, the roll-back tax shall be an amount equal to the difference, if any, between the taxes paid or payable for that tax year in accordance with this

chapter and the taxes that would have been paid or payable in that tax year had the land been valued, assessed and taxed without regard to these provisions.

If, at the time during a tax year when a change in land use has occurred, the land is not valued, assessed and taxed under this chapter, then the land shall be subject to roll-back taxes only for those years of the 5 immediately preceding years in which the land was valued, assessed and taxed under this chapter.

In determining the amount of roll-back taxes on land which has undergone a change in use, the board of assessors shall ascertain the following for each of the roll-back tax years involved:-

(a) the full and fair value of the land under the valuation standard applicable to other land in the city or town;

(b) the amount of the land assessment for the particular tax year;

(c) the amount of the additional assessment on the land for the particular tax year by deducting the amount of the actual assessment on the land for that year from the amount of the land assessment determined under subsection (a); and

(d) the amount of the roll-back tax for that tax year by multiplying the amount of the additional assessment determined under subsection (c) by the general property tax rate of the city or town applicable for that tax year.

Roll-back taxes will be subject to simple interest at a rate of 5 per cent per annum. If the board of assessors determines that the total amount of roll-back taxes to be assessed under this section, before the addition of any interest, as provided for in the preceding paragraph, would be less than \$10, no tax shall be assessed.

No roll-back tax imposed by this section will be assessed on land that meets the definition of land in agricultural use under sections 1 and 3 of chapter 61A or the definition of land in horticultural use under sections 2 and 3 of said chapter 61A or the definition of recreational land under section 1 of chapter 61B.

Land retained as open space as required for the mitigation of a development shall be subject to the roll-back taxes imposed by this section.

SECTION 18. Said chapter 61 is hereby amended by striking out section 8, as so appearing, and inserting in place thereof the following section:-

Section 8. Land taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use while so taxed or within 1 year after that time unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use.

The discontinuance of forest certification shall not, in itself, for the purposes of this section, be considered a conversion. Specific use of land for a residence for the owner, the owner's spouse or a parent, grandparent, child, grandchild, or brother or sister of the owner, or surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full-time in the forest use of that land, shall not be a conversion for the purposes of this section, and a certificate of the board of assessors, recorded with the registry of deeds, shall conclusively establish that particular use.

Any notice of intent to sell for other use shall be accompanied by a statement of intent to sell, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the landowner.

Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter, and which shall be a bona fide offer as described below.

Any notice of intent to sell for other use shall also be accompanied by any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under this chapter, but sold or to be sold contemporaneously with the proposed sale.

For the purposes of this chapter, a bona fide offer to purchase shall mean a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed.

Any notice of intent to convert to other use shall be accompanied by a statement of intent to convert, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, the name, address and telephone number of the landowner and the landowner's attorney, if any.

The notice of intent to sell or convert shall be sent by the landowner, by certified mail or hand-delivered, to the mayor and city council of a city, or board of selectmen of a town, and in the case of either a city or a town, to

its board of assessors, to its planning board and conservation commission, if any, and to the state forester.

A notarized affidavit that the landowner has mailed or delivered a notice of intent to sell or convert shall be conclusive evidence that the landowner has mailed the notice in the manner and at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to which it relates.

The notice of intent to sell or convert shall be considered to have been duly mailed if addressed to the mayor and city council or board of selectmen in care of the city or town clerk; to the planning board and conservation commission if addressed to them directly; to the state forester if addressed to the commissioner of the department of conservation and recreation and to the assessors if addressed to them directly.

If the notice of intent to sell or convert does not contain all of the material as described above, then the town or city, within 30 days after receipt, shall notify the landowner in writing that the notice is insufficient and does not comply.

For a period of 120 days after the day following the latest date of deposit in the United States mail of any notice which complies with this section, the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the land.

In the case of intended or determined conversion not involving sale, the municipality shall have an option to purchase the land at full and fair market value to be determined by an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee, the original appraisal to be completed and delivered to the landowner within 30 days after the notice of conversion to the municipality. In the event that the landowner is dissatisfied with the original appraisal, the landowner may, at the landowner's expense, contract for a second appraisal, the second appraisal to be completed within 60 days after the delivery of the notice to convert. If, after completion of the second appraisal, the parties cannot agree on a consideration, the parties shall contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne equally by both parties. The third appraisal shall be delivered to both parties within 90 days after the notice of conversion to the municipality and shall be the final determination of consideration. Upon agreement of a consideration, the city or town shall then have 120 days to exercise its option. During the appraisal process, the landowner may revoke the intent to convert at any time and with no recourse to either party.

This option may be exercised only after a public hearing followed by written notice signed by the mayor or board of selectmen, mailed to the

landowner by certified mail at such address as may be specified in the notice of intent. Notice of the public hearing shall be given in accordance with section 23B of chapter 39.

The notice of exercise shall also be recorded at the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of it.

The notice to the landowner of the city or town's election to exercise its option shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the landowner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the mayor or board of selectmen, or upon expiration of any extended period the landowner has agreed to in writing, whichever is later.

At the public hearing or a further public hearing, the city or town may assign its option to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions under terms and conditions that the mayor or board of selectmen may consider appropriate. Notice of the public hearing shall be given in accordance with section 23B of chapter 39.

The assignment shall be for the purpose of maintaining no less than 70 per cent of the land in use as forest land as defined in section 1 of this chapter, as agricultural and horticultural land as defined in sections 1 and 2 of chapter 61A or as recreation land as defined in section 1 of chapter 61B, and in no case shall the assignee develop a greater proportion of the land than was proposed by the developer whose offer gave rise to the assignment. All land other than land that is to be developed shall then be bound by a permanent deed restriction that meets the requirements of chapter 184.

If the first refusal option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions as provided in this section, the mayor or board of selectmen shall provide written notice of assignment to the landowner.

The notice of assignment shall state the name and address of the organization or agency of the commonwealth which will exercise the option in addition to the terms and conditions of the assignment. The notice of assignment shall be recorded with the registry of deeds.

Failure to record either the notice of exercise or the notice of assignment within the 120 day period shall be conclusive evidence that the city or town has not exercised its option.

If the option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions, the option may be exercised by the assignee only by written notice to the landowner signed by the

assignee, mailed to the landowner by certified mail at the address that is specified in the notice of intent. The notice of exercise shall also be recorded with the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice of exercise to the landowner shall be accompanied by a proposed purchase and sale contract or other agreement between the assignee and landowner which, if executed, shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended period the landowner has agreed to in writing, from the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the assignee.

During the 120 day period, the city or town or its assignees, shall have the right, at reasonable times and upon reasonable notice, to enter upon said land for the purpose of surveying and inspecting said land, including but not limited to soil testing for purposes of Title V and the taking of water samples.

The city or town or its assignee shall have all rights assigned to the buyer in the purchase and sales agreement contained in the notice of intent.

If the city or town elects not to exercise the option, and not to assign its right to exercise the option, the city or town shall send written notice of non-exercise signed by the mayor or board of selectmen to the landowner by certified mail at the address that is specified in the notice of intent. The notice of non-exercise shall contain the name of the owner of record of the land and description of the premises adequate for identification of them, and shall be recorded with the registry of deeds.

No sale or conversion of the land shall be consummated until the option period has expired or the notice of non-exercise has been recorded with the registry of deeds, and no sale of the land shall be consummated if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell except as provided in this section.

This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the sale to the parties in the manner described in this section for notice of intent to sell or convert, and the giving of this notice may be established by an affidavit as described in this section.

SECTION 19. Chapter 61A of the General Laws is hereby amended by striking out section 2, as so appearing, and inserting in place thereof the following section:-

Section 2. Land shall be considered to be in horticultural use when primarily and directly used in raising fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flower, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs for the purpose of selling these products in the regular course of business; or when primarily and directly used in raising forest products under a certified forest management plan, approved by and subject to procedures established by the state forester, designed to improve the quantity and quality of a continuous crop for the purpose of selling these products in the regular course of business; or when primarily and directly used in a related manner which is incidental to those uses and represents a customary and necessary use in raising these products and preparing them for market.

SECTION 20. Said chapter 61A is hereby further amended by inserting after section 4 the following section:-

Section 4A. In a city or town that accepts this section, the rate of tax applicable to land actively devoted to agricultural, horticultural or agricultural and horticultural uses shall be the rate determined to be applicable to class two, open space.

SECTION 21. Section 7 of said chapter 61A, as appearing in the 2004 Official Edition, is hereby amended by striking out, in line 3, the words "December thirty-first" and inserting in place thereof the following words:- June thirtieth.

SECTION 22. Section 10 of said chapter 61A, as so appearing, is hereby amended by inserting after the word "values", in line 8, the following words:- but these factors shall be limited to data specific to the crop or product being grown or produced.

SECTION 23. Section 11 of said chapter 61A, as so appearing, is hereby amended by inserting after the word "agriculture", in line 3, the following words:- , commissioner of the department of conservation and recreation.

SECTION 24. Said section 11 of said chapter 61A, as so appearing, is hereby further amended by inserting after the word "horticultural", in line 11, the following words:- or forest land.

SECTION 25. Said section 11 of said chapter 61A, as so appearing, is hereby further amended by striking out, in line 21, the words "from the agricultural purposes fund" and inserting in place thereof the following words:- for the farmland valuation advisory commission.

SECTION 26. Section 12 of said chapter 61A, as so appearing, is hereby amended by inserting after the second sentence the following 2 sentences:- Notwithstanding the previous sentence, no conveyance tax shall be assessed if the land involved, or a lesser interest in that land, is acquired for a natural

resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold or converted to commercial, residential or industrial use within 5 years after acquisition by a nonprofit conservation organization, the conveyance tax shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had that transaction been subject to a conveyance tax. The conveyance tax shall be assessed on only that portion of land on which the use has changed.

SECTION 27. Said section 12 of said chapter 61A, as so appearing, is hereby further amended by striking out the fourth sentence and inserting in place thereof the following 4 sentences:- Said conveyance tax shall be due and payable by the grantor at the time of transfer of the property by deed or other instrument of conveyance and shall be payable to the tax collector of the city or town in which the property is entered upon the tax list. In the case of taking by eminent domain, the value of the property taken shall be determined in accordance with chapter 79, and the amount of conveyance tax, if any, shall be added to that amount as an added value. If there is filed with the board of assessors an affidavit by the purchaser that the land is being purchased for agricultural, horticultural or agricultural and horticultural use, no conveyance tax shall be payable by the seller by reason of the sale, but if the land is not continued in that use for at least 5 consecutive years, the purchaser shall be liable for any conveyance tax that would have been payable on the sale as a sale for other use. The conveyance tax shall be assessed on only that portion of land whose use has changed.

SECTION 28. Section 12 of said chapter 61A, as so appearing, is hereby further amended by adding the following paragraph:-

No conveyance tax will be assessed on land that meets the definition of forest land under section 1 of chapter 61 or the definition of recreational land under section 1 of chapter 61B.

SECTION 29. Section 13 of said chapter 61A, as so appearing, is hereby amended by striking out the first and second sentences and inserting in place thereof the following 2 sentences:- Whenever land which is valued, assessed and taxed under this chapter no longer meets the definition of land actively devoted to agricultural, horticultural or agricultural and horticultural use, it shall be subject to additional taxes, in this section called roll-back taxes, in the current tax year in which it is disqualified and in those years of the 4 immediately preceding tax years in which the land was so valued, assessed and taxed, but roll-back taxes shall not apply unless the amount of those taxes as computed under this section, exceeds the amount, if any, imposed

under section 12 and, in that case, the land shall not be subject to the conveyance tax imposed under said section 12. For each tax year, the roll-back tax shall be an amount equal to the difference, if any, between the taxes paid or payable for that tax year in accordance with this chapter and the taxes that would have been paid or payable in that tax year had the land been valued, assessed and taxed without regard to those provisions.

SECTION 30. Said section 13 of said chapter 61A, as so appearing, is hereby further amended by adding the following 4 paragraphs:-

Roll-back taxes will be subject to a simple interest rate of 5 per cent per annum. Land which is valued, assessed and taxed under this chapter as of July 1, 2006 shall be exempt from any interest if it remains in the same ownership as it was on that date or under the ownership of the original owner's spouse, parent, grandparent, child, grandchild, brother, sister or surviving spouse of any deceased such relative.

If the board of assessors determines that the total amount of roll-back taxes to be assessed under this section, before the addition of any interest, as provided for in the preceding paragraph, would be less than \$10, no tax shall be assessed.

No roll-back tax imposed by this section will be assessed on land that meets the definition of forest land under section 1 of chapter 61 or recreational land under section 1 of chapter 61B.

Land retained as open space as required for the mitigation of development shall be subject to the roll-back taxes imposed by this section.

SECTION 31. Said chapter 61A is hereby further amended by striking out section 14, as so appearing, and inserting in place thereof the following section:-

Section 14. Land taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use while so taxed or within 1 year after that time unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use.

The discontinuance of forest certification shall not, in itself, for the purposes of this section, be considered a conversion. Specific use of land for a residence for the owner, the owner's spouse or a parent, grandparent, child, grandchild, or brother or sister of the owner, or surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full-time in the forest use of land, shall not be a conversion for the purposes of this section, and a certificate of the board of assessors, recorded with the registry of deeds, shall conclusively establish that particular use.

Any notice of intent to sell for other use shall be accompanied by a statement of intent to sell, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the landowner.

Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter, and which shall be a bona fide offer as described below.

Any notice of intent to sell for other use shall also be accompanied by any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under this chapter, but sold or to be sold contemporaneously with the proposed sale.

For the purposes of this chapter, a bona fide offer to purchase shall mean a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed.

Any notice of intent to convert to other use shall be accompanied by a statement of intent to convert, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, the name, address and telephone number of the landowner and the landowner's attorney, if any.

The notice of intent to sell or convert shall be sent by the landowner by certified mail or hand delivered to the mayor and city council of a city, or board of selectmen of a town, and in the case of either a city or a town, to its board of assessors, to its planning board and conservation commission, if any, and to the state forester.

A notarized affidavit that the landowner has mailed or delivered a notice of intent to sell or convert shall be conclusive evidence that the landowner has mailed the notice in the manner and at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to which it relates.

The notice of intent to sell or convert shall be considered to have been duly mailed if addressed to the mayor and city council or board of selectmen in care of the city or town clerk; to the planning board and conservation commission if addressed to them directly; to the state forester if addressed to

the commissioner of the department of conservation and recreation; and to the assessors if addressed to them directly.

If the notice of intent to sell or convert does not contain all of the material described above, then the town or city, within 30 days after receipt, shall notify the landowner in writing that notice is insufficient and does not comply.

For a period of 120 days after the day following the latest date of deposit in the United States mail of any notice which complies with this section, the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the land.

In the case of intended or determined conversion not involving sale, the municipality shall have an option to purchase the land at full and fair market value to be determined by an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee, the original appraisal to be completed and delivered to the landowner within 30 days after the notice of conversion to the municipality. In the event that the landowner is dissatisfied with the original appraisal, the landowner may, at the landowner's expense, contract for a second appraisal, to be completed within 60 days after the delivery of the notice to convert. If, after completion of the second appraisal, the parties cannot agree on a consideration, the parties will contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne equally by both parties. The third appraisal shall be delivered to both parties within 90 days after the notice of conversion to the municipality and shall be the final determination of consideration. Upon agreement of a consideration, the city or town shall then have 120 days to exercise its option. During the appraisal process, the landowner may revoke the intent to convert at any time and with no recourse to either party.

The option may be exercised only after a public hearing followed by written notice signed by the mayor or board of selectmen, mailed to the landowner by certified mail at the address that is specified in the notice of intent. Notice of public hearing shall be given in accordance with section 23B of chapter 39.

The notice of exercise shall also be recorded at the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice to the landowner of the city or town's election to exercise its option shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the landowner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the

contract or agreement, endorsed by the landowner, is returned by certified mail to the mayor or board of selectmen, or upon expiration of any extended period that the landowner has agreed to in writing, whichever is later.

At the public hearing or a further public hearing, the city or town may assign its option to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions under the terms and conditions that the mayor or board of selectmen may consider appropriate. Notice of public hearing shall be given in accordance with section 23B of chapter 39.

The assignment shall be for the purpose of maintaining no less than 70 per cent of the land in use as forest land as defined in section 1, as agricultural and horticultural land as defined in sections 1 and 2 of chapter 61A or as recreation land as defined in section 1 of chapter 61B, and in no case shall the assignee develop a greater proportion of the land than was proposed by the developer whose offer gave rise to the assignment. All land other than land that is to be developed shall then be bound by a permanent deed restriction that meets the requirements of chapter 184.

If the first refusal option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions as provided in this section, the mayor or board of selectmen shall provide written notice of assignment to the landowner.

The notice of assignment shall state the name and address of the organization or agency of the commonwealth which will exercise the option in addition to the terms and conditions of the assignment. The notice of assignment shall be recorded with the registry of deeds.

Failure to record either the notice of exercise or the notice of assignment within the 120 day period shall be conclusive evidence that the city or town has not exercised its option.

If the option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions, the option may be exercised by the assignee only by written notice to the landowner signed by the assignee, mailed to the landowner by certified mail at the address that is specified in the notice of intent. The notice of exercise shall also be recorded with the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice of exercise to the landowner shall be accompanied by a proposed purchase and sale contract or other agreement between the assignee and landowner which, if executed, shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended period the landowner has

agreed to in writing, from the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the assignee.

During the 120 day period, the city or town or its assignees, shall have the right, at reasonable times and upon reasonable notice, to enter upon the land for the purpose of surveying and inspecting the land, including, but not limited to, soil testing for purposes of Title V and the taking of water samples.

The city or town or its assignee shall have all rights assigned to the buyer in the purchase and sale agreement contained in the notice of intent.

If the city or town elects not to exercise the option, and not to assign its right to exercise the option, the city or town shall send written notice of nonexercise, signed by the mayor or board of selectmen, to the landowner by certified mail at the address that is specified in the notice of intent. The notice of nonexercise shall contain the name of the owner of record of the land and description of the premises adequate for identification of them and shall be recorded with the registry of deeds.

No sale or conversion of the land shall be consummated until the option period has expired or the notice of nonexercise has been recorded with the registry of deeds, and no sale of the land shall be consummated if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell except as provided in this section.

This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the sale to the parties in the manner described in this section for notice of intent to sell or convert, and the giving of notice may be established by an affidavit as described in this section.

SECTION 32. Section 16 of said chapter 61A, as so appearing, is hereby amended by inserting after the word "land", in line 9, the following words:-  
for the previous 5 years.

SECTION 33. Section 18 of said chapter 61A, as so appearing, is hereby amended by striking out, in lines 6 to 7, inclusive, the words "and interest on account of such suspended special assessments or betterment assessments".

SECTION 34. Section 18 of said chapter 61A, as so appearing, is hereby further amended by striking out the third sentence.

SECTION 35. Said section 18 of said chapter 61A, as so appearing, is hereby further amended by striking out, in lines 14, 19 and 22, the words "including interest".

SECTION 36. Said section 18 of said chapter 61A, as so appearing, is hereby further amended by adding the following paragraph:-

Payment of the assessment and interest on it shall be made in accordance with section 13 of chapter 80, but any interest shall be computed from the date of the change in use.

SECTION 37. Section 19 of said chapter 61A, as so appearing, is hereby amended by striking out, in line 9, the word "sixty" and inserting in place thereof the following figure:- 30.

SECTION 38. Section 1 of chapter 61B of the General Laws, as so appearing, is hereby amended by striking out, in line 3, the words "landscaped condition" and inserting in place thereof the following words:- landscaped or pasture condition or in a managed forest condition under a certified forest management plan approved by and subject to procedures established by the state forester.

SECTION 39. Said section 1 of said chapter 61B, as so appearing, is hereby further amended by striking out the words "and target shooting", in line 17, and inserting in place thereof the following words:- , target shooting and commercial horseback riding and equine boarding.

SECTION 40. Said chapter 61B is hereby further amended by inserting after section 2 the following section:-

Section 2A. In a city or town that accepts this section, the rate of tax applicable to recreational land shall be the rate determined to be applicable to class two, open space.

SECTION 41. Section 4 of said chapter 61B, as appearing in the 2004 Official Edition, is hereby amended by striking out, in lines 2 and 3, the words "December thirty-first" and inserting in place thereof the following words:- June thirtieth.

SECTION 42. Section 6 of said chapter 61B, as so appearing, is hereby amended by adding the following paragraph:-

All recording fees paid under this chapter whether for statements of liens, certificates, releases or otherwise shall be borne by the owner of record of the land.

SECTION 43. Section 7 of said chapter 61B, as so appearing, is hereby amended by striking out the fourth sentence and inserting in place thereof the following 6 sentences:- The conveyance tax shall be due and payable by the grantor at the time of transfer of the property by deed or other instrument of conveyance and shall be payable to the tax collector of the city or town in which the property is entered upon the tax list. In the case of taking by eminent domain, the value of the property taken shall be determined in accordance with chapter 79, and the amount of conveyance tax, if any, shall be

added as an added value. If there is filed with the board of assessors an affidavit by the purchaser that the land is being purchased for recreational use, no conveyance tax shall be payable by the seller by reason of the sale, but if the land is not continued in that use for at least 5 consecutive years, the purchaser shall be liable for any conveyance tax that would have been payable on the sale as a sale for other use. The conveyance tax shall be assessed only on the portion of land whose use has changed. Notwithstanding the foregoing provisions, no conveyance tax shall be assessed if the land involved, or a lesser interest in the land, is acquired for a natural resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold for or converted to commercial, residential, or industrial use within 5 years of acquisition by a nonprofit conservation organization, the conveyance tax shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had such transaction been subject to a conveyance tax. The conveyance tax shall be assessed only on the portion of land whose use has changed.

SECTION 44. The second paragraph of said section 7 of said chapter 61B, as so appearing, is hereby amended by inserting before the first sentence the following sentence:- Except with respect to eminent domain takings, this section shall not apply to the following: mortgage deeds; deeds to or by the city or town in which the land is located; deeds which correct, modify, supplement or confirm a deed previously recorded; deeds between husband and wife and parent and child when no consideration is received; tax deeds; deeds releasing any property which is a security for a debt or other obligation; deeds for division of property between owners without monetary consideration; foreclosures of mortgages and conveyances by the foreclosing parties; deeds made pursuant to a merger of a corporation or by a subsidiary corporation to a parent corporation for no consideration other than cancellation and surrender of capital stock of the subsidiary which do not change beneficial ownership; and property transferred by devise or other as a result of death.

SECTION 45. Said section 7 of said chapter 61B, as so appearing, is hereby further amended by adding the following paragraph:-

Notwithstanding this section, no conveyance tax imposed by this section will be assessed on land that meets the definition of forest land under section 1 of chapter 61 or the definition of agricultural land under sections 1 and 3 of chapter 61A or the definition of horticultural land under sections 2 and 3 of chapter 61A.

SECTION 46. Section 8 of said chapter 61B, as so appearing, is hereby amended by striking out the first and second sentences and inserting in place thereof the following 3 sentences:- Whenever land which is valued, assessed and taxed under this chapter no longer meets the definition of recreational use, it shall be subject to additional taxes, in this section called roll-back taxes, in the current tax year in which it is disqualified and in each of the 4 immediately preceding tax years in which the land was so valued, assessed and taxed, but the roll-back taxes shall not apply unless the amount of the taxes, as computed under this section, exceeds the amount, if any, imposed under section 7 and, in that case, the land shall not be subject to the conveyance tax imposed under said section 7. For each tax year, the roll-back tax shall be equal to the difference, if any, between the taxes paid or payable for that tax year in accordance with this chapter and the taxes that would have been paid or payable had the land been valued, assessed and taxed without regard to these provisions. Notwithstanding the foregoing provisions, no roll-back taxes shall be assessed if the land involved, or a lesser interest in the land, is acquired for a natural resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold or converted to commercial, residential, or industrial use within 5 years after acquisition by a nonprofit conservation organization, roll-back taxes shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had the transaction been subject to a roll-back tax.

SECTION 47. Said section 8 of said chapter 61B, as so appearing, is hereby further amended by striking out the last paragraph and inserting in place thereof the following 3 paragraphs:-

Interest on roll-back taxes shall be payable and shall be computed as simple interest at 5 per cent per annum. If the board of assessors determines that the total amount of the roll-back taxes to be assessed under this section, before the addition of any interest as provided for in the preceding paragraph, would be less than \$10, no tax shall be assessed.

No roll-back tax imposed by this section will be assessed on land that meets the definition of forest land under section 1 of chapter 61, agricultural land under sections 1 and 3 of chapter 61A, or horticultural land under sections 2 and 3 of chapter 61A.

Land retained as open space as required for the mitigation of a development shall be subject to the roll-back taxes imposed by this section.

SECTION 48. Said chapter 61B is hereby further amended by striking out section 9, as so appearing, and inserting in place thereof the following section:-

Section 9. Land taxed under this chapter shall not be sold for, or converted to, residential, industrial or commercial use while so taxed or within 1 year after that time unless the city or town in which the land is located has been notified of the intent to sell for, or to convert to, that other use.

The discontinuance of forest certification shall not, in itself, for the purposes of this section, be considered a conversion. Specific use of land for a residence for the owner, the owner's spouse or a parent, grandparent, child, grandchild, or brother or sister of the owner, or surviving husband or wife of any deceased such relative, or for living quarters for any persons actively employed full-time in the forest use of such land, shall not be a conversion for the purposes of this section, and a certificate of the board of assessors, recorded with the registry of deeds, shall conclusively establish that particular use.

Any notice of intent to sell for such other use shall be accompanied by a statement of intent to sell, a statement of proposed use of the land, the location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, and the name, address and telephone number of the landowner.

Any notice of intent to sell for other use shall be accompanied by a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited to only the property classified under this chapter, and which shall be a bona fide offer as described below.

Any notice of intent to sell for other use shall also be accompanied by any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under this chapter, but sold or to be sold contemporaneously with the proposed sale.

For the purposes of this chapter, a bona fide offer to purchase shall mean a good faith offer, not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed.

Any notice of intent to convert to other use shall be accompanied by a statement of intent to convert, a statement of proposed use of such land, the

location and acreage of land as shown on a map drawn at the scale of the assessors map in the city or town in which the land is situated, the name, address and telephone number of the landowner and the landowner's attorney, if any.

The notice of intent to sell or convert shall be sent by the landowner by certified mail or hand delivered to the mayor and city council of a city, or board of selectmen of a town, and in the case of either a city or a town, to its board of assessors, to its planning board and conservation commission, if any, and to the state forester.

A notarized affidavit that the landowner has mailed or delivered a notice of intent to sell or convert shall be conclusive evidence that the landowner has mailed the notice in the manner and at the time specified. Each affidavit shall have attached to it a copy of the notice of intent to which it relates.

The notice of intent to sell or convert shall be considered to have been duly mailed if addressed to the mayor and city council or board of selectmen in care of the city or town clerk; to the planning board and conservation commission if addressed to them directly; to the state forester if addressed to the commissioner of the department of conservation and recreation and to the assessors if addressed to them directly.

If the notice of intent to sell or convert does not contain all of the material as described above, then the town or city, within 30 days after receipt, shall notify the landowner in writing that notice is insufficient and does not comply.

For a period of 120 days after the day following the latest date of deposit in the United States mail of any notice which complies with this section, the city or town shall have, in the case of intended sale, a first refusal option to meet a bona fide offer to purchase the land.

In the case of intended or determined conversion not involving sale, the municipality shall have an option to purchase the land at full and fair market value to be determined by an impartial appraisal performed by a certified appraiser hired at the expense of the municipality or its assignee, the original appraisal to be completed and delivered to the landowner within 30 days after the notice of conversion to the municipality. In the event that the landowner is dissatisfied with the original appraisal, the landowner may, at the landowner's expense contract for a second appraisal, to be completed within 60 days after the delivery of the notice to convert. If, after completion of the second appraisal, the parties cannot agree on a consideration, the parties will contract with a mutually acceptable appraiser for a third appraisal whose cost will be borne equally by both parties. The third appraisal shall be delivered to both parties within 90 days after the notice of conversion to the

municipality and shall be the final determination of consideration. Upon agreement of a consideration, the city or town shall then have 120 days to exercise its option. During the appraisal process, the landowner may revoke the intent to convert at any time and with no recourse to either party.

The option may be exercised only after a public hearing followed by written notice signed by the mayor or board of selectmen, mailed to the landowner by certified mail at the address that is specified in the notice of intent. Notice of the public hearing shall be given in accordance with section 23B of chapter 39.

The notice of exercise shall also be recorded at the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice to the landowner of the city or town's election to exercise its option shall be accompanied by a proposed purchase and sale contract or other agreement between the city or town and the landowner which, if executed, shall be fulfilled within a period of not more than 90 days after the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the mayor or board of selectmen, or upon expiration of any extended period that the landowner has agreed to in writing, whichever is later.

At the public hearing or a further public hearing, the city or town may assign its option to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions under the terms and conditions that the mayor or board of selectmen may consider appropriate. Notice of the public hearing shall be given in accordance with section 23B of chapter 39.

The assignment shall be for the purpose of maintaining no less than 70 per cent of the land in use as forest land as defined in section 1 of this chapter, as agricultural and horticultural land as defined in sections 1 and 2 of chapter 61A or as recreation land as defined in section 1 of chapter 61B, and in no case shall the assignee develop a greater proportion of the land than was proposed by the developer whose offer gave rise to the assignment. All land other than land that is to be developed shall then be bound by a permanent deed restriction that meets the requirements of chapter 184.

If the first refusal option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions as provided in this section, the mayor or board of selectmen shall provide written notice of assignment to the landowner.

The notice of assignment shall state the name and address of the organization or agency of the commonwealth which will exercise the option in

addition to the terms and conditions of the assignment. The notice of assignment shall be recorded with the registry of deeds.

Failure to record either the notice of exercise or the notice of assignment within the 120 day period shall be conclusive evidence that the city or town has not exercised its option.

If the option has been assigned to a nonprofit conservation organization or to the commonwealth or any of its political subdivisions, the option may be exercised by the assignee only by written notice to the landowner signed by the assignee, mailed to the landowner by certified mail at the address that is specified in the notice of intent.

The notice of exercise shall also be recorded with the registry of deeds and shall contain the name of the record owner of the land and description of the premises adequate for identification of them.

The notice of exercise to the landowner shall be accompanied by a proposed purchase and sale contract or other agreement between the assignee and landowner which, if executed, shall be fulfilled within a period of not more than 90 days, or upon expiration of any extended period that the landowner has agreed to in writing, from the date the contract or agreement, endorsed by the landowner, is returned by certified mail to the assignee.

During the 120 day period, the city or town or its assignees, shall have the right, at reasonable times and upon reasonable notice, to enter upon the land for the purpose of surveying and inspecting said land, including but not limited to soil testing for purposes of Title V and the taking of water samples.

The city or town or its assignee shall have all rights assigned to the buyer in the purchase and sales agreement contained in the notice of intent.

If the city or town elects not to exercise the option, and not to assign its right to exercise the option, the city or town shall send written notice of nonexercise signed by the mayor or board of selectmen to the landowner by certified mail at the address that is specified in the notice of intent. The notice of nonexercise shall contain the name of the owner of record of the land and description of the premises adequate for identification of them, and shall be recorded with the registry of deeds.

No sale or conversion of the land shall be consummated until the option period has expired or the notice of nonexercise has been recorded with the registry of deeds, and no sale of the land shall be consummated if the terms of the sale differ in any material way from the terms of the purchase and sale agreement which accompanied the bona fide offer to purchase as described in the notice of intent to sell except as provided herein.

This section shall not apply to a mortgage foreclosure sale, but the holder of a mortgage shall, at least 90 days before a foreclosure sale, send written notice of the time and place of the sale to the parties in the manner described in this section for notice of intent to sell or convert, and the giving of that notice may be established by an affidavit as described in this section.

SECTION 49. Section 11 of said chapter 61B, as so appearing, is hereby amended by inserting after the word "land", in line 9, the following words:- for the previous 5 years.

SECTION 50. Section 13 of said chapter 61B, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following 6 sentences:- This assessment shall, however, upon application, be suspended during the time the land is in classified recreational use and shall become due and payable as of the date when the use of the land is changed. Payment of the assessment and interest on it shall be made in accordance with section 13 of chapter 80, but the interest shall be computed from the date of the change in use. If only a portion of a tract of land which benefits from a suspension of payment is changed from that use, the assessment shall become due and payable as of the date when the use was changed only to the extent of and in the proportion that the frontage of that portion bears to the street frontage of the entire tract of land which originally benefited from a suspension of payment. Upon receipt of full payment of a portion of a suspended assessment, the tax collector shall dissolve the lien for the assessment insofar as it affects the portion of the land changed from recreational use. The lien for the portion of the original assessment which remains unpaid shall continue and remain in full force and effect until dissolved in accordance with law. A request for this release shall be made in writing to the tax collector and shall be accompanied by a plan and other information that is required in the case of a request for a division of an assessment under section 10.

SECTION 51. Land classified as forest land under chapter 61 of the General Laws before the first tax filing date after the effective date of this act shall be exempt from section 6 of said chapter 61, inserted by section 16 of this act, until that land has been transferred to another owner.

House of Representatives, December 14, 2006.

Passed to be enacted,



Acting  
Speaker.

In Senate, December 14, 2006.

Passed to be enacted,



Acting  
President.

12-22, 2006.

Approved, at 1:46 PM



Governor.

## 2007 LEGISLATION

### CHAPTER 67 – FISCAL YEAR 2008 STATE BUDGET

*Effective July 1, 2007*

**§61. Education Reform Waivers.** Annual provision that permits cities, towns and regional school districts to apply for various adjustments in their fiscal year 2008 minimum required contributions to schools under the Education Reform Act.

Municipalities may seek adjustments if (1) non-recurring revenues were used to support fiscal year 2007 operating budgets and those revenues are not available in fiscal year 2008, (2) they have extraordinary non-school related expenses in fiscal year 2008, or (3) their fiscal year 2008 municipal revenue growth factor is at least 1.5 times the statewide average and is deemed to be excessive.

Regional school districts that used non-recurring revenues in fiscal year 2007 that are unavailable for fiscal year 2008 must seek waivers if a majority of the selectmen in a town, the city council in a Plan E city or the mayor in all other cities in a majority of the member municipalities requests them. If a regional school budget has already been approved by the members and a waiver is granted of any member's minimum required local contribution to the district, the use of that waiver must be approved by the selectmen, the city council in a Plan E city or the mayor in all other cities of a majority of the member municipalities. Requests for waivers must be made by October 1, 2007.

**See IGR 07-302, *Fiscal Year 2008 Waivers to Education Reform Spending Requirements and Minimum Required Local Contributions*, issued July 2007.**

# Chapter 61



## The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND AND SEVEN

### AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2008 FOR THE MAINTENANCE OF THE DEPARTMENTS, BOARDS, COMMISSIONS, INSTITUTIONS AND CERTAIN ACTIVITIES OF THE COMMONWEALTH, FOR INTEREST, SINKING FUND AND SERIAL BOND REQUIREMENTS AND FOR CERTAIN PERMANENT IMPROVEMENTS

*Whereas, the deferred operation of this act would tend to defeat its purpose, which is immediately to make appropriations for the fiscal year beginning July 1, 2007, and to make certain changes in law, each of which is immediately necessary or appropriate to effectuate said appropriations or for other important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.*

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

SECTION 1. To provide for the maintenance of the several departments, boards, commissions and institutions and other services, and for certain permanent improvements and to meet certain requirements of law, the sums set forth in sections 2, 2B, 2D and 3, for the several purposes and subject to the conditions specified in sections 2, 2B, 2D and 3, are hereby appropriated from the General Fund unless specifically designated otherwise, subject to the provisions of law regulating the disbursement of public funds and the approval thereof for the fiscal year ending June 30, 2008. All sums appropriated under this act, including supplemental and deficiency budgets, shall be expended in a manner reflecting and encouraging a policy of nondiscrimination and equal opportunity for members of minority groups, women and handicapped persons. All officials and employees of an agency, board, department, commission or division receiving monies under this act shall take affirmative steps to ensure equality of opportunity in the internal affairs of state government, as well as in their relations with the public, including those persons and organizations doing business with the commonwealth. Each agency, board, department, commission or division, in spending appropriated sums and discharging its statutory responsibilities, shall adopt measures to ensure equal opportunity in the areas of hiring, promotion, demotion or transfer, recruitment, layoff or termination, rates of compensation, in-service or apprenticeship training programs and all terms and conditions of employment.

General Fund to the Commonwealth Covenant Fund established in section 35EE of chapter 10 of the General Laws.

**SECTION 65.** Notwithstanding any general or special law to the contrary, during fiscal year 2008 the comptroller shall not transfer 0.5 per cent of the total revenue from taxes in the preceding fiscal year to the Commonwealth Stabilization Fund as otherwise required pursuant to clause (a) of section 5C of chapter 29 of the General Laws.

**SECTION 66.** Notwithstanding any general or special law to the contrary, the amounts transferred pursuant to subdivision (1) of section 22C of chapter 32 of the General Laws shall be made available for the Commonwealth's Pension Liability Fund established pursuant to section 22 of said chapter 32. The amounts transferred pursuant to said paragraph (1) of said section 22C of said chapter 32 shall meet the commonwealth's obligations under said section 22C of said chapter 32, including retirement benefits payable by the state employees' and the state teachers' retirement systems, for the costs associated with a 3 per cent cost-of-living adjustment pursuant to section 102 of said chapter 32, the reimbursement of local retirement systems for previously authorized cost-of-living adjustments pursuant to said section 102 of said chapter 32, and for the costs of increased survivor benefits pursuant to chapter 389 of the acts of 1984. The state board of retirement and each city, town, county and district shall verify these costs, subject to the rules adopted by the treasurer. The treasurer may make payments upon a transfer of funds to reimburse certain cities and towns for pensions to retired teachers, including any other obligations which the commonwealth has assumed on behalf of any retirement system other than the state employees' or state teachers' retirement systems and also including the commonwealth's share of the amounts to be transferred pursuant to section 22B of said chapter 32 and the amounts to be transferred pursuant to clause (a) of the last paragraph of section 21 of chapter 138 of the General Laws. All payments for the purposes described in this section shall be made only pursuant to distribution of monies from the fund, and any distribution and the payments for which distributions are required shall be detailed in a written report filed quarterly by the commissioner of administration with the house and senate committees on ways and means and the joint committee on public service in advance of such distribution. Distributions shall not be made in advance of the date on which a payment is actually to be made. The state board of retirement may expend an amount for the purposes of the board of higher education's optional retirement program pursuant to section 40 of chapter 15A of the General Laws. To the extent that the amount transferred pursuant to said paragraph (1) of said section 22C of said chapter 32 exceeds the amount necessary to adequately fund the annual pension obligations, the excess amount shall be credited to the Pension Reserves Investment Trust Fund of the commonwealth for the purpose of reducing the unfunded pension liability of the commonwealth.

**SECTION 67.** (a) Notwithstanding any general or special law to the contrary, upon the request of the board of selectmen in a town, the city council in a plan E city or the mayor in any other city, the department of revenue may recalculate the minimum required local contribution, as defined in section 2 of chapter 70 of the General Laws, in the fiscal year ending June 30, 2008. Based on the criteria established in this section, the department

shall recalculate the minimum required local contribution for a municipality's local and regional schools and shall certify the amounts calculated to the department of education.

(b) A city or town that used qualifying revenue amounts in a fiscal year which will not be available for use in the next fiscal year, or that will be required to use revenues for extraordinary non school-related expenses for which it did not have to use revenues in the preceding fiscal year, or that has an excessive certified municipal revenue growth factor which is also greater than or equal to 1.5 times the state average municipal revenue growth factor, may appeal to the department of revenue on or before October 1, 2007 for an adjustment of its minimum required local contribution and net school spending.

(c) If a claim is determined to be valid, the department of revenue may reduce proportionately the minimum required local contribution amount based on the amount of shortfall in revenue or based on the amount of increase in extraordinary expenditures in the current fiscal year, but no adjustment to the minimum required local contribution on account of an extraordinary expense in the budget for the fiscal year ending on June 30, 2008 shall affect the calculation of the minimum required local contribution in subsequent fiscal years. Qualifying revenue amounts shall include, but not be limited to, extraordinary amounts of free cash, overlay surplus and other available funds.

(d) If, upon submission of adequate documentation, the department of revenue determines that the municipality's claim regarding an excessive municipal revenue growth factor is valid, the department shall recalculate the municipal revenue growth factor and the department of education shall use the revised growth factor to calculate the preliminary local contribution, the minimum required local contribution and any other factor that directly or indirectly uses the municipal revenue growth factor. Any relief granted as a result of an excessive municipal revenue growth factor shall be a permanent reduction in the minimum required local contribution.

(e) The board of selectmen in a town, the city council in a plan E city, the mayor in any other city, or a majority of the member municipalities of a regional school district, which used qualifying revenue amounts in a fiscal year that will not be available for use in the next fiscal year, may appeal to the department of revenue not later than October 1, 2007 for an adjustment to its net school spending requirement. If the claim is determined to be valid, the department of revenue shall reduce the net school spending requirement based on the amount of the shortfall in revenue and reduce the minimum required local contribution of member municipalities accordingly. Qualifying revenue amounts shall include, but not be limited to, extraordinary amounts of excess and deficiency, surplus and uncommitted reserves.

(f) If the regional school budget has already been adopted by two-thirds of the member municipalities then, upon a majority vote of the member municipalities, the regional school committee shall adjust the assessments of the member municipalities in accordance with the reduction in minimum required local contributions approved by the department of revenue or the department of education in accordance with this section.

(g) Notwithstanding clause (14) of section 3 of chapter 214 of the General Laws or any other general or special law to the contrary, the amounts so determined pursuant to this section shall be the minimum required local contribution described in chapter 70 of the General Laws. The department of revenue and the department of education shall notify the house and senate committees on ways and means and the joint committee on

education of the amount of any reduction in the minimum required local contribution amount.

(h) If a city or town has an approved budget that exceeds the recalculated minimum required local contribution and net school spending amounts for its local school system or its recalculated minimum required local contribution to its regional school districts as provided by this section, the local appropriating authority shall determine the extent to which the community shall avail itself of any relief authorized pursuant to this section.

(i) The amount of financial assistance due from the commonwealth in fiscal year 2008 pursuant to chapter 70 of the General Laws or any other law shall not be changed on account of any redetermination of the minimum required local contribution pursuant to this section.

(j) The department of revenue and the department of education shall issue guidelines for their respective duties pursuant to this section.

**SECTION 68.** Notwithstanding any general or special law to the contrary, the executive office of health and human services may, pursuant to section 16 of chapter 6A of the General Laws, acting in its capacity as the single state agency pursuant to Title XIX of the Social Security Act and as the principal agency for all of the agencies within the executive office and other federally assisted programs administered by the executive office, enter into interdepartmental services agreements with the University of Massachusetts medical school to perform activities that the secretary, in consultation with the comptroller, determines are appropriate and within the scope of the proper administration of Title XIX and other federal funding provisions to support the programs and activities of the executive office. These activities shall include: (1) providing administrative services, including, but not limited to, activities such as providing the medical expertise to support or administer utilization management activities, determining eligibility based on disability, supporting case management activities and similar initiatives; (2) providing consulting services related to quality assurance, program evaluation and development, integrity and soundness and project management; and (3) providing activities and services for the purpose of pursuing federal reimbursement or avoiding costs, third party liability and recouping payments to third parties. Federal reimbursement for any expenditures made by the University of Massachusetts medical school relative to federally reimbursable services the university provides under these interdepartmental service agreements or other contracts with the executive office of health and human services shall be distributed to the university, and recorded in the state accounting system. The secretary of health and human services may negotiate contingency fees for activities and services related to the purpose of pursuing federal reimbursement or avoiding costs, and the comptroller shall certify these fees and pay them upon the receipt of this revenue, reimbursement or demonstration of costs avoided. Contracts for contingency fees shall not extend longer than 3 years, and shall not be renewed without prior review and approval from the executive office of administration and finance. The secretary shall not pay contingency fees in excess of \$40,000,000 for state fiscal year 2008. The secretary of health and human services shall submit to the secretary of administration and finance and the senate and house committees on ways and means a quarterly report detailing the amounts of the agreements, the ongoing and new

## **CHAPTER 67 – MUNICIPAL GROUP INSURANCE COVERAGE**

*Effective July 25, 2007*

Amends provisions of G.L. c. 32, 32A and 32 B to create a local option for local governmental employers to obtain health insurance coverage for employees, retirees and their dependents by joining the state Group Insurance Commission (GIC) pool. The option addresses only health insurance benefits, not life, dental, or vision insurance. Eligible local governmental employers are cities, towns, districts, counties, regional councils of government (RCGs) and regional planning agencies (RPAs), educational collaboratives and charter schools.

To join the GIC, a city, town, district or county must accept G.L. c. 32B, §19 and enter into a written agreement with a public employee committee made up of a retiree and a representative from each of its labor unions. The retiree has 10% voting rights and each union has weighted voting rights based on the proportion of its members. A weighted vote of 70% of the committee is required to join. If the employer is non-unionized, the decision to join is made by the city, town or district chief executive officer, educational collaborative or charter school board of trustees, RCG or RPA governing body.

Once adopted locally through coalition bargaining, employers must accept the health insurance options and plan design set by the GIC, but the percentage of health insurance costs paid by employees or retirees will still be determined at the local level. The premium contribution ratio for each type of plan (Medicare, PPO, HMO, Indemnity) must be included in the written agreement with the public employee committee. The premium contribution rate for non-union charter schools and educational collaboratives, RCGs and RPAs is the same rate set by the Legislature for state employees.

Employers must notify the GIC by October 1 of any year in order to have GIC health benefits effective July 1 of the following year. Employers that choose to purchase health insurance through the GIC must do so in three or six year periods. The written agreement with the public employee committee can establish the terms and conditions for withdrawal such as whether the decision will be made jointly by the employer and committee.

Employers will pay all costs associated with purchasing health insurance through the GIC, including payment to the state of an administrative fee, which cannot exceed 1% of premiums.

The GIC is expanded to include municipal representatives representing management and labor. Two new members are added immediately, with two more to be added after more than 45,000 municipal subscribers have enrolled.

### **Additional Information:**

GIC Website: <http://www.mass.gov/gic/municipalities/municipalities.htm>

Metropolitan Area Planning Council

Website: [http://www.mapc.org/regional\\_planning/health\\_care\\_action\\_center.html](http://www.mapc.org/regional_planning/health_care_action_center.html)

Chapter 67,

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Seven

AN ACT TO REDUCE THE RELIANCE ON PROPERTY TAXES THROUGH MUNICIPAL HEALTH CARE.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith affordable health insurance coverage for cities and towns, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

SECTION 1. To provide for certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations and to meet certain requirements of law, the sum set forth in this section is hereby appropriated from the General Fund unless specifically designated otherwise in this section for the several purposes and subject to the conditions specified in this section, and subject to the laws regulating the disbursement of public funds for the fiscal year ending June 30, 2008. This sum shall be in addition to any amounts previously appropriated and made available for the purposes of this item.

1108-5201 For the costs incurred by the group insurance commission associated with providing municipal health insurance coverage pursuant to section 19 of chapter 32B of the General Laws; provided, that the commission may expend revenues in an amount not to exceed \$1,000,000 from the revenue received from administrative fees associated with providing municipal health insurance coverage pursuant to section 19 of chapter 32B of the General Laws; and provided further, that notwithstanding any general or special law to the contrary, for the purpose of accommodating timing discrepancies between the receipt of revenues and related expenditures, the commission may incur expenses and the comptroller may certify for payment the amounts not to exceed the lower of this authorization or the most recent revenue estimate, as

reported in the state accounting system.....\$1,000,000

SECTION 2. Section 19A of chapter 32 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following paragraph:-

A retirement board in the case of a retiree may deduct the per cent contribution of health insurance premiums for all retired members receiving group life insurance, group accidental death and dismemberment insurance, group general or blanket hospital, surgical, medical, dental or other health insurance coverage under chapter 32B from the respective retiree pension check. In the event that the amount of a retiree's pension check is insufficient to accommodate the entire deduction and upon notice from the retirement board, the employer for whom the retiree last worked and from whom he is retired shall bill the retiree for the employee share of the premiums.

SECTION 3. Paragraph (b) of section 2 of chapter 32A of the General Laws, as so appearing, is hereby amended by adding the following sentence:- A person employed by a regional council of government established pursuant to section 20 of chapter 34B or a regional planning district or commission established pursuant to chapter 40B, a non-unionized education collaborative as defined by section 4E of chapter 40 or a commonwealth charter school as defined by section 89 of chapter 71 shall be an employee under chapter 32A and subject to the terms and conditions of said chapter 32A including, but not limited to, premium contribution ratios, in the event that the governing body of the regional council of government or the regional planning district or commission votes to accept that status and notifies the commission of the vote.

SECTION 3A. Said chapter 32A is hereby further amended by striking out section 3, as so appearing, and inserting in place thereof the following section:-

Section 3. There shall be established within the executive office of administration and finance, but not under its jurisdiction, a special unpaid commission, to be known as the group insurance commission, consisting of the commissioner of administration and finance, the commissioner of insurance, and 13 members to be appointed by the governor, 1 of whom shall be a retired state employee, 1 of whom shall be a health economist and at least 3 of whom shall be full-time state employees, 1 shall be a member of the Massachusetts Public Employees Council, #93, AFSCME, Massachusetts State Labor Council, AFL-CIO, 1 shall be a member of the Massachusetts State Employees Association, NAGE, and 1 shall be a member of Local 254, S.E.I.U., 1 of whom shall be a management representative appointed from a list of 3 representatives nominated by the Massachusetts Municipal Association and 1 of whom shall be a labor

representative appointed from a list of 3 representatives nominated by the president of the teachers' union with the greatest amount of active and retired members enrolled in commission health plans. In addition, upon the transfer of 45,000 subscribers from municipal governmental units to the group insurance commission pursuant to section 19 of chapter 32B, there shall be an additional management representative appointed by the governor from a list of 3 representatives nominated by the Massachusetts Municipal Association and an additional labor representative appointed by the governor from a list of 3 representatives of municipal public safety employees nominated by the president of the Massachusetts Chapter of the AFL-CIO. Whenever an organization nominates a list of representatives for appointment by the governor under this section, the organization may nominate additional candidates if the governor declines to appoint any of those originally nominated. Not more than 55 per cent of the appointive members of the commission shall be members of the same political party. No member appointed by the governor shall be an insurance agent, broker, employee or officer of an insurance company. Upon the expiration of the term of office of an appointive member, his successor shall be appointed in like manner for a term of 3 years. The commission shall be provided with suitable offices and may, subject to appropriation, incur expenses and appoint an executive director who shall be the executive and administrative head of the commission and who shall not be subject to chapter 31. The commission may authorize the executive director to appoint such employees as may be necessary to administer this chapter. There shall be paid by the commonwealth to each appointive member of the commission the necessary expenses actually incurred in the discharge of his official duties. The commission shall adopt such reasonable rules and regulations as may be necessary for the administration of this chapter and shall make an annual report to the governor and to the general court which shall include any modifications or amendments made to contracts executed under this chapter. The rules and regulations shall be in such form as to enable employees to understand the benefits available from the insurance program, including the cost thereof.

NO SECTION 3B.

SECTION 3C. Said chapter 32A is hereby further amended by inserting after section 3A the following section:-

Section 3B. This chapter shall become effective for a commonwealth charter school by a majority vote of its board of trustees and, for an education collaborative, by a majority vote of its board of directors.

SECTION 3D. Section 2 of said chapter 32B, as so appearing, is hereby amended by striking out, in line 5. the word "and".

SECTION 3E. Paragraph (a) of said section 2 of said chapter 32B, as so appearing, is hereby amended by inserting after the word "thereof", in line 5, the following words:- and for the purposes of this chapter if a collective bargaining agreement is in place, as to a commonwealth charter school as defined by section 89 of chapter 71, the board of trustees and; as to an education collaborative, as defined by section 4E of chapter 40, the board of directions.

SECTION 4. Chapter 32B of the General Laws is hereby amended by striking out section 19, as so appearing, and inserting in place thereof the following section:-

Section 19. (a) Notwithstanding any other provision of this chapter, the appropriate public authority of a political subdivision which has undertaken to provide health insurance coverage to its subscribers by acceptance of any other section of this chapter may instead elect to provide health insurance coverage to all its subscribers pursuant to this section by entering into contracts with health insurance carriers or by transferring its subscribers to the commission under subsection (e). For the purposes of this section, the term "subscribers" shall mean employees, retirees, surviving spouses and dependents of the political subdivision and may include employees, retirees, surviving spouses and dependents of a district who previously received health insurance benefits through the political subdivision accepting this section. This section shall take effect in a political subdivision upon its acceptance in the following manner: in a county, except Worcester county, by a vote of the county commissioners; in a city having Plan D or a Plan E charter, by majority vote of the city council and approval by the manager; in any other city, by majority vote of the city council and approval by the mayor; in a town, by vote of the board of selectmen; in a regional school district, by vote of the regional district school committee; and in all other districts, by vote of the registered voters of the district at a district meeting.

Acceptance of this section shall not take effect until a written agreement has been reached between the appropriate public authority and the public employee committee, but the written agreement may condition acceptance of this section upon the transferring of subscribers into the commission under subsection (e).

A written agreement to transfer subscribers to the commission under this section shall be the sole means by which the subscribers of a political subdivision may be transferred to commission coverage.

Notwithstanding subsection (c) of section 4B of chapter 4, the acceptance of this section may be revoked in the same manner it was accepted in accordance with all other subsections of section 4B of said chapter 4, subject to the

requirements of any written agreements as provided in this section and chapter 150E. The revocation of this section shall not take effect until a written agreement providing for revocation is reached between the appropriate public authority and the employee committee established herein. Nothing in this section shall preclude an appropriate public authority from agreeing to establish a health and welfare trust fund under section 15.

Except as otherwise provided in subsection (e), a contract with a health insurance carrier shall be in conformity with an agreement reached by an appropriate public authority and a public employee committee. The election by the appropriate public authority may be renewed in conformity with any successor agreement reached with a public employee committee. The public employee committee shall include a representative of each collective bargaining unit with which the political subdivision negotiates under chapter 150E and a retiree representative. Either the public employee committee or the appropriate public authority may convene the initial meeting of the committee at any time upon 30 days notice. The retiree representative shall be designated by the Retired State, County and Municipal Employees Association. The retiree representative shall have a 10 per cent vote. The remaining 90 per cent vote shall be divided so that each collective bargaining unit represented on the public employee committee shall have a weighted vote equal to the proportion which the number of employees eligible for health insurance under this chapter employed in the bargaining unit he represents bears to the total number of employees eligible for health insurance in all bargaining units of the political subdivision. An agreement with the appropriate public authority shall be approved by 70 per cent of the weighted votes of the representatives on the public employee committee and shall be binding on all subscribers and their representatives. For the purposes of this section, a health insurance carrier shall include any insurance company organized pursuant to chapter 175, hospital service corporation organized pursuant to chapter 176A, medical service corporation organized pursuant to chapter 176B, health maintenance organization organized pursuant to chapter 176G, preferred provider organization organized pursuant to chapter 176I and, in the case of a political subdivision which is partially or fully self-insured with respect to health insurance coverage, any third party administrator selected by the political subdivision, which may include, but shall not be limited to, a health insurance carrier.

An agreement approved under this section shall be binding on all active and retired employees for whom health insurance coverage is being purchased, shall supersede any conflicting provision of a collective bargaining agreement and shall not be superseded in a statutory impasse proceeding under chapter

150E, but the agreement may include procedures for resolving an impasse in negotiations for a successor agreement. A dispute arising over the interpretation or application of the public employee committee agreement under this section may be submitted to binding arbitration under the labor arbitration provisions of the American Arbitration Association upon request of the public employee committee or the appropriate public authority, except as otherwise provided in subsection (f). A request shall be approved by 70 per cent of the weighted votes of the representatives on the public employee committee as set forth in this section or, where applicable, by a majority vote of the appropriate public authority. A political subdivision which elects to provide health insurance coverage to subscribers under this section shall be deemed in full compliance with this chapter regulating the procurement of health insurance. A political subdivision which elects to provide health insurance coverage under this section pursuant to an agreement approved by a public employee committee, may provide such coverage either as a single political subdivision or, under section 12, through joint purchase with other political subdivisions or, with multiple political subdivisions, through a risk-sharing pool, trust or health insurance carrier or third party administrator, or by making payments to a health and welfare trust fund to provide health insurance coverage under this section either as a single political subdivision or with multiple political subdivisions. The appropriate public authority may contract with a health insurance carrier for direct coverage of subscribers for whom the carrier's geographic service area provides appropriate access and coverage for other subscribers in accordance with subsection (d).

(b) Nothing in this section shall require, preclude or permit a change in any aspect of health insurance coverage for subscribers authorized by this section except where an agreement to provide for such change is reached by an appropriate public authority and a public employee committee in an agreement entered into or modified after the effective date of this subsection except as otherwise provided in subsection (e). In the absence of a successor agreement approved under this section, the prior agreement of the public employee committee and the appropriate public authority regarding the provision of health insurance shall remain in effect.

(c) Nothing in this section shall relieve a political subdivision from providing health insurance coverage to an employee, retiree, surviving spouse or dependent to whom it has an obligation to provide coverage under any other provision of this chapter.

(d) The agreement reached between an appropriate public authority and the public employee committee shall provide for those subscribers who, by reason of

residence or domicile, cannot be appropriately served within the service area of the health insurance carrier included in the agreement, subject to this subsection.

Coverage for subscribers under this subsection shall be pursuant to and in conformity with the agreement required by this section and shall conform to all requirements of this section. The agreement reached between an appropriate public authority and the public employee committee shall provide that a subscriber who for reasons of residency is not eligible for enrollment in any such plan offered by a political subdivision shall be covered under a plan offered under chapter 176I, if any such plan is provided for under the agreement, but a subscriber who lives 10 miles or more from the nearest primary care physician providing care under the plan shall have out-of-pocket payments and medical deductibles limited to the amount that he would have paid had he utilized the network of medical services of the plan offered under chapter 176I. If the agreement reached between the appropriate public authority and the public employee committee provides for only health maintenance organizations or other health insurance carriers that limit enrollment to a particular geographic area, then notwithstanding any general or special law to the contrary, health maintenance organizations or other health insurance carriers shall provide for the coverage of services provided or arranged for all subscribers who do not reside within the geographic service area by providing the same benefit schedule and premium contribution provided to subscribers residing within the carrier's geographic service area including, but not limited to, covered services, out-of-pocket payments and medical deductibles for all medical services provided for or arranged under the agreement.

(e) Where an agreement, either executed or modified, reached by an appropriate public authority and the public employee so provides, the appropriate public authority shall notify the commission that it will transfer all subscribers for whom it provides health insurance coverage to the commission. The notice shall be provided to the commission by the appropriate public authority not later than October 1 of each year and the transfer of subscribers to the commission shall take effect on the following July 1. On the effective date of the transfer, the health insurance of all subscribers, including elderly governmental retirees previously governed by section 10B of chapter 32A and retired municipal teachers previously governed by section 12 of chapter 32A, shall be provided through the commission for all purposes and governed under this section. As of the effective date and for the duration of this transfer, subscribers transferred to the commission's health insurance coverage shall receive group health insurance benefits determined exclusively

by the commission and the coverage shall not be subject to collective bargaining, except for contribution ratios which shall be determined by the written agreement.

Subscribers transferred to the commission who are eligible or become eligible for Medicare coverage shall transfer to Medicare coverage, as prescribed by the commission. In the event of transfer to Medicare, the political subdivision shall pay any Medicare part B premium penalty assessed by the federal government on retirees, spouses and dependents as a result of enrollment in Medicare part B at the time of transfer into the Medicare health benefits supplement plan. For each subscriber's premium and the political subdivision's share of that premium, the subscriber and the political subdivision shall furnish to the commission, in such form and content as the commission shall prescribe, all information the commission deems necessary to maintain subscribers' and covered dependents' health insurance coverage. The appropriate public authority of the political subdivision shall perform such administrative functions and process such information as the commission deems necessary to maintain those subscribers' health insurance coverage including, but not limited to, family and personnel status changes, and shall report all changes monthly to the commission. In the event that a political subdivision transfers subscribers to the commission under this section, subscribers may be withdrawn from commission coverage at either 3 or 6-year intervals from the date of transfer of subscribers to the commission, as determined by the written agreement which shall specify the withdrawal interval and withdrawal procedures. The written agreement may specify the procedures for resolving an impasse in negotiations over whether to withdraw from commission coverage and for determining health insurance coverage and contribution ratios for subscribers for the year following withdrawal from the commission. In the event that binding arbitration is included in the written agreement, the agreement shall provide that the dispute shall be submitted to arbitration and, if no method is provided of arbitration is provided in the agreement, then the dispute shall be administered by the American Arbitration Association under the procedures set forth in its Labor Arbitration Rules.

The decision and notice to withdraw shall be made by October 1 of the year prior to the effective date of withdrawal. All withdrawals shall be effective on July 1 following the political subdivision's notice to the commission. Except as otherwise provided in the written agreement, withdrawal from commission coverage shall revoke acceptance of this section and any written agreements related to the implementation of this section as of the effective date of withdrawal. In the event that the acceptance of this section is revoked, the appropriate public authority of the political subdivision shall

abide by all commission requirements for effectuating such withdrawal, including the notice requirements in this subsection. In the event a political subdivision withdraws from commission coverage under this section, such withdrawal shall be binding on all subscribers, including those subscribers who, prior to the transfer to the commission, received coverage from the commission under sections 10B and 12 of chapter 32A and, after withdrawal from the commission, those subscribers who received coverage from the commission under said sections 10B and 12 of said chapter 32A shall not pay more than 25 per cent of the cost of their health insurance premiums.

In the event of revocation of acceptance of this section, the political subdivision and public employee unions shall return to governance of negotiations of health insurance under chapter 150E and this chapter on the effective date of withdrawal from commission coverage, to negotiate healthcare coverage for subscribers thereafter.

(f) To the extent authorized under chapter 32A, the commission shall provide group coverage of subscribers' health claims incurred after transfer to the commission. The claim experience of those subscribers shall be maintained by the commission in a single pool and combined with the claim experience of all covered state employees and retirees and their covered dependents, including those subscribers who previously received coverage under sections 10B and 12 of chapter 32A.

Notwithstanding any general or special law to the contrary, a political subdivision that self-insures its group health insurance plan under section 3A and has a deficit in its claims trust fund at the time of transferring its subscribers to the commission and the deficit is attributable to a failure to accrue claims which had been incurred but not paid may capitalize the deficit and amortize the amount over 10 fiscal years in 10 equal amounts, or on a schedule providing for a more rapid amortization. Except as provided otherwise herein, subscribers eligible for health insurance coverage under subsection (e) shall be subject to all of the terms, conditions, schedule of benefits and health insurance carriers as employees and dependents as defined by section 2 and commission regulations. The commission shall determine all matters relating to subscribers' group health insurance rights, responsibilities, costs and payments, excluding contribution ratios, and obligations, including but not limited to, the manner and method of payment, schedule of benefits, eligibility requirements and choice of health insurance carriers and these matters shall be determined exclusively by the commission and shall not be subject to collective bargaining, the written agreement under subsection (a) or to arbitration under the agreement. The commission may issue rules and regulations consistent with this section and shall provide public notice of any proposed rules and

regulations and notice of thereof at the request of interested parties, together with an opportunity to review those rules and regulations and an opportunity to comment on those proposed rules and regulations in writing and at a public hearing, but the commission shall not be subject to chapter 30A.

The commission shall negotiate and purchase health insurance coverage for subscribers transferred under subsection (e) and shall promulgate regulations, policies and procedures for coverage of the transferred subscribers. The schedule of benefits available to transferred subscribers shall be determined by the commission pursuant to chapter 32A. The commission shall offer those subscribers the same choice as to health insurance carriers and benefits as those provided to state employees and retirees. The political subdivision's contribution to the cost of health insurance coverage for transferred subscribers shall be as determined under this section, and shall not be subject to the provisions on contributions in said chapter 32A. Any change to the premium contribution ratios shall become effective on July 1 of each year, with notice to the commission of such change not later than January 15 of the same year.

A political subdivision that transfers subscribers to the commission shall pay the commission for all costs of its subscribers' coverage, including administrative expenses, and the governmental unit's cost of subscribers' premium. The commission shall determine on a periodic basis the amount of premium which the political subdivision shall pay to the commission. If the political subdivision unit fails to pay all or a portion of these costs according to the timetable determined by the commission, the commission may inform the state treasurer who shall issue a warrant in the manner provided by section 20 of chapter 59 requiring the respective political subdivision to pay into the treasury of the commonwealth as prescribed by the commission the amount of the premium and administrative expenses attributable to the political subdivision. The state treasurer shall recoup any past due costs from the political subdivision's cherry sheet under section 20A of chapter 58 and transfer that money to the commission. If a governmental unit fails to pay to the commission the costs of coverage for more than 90 days and the cherry sheet provides an inadequate source of payment, the commission may, at its discretion, cancel the coverage of subscribers of the political subdivision. If the cancellation of coverage is for nonpayment, the political subdivision shall provide all subscribers health insurance coverage under plans which are the actuarial equivalent of plans offered by the commission in the preceding year until there is an agreement with the public employee committee providing for replacement coverage.

The commission may charge the political subdivision an administrative fee, which shall not be more than 1 per cent of the cost of total premiums for the political subdivision, to be determined by the commission which shall be considered as part of the cost of coverage for purposes of determining the contributions of the political subdivision and its employees to the cost of health insurance coverage by the commission.

(g) Any agreement reached between the political subdivision and the public employee committee, including an agreement to transfer subscribers to the group insurance commission, shall provide that within the same health insurance coverage plan the percentage contributed by the political subdivision to the premium or cost of health insurance coverage shall be the same for all subscribers covered under this section. These payments shall differ only by the type of coverage elected under the plan, including individual, family, optional Medicare extension or other coverage selections; but the percentage contributed by the political subdivision may vary among the different health insurance coverage plans offered under the agreement reached between the political subdivision and the public employee committee. The agreement reached shall provide that the percentage contributed by the political subdivision to the premium or cost of at least 1 Medicare extension plan available to all eligible subscribers shall be not less than the minimum percentage contributed by the political subdivision to any other health insurance coverage plan offered under the agreement reached. Any political subdivision that accepts this section shall establish by agreement with the public employee committee a contribution by the political subdivision to the premium or cost of health insurance coverage that provides for at least 50 per cent but not more than 99 per cent. Notwithstanding this subsection, where there is an agreement to transfer subscribers to the commission, subscribers whose coverage was governed by section 10B or 12 of chapter 32A before the date that the written agreement is executed, shall not be required to contribute more than 25 per cent of their health insurance premiums, but the written agreement may provide for a premium contribution paid by these subscribers of less than 25 per cent.

(h) If there is a revocation of acceptance or a withdrawal from the commission under this section, all retirees, their spouses and dependents insured or eligible to be insured by the political subdivision, if enrolled in Medicare part A at no cost to the retiree, spouse or dependents, shall be required to be insured by a Medicare extension plan offered by the political subdivision under section 11C or section 16. A retiree shall provide the political subdivision, in such form as the political subdivision shall prescribe, such information as is necessary to transfer to a Medicare extension plan. If a retiree does not submit the information required, he shall no

longer be eligible for his existing health insurance coverage. The political subdivision may from time to time request from a retiree, a retiree's spouse and dependents, proof certified by the federal government of his eligibility or ineligibility for Medicare part A and part B coverage. The political subdivision shall pay the Medicare part B premium penalty assessed by the federal government on those retirees, spouses and dependents as a result of enrollment in Medicare part B at the time of transfer into the Medicare health benefits supplement plan.

(i) In the absence of a public collective bargaining unit, the chief executive officer of a municipality may authorize the transfer of subscribers to the commission.

SECTION 5. Where a public employee committee and governmental entity have in existence an agreement under section 19 of chapter 32A of the General Laws on July 31, 2006, that agreement shall remain in full force and effect and shall thereafter be governed by said chapter 32A. If the agreement provides for the transfer of subscribers to the group insurance commission, the public employee committee and the political subdivision shall amend the agreement, as necessary, to be consistent with state law.

SECTION 6. Notwithstanding any general or special law to the contrary, the town of Saugus may transfer subscribers to the group insurance commission in accordance with section 19 of chapter 32B of the General Laws on or after the effective date of this act.

Preamble adopted, House of Representatives, July 16, 2007.  
*Paul Donato* Acting Speaker.

Preamble adopted, In Senate, July 16, 2007.  
*Thomas Lehman* Acting President.

Bill passed to be enacted, House of Representatives, July 19, 2007.  
*Frank White* Acting Speaker.

Bill passed to be enacted, In Senate, July 19, 2007.  
*Paulley* President.

*25 July*, 2007.  
Approved,

at *2* o'clock and *40* minutes, *P.* M.  
*[Signature]*  
Governor.



# The Commonwealth of Massachusetts Group Insurance Commission



P.O. Box 8747  
Boston, Massachusetts 02114-8747

(617) 727-2310  
Fax (617) 227-2681  
TTY (617) 227-8583

## MUNICIPAL GROUP INSURANCE LAW QUESTIONS AND ANSWERS

The new Municipal Group Insurance Law known as Chapter 67 of the Acts of 2007 was signed into law on July 25, 2007 and became effective on that date. Below are some questions and answers about the law's terms and conditions for joining the GIC's health coverage.

### DECIDING WHETHER TO JOIN GIC COVERAGE

#### Under the new law, who may join GIC coverage?

Cities, towns and districts, regional councils of government and regional planning agencies, education collaboratives and charter schools may join. **In this document, the term "Municipal Employer" is used to refer to all of these entities unless otherwise specified.**

#### Must a Municipal Employer vote to adopt section 19 of Mass. General Laws chapter 32B in order to join the GIC's health coverage?

Cities, towns and districts must formally adopt section 19's local option to join the GIC's health coverage. Other Municipal Employers do not have to adopt section 19.

#### What is the process for joining GIC health coverage?

*Unionized Municipal Employers* decide with their unions, negotiating as a group, whether to join GIC health coverage. The parties draft a written agreement to join GIC health coverage and send it to the GIC as its notice of intent to join GIC coverage. Receipt of the agreement will begin the implementation process for the Municipal Employer's transfer to GIC health coverage. Agreements must be received by the GIC by October 1 of any year in order to begin work to transfer municipal subscribers to GIC health coverage that begins the following July 1. (For important details about the coalition bargaining process and a model agreement, contact the Metropolitan Area Planning Council at 617/451-2770 or log on to "Health Insurance Action Center" on its website at [www.mapc.org](http://www.mapc.org).)

*Non-union Municipal Employers* decide as follows: a non-union city, town or district's Chief Executive Officer decides whether to join GIC coverage; a non-union education collaborative decides by a majority vote of its Board of Directors; a Commonwealth charter school decides by a majority vote of its Board of Trustees; a regional planning agency or regional council of government decides by a majority vote of its governing board. Non-union Municipal Employers must send a letter to the GIC as its notice of intent to join GIC coverage by October 1 of any year for coverage to begin the following July 1. Additional notice requirements can be found in the "Notice of Intent" section of this document.

If only some of a Municipal Employer's employees are unionized, how does the employer determine whether to join GIC coverage?

The unions' vote determines whether all of the Municipal Employer's eligible subscribers join GIC health coverage. Contact MAPC at 617/451-2770 or log on to MAPC's website, [www.mapc.org](http://www.mapc.org), for more information about the approval process.

Are Municipal Employers required to re-enroll for GIC coverage each year?

No. Municipal Employers who join GIC coverage must remain in GIC coverage for a minimum of three years, and may withdraw from GIC coverage at three or six year intervals.

## **THE AGREEMENT** (Unionized Municipal Employers)

What must be in the bargained agreement to join GIC health coverage?

Three issues: (1) whether to join GIC health coverage; (2) the health premium contribution ratios for the Municipal Employer's subscribers, which can differ only by type of plan (Medicare, PPO, HMO or Indemnity) and not by type of subscriber (active, retired or survivor); and (3) the terms for revocation of section 19 if the Municipal Employer or its subscribers wish to withdraw after three or six years of enrollment in GIC health coverage.

May we bargain benefits and carriers?

No. For Municipal Employers joining GIC health coverage, the law suspends all collective bargaining related to municipal subscribers' health insurance except the level of their GIC health premium contribution ratios. The law vests with the GIC the exclusive authority to determine all other matters relating to municipal subscribers' GIC health insurance rights, responsibilities, cost and payment obligations, including, for example, the manner and method of payment, eligibility requirements and choice of benefits and health carriers.

May we negotiate to give subscribers incentives to join GIC health coverage?

With the exception of reimbursing enrollees' Medicare Part B premiums (which is a local option), the law prohibits Municipal Employers from altering the choice of health carriers, health benefits, and subscribers' out-of-pocket costs; from offering health benefits or health benefit compensation not otherwise provided to other GIC subscribers; and from making contributions to offset GIC health premium or specific health benefits, including compensating the difference between current municipal benefits and GIC benefits. **Violations of the prohibition described here will result in termination of the municipal subscribers' GIC coverage.** Municipal Employers are urged to contact the GIC if they have questions about incentives.

## **HEALTH PREMIUM CONTRIBUTIONS**

Who determines the health premium contribution ratios?

*Unionized Municipal Employers* determine the premium contribution ratios with their unions through coalition bargaining. *Non-union charter schools and education collaboratives, regional planning agencies and regional councils of government* receive GIC coverage through the GIC's statute (Mass. General Laws chapter 32A); therefore, their health premium contribution ratios are determined by the Legislature.

May premium contribution ratios differ by the type of subscriber (actives vs. retirees vs. survivors)?

No; the law requires that they be covered at the same ratio, differing only by type of plan (i.e., HMO, PPO, Indemnity, or Medicare). However, the law provides one exception for Retired Municipal Teachers who transfer from the GIC's RMT coverage: once transferred, their premium contribution ratios must be no more than the lower of 25% of premium or the health premium contribution ratios determined for all others in the pool, depending on the type of plan.

Is there a minimum and/or maximum premium contribution percentage that Municipal Employers or employees/retirees must pay for GIC coverage?

Yes, Municipal Employers must pay between 50% and 99% of their subscribers' health premium. And as stated above, the maximum health premium contribution for Retired Municipal Teachers who transfer from the GIC's RMT program to the Municipal Employer's GIC health coverage can be no more than 25% (and may be less than 25%).

## NOTICE OF INTENT

What documents must a Municipal Employer file with the GIC as its notice of intent to join GIC health coverage?

*Unionized Municipal Employers* must provide two documents to the GIC by October 1: (1) a copy of the signed and executed bargained agreement to join GIC health coverage; and (2) a cover letter from an authorized official of the Municipal Employer confirming the Municipal Employer's intent to join GIC health coverage.

As to *non-union Municipal Employers*, Commonwealth charter schools must provide a certified copy of a majority vote of their board of trustees to join GIC coverage; non-union education collaboratives must provide a certified copy of their board of directors' majority vote to join GIC coverage. Regional planning agencies and regional councils of government must provide a letter from their governing board stating their decision to join GIC coverage, and non-union cities, towns, and districts must send a letter from their Chief Executive Officer stating their decision to transfer the Municipal Employer's subscribers to GIC coverage. **All notices of intent must be filed by October 1 of any year for coverage to begin the following July 1. This is a firm deadline.**

Why must Municipal Employers give notice of intent so far in advance?

Municipal Employers must give notice by October 1 because the GIC and their health carriers need to know the size of the pool with enough time to more accurately price their proposed rates, which occurs in November of each year for coverage the following July. In addition, there is a great deal of implementation work required for Municipal Employers and the GIC in order to transfer subscribers to GIC coverage the following July 1. Regardless of the number of subscribers to be transferred, each Municipal Employer has information systems exchanges and testing to be done with the GIC, subscriber communications to draft, multiple implementation meetings to be held, eligibility verification for all subscribers and their dependents, fiscal arrangements, and enrollment activities -- all of which must be completed before coverage can begin.

What happens if Municipal Employers miss the notice deadline?

Municipal Employers may file their required documents in subsequent years, by October 1.

Where must notices of intent to join GIC coverage be sent?

All notices must be sent to: Executive Director, Group Insurance Commission, P.O. Box 8747, Boston, MA 02114-8747.

## **WHO'S COVERED**

Must Municipal Employers transfer all of their subscribers to GIC health coverage, or may they enroll only certain groups?

The law requires that Municipal Employers enroll all of their eligible subscribers in GIC health coverage.

Must Municipal Employers cover their retirees, survivors and dependents if they decide to join GIC coverage?

Yes. All eligible active employees, retired employees, survivors and dependents must be offered GIC coverage.

Our retired teachers are currently in the GIC's Retired Municipal Teachers (RMT) program. Can they stay in GIC health coverage?

Yes, but they must join the same pool of GIC health coverage as that of their non-teacher colleagues (and state employees), in order to obtain the benefit of the pool's favorable experience and lower rates.

If we decide to leave GIC health coverage after joining it, can our Retired Municipal Teachers return to the RMT program?

According to the law, Retired Municipal Teachers cannot return to the RMT program if the Municipal Employer withdraws its subscribers from GIC coverage.

## **OTHER BENEFITS**

Are unionized Municipal Employers' subscribers eligible for other GIC benefits?

No, the law specifies that by joining the GIC through adoption of Mass. General Laws chapter 32B, section 19, they are eligible only for the GIC's health coverage. Other non-health employee/retiree benefits currently provided by Municipal Employers will continue to be the Municipal Employers' responsibility.

Are non-union cities, towns and districts eligible for other GIC benefits?

No. According to the new law, they join GIC health coverage by adopting Mass. General Laws chapter 32B, section 19, and thus are eligible only for the GIC's health coverage. Other benefits currently provided by Municipal Employers will continue to be the Municipal Employers' responsibility.

Since non-union charter schools and education collaborative subscribers join GIC health coverage through the GIC's law (as opposed to chapter 32B, section 19), are they eligible for other GIC benefits?

Yes. Under the new law, all Municipal Employers who join GIC coverage through the GIC's law, chapter 32A -- Commonwealth charter schools and non-union education collaboratives, regional planning agencies and regional councils of government -- are eligible to receive other GIC state employee and retiree benefits. These entities may log on to the GIC's website at [www.mass.gov/gic](http://www.mass.gov/gic) for more information about additional GIC benefits.

## MEDICARE

Must Medicare-eligible retirees enroll in Medicare Part A and Part B in order to join GIC health coverage?

Yes, Medicare eligible retirees 65 years and older must enroll soon after the Municipal Employer files a notice of intent by October 1 of any year to join the GIC. They must enroll in Medicare before the following July 1 in order to have GIC coverage at that time. Medicare annual enrollment runs from January 1 to March 31 of each year.

Do we need to enroll them in Medicare before joining the GIC?

Municipal Employers who have not formally adopted section 18 of chapter 32B must, after providing notice of intent to join the GIC by October 1 of any year, **promptly contact their retirees who are 65 years old or older to inform them that (1) they are required to sign up for Medicare Part B if they are eligible for Part A for free in order to have GIC health coverage by the following July 1; and (2) the Medicare annual enrollment period for Medicare Part B begins January 1 and ends March 31 for health coverage effective July 1.**

Who must pay the Medicare Part B premium penalty, if any, for persons' enrollment in Medicare Part B?

By law, the city, town or district must pay the penalty if it is entering GIC coverage through section 19.

## FISCAL

Is there a Municipal Employer administrative cost for joining GIC coverage?

Yes, the law requires an administrative fee of up to 1% of total premium per year to pay for this program, because there are significant GIC costs for systems, operations, customized communications, customer service, and other needs in order to accommodate and cover Municipal Employers' subscribers each year.

Will the administrative fee be included in subscribers' and Municipal Employers' share of health premium?

Yes, the law requires that the fee be included in their respective health premium contributions.

May brokers' fees be factored into Municipal Employers' and their subscribers' premium contributions to GIC coverage?

No. Since the GIC and its consultant will be performing the services that brokers perform, there will be no need for any brokers' fees. The GIC prohibits the payment of any such fees.

## SYSTEMS

How do we physically exchange eligibility and other forms of electronic data with the GIC?

All Municipal Employers exchange data using the State's secure e-mail system (SFED). The GIC's IT staff will provide information on how to use this process. All data exchanges will require the Municipal Employer to use the standard formats developed by the GIC for each particular file process.

Are there any other technical requirements that we need to know?

The GIC requires that all Municipal Employers designate a technical contact in order to ensure that all data exchanges are handled in a timely and efficient manner. The GIC IT staff will endeavor to assist Municipal Employers with the IT requirements.

## **OPERATIONS**

Are there administrative tasks that the Municipal Employer must continue to provide once its subscribers transfer to GIC coverage?

Yes; the Municipal Employer must collect and provide to the GIC all information necessary to maintain subscribers and covered dependents' coverage. The Municipal Employer will perform administrative functions and process information as necessary to maintain the coverage, including family and personnel status changes, enrollment activities, reporting enrollee changes monthly to the GIC and otherwise communicating with subscribers and the GIC as necessary. The GIC will provide detailed information to Municipal Employers about implementation when they submit notice of intent to the GIC.

## **COMMISSION REPRESENTATION**

Will Municipalities have representation on the Commission?

Yes. Several new GIC Commissioners representing municipalities are to be added soon (a labor representative nominated by the Mass. Teachers Association, and a management representative nominated by the Mass. Municipal Association). After 45,000 additional municipal subscribers have enrolled, two more Commissioners - also representing labor (nominated by a public safety union) and management (a second MMA nominee) - will be added.

## **MISCELLANEOUS**

Will Blue Cross/Blue Shield be available as one of the GIC's health plans?

Possibly; we will begin a new procurement this Fall for health plans for coverage beginning July 1, 2008. Over the years, Blue Cross/Blue Shield has provided indemnity, PPO and HMO health coverage to GIC subscribers, although it has not been a GIC vendor since 1998. As with all GIC procurements, all qualified plans are welcome to bid; however, we cannot know at this time what health plans will be offered by the GIC next year or in future years..

Where can I find more information about this law?

[www.MAPC.org](http://www.MAPC.org)  
[www.MMA.org](http://www.MMA.org)  
[www.mass.gov/gic](http://www.mass.gov/gic)

*August 15, 2007*

## **CHAPTER 68 – UNDERPERFORMING LOCAL PENSION SYSTEMS**

*Effective July 25, 2007*

Amends provisions of G.L. c. 32, §22 and adds G.L. c. 32, §22(c½) to require that underperforming local pension systems transfer ownership and control of assets to the state Pension Reserves Investment Management (PRIM) Board for investment.

Effective October 1, 2007, pension systems considered underperforming must transfer their assets to the PRIM Board. An underperforming system is defined as a system having a funding ratio of less than 65% and an average rate of return during that previous 10 years that is at least two percentage points less than the return of the Pension Reserves Investment Trust (PRIT) Fund over that same period.

Underperforming systems may also voluntarily transfer ownership and control of their assets to the PRIM Board before October 1, 2007. The decision to transfer is made by the retirement board of the system, with the approval of a majority of the local governing body. Local governing body is defined as in a county, the county commissioners, in a city, the city council and mayor or manager, in a town, the board of selectmen, in a regional retirement system, the regional retirement board advisory committee, and in all other districts, the district governing board.

By July 1 of each year, the Public Employees Retirement Administration Commission (PERAC) will review the investment performance and funding ratio of all systems using data as of January 1. If the review establishes that the system is underperforming, PERAC will notify the system to transfer the ownership and control of its assets to the PRIM Board. The notice is to include a financial report on the system, a description of the rights and duties of the PRIM Board and a schedule for the asset transfer.

The PRIM Board will hold the assets in trust for the system. The retirement board is to continue to perform its other functions and must notify the PRIM Board of its funding requirements for the next fiscal year at least 90 days before the start of the year.

A retirement board notified to transfer its assets may seek an exemption by appealing to a four member review board. The members of the board are the Executive Director of the PRIM Board or his designee, the Secretary of Administration and Finance or her designee, a member selected by the State Treasurer from a list of three names submitted by the Massachusetts Association of Contributory Retirement Systems and a member of a municipal employee union appointed by the Governor. The appeal must be filed with the Secretary of Administration and Finance no later than 30 days after it receives the PERAC notice to transfer its assets. The review board may grant an exemption if the system's rate of return has exceeded the PRIT Fund rate of return for the previous two years, or the system's rate of return was affected by extenuating circumstances. The board may take into account the system's management costs, its risk return ratio and other factors it considers appropriate. Three of the four members must agree to grant the exemption.

Any exemption granted only takes effect if approved by a majority of the local governing body for the system within 30 days of the review board's decision. If the board denies the exemption, the system may appeal to the courts in the same manner as adjudicatory decisions of other state agencies, boards or commissions under G.L. c. 30A, §14.

68,

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Seven

AN ACT TO REDUCE THE STRESS ON LOCAL PROPERTY TAXES THROUGH ENHANCED PENSION FUND INVESTMENT.

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

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

SECTION 1. Section 22 of said chapter 32 of the General Laws, as so appearing, is hereby amended by striking out, in line 1043, the words "electing to participate" and inserting in place thereof the following word:- participating.

SECTION 2. Subdivision (8) of said section 22 of said chapter 32, as so appearing, is hereby amended by inserting after paragraph (c) the following paragraph:-

(c½) The commission shall annually review the investment performance and funded ratio of all systems using data compiled as of January 1 of the year in which the review occurs. If on or before July 1 the funded ratio data as of January 1 is not available, the most recent data shall be used. A system found by the commission to have a funded ratio of less than 65 per cent and an average rate of return during the previous 10 years that is at least 2 percentage points less than that of the PRIT Fund rate of return over the same period shall be declared underperforming by the commission. The commission shall notify, in writing, any system deemed to be underperforming pursuant to this paragraph that it shall transfer ownership and control of all of its assets to the PRIM board. The notice shall include, without limitation: (i) a financial report on the specific underperforming system; (ii) a description of the rights and duties of the PRIM board; and (iii) a schedule for the transfer of ownership and control of a system's assets to the PRIM board pursuant to this paragraph. A transfer of the ownership and control of a system's assets pursuant to this paragraph shall be in perpetuity.

The PRIM board shall hold assets in trust for the participating systems. The PRIM board shall credit assets and earnings on the assets to the individual systems. The PRIM board shall calculate regular interest as defined in

subdivision (6) to allocate earnings among the various funds of each system. The board of each system shall continue to administer the system in accordance with sections 1 to 28, inclusive, including the maintenance of accounts in accordance with the funds provided for in this section. The PRIM board shall transfer monies to the various funds of the participating systems to allow them to carry out their duties pursuant to this chapter. The board of each participating system shall notify the PRIM board of the amounts needed for the various funds for the next fiscal year not later than 90 days before the start of the next fiscal year. The PRIM board shall develop a schedule of transfers to be made to the systems during the next fiscal year and notify the systems of that schedule not later than 30 days before the start of the next fiscal year. The PRIM board shall transfer those amounts in accordance with the schedule during the course of the fiscal year. From time to time, the boards may make supplemental requests of the PRIM board if the initial request is found to be insufficient. Within 30 days after the request, the PRIM board shall approve or deny it, but a denial shall be accompanied by a written statement of the reasons therefor.

A system ordered by the commission to transfer its assets under this paragraph may appeal for an exemption to a 4-member review board which shall consist of the executive director of the PRIM board or his designee, the secretary of administration and finance or his designee, a member selected by the state treasurer from a list of 3 names submitted by the Massachusetts Association of Contributory Retirement Systems and 1 member of a municipal employee union to be appointed by the governor. The system shall file written notice of its appeal with the secretary of administration and finance not later than 30 days after receiving the commission's order to transfer its assets. The review board may establish rules for its own procedure and the rules shall not be subject to chapter 30A. The review board may grant an exemption from the transfer requirement of this paragraph if its rate of return has exceeded the PRIT Fund rate of return for the previous 2 years or if the system's rate of return was affected by other extenuating circumstances. The review board may also consider the system's management costs, its risk return ratio and any other factors it deems appropriate. The grant of an exemption shall require the concurrence of at least 3 of the 4 members or their designees. A system may seek judicial review of the review board's decision to deny an exemption in the manner provided in section 14 of chapter 30A. An exemption granted by the review board pursuant to this paragraph shall take effect only upon the approval of a majority of the local governing body as follows: in a county, by the county commissioners, in a city having a Plan D or Plan E charter, by the city council and the manager, in any other city the city council and the mayor,

in a town shall, by the board of selectmen, in a regional retirement system by the regional retirement board advisory council and in all other districts, by the governing board. The local governing body shall vote whether or not to approve the review board's grant of exemption within 30 days after the review boards' decision to provide an exemption.

SECTION 3. Notwithstanding any general or special law to the contrary, and pursuant to paragraph (c%) of subdivision (8) of section 22 of chapter 32 of the General Laws, the public employee retirement administration commission established in section 49 of chapter 7 of the General Laws shall review the investment performance and funded ratio of all systems using data compiled as of January 1, 2007. If an updated actuarial valuation is not completed by October 1, 2007, the most recent valuation completed shall be used. A system found by the public employee retirement administration commission to have a funded ratio of less than 65 per cent and an average rate of return during the previous 10 years that is at least 2 percentage points less than that of the rate of return of the PRIT Fund established in said subdivision (8) of said section 22 of said chapter 32 over the same time period shall be declared underperforming by the public employee retirement administration commission and shall transfer ownership and control of all of its assets to the PRIM board in accordance with said paragraph (c%) of said subdivision (8) of said section 22 of said chapter 32.

SECTION 4. Notwithstanding any general or special law to the contrary, a pension system established pursuant to chapter 32 or chapter 34B of the General Laws that would be deemed underperforming under paragraph (c%) of subdivision (8) of section 22 of said chapter 32 may voluntarily transfer ownership and control of all of its assets to the PRIM board. The decision to voluntarily transfer ownership and control of all of its assets to the PRIM board shall be made by the retirement board of each system, subject to the approval of a majority of the local governing body as follows: in a county, by the county commissioners, in a city having a Plan D or Plan E charter, by the city council and the manager, in any other city shall, by the city council and the mayor, in a town, by the board of selectmen, in a regional retirement system by the regional retirement board advisory council and in all other districts, by the governing board thereof. After the decision to participate has been approved, the decision to participate shall not be revoked for 5 years. A system that would be deemed underperforming pursuant to said paragraph (c%) of said subdivision (8) of said section 22 of said chapter 32 which chooses to exercise its right to voluntarily transfer its assets pursuant to this section shall transfer its assets before October 1, 2007.

SECTION 5. Notwithstanding any general or special law to the contrary, the public employee retirement administration commission established in section 49 of chapter 7 of the General Laws shall file an annual report with the house and senate committees on ways and means and the joint committee on public service detailing the average rate of return and funding level of each retirement system. The first annual report shall include the average rate of return and funding level of each retirement system since 1985.

SECTION 6. Notwithstanding any general or special law to the contrary, local retirement boards shall consider the annual cost-of-living adjustments to be a priority but the prioritization shall not constitute grounds for an appeal pursuant to paragraph (c) of subdivision (8) of section 22 of chapter 32 of the General Laws.

SECTION 7. Sections 1, 2, 3, 5, and 6 of this act shall take effect on October 1, 2007.

House of Representatives, July 16, 2007.

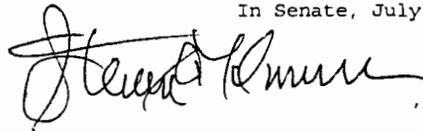
Preamble adopted,



Acting Speaker.

In Senate, July 16, 2007.

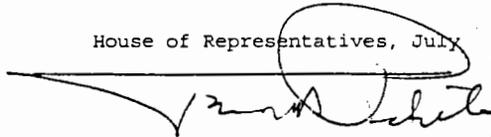
Preamble adopted,



Acting President.

House of Representatives, July 19, 2007.

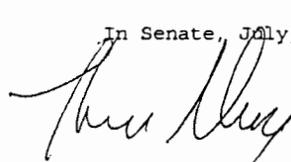
Bill passed to be enacted,



Acting Speaker.

In Senate, July 19, 2007.

Bill passed to be enacted,

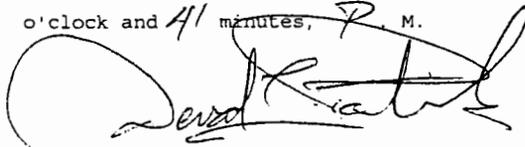


President.

25 July, 2007.  
Approved,

at

2 o'clock and 41 minutes, P. M.



Governor.

## **CHAPTER 74 – NOTICE OF OVERDUE TAXES AND CHARGES**

*Effective July 25, 2007 (Emergency Letter)*

Amends provisions in G.L. c. 59, §§57 and 57C that require municipal real estate tax bills to include a statement that there are past due amounts whenever any tax or charge that constitutes a lien on the property is overdue more than 90 days.

The delinquency statement requirement was added as part of the 2003 Municipal Relief Act, St. 2003, c. 46, §§52 and 54, but implementation was delayed until fiscal year 2008. The changes clarify that the statement need only appear on the actual real estate bill, not any preliminary bill.

In addition, collectors do not have to include delinquent charges for fire, water, sewer or electric service if the community has multiple suppliers of that utility service, or the municipal or district supplier is located in another jurisdiction.

T H E C O M M O N W E A L T H O F M A S S A C H U S E T T S

In the Year Two Thousand and Seven

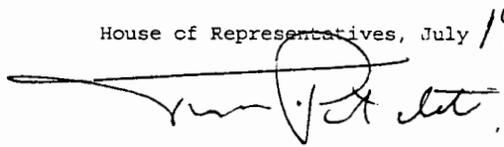
AN ACT RELATIVE TO MUNICIPAL REAL ESTATE TAX NOTICES.

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

SECTION 1. The first paragraph of section 57 of chapter 59 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the last sentence and inserting in place thereof the following 2 sentences:- A first actual real estate tax bill sent out for fiscal year 2008 or any subsequent year pursuant to this section shall contain a statement that there exists a delinquency if any tax, betterment assessment or apportionment thereof, water rate, annual sewer use, or other charge which may constitute a lien is overdue for more than 90 days. Such delinquencies shall not include amounts due relating to fire service, electric, water or sewer use in any city or town served by more than 1 independent municipal or district fire, electric, water, sewer, or joint water and sewer district or in any city or town served by an independent municipal or district fire, electric, water, sewer, or joint water and sewer district that is not principally domiciled in that city or town.

SECTION 2. The seventh paragraph of section 57C of said chapter 59 of the General Laws, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following 2 sentences:- A first actual real estate tax bill sent out for fiscal year 2008 or any subsequent year pursuant to this section shall contain a statement that there exists a delinquency if any tax, betterment assessment or apportionment thereof, water rate, annual sewer use, or other charge which may constitute a lien is overdue for more than 90 days. Such delinquencies shall not include amounts due relating to fire service, electric, water or sewer use in any city or town served by more than 1 independent municipal or district fire, electric, water, sewer, or joint water and sewer district or in any city or town served by an independent municipal or district fire, electric, water, sewer, or joint water and sewer district that is not principally domiciled in that city or town.

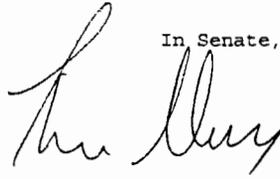
House of Representatives, July 19, 2007.

 Acting Speaker.

Passed to be enacted,

In Senate, July 19, 2007.

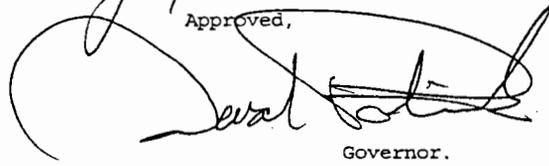
Passed to be enacted,



, President.

25 July, 2007.

Approved,



Governor.



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 725-4000

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

July 25, 2007

Honorable William Francis Galvin  
Secretary of the Commonwealth  
State House – Room 337  
Boston, MA 02133

Dear Secretary Galvin:

I, Deval L. Patrick, pursuant to Article XLVIII of the Amendments to the Constitution of the Commonwealth of Massachusetts, the Referendum II, Emergency Measures, declare that, in my opinion, the immediate preservation of the public peace, health, safety or convenience requires that the attached Act, "An Act Relative to Municipal Real Estate Tax Notices," the enactment of which received my approval on July 25, 2007, should take effect immediately.

So that cities and towns with multiple billing and collecting authorities may be exempt from the delinquency reporting requirement, thus relieving affected communities from knowingly falling short of the law, I further declare that, in my opinion, it is in the public interest that this Act take effect immediately.

Respectfully Submitted,

SECRETARY OF THE COMMONWEALTH Boston, Massachusetts

July 25, 2007

I, William Francis Galvin, Secretary of the Commonwealth, hereby certify that the accompanying statement was filed in this office by the Governor of the Commonwealth of Massachusetts at four o'clock and twenty-three minutes P.M. on the above date, and in accordance with Article Forty-eight of the Amendments to the Constitution said Chapter takes effect forthwith, being Chapter Seventy-four of the Acts of Two Thousand Seven.

William Francis Galvin  
Secretary of the Commonwealth

## **CHAPTER 82 – IDENTITY THEFT PREVENTION**

*Section 17 Effective February 3, 2008, Otherwise Effective*

Amends G.L. c. 93 and adds G.L. c. 93H and 93I to establish comprehensive identity theft prevention measures.

Under amendments to G.L. c. 93, consumers may secure credit freezes to prevent new accounts from being fraudulently created in their name.

Under new G.L. c. 93H, businesses and governments must promptly notify consumers when their personal information is lost or stolen. Personal information includes the customer's name in combination with a social security, driver's license or financial account number. It does not include any data found in public records. The attorney general may bring an action to remedy violations.

The new G.L. c. 93I sets standards for the disposal of records containing personal information by businesses and governments. Personal information for purposes of this chapter includes the customer's name in combination with a social security, driver's license or financial account number or a biometric indicator. Documents or other records containing personal information must be redacted, burned, pulverized or shredded. Electronic and other media must be destroyed or erased so that personal information cannot be read or reconstructed. Violators are subject to a civil fine of not more than \$100 per data subject affected up to a maximum \$50,000 for each instance of improper disposal. The attorney general may file a civil action in the superior or district court in the name of the commonwealth to recover penalties and may bring an action to remedy violations.

The Director of Consumer Affairs and Business Regulation and the Supervisor of Public Records are responsible for setting regulations for how businesses and government agencies must protect personal information to prevent data breaches.

Chapter 82

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Seven

AN ACT RELATIVE TO SECURITY FREEZES AND NOTIFICATION OF DATA BREACHES.

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 66 of the General Laws is hereby amended by inserting after section 8A the following section:-

Section 8B. Records or documents required to be destroyed or disposed of in this chapter shall be destroyed or disposed of in the manner set forth in chapter 93I.

SECTION 2. Section 2 of chapter 66A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the word "fire", in line 33, the following words:- , identity theft.

SECTION 3. Section 50 of chapter 93 of the General Laws, as so appearing, is hereby amended by inserting after the definition of "Firm offer of credit" the following definition:-

"Identity theft report", a report that alleges a violation of section 37E of chapter 266, 18 United States Code, section 1028, or a similar statute in any other jurisdiction, or a copy of a report filed by a consumer with an appropriate federal, state or local law enforcement agency, and the filing of which subjects the person filing the report to criminal penalties pursuant to section 67B of chapter 266 or section 13A of chapter 269.

SECTION 4. Said section 50 of said chapter 93, as so appearing, is hereby further amended by inserting after the definition of "Investigative consumer report" the following definition:-

"Lift", to suspend a security freeze for the purpose of releasing a consumer's credit information to a specific party or for a specified period of time, as authorized by the consumer.

SECTION 5. Said section 50 of said chapter 93, as so appearing, is hereby further amended by inserting after the definition of "Medical information" the following definition:-

"Password" or "Personal identification number", a unique and random number or a unique and random combination of numbers, letters or symbols, which shall not contain a consumer's social security number or any sequence of 3 or more numbers of a consumer's social security number, or other personal identifying information.

SECTION 6. Said section 50 of said chapter 93, as so appearing, is hereby further amended by inserting after the definition of "Prescreening" the following 3 definitions:-

"Proper identification", information sufficient to identify a person, which shall include, but not be limited to, name, address, social security number and date of birth. Such information shall not include information concerning the consumer's employment and personal or family history unless the consumer is unable to reasonably identify himself with the information described in the preceding sentence.

"Remove", to permanently terminate a security freeze.

"Security freeze", a notice placed on a person's consumer report by a consumer reporting agency, at the request of the consumer and subject to certain exceptions, which prohibits the consumer reporting agency from releasing the report or any information derived therefrom without the express authorization of the consumer.

SECTION 7. Section 55 of said chapter 93, as so appearing, is hereby amended by striking out, in line 1, the words "the provisions of section fifty-one" and inserting in place thereof the following words:- sections 51 and 62A.

SECTION 8. The third paragraph of subsection (b) of section 56 of said chapter 93, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 2 sentences:- You have a right to dispute inaccurate information by contacting the consumer reporting agency directly, either in writing or by telephone. The consumer reporting agency shall provide, upon request and without unreasonable delay, a live representative of the consumer reporting agency to assist in dispute resolution whenever possible and practicable, or to the extent consistent with federal law.

SECTION 9. The last paragraph of said subsection (b) of said section 56 of said chapter 93, as so appearing, is hereby amended by striking out the last sentence and inserting in place thereof the following sentence:- You may be entitled to collect compensation, in certain circumstances, if you are damaged by a person's negligent or intentional failure to comply with the credit reporting act.

SECTION 10. Said subsection (b), of said section 56 of said chapter 93, as so appearing, is hereby further amended by adding the following 4 paragraphs:-

You have a right to request a "security freeze" on your consumer report. The security freeze will prohibit a consumer reporting agency from releasing any information in your consumer report without your express authorization. A security freeze shall be requested by sending a request either by certified

mail, overnight mail or regular stamped mail to a consumer reporting agency, or as authorized by regulation. The security freeze is designed to prevent credit, loans or services from being approved in your name without your consent. You should be aware that using a security freeze may delay, interfere with, or prevent the timely approval of any subsequent request or application you make regarding new loans, credit, mortgage, insurance, government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, internet credit card transactions, or other services, including an extension of credit at point of sale.

When you place a security freeze on your consumer report, within 5 business days of receiving your request for a security freeze, the consumer reporting agency shall provide you with a personal identification number or password to use if you choose to remove the freeze on your consumer report or to authorize the release of your consumer report to a specific party or for a specified period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide the following:-

- (1) the personal identification number or password provided by the consumer reporting agency;
- (2) proper identification to verify your identity; and
- (3) the third party or parties who are to receive the consumer report or the specified period of time for which the report shall be available to authorized users of the consumer report.

A consumer reporting agency that receives a request from a consumer to lift a freeze on a consumer report shall comply with the request not later than 3 business days after receiving the request.

A security freeze shall not apply to a person or entity, or to its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information relative to your consumer report for the purposes of reviewing or collecting the account, if you have previously given consent to the use of your consumer report. "Reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

SECTION 11. Section 58 of said chapter 93, as so appearing, is hereby amended by inserting after the word "writing", in line 17, the following words:- , but shall provide consumers with the option of speaking with a live representative at any time during the dispute resolution process, whenever possible and practicable or to the extent consistent with federal law.

SECTION 12. Said section 58 of said chapter 93, as so appearing, is hereby further amended by adding the following paragraph:-

(j) At any time during the dispute process described in this section, the consumer shall have the right to request to speak to a live representative from the consumer reporting agency in an attempt to resolve the dispute. The consumer reporting agency shall maintain a toll-free telephone number available to consumers for such purpose and shall notify consumers of its availability whenever possible and practicable or to the extent consistent with federal law.

SECTION 13. Said chapter 93 is hereby further amended by inserting after section 62 the following section:-

Section 62A. If a consumer requests a security freeze, the consumer reporting agency shall disclose to the consumer the process of placing, removing and lifting a security freeze. A consumer reporting agency shall require proper identification of the person making a request to place, lift or remove a security freeze.

A consumer may request that a security freeze be placed on his consumer report by sending a request to a consumer reporting agency by certified mail, overnight mail or regular stamped mail to an address designated by the consumer reporting agency to receive such requests, or by a method otherwise permitted by regulation. If a security freeze is in place, the information from a consumer report shall not be released to a third party without prior express authorization from the consumer. This section shall not prohibit a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer report.

A consumer reporting agency shall place a security freeze on a consumer report not later than 3 business days after receiving a request from the consumer. The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within 5 business days after receiving the request and shall provide the consumer with a unique personal identification number or a unique password, or both, to be used by the consumer for the purpose of providing authorization for the removal or lifting of the security freeze.

If the consumer wishes to lift a security freeze that is in place, he shall contact the consumer reporting agency, request that the freeze be lifted, and provide proper identification, the personal identification number or password, or both, provided by the consumer reporting agency, and the third party who is to receive the consumer report or the specified period of time for which the report shall be available to authorized users of the consumer report.

A consumer reporting agency that receives a request from a consumer to lift a security freeze on a consumer report pursuant to this chapter shall comply with the request as soon as practicable and without unreasonable delay,

but under no circumstances not later than 3 business days after receiving the request.

A security freeze shall remain in place until the consumer requests that the security freeze be lifted or removed in accordance with this section; provided, however, that a consumer reporting agency may remove a security freeze if the consumer report was frozen due to a material misrepresentation of fact. If a consumer reporting agency intends to remove a freeze on a consumer report due to a material misrepresentation of fact by the consumer, the consumer reporting agency shall notify the consumer in writing 5 business days prior to removing the freeze on the consumer report.

While a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a consumer report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer report: name, date of birth, social security number, and address. Written confirmation shall not be required for technical modifications of information contained in a consumer report, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

If a third party requests access to a consumer report on which a security freeze is in effect, and this request is submitted in connection with an application for credit or any other use, and the consumer does not allow his or her consumer report to be accessed for that specific party or for that specified period of time, the third party shall treat the application as incomplete.

A consumer reporting agency shall remove a security freeze within 3 business days of receiving a request for removal from a consumer who provides both proper identification and the personal identification number or password provided by the consumer reporting agency pursuant to this section.

This section shall not apply to the use of a consumer report by any of the following:-

(a) a person or agent thereof, or an assignee of a financial obligation owing by the consumer to such person or agent thereof, or a prospective assignee of a financial obligation owing by the consumer to that person or agent thereof in conjunction with the proposed purchase of the financial obligation, with which the consumer has or had, prior to assignment, an account or contract, including a demand deposit account, or to whom the consumer issued a negotiable instrument, for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract or negotiable instrument. For purposes of this paragraph, "reviewing the account"

shall include activities related to account maintenance, monitoring, credit line increases and account upgrades and enhancements; or access to said account by a subsidiary, affiliate, agent, assignee or prospective assignee of a person, or agent thereof, to whom access has been granted for purposes of facilitating the extension of credit or other permissible use;

(b) any federal, state or local agency, law enforcement agency, or trial court acting pursuant to a court order, warrant or subpoena;

(c) the Massachusetts child support agency under Title IV-D of the Social Security Act, 42 U.S.C. et seq;

(d) the executive office of health and human services or its agents or assigns acting to investigate Medicaid fraud;

(e) the department of revenue or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

(f) a person using credit information for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act;

(g) any person administering a credit file monitoring subscription service to which the consumer has subscribed;

(h) any person acting solely for the purpose of providing a consumer with a copy of his consumer report upon the consumer's request; or

(i) to the extent otherwise allowed by statute, any property and casualty insurer licensed by the commonwealth for use in rating or underwriting insurance policies.

Nothing in this chapter shall prevent a consumer reporting agency from charging a reasonable fee, not to exceed \$5, to a consumer who elects to freeze, lift or remove a freeze to a consumer report, except that a consumer reporting agency shall not charge a fee to a victim of identity theft or his spouse, provided that the victim has submitted a valid police report relating to the identity theft to the consumer reporting agency.

The following persons shall not be required to place a security freeze on a consumer report:-

(a) a check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers or similar methods of payments;

(b) a deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank; or

(c) a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies, and does not maintain a permanent database of credit information from which new consumer reports are produced, except that such financial institution or consumer reporting agency shall be subject to any security freeze placed on a consumer report by another consumer reporting agency from which it obtains information.

Notwithstanding any general or special law to the contrary, the director of consumer affairs and business regulation, in consultation with the secretary of housing and economic development, shall promulgate rules and regulations for the purpose of expediting the methods of requesting, lifting and removing security freezes through technological advancements, consistent with this section and designed to benefit consumers.

SECTION 14. Section 63 of said chapter 93, as so appearing, is hereby amended by striking out, in line 4, the words "fifty to sixty-two" and inserting in place thereof the following figures:- 50 to 62A.

SECTION 15. Section 64 of said chapter 93, as so appearing, is hereby amended by striking out, in line 4, the words "fifty to sixty-two", and inserting in place thereof the following figures:- 50 to 62A.

SECTION 16. The General Laws are hereby further amended by inserting after chapter 93G the following chapter:-

CHAPTER 93H.

SECURITY BREACHES.

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

"Agency", any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or any of its branches, or of any political subdivision thereof.

"Breach of security", the unauthorized acquisition or unauthorized use of unencrypted data or, encrypted electronic data and the confidential process or key that is capable of compromising the security, confidentiality, or integrity of personal information, maintained by a person or agency that creates a substantial risk of identity theft or fraud against a resident of the commonwealth. A good faith but unauthorized acquisition of personal information by a person or agency, or employee or agent thereof, for the lawful purposes of such person or agency, is not a breach of security unless the personal information is used in an unauthorized manner or subject to further unauthorized disclosure.

"Data" any material upon which written, drawn, spoken, visual, or electromagnetic information or images are recorded or preserved, regardless of physical form or characteristics.

"Electronic", relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Encrypted" transformation of data through the use of a 128-bit or higher algorithmic process into a form in which there is a low probability of assigning meaning without use of a confidential process or key, unless further defined by regulation of the department of consumer affairs and business regulation.

"Notice" shall include:-

- (i) written notice;
- (ii) electronic notice, if notice provided is consistent with the provisions regarding electronic records and signatures set forth in § 7001 (c) of Title 15 of the United States Code; and chapter 110G; or
- (iii) substitute notice, if the person or agency required to provide notice demonstrates that the cost of providing written notice will exceed \$250,000, or that the affected class of Massachusetts residents to be notified exceeds 500,000 residents, or that the person or agency does not have sufficient contact information to provide notice.

"Person", a natural person, corporation, association, partnership or other legal entity.

"Personal information" a resident's first name and last name or first initial and last name in combination with any 1 or more of the following data elements that relate to such resident:

- (a) Social Security number;
  - (b) driver's license number or state-issued identification card number;
- or
- (c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a resident's financial account; provided, however, that "Personal information" shall not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

"Substitute notice", shall consist of all of the following:-

- (i) electronic mail notice, if the person or agency has electronic mail addresses for the members of the affected class of Massachusetts residents;
- (ii) clear and conspicuous posting of the notice on the home page of the person or agency if the person or agency maintains a website; and

(iii) publication in or broadcast through media or medium that provides notice throughout the commonwealth.

(b) The department of consumer affairs and business regulation may adopt regulations, from time to time, to revise the definition of "encrypted", as used in this chapter, to reflect applicable technological advancements.

Section 2. (a) The department of consumer affairs and business regulation shall adopt regulations relative to any person that owns or licenses personal information about a resident of the commonwealth. Such regulations shall be designed to safeguard the personal information of residents of the commonwealth and shall be consistent with the safeguards for protection of personal information set forth in the federal regulations by which the person is regulated. The objectives of the regulations shall be to: insure the security and confidentiality of customer information in a manner fully consistent with industry standards; protect against anticipated threats or hazards to the security or integrity of such information; and protect against unauthorized access to or use of such information that may result in substantial harm or inconvenience to any consumer. The regulations shall take into account the person's size, scope and type of business, the amount of resources available to such person, the amount of stored data, and the need for security and confidentiality of both consumer and employee information.

(b) The supervisor of records, with the advice and consent of the information technology division to the extent of its jurisdiction to set information technology standards under paragraph (d) of section 4A of chapter 7, shall establish rules or regulations designed to safeguard the personal information of residents of the commonwealth that is owned or licensed. Such rules or regulations shall be applicable to: (1) executive offices and any agencies, departments, boards, commissions and instrumentalities within an executive office; and (2) any authority created by the General Court, and the rules and regulations shall take into account the size, scope and type of services provided thereby, the amount of resources available thereto, the amount of stored data, and the need for security and confidentiality of both consumer and employee information. The objectives of the rules or regulations shall be to: insure the security and confidentiality of personal information; protect against anticipated threats or hazards to the security or integrity of such information; and to protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any resident of the commonwealth.

(c) The legislative branch, the judicial branch, the attorney general, the state secretary, the state treasurer and the state auditor shall adopt rules or regulations designed to safeguard the personal information of

residents of the commonwealth for their respective departments and shall take into account the size, scope and type of services provided by their departments, the amount of resources available thereto, the amount of stored data, and the need for security and confidentiality of both consumer and employee information. The objectives of the rules or regulations shall be to: insure the security and confidentiality of customer information in a manner fully consistent with industry standards; protect against anticipated threats or hazards to the security or integrity of such information; and protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any resident of the commonwealth.

Section 3. (a) A person or agency that maintains or stores, but does not own or license data that includes personal information about a resident of the commonwealth, shall provide notice, as soon as practicable and without unreasonable delay, when such person or agency (1) knows or has reason to know of a breach of security or (2) when the person or agency knows or has reason to know that the personal information of such resident was acquired or used by an unauthorized person or used for an unauthorized purpose, to the owner or licensor in accordance with this chapter. In addition to providing notice as provided herein, such person or agency shall cooperate with the owner or licensor of such information. Such cooperation shall include, but not be limited to, informing the owner or licensor of the breach of security or unauthorized acquisition or use, the date or approximate date of such incident and the nature thereof, and any steps the person or agency has taken or plans to take relating to the incident, except that such cooperation shall not be deemed to require the disclosure of confidential business information or trade secrets, or to provide notice to a resident that may have been affected by the breach of security or unauthorized acquisition or use.

(b) A person or agency that owns or licenses data that includes personal information about a resident of the commonwealth, shall provide notice, as soon as practicable and without unreasonable delay, when such person or agency (1) knows or has reason to know of a breach of security or (2) when the person or agency knows or has reason to know that the personal information of such resident was acquired or used by an unauthorized person or used for an unauthorized purpose, to the attorney general, the director of consumer affairs and business regulation and to such resident, in accordance with this chapter. The notice to be provided to the attorney general and said director, and consumer reporting agencies or state agencies if any, shall include, but not be limited to, the nature of the breach of security or unauthorized acquisition or use, the number of residents of the commonwealth affected by such incident at

the time of notification, and any steps the person or agency has taken or plans to take relating to the incident.

Upon receipt of this notice, the director of consumer affairs and business regulation shall identify any relevant consumer reporting agency or state agency, as deemed appropriate by said director, and forward the names of the identified consumer reporting agencies and state agencies to the notifying person or agency. Such person or agency shall, as soon as practicable and without unreasonable delay, also provide notice, in accordance with this chapter, to the consumer reporting agencies and state agencies identified by the director of consumer affairs and business regulation.

The notice to be provided to the resident shall include, but not be limited to, the consumer's right to obtain a police report, how a consumer requests a security freeze and the necessary information to be provided when requesting the security freeze, and any fees required to be paid to any of the consumer reporting agencies, provided however, that said notification shall not include the nature of the breach or unauthorized acquisition or use or the number of residents of the commonwealth affected by said breach or unauthorized access or use.

(c) If an agency is within the executive department, it shall provide written notification of the nature and circumstances of the breach or unauthorized acquisition or use to the information technology division and the division of public records as soon as practicable and without unreasonable delay following the discovery of a breach of security or unauthorized acquisition or use, and shall comply with all policies and procedures adopted by that division pertaining to the reporting and investigation of such an incident.

Section 4. Notwithstanding section 3, notice may be delayed if a law enforcement agency determines that provision of such notice may impede a criminal investigation and has notified the attorney general, in writing, thereof and informs the person or agency of such determination. If notice is delayed due to such determination and as soon as the law enforcement agency determines and informs the person or agency that notification no longer poses a risk of impeding an investigation, notice shall be provided, as soon as practicable and without unreasonable delay. The person or agency shall cooperate with law enforcement in its investigation of any breach of security or unauthorized acquisition or use, which shall include the sharing of information relevant to the incident; provided however, that such disclosure shall not require the disclosure of confidential business information or trade secrets.

Section 5. This chapter does not relieve a person or agency from the duty to comply with requirements of any applicable general or special law or federal law regarding the protection and privacy of personal information; provided however, a person who maintains procedures for responding to a breach of security pursuant to federal laws, rules, regulations, guidance, or guidelines, is deemed to be in compliance with this chapter if the person notifies affected Massachusetts residents in accordance with the maintained or required procedures when a breach occurs; provided further that the person also notifies the attorney general and the director of the office of consumer affairs and business regulation of the breach as soon as practicable and without unreasonable delay following the breach. The notice to be provided to the attorney general and the director of the office of consumer affairs and business regulation shall consist of, but not be limited to, any steps the person or agency has taken or plans to take relating to the breach pursuant to the applicable federal law, rule, regulation, guidance or guidelines; provided further that if said person or agency does not comply with applicable federal laws, rules, regulations, guidance or guidelines, then it shall be subject to the provisions of this chapter.

Section 6. The attorney general may bring an action pursuant to section 4 of chapter 93A against a person or otherwise to remedy violations of this chapter and for other relief that may be appropriate.

SECTION 17. The General Laws are hereby further amended by inserting after chapter 93H the following chapter:-

CHAPTER 93I.

DISPOSITION AND DESTRUCTION OF RECORDS.

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

"Agency", any county, city, town, or constitutional office or any agency thereof, including but not limited to, any department, division, bureau, board, commission or committee thereof, or any authority created by the general court to serve a public purpose, having either statewide or local jurisdiction.

"Data subject", an individual to whom personal information refers.

"Person", a natural person, corporation, association, partnership or other legal entity.

"Personal information", a resident's first name and last name or first initial and last name in combination with any 1 or more of the following data elements that relate to the resident:-

- (a) Social Security number;
- (b) driver's license number or Massachusetts identification card number;

(c) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password that would permit access to a resident's financial account; or

(d) a biometric indicator.

Section 2. When disposing of records, each agency or person shall meet the following minimum standards for proper disposal of records containing personal information:

(a) paper documents containing personal information shall be either redacted, burned, pulverized or shredded so that personal data cannot practicably be read or reconstructed;

(b) electronic media and other non-paper media containing personal information shall be destroyed or erased so that personal information cannot practicably be read or reconstructed.

Any agency or person disposing of personal information may contract with a third party to dispose of personal information in accordance with this chapter. Any third party hired to dispose of material containing personal information shall implement and monitor compliance with policies and procedures that prohibit unauthorized access to or acquisition of or use of personal information during the collection, transportation and disposal of personal information.

Any agency or person who violates the provisions of this chapter shall be subject to a civil fine of not more than \$100 per data subject affected, provided said fine shall not exceed \$50,000 for each instance of improper disposal. The attorney general may file a civil action in the superior or district court in the name of the commonwealth to recover such penalties.

Section 3. The attorney general may bring an action pursuant to section 4 of chapter 93A against a person or otherwise to remedy violations of this chapter and for other relief that may be appropriate.

SECTION 18. Section 37E of chapter 266 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following subsection:-

(f) A law enforcement officer shall accept a police incident report from a victim and shall provide a copy to such victim, if requested, within 24 hours. Such police incident reports may be filed in any county where a victim resides, or in any county where the owner or license holder of personal information stores or maintains said personal information, the owner's or license holder's principal place of business or any county in which the breach of security occurred, in whole or in part.

SECTION 19. Section 17 shall take effect on February 3, 2008.

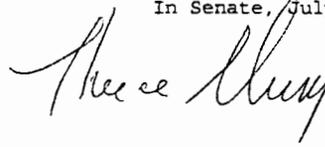
House of Representatives, July 30, 2007.

Passed to be re-enacted,

 Acting Speaker.

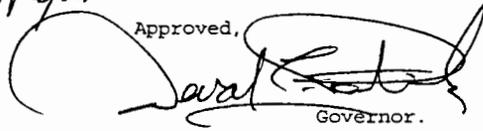
In Senate, July 31, 2007.

Passed to be re-enacted,

 President.

August 2, 2007.

Approved,

 Governor.

## **CHAPTER 91 – CAPITAL EXPENDITURE EXCLUSIONS**

*Effective August 14, 2007*

Amends G.L. c. 59, §21C(i½) to allow a city or town that is a member of a regional governmental entity, such as a regional school district, to present a Proposition 2½ capital expenditure exclusion referendum to its voters in order to levy above its levy limit to fund its assessed share of the entity's capital spending not financed by debt.

Under Proposition 2½, communities can seek voter approval to raise taxes for a temporary period to fund capital spending financed by debt (debt exclusion for the life of borrowing). They may also present a debt exclusion to voters in order to raise taxes to fund their proportionate shares of debt issued by regional entities of which they are members as reflected in their annual assessments. G.L. c. 59, §21C(k). In 1986, Proposition 2½ was amended to enable communities that funded smaller capital projects from sources other than debt to seek voter approval to raise taxes temporarily to cover that spending as well (one year capital expenditure exclusion). St. 1986, c. 562, §1. However, the capital expenditure exclusion provision did not include the language found in the debt exclusion that also allows that referendum to be used in situations where the capital spending is done by a regional entity rather than the city or town.

Beginning in fiscal year 2008, a community that is a member of a regional entity that decides not to finance capital spending by debt will now be able to ask voters to increase taxes for a particular fiscal year to cover the portion of its assessment for the year that is attributable to that spending.

Chapter 91

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Seven

AN ACT RELATIVE TO THE REGIONAL SCHOOL BUDGET PROCESS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to streamline the regional school budget process, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

SECTION 1. Section 21C of chapter 59 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the word "expenditures", in line 124, the following words:- or for the city's or town's apportioned share for certain capital outlay expenditures by a regional governmental unit.

SECTION 2. Said section 21C of said chapter 59, as so appearing, is hereby further amended by striking out, in line 131, the words "nineteen hundred" and inserting in place thereof the following words:- two thousand.

SECTION 3. This act shall take effect for fiscal years beginning on or after July 1, 2007.

Preamble adopted, House of Representatives, August 6, 2007. Acting Speaker.

Preamble adopted, In Senate, August 6, 2007. Acting President.

Bill passed to be enacted, House of Representatives, August 6, 2007. Acting Speaker.

Bill passed to be enacted, In Senate, August 6, 2007. Acting President.

14 August 2007. Approved,

at 8 o'clock and 15 minutes, A.M.

Signature of Governor

**CHAPTER 110 – FUNERAL AND BURIAL EXPENSES**  
**FOR FALLEN FIREFIGHTER AND POLICE OFFICER**

*Effective August 15, 2007*

Amends local option G.L. c. 41, §100G<sup>1/4</sup>, to increase to \$15,000 the amount of funeral and burial expenses to be paid by a city or town in cases where a firefighter or police officer is killed in the line of duty or dies from injuries received in the line of duty. Previously, maximum amount payable was \$5,000.

Chapter 110

THE COMMONWEALTH OF MASSACHUSETTS

In the Year Two Thousand and Seven

AN ACT RELATIVE TO PAYMENT OF FUNERAL AND BURIAL EXPENSES FOR FIREFIGHTERS AND POLICE OFFICERS KILLED IN PERFORMANCE OF DUTIES.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to assist in the payment of burial expenses for firefighters and police officers killed in the performance of their duties, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

SECTION 1. Section 100G of chapter 41 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 5, the words "five thousand dollars" and inserting in place thereof the following figure:- \$15,000.

SECTION 2. Said section 100G of said chapter 41, as so appearing, is hereby further amended by inserting after the first sentence the following sentence:- No payment shall be made under this section in the absence of adequate documentation that such expense has actually been incurred.

SECTION 3. This act shall take effect as of August 15, 2007.

House of Representatives, September 6, 2007.

Preamble adopted,

Paul J. Donato acting Speaker.

In Senate, September 6, 2007.

Preamble adopted,

Anthony S. Bonello Acting President.

House of Representatives, September 6, 2007.

Bill passed to be enacted,

Michael J. Maher Acting Speaker.

In Senate, September 6, 2007.

Bill passed to be enacted,

Anthony S. Bonello Acting President.

6 September, 2007.

Approved,

at 4 o'clock and 30 minutes, P. M. [Signature]



Commonwealth  
of Massachusetts

*OCPF Online*  
*www.mass.gov/ocpf*  
*Office of Campaign and Political Finance*  
*One Ashburton Place, Room 411*  
*Boston, MA 02108*

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Advisory Opinion

March 7, 2007  
AO-07-03

Jonathan Landman, Assistant Superintendent  
Randolph Public Schools  
Office of the Superintendent  
40 Highland Avenue  
Randolph, MA 02368-4513

Re: Proposed use of automated calling system

Dear Mr. Landman:

This letter is in response to your request for an opinion regarding the use of the school district's taxpayer-funded automated calling system.

Randolph will hold a town election on March 27, 2007, and an operational override will be on the ballot. You understand that the campaign finance law allows the school district to use student backpacks to distribute a flyer for students to take to their parents that notifies them of an upcoming election date, and that asks them to vote. You have asked if the school district may also use its taxpayer-funded automated calling system to phone district families with a similar message – i.e., a message that does not advocate that parents vote one way or another at the polls, but does urge them to vote.

QUESTION

May the automated calling system be used to notify parents of an upcoming election date and to encourage them to vote?

ANSWER

Yes, but only if extreme care is taken to avoid any comment regarding the merits of a ballot question or any appearance of advocacy.

DISCUSSION

In *Anderson v. City of Boston*, 376 Mass. 178 (1978), the Supreme Judicial Court analyzed the provisions of M.G.L. c. 55 in considering whether a municipality had authority to appropriate and expend funds to influence a ballot question. The court held that M.G.L. c. 55 was a comprehensive

campaign finance statute which bars such expenditures since it “demonstrate[s] a general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls.” *Id.*, at 186-187.

In accordance with *Anderson*, this office has consistently advised that governmental entities may not use public resources to support or oppose ballot questions. Specifically, this office has advised that governmental entities may not distribute flyers, brochures or other material to voters or a class of voters **advocating** the support or opposition of a ballot question absent express statutory authorization. In addition, even a truly objective flyer including a fair and impartial summary of a ballot question and arguments by proponents and opponents may not be distributed to voters or a class of voters absent statutory authorization. *See* IB-91-01.

In IB-91-01, the office stated, however, that the campaign finance law does not restrict the use of public resources to distribute certain basic information, such as a notice of the time, date and place of a municipal election. Using the same analysis, an automated phone message may provide the same information.

Although the use of an automated phone system as described above may not, strictly speaking, violate the campaign finance law, such use seems likely to create an appearance of public resource use that you might want to avoid. The primary purpose of the taxpayer-funded system is not to disseminate information relating to elections. In addition, using an automated phone system is similar to providing a phone bank, and phone banks are often used by political campaigns. Also, using an automated phone bank, normally used for routine school-related announcements, to communicate with parents about an election involves a more intrusive step than sending flyers home in backpacks. Accordingly, if the school district decides to use the phone system to notify parents of the time, date and place of a municipal election, extreme care should be taken to avoid any comment regarding the merits of a ballot question or any appearance of advocacy.

This opinion is limited in scope to providing guidance under that statute and is based on your letter and conversations with OCPF staff. You may also wish to contact the Ethics Commission to ensure that this activity would not raise any issues under the state ethics law.

Thank you for your interest in the campaign finance law. Please contact us if you have further questions.

Sincerely,



Michael J. Sullivan  
Director

MJS/gb



Commonwealth  
of Massachusetts

**OCPF Online**  
*www.mass.gov/ocpf*  
**Office of Campaign and Political Finance**  
*One Ashburton Place, Room 411*  
*Boston, MA 02108*

**OCPF-IB-91-01**  
**Issued: October 31, 1991**  
**Revised: January 9, 2007**

**INTERPRETIVE BULLETIN**

**The Use of Governmental Resources  
for Political Purposes**

This office frequently is asked about the extent to which public resources may be used for political purposes, most often whether public resources may be used to distribute information to voters concerning a municipal ballot question. In addition, questions have been asked regarding whether public facilities, especially buildings and other property, may be used by groups supporting or opposing a particular ballot question or candidate.

In general, the campaign finance law prohibits the use of public resources for political purposes, such as public employees engaging in campaign activity during work hours or using their office facilities for such a purpose. For example, a candidate who also works in a public office may not use the office phones or computer to conduct campaign work.

The law prohibits the use of public funds or other public resources to support or oppose a question put to voters, such as the use of public resources to distribute a mailing days before an election. The law does not, however, prohibit the expression of views by public officials concerning ballot questions to the extent such expression is within the scope of their official responsibilities and protected by the First Amendment.

**I. Scope of the restriction, in general**

In Anderson v. City of Boston, 376 Mass. 178, 187, 380 N.E.2d 628 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court indicated that public resources may generally not be used for political purposes. In that case, the court concluded that the City of Boston could not use public funds to set up an office “for the purpose of collecting and disseminating information about the impact” of a ballot question. The court stated that the campaign finance law is “comprehensive legislation” which “preempt[s] any right which a municipality might otherwise have to appropriate funds for the purpose of influencing” the outcome of a ballot question. 376 Mass. at 185-186.

The court pointed to Section 22A of Chapter 55, which states that “[n]othing contained herein shall be construed as authorizing the expenditures of public monies for political purposes.” The court also stated that:

[T]he Legislature may decide, as it has, that fairness in the election process is best achieved by a direction that political subdivisions of the State maintain a “hands off” policy. It may further decide that the State government and its various subdivisions should not use public funds to instruct the people, the ultimate authority, how they should vote.

376 Mass. at 194-195.

The analysis in Anderson applies to the Commonwealth and its “political subdivisions,” which use taxpayer or rate payer funds. 376 Mass. at 193. Political subdivisions of the commonwealth include all agencies within the state government, and within county, regional, town and city governments. State authorities, e.g., the Massachusetts Port Authority and the Massachusetts Turnpike Authority, and state institutions of higher education are subject to the restrictions articulated in the case. See § 179 of ch. 655 of the Acts of 1989. In addition, the Anderson decision applies to municipal utilities that rely on fees paid by ratepayers. See AO-95-42. Finally, non-profit organizations that are supported by state tax revenues and other public funds may not use such revenues to support or oppose a candidate or a ballot question. See AO-95-41 and AO-96-25.

“Governmental resources” include anything that is paid for by taxpayers, e.g., personnel, paper, stationery and other supplies; offices, meeting rooms and other facilities; copiers, computers, telephones, fax machines; automobiles and other equipment purchased or maintained by the government. A bulk mail permit is also considered a governmental resource.

Chapter 55 was enacted to regulate “**election** financing.” Anderson, 376 Mass. at 185 (emphasis added). The prohibition on the use of governmental resources for political purposes therefore applies to all expenditures made to promote or oppose a matter placed before voters at the polls, such as a ballot question. In municipal elections, the Anderson restriction and other provisions of the campaign finance law are generally triggered once the appropriate municipal authority, i.e., the board of selectmen, city or town council or mayor, decides to place the question on the ballot. See IB-90-02. However, there are cases where the law would apply to activity undertaken before a question is officially placed on the ballot. Funds spent prior to a question being “on the ballot” may also be subject to campaign finance law if the funds are spent to influence the outcome of an anticipated ballot question. Id.

Although it applies to anticipated ballot questions, the prohibition does not extend to expenditures made to discuss policy issues (e.g., the need to renovate aging school buildings), which currently are not the subject of a scheduled or anticipated ballot question, but may at some **undetermined** future point become the subject of a ballot question. On the other hand, the prohibition does not apply to expenditures concerning public policy issues that are not, and are not expected to be, the subject of an election. An example would be an issue that is on the warrant for a town meeting only, as noted later in this bulletin.

This bulletin deals largely with the publicly funded distribution of information, especially

printed matter, as it relates to the Anderson restriction. Such distribution is the most common source of questions and complaints to OCPF. This bulletin does not, however, concern the speech of public officials concerning a ballot question, such as comments supporting or opposing a question or statements made during public meeting. Such comments are generally unrestricted by the campaign finance law. See Interpretive Bulletin IB-92-02, “Activities of Public Officials in Support of or Opposition to Ballot Questions.”

## **II. Distribution of information relating to ballot questions**

Public officials often wish to distribute, or assist others in distributing, information relating to ballot questions at public expense. Such distribution is appropriate only if it is consistent with Anderson. As discussed below, public officials may prepare and make available certain information since such activity is consistent with their official responsibilities. Examples of such allowable actions would be preparing material and giving out copies at official meetings or sending it to voters who have requested more information. This type of activity is limited in scope and, in general, complies with Anderson.

In contrast, the use of public resources to make an unsolicited distribution of information relating to the substance of a ballot question, such as a blanket mailing or other publicly funded dissemination of material, outside of an official meeting, would not comply with Anderson. The general rule is that governmental resources may *not* be used for distribution of voter information commenting on the substance of a ballot question. The prohibition applies whether the material that is distributed advocates for or against a question (it is “advocacy”) or simply purports to be objective and factual (it is “informational”). As noted above, Anderson prohibits the distribution of advocacy material. As for informational material, the Secretary of the Commonwealth has concluded that the Home Rule Amendment of the Massachusetts Constitution prohibits municipalities from distributing such material in the absence of legislation specifically providing such authority.

Only eight municipalities currently have such authority to distribute informational material: Newton (Chapter 274 of the Acts of 1987), Cambridge (Chapter 630 of the Acts of 1989), Sudbury (Chapter 180 of the Acts of 1996), Burlington (Chapter 89 of the Acts of 1998), Dedham (Chapter 238 of the Acts of 2002), Lancaster (Sections 285-288 of Chapter 149 of the Acts of 2004), Yarmouth (Chapter 404 of the Acts of 2006), and Shrewsbury (Chapter 427 of the Acts of 2006). In addition, there is at least one other exception that this office is aware of: M.G.L. c. 43B, § 11, which directs the city council or board of selectmen to distribute the final report of a charter commission to voters.

Two examples illustrate the circumstances in which the office most often finds that information has been distributed in violation of Anderson. Both concern the preparation and distribution of information that deals with a ballot question, though the method of distribution varies in each example.

1) A board of selectmen uses public funds to prepare and distribute a mailing to all town residents concerning an upcoming Proposition 2 ½ override. The mailing either argues for a yes vote or provides arguably “objective” information about the question. If the mailing calls for a particular vote, it is an inappropriate use of public resources and violates Anderson. Even if the mailing simply provides “information” concerning the question, however, and may reflect an effort to be neutral, it is not consistent with the Home Rule Amendment.

2) A public school system prepares and distributes to teachers a flyer similar to the one noted in the first example. While there is no town-wide mailing, public resources are still used: school resources to prepare or copy the flyer, and the time of teachers in distributing it to students. Therefore, school officials should not ask children to take literature (including literature prepared by a parent/teacher organization) regarding the substance of a ballot question home from school to give to parents.<sup>1</sup> See AO-94-11.

Although the scope of the general rule prohibiting distribution of public resources is broad, there are several exceptions. They are discussed in greater detail below.

#### **A. Distribution of information relating to Town Meeting**

In addition to consideration by voters at the polls, some ballot questions, such as Proposition 2½ overrides and debt exclusions, also involve review by town meeting or a city or town board in the weeks and months prior to, or shortly after, an election.

The campaign finance law does not regulate expenditures of public funds made for the purpose of lobbying town meeting or city or town boards or for other purposes not designed to influence voters at an election. See AO-93-36 and AO-94-37 (stating that the campaign finance law does not regulate expenditures made primarily to affect the deliberations on a warrant article at town meeting). Municipal officials may therefore use public resources to distribute information regarding a warrant article to residents prior to a town meeting, as long as the material is distributed primarily to influence the town meeting.

Material distributed using public funds prior to a town meeting may not advocate a position on a ballot question. For example, a report summarizing or supporting a warrant article pending before town meeting may not also urge a vote in a subsequent town election.

In addition, because it is not always easy to determine the primary purpose of material distributed before a town meeting and related election, municipal officials *should be careful to avoid any discussion regarding an election* in such material. Even if it does not expressly urge a vote in an election, any discussion regarding an election in a flyer or other document distributed using public resources may raise an inference that the document is being distributed to influence the election.

There are, however, limited circumstances where the mere mention of an election in a document that is distributed using public resources prior to a town meeting would not violate the campaign finance law. For example, the town meeting warrant may include a reference to a subsequent election, especially in the context of a town meeting vote that is contingent on an override vote. In addition, a town's finance committee may use governmental resources to distribute a booklet containing its report and recommendations on warrant articles, if the recommendations are limited in scope to the warrant articles and the content of the booklet would reasonably be seen as primarily providing information in connection with town meeting, not the election which may take place after

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<sup>1</sup> This office is sometimes asked about teachers' discussion of a ballot question, such as an override, in the classroom. Such activity often engenders controversy and is seen as an indirect attempt to influence parents, even if it is undertaken for educational or information purposes. Since there is no explicit prohibition of this activity under the campaign finance law, questions or concerns about such activity should be directed to local school officials or the Massachusetts Department of Education.

the town meeting. In such circumstances, the mention of the election is clearly secondary to the material's primary purpose of providing information relating to town meeting.

The above examples deal with situations where town meeting precedes the election. In contrast, where an election, instead of following town meeting, precedes the relevant town meeting, OCPF advises that public resources should generally not be used to distribute information to voters until *after* the election. Distribution after the election eliminates any inference that taxpayer funds are being inappropriately used to influence or affect the outcome of the election. See AO-04-02 (relating to the distribution of the report and recommendations of a finance committee with the town meeting warrant).

Material that raises legal concerns under Anderson should be distributed with private funds by entities such as a duly organized ballot question committee or an existing association, corporation or other organization, in accordance with M.G.L. c. 55. Officials unsure about the appropriateness of any material planned for distribution should contact OCPF, which will review it and make a recommendation.

### **B. Preparation of material by officials; restrictions on distribution**

Policy-making officials may act or speak out concerning ballot questions in their official capacity and during work hours if in doing so they are acting within the scope of their official responsibilities. See IB-92-02.

Such responsibilities may include preparing a document for use in responding to public inquiries or taking steps to understand the implications of a ballot question that is within their area of responsibility. An official may therefore produce a document that deals with a ballot question, such as a summary of the effects of the question or an agency's position on the question, as long as such preparation is in accordance with his or her official responsibilities and does not expressly advocate a vote on an upcoming election.

An example of a document that concerns a ballot question but does not pose an immediate problem under Anderson is a report prepared by a school building committee supporting the need for a new facility that will be the subject of a Proposition 2½ debt exclusion. The document would be a public record. It may be provided to those who ask for it, such as a citizen who calls the official seeking more information on the ballot question. Any person or group, at that person or group's expense, in turn may distribute the information to voters without violating the campaign finance law if the person or group complies with the campaign finance law's reporting and disclosure requirements. In addition, information prepared by a governmental entity regarding a ballot question may be posted on a bulletin board at town hall, and it may be made available at a counter or other convenient location for the public. It may also be posted on a governmental website. See AO-01-27, and IB-04-01.

While the preparation of the document is allowable, its distribution by a public entity on a larger scale, beyond those who seek out the document or receive it at official meetings as noted below, would raise concerns under Anderson. Because the document is a public record, however, it may be copied and mailed to residents by a private entity using private funds, such as a parent-teacher organization (PTO), a ballot question committee or a corporation. See IB-92-02. The entity would, however, have to report the expenditures in accordance with the campaign finance law's requirements.

### **C. Distribution of information at public meetings or hearings**

Governmental resources may be used to produce and distribute, or make available, a reasonable quantity of a summary or other document, e.g., an architect's report on a proposed new school building, at a meeting or hearing of the governmental entity, even if the document advocates a particular vote in an anticipated election or otherwise refers to such an election. In meetings or hearings conducted by a public body, materials prepared by or for the body may be distributed to persons in attendance where such materials are designed to facilitate discussion or where the materials otherwise relate to the agenda of the meeting.<sup>2</sup>

The content of such material is generally not subject to Anderson, even if it references or makes a recommendation concerning an upcoming ballot question, because its primary purpose is to facilitate the meeting. Such unsolicited distribution of the material to a larger audience after a meeting should be avoided.

### **D. Distribution of notices of public meetings or municipal elections**

The campaign finance law does not restrict the distribution of some basic information, such as notice of a public meeting held by a governmental body or a notice regarding an upcoming election.

Public resources may be used to prepare and distribute a brief neutral notice to voters announcing the times and dates of meetings such as the type referred to in the previous section, as well as notices of meetings of governmental bodies. For example, a notice of a selectmen's meeting to discuss the municipal budget and an upcoming override may be distributed at public expense. Such notice should be confined to a simple notice of the meeting and avoid any discussion of the substance or merits of the override. A notice that encourages people to attend so they can "learn why an override is needed" would not comply with this standard.

In addition, public resources may be used to distribute information that simply advises voters of an upcoming vote, such as a notice of the time, date and place of a municipal election. In addition, such information may urge people to vote, and provide information about how to register to vote. Also, such information may include a brief neutral title describing the ballot question, and the text of the ballot question. **Extreme care should be taken to avoid any appearance of advocacy.** For example, the title "school expansion project" would be appropriate. On the other hand, titles which would not be appropriate include "ballot question relating to need for school expansion," or "ballot question addressing school overcrowding problem."

## **III. Use of government buildings or other public facilities or resources**

Notwithstanding the Anderson prohibition, there are limited circumstances in which groups supporting or opposing a ballot question may use public resources. In its decision, the court stated

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<sup>2</sup> Generally, such public documents may not be reproduced using public funds if they are to be distributed at a meeting sponsored or organized by a ballot question committee. The documents could, however, be distributed by an official who has been invited to speak at a meeting of other private groups regarding a ballot question within the scope of the official's area of responsibilities.

that the city's use of publicly funded facilities “would be improper, at least unless each side were given equal representation and access.” 376 Mass. at 200.

“Equal access” means that a group supporting or opposing a ballot question, such as a registered ballot question committee, may be allowed to use a room or other space in a public building for a meeting, as long as a group on the opposing side is given the opportunity, on request, to have a similar meeting, on the same terms and conditions.<sup>3</sup>

“Equal access,” if provided, does not mean that proponents or opponents must be invited to attend a particular event or be asked or permitted to speak at an event. See AO-90-02. For example, an opponent of a ballot question who demands an opportunity to speak at a meeting of the committee supporting the question is not entitled to such an opportunity under the equal access rule. The content and agenda of the meeting is set and controlled by the group using the space.

While a political meeting in a public building may be allowable under the campaign finance law, the meeting may not include any fundraising activity. Political fundraising is not allowed in buildings occupied for governmental purposes, such as city and town halls and schools. In addition, as previously noted, public employees who work in those buildings are also prohibited from raising funds for any political purpose. See M.G.L. c. 55, § 13-17 and IB-92-01.

“Equal access” does not mean that a private group may use a room or building which has been used for a meeting by a public body, such as a board of selectmen, within the scope of its official responsibilities, even if the public body endorsed or discussed a ballot question at its meeting and the private group opposes the ballot question. The “equal access” requirement also does not provide individuals or groups any right to speak or be placed on the agenda at a public meeting of a governmental body, such as a board of selectmen or school committee. Nor does it mean that an opponent of a ballot question is entitled to such access to distribute information, after the public body has made ballot question information, prepared within the scope of the entity’s responsibilities, available to the public in the building or at the meeting. See AO-01-27.

The equal access requirement generally is not triggered by the use of public facilities by parent teacher organizations (PTOs) for regularly scheduled PTO meetings, even if a meeting is used in part to discuss the merits of a ballot question. The primary purpose of PTOs is not to promote or oppose ballot questions. In short, “equal access” is triggered by the use of governmental resources by private groups organized to influence a ballot question, or when private groups use public resources primarily for that purpose.

In addition to access to buildings or space for meetings, groups may be given the opportunity, if equal access is provided, to distribute non-fundraising flyers regarding a ballot question in public buildings. If each side is provided the same opportunity, proponents and opponents may also be offered access to certain public services, such as mailing labels (AO-88-27), a city council chamber for campaign announcement (AO-89-28), faculty mailboxes in public school to distribute non-fundraising campaign material (AO-04-06), or a public park for a political rally (AO-92-28). In addition, a state or local governmental agency may, as part of a collective bargaining agreement, use public resources to

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<sup>3</sup> A municipality may choose, however, to not allow *any* access to meeting space by political committees; such a policy does not violate the campaign finance law as long as it is evenly applied to all groups. In other words, equal access may mean no access by political groups. See AO-04-06.

administer a payroll deduction plan for a public employee PAC, since the use of such resources would be for the purpose of fulfilling the governmental entity's contractual obligation, not primarily to provide a benefit to the PAC. See AO-03-04. A municipality or agency, which provides such a resource, must be reimbursed for any additional out-of-pocket expenses incurred in providing the resource. See AO-03-04.

The campaign finance law does not regulate the extent to which proponents and opponents of a ballot question may have access to cable television resources. Questions relating to such access should be addressed to the Cable Television Division of the Massachusetts Department of Telecommunications and Energy at (617) 305-3580.

#### **IV. Privately-funded political committees and other permissible activities**

Government officials, public employees or anyone else who wishes to oppose or promote a ballot question may undertake such activity using private funds, through a ballot question committee or other existing organization.

A separate ballot question committee should first be established with the local election official, in the case of a municipal ballot question, or with OCPF, in the case of a question put to voters on the state ballot. This committee may then be used to raise and expend funds to promote or oppose the ballot question. Public employees may not solicit or receive any contribution on behalf of the committee, although they may make contributions and participate in activities of the committee that do not involve fundraising. A school newsletter prepared using public resources, or a PTO newsletter, if distributed by teachers, should not be used to help support a ballot question committee. For example, it should not announce the formation of a ballot question committee or provide information on how to contact the committee. See AO-00-06.

A group may not solicit or receive contributions to support or oppose a ballot question until it organizes and registers as a ballot question committee. Where two or more persons "pool" their money to support or oppose a question, e.g., to pay for an advertisement, the persons should first register as a ballot question committee. Such groups are subject to all the reporting and disclosure provisions of M.G.L. c. 55.

Groups such as parent-teacher organizations and local teachers' unions, which do not raise funds specifically to influence the vote on a ballot question, may make expenditures from existing funds to support or oppose a ballot question, and may make contributions to a ballot question committee. See IB-88-01 "The Applicability of the Campaign Finance Law to Organizations Other Than Political Committees." Groups making such contributions or expenditures must, however, file a report (OCPF Form M22 or 22) with either the local election official or OCPF to disclose the contributions or expenditures. See IB-90-02.

#### **V. Expenditures of Governmental Resources - Remedies**

The treasurer of any city, town or other governmental unit, which has made expenditures or used public resources to influence or affect the vote on any question submitted to the voters, must file a report disclosing such activity. See M.G.L. c. 55, § 22A and M-95-06.

Because of the differing circumstances and severity of instances of the improper use of public resources to influence elections, the final disposition and remedies in such cases may vary. Where the use of public resources is minor or difficult to quantify, or where officials are not aware of the restrictions, OCPF focuses on providing guidance to ensure that the action is not repeated.

In other cases, however, restitution of funds adjudicated to have been spent contrary to law may be required. Such restitution may not be paid from public funds. It may, however, be paid by a ballot question committee, association or other private group or individual. Any officer of a governmental unit violating § 22A may be subject to criminal penalties.

Finally, any ten persons may file suit to restrain illegal use of public funds at the local level by filing a ten taxpayer suit. See M.G.L. c. 40, § 53. It was such a “ten taxpayer” suit that led to the Anderson decision. At the state level, any 24 taxpayers can file a similar suit. See M.G.L. c. 29, § 63.

## **VI. Other Bulletins and Memoranda**

This bulletin provides general guidance. If you are in doubt regarding the scope of the campaign finance law, you should contact OCPF at (800) 462-OCPF or (617) 727-8352. This office’s web site, [www.mass.gov/ocpf](http://www.mass.gov/ocpf), provides additional guidance on this and other campaign finance topics. In addition, related interpretive bulletins and memoranda which may be of interest -- and which may be downloaded from OCPF’s website -- include: IB-90-02 (Disclosure and Reporting of Contributions and Expenditures Related to Ballot Questions); IB-92-01 (The Application of the Campaign Finance Laws to Public Employees and Political Solicitation); IB-92-02 (Activities of Public Officials in Support of or Opposition to Ballot Questions); IB-95-02 (Political Activity of Ballot Question Committees and Civic Organizations’ Involvement in Ballot Question Campaigns); IB-95-03 (Use of Public Resources by Elected Officials to Communicate with Constituents or Respond to Criticism); M-95-06 (Disclosure of expenditures of public resources required under M.G.L. c. 55, § 22A); and IB-04-01 (Use of the Internet and E-mail for Political Campaign Purposes).

Michael J. Sullivan  
Director



Commonwealth  
of Massachusetts

*OCPF Online*  
*www.mass.gov/ocpf*  
*Office of Campaign and Political Finance*  
*One Ashburton Place, Room 411*  
*Boston, MA 02108*

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**INTERPRETIVE BULLETIN**

**Activities of Public Officials  
in Support of or Opposition to Ballot Questions**

This office frequently is asked about the extent to which public officials may act or speak in support of or in opposition to a question submitted to the voters.

In general, officials may undertake various official actions that concern ballot questions relating to matters that are within their areas of authority, such as voicing their opinions, holding or attending meetings and making information available to the public. Officials should not, however, use public resources to engage in a campaign to influence voters concerning a ballot question, for example by authorizing a publicly funded mass mailing to voters or using city or town resources to support or oppose a ballot question.

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court ruled that public resources may not be used to influence voters concerning a ballot question.

In accordance with the Anderson decision, OCPF has consistently advised that governmental entities may not contribute or expend anything of value in support of or opposition to a ballot question, whether it is on the statewide ballot or placed before voters in a single city or town.<sup>1</sup> See OCPF Interpretive Bulletin IB-91-01 and advisory opinions cited therein for more specific guidance on activities that fall under this prohibition. In addition, public resources may not be used to distribute even admittedly objective information regarding a ballot question unless expressly authorized by state law. See IB-91-01.

Anderson, however, does permit public officials to act and speak regarding ballot questions, subject to certain limitations. As the Anderson court noted with apparent approval:

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<sup>1</sup> Anderson generally does not address or restrict activities of officials concerning town meeting. There may be some limitations, however, in the case of a ballot question that is also the subject of a town meeting, such as a Proposition 2½ override. See IB-91-01.

At oral argument, the plaintiffs conceded that the mayor and persons in relevant policy-making positions in . . . government are free to act and speak out in support [of a ballot question]. *Id.* at 199 (emphasis added).

In short, the decision reflected a recognition that if officials were prohibited from stating their positions regarding a ballot question related to their official responsibility, such a prohibition would unnecessarily (and probably unconstitutionally) restrain such officials from carrying out the duties of their offices.

Nevertheless, OCPF always advises caution on the part of officials to avoid the appearance of improperly using public resources to support or oppose a ballot question. In Anderson, the court indicated that the campaign finance law reflects an interest “in assuring the fairness of elections and the appearance of fairness in the electoral process.” 376 Mass. at 193. In general, officials should be aware that some of their actions or comments may be viewed unfavorably by those who oppose their positions, even if those actions are not specifically prohibited by the campaign finance law. On the other hand, members of the public who may question an official’s conduct or comments concerning a ballot question should be aware that, as noted by the court in Anderson above, an official has the right to voice his or her opinion on a public policy issue, including a ballot question. Objections to the speech or actions of officials concerning a ballot question are sometimes based not on the law, but on other considerations that are beyond the scope of OCPF’s jurisdiction.

This bulletin provides more specific guidance regarding the scope of such permissible activities concerning a ballot question, but it cannot be seen as encompassing all situations that might arise. OCPF is aware that ballot questions, especially those concerning Proposition 2 ½ overrides and debt exclusions, are often contentious issues. Given the limited treatment of this issue in Anderson, and the absence of relevant statutory provisions, questions and issues not addressed or reflected in this bulletin will continue to be raised regarding the extent to which officials may speak or act regarding ballot questions in a manner consistent with Anderson. Those who have questions not addressed here may contact OCPF for advice.

## **I. Permissible Official Activity by Public Officials**

In general, a public official may comment regarding a ballot question. In addition, a public official may take certain actions regarding a ballot question, if the actions are consistent with his official responsibilities.<sup>2</sup> An official may therefore address an issue or advocate a position regarding a ballot question that may affect the official’s agency or which relates to a matter within the scope of his agency’s enabling legislation. See AO-02-03.

On the other hand, if an official could utilize governmental resources to promote or oppose a ballot question, the fundamental prohibition set forth in Anderson would be meaningless. While voters

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<sup>2</sup> It is worth noting, however, that *elected* officials have considerably more leeway than *appointed* officials. An *elected* official may speak about a ballot question at any time, even if the ballot question is not within the official's area of responsibility. In contrast, an *appointed* official may speak regarding a ballot question during work hours only if the question relates to a matter within the scope of the official’s area of responsibilities. In addition, an appointed official may not appear at a political committee’s campaign function to promote or oppose a ballot question during working hours. The appointed official may attend the event during non-working hours. An elected official, however, may attend such an event at any time.

have the right to know an official's position, they also have the right to expect that their tax dollars will not be used for political purposes, whether to support the election of a candidate or to gain approval of a question put before voters.

Therefore, officials may not use public resources in an attempt to promote or oppose a ballot question, e.g., by placing an advertisement in a newspaper urging a “yes” or “no” vote on the question, or by conducting a mass mailing of flyers urging a yes or no vote on a question or by distributing such a flyer through students at a public school. In addition, the Secretary of the Commonwealth has ruled that a city or town may not distribute printed information to voters regarding the question, unless it has been authorized to do so by the Legislature. (As of this writing, only eight communities have received such authorization through home rule petitions: Burlington, Cambridge, Dedham, Lancaster, Newton, Sudbury, Shrewsbury, and Yarmouth.)

In general, officials are prohibited from using any publicly funded publications, including newsletters, to influence voters concerning a ballot question. Such materials may be prepared, but they may not be sent unsolicited to voters.

Even with these restrictions, however, public officials may act or speak regarding ballot questions in a number of ways without violating the campaign finance law. Notwithstanding the Anderson restrictions, a public official may:

**A. Discuss a ballot question, including at meetings of a governmental entity or at informational meetings of private groups.** Officials may discuss a ballot question at any time, including at an official meeting of a governmental body, such as a board of selectmen or school committee, or at informational meetings sponsored by a private group. Although sometimes a person may complain that the statements made by officials at such meetings are inaccurate or inappropriate, the accuracy or appropriateness of officials’ statements is not an issue under the campaign finance law.

**B. Take a position on a ballot question.** Officials may endorse, or vote as a body to endorse, a ballot question, and may issue statements supporting or opposing a ballot question. However, the distribution of such statements should be restricted to such usual methods as posting on a bulletin board or a press release, not in a manner restricted by Anderson as noted below. The fact that a ballot question is discussed or a vote is taken does not make an official meeting a “political event” and therefore does not trigger an equal access requirement for the use of the meeting room or inclusion on the agenda of the meeting. See AO-95-33 (selectmen may discuss ballot question at meetings, respond to inaccurate or misleading statements and post a statement on town hall bulletin board) and AO-00-19 (selectmen may endorse candidate or ballot question).

**C. Analyze the impact of a ballot question.** An official may conduct an analysis of a ballot question's impact on agency operations or assign staff to conduct such an analysis, provided the question would affect the official’s area of responsibility or agency. For example, a police chief may prepare an analysis of the effect of a Proposition 2 ½ override that would fund his department; if the question concerned the school budget only, however, such a use of police department resources would run counter to Anderson. The results of such analysis would be considered a public document and could be made available to the public upon request, but should not be prepared or distributed in a manner inconsistent with the next section. The

official may not conduct a study primarily to aid the proponents or opponents of a ballot question.

**D. Provide copies of the agency's analysis of and/or position on a ballot question, or other public documents, to persons requesting copies or to persons attending public meetings of a governmental entity.** An official may distribute information containing the official's position on a ballot question or the agency's analysis to persons requesting such information, and may make a reasonable number of copies available to persons attending an official meeting (such as a public forum) of a governmental entity. However, even if the study is a public record, it may not be mailed or distributed, beyond those who attend such a meeting or request such information, to voters or a class of voters at public expense without express statutory authorization. See IB-91-01. A copy may be made available to an individual or group and may be reproduced with private funds and distributed by individuals or political committees, if such distribution is disclosed in accordance with the campaign finance law. Officials should not provide an excessive number of copies to a private group, political committee, or individual, for mailing or any other type of distribution.

**E. Hold an informational forum, participate in a forum held by a private group, and distribute a notice of the forum.** An official or agency may hold an informational forum concerning a ballot question, or participate in a forum sponsored by a private group. As noted above, the campaign finance law generally does not cover the content of public meetings. If the governmental agency distributes a notice of a forum, however, such a notice may not discuss the substance of the ballot question or contain an argument for or against the question. For example, it may announce the date, time and location of the forum, but it may not contain a discussion of the reasons for supporting or opposing the ballot question.

**F. Speak to the press.** An official may speak to the press regarding a ballot question that concerns a matter within the official's area of responsibilities. An official may also respond to or direct staff to respond to questions from the press or the public about the official's position on such a ballot question. See AO-92-32. Officials should contact OCPF before a press release is prepared or distributed using public resources.

**G. Post information on a government bulletin board or Web site.** Information or endorsements by governmental entities or other information regarding a ballot question that are public records may be posted on a town's Web site or bulletin board. See AO-00-12. Further use of the governmental web site or the Internet for a more political purpose, such as unsolicited e-mails to voters asking for their support, should be avoided.

**H. Allow private groups to use a public building for a meeting concerning a ballot question.** In Anderson the court stated that the political use of certain government resources, such as facilities paid for by public funds "would be improper, unless each side were given equal representation and access." Accordingly, ballot question committees, or other groups that support or oppose a ballot question, may use areas within public buildings that are accessible to the public (i.e., not private offices) for meetings if each side is given equal access. See AO-90-02. "Equal access" does not mean that the other side must be invited to attend a meeting. It means that both sides may, upon request, use the same space for separate meetings on the same terms and conditions. It is important to remember, however, that fundraising relating to the ballot question may not take place at such a meeting. See M.G.L. c. 55, § 14

(prohibiting any demand, solicitation or receipt of money or other things of value for any political campaign purpose in any building or part thereof “occupied for state, county or municipal purposes”).

**I. Appear on cable television:** The fact that an official may, as described above, discuss or take a position on a ballot question is not altered if such an action is broadcast on local access cable television. In addition to speaking at public meetings that may be broadcast, an official may appear on a local cable or broadcast television or radio show, during work hours if applicable, to discuss a ballot question that relates to a matter within the scope of the official’s area of responsibilities. During the course of the official’s appearance on the show, the official may state that he or she supports or opposes the ballot question. See AO-02-03. Questions concerning content of cable television programming and the use of cable television by municipalities should be directed to Cable Television Division of the state Department of Telecommunications and Energy at (617) 305-3580 or (888) MA CBL TV (888-622-2588).

## **II. Private activity by officials**

The examples listed above concern an official’s actions while using some type of public resource, i.e., staff time or material, to promote or oppose or otherwise influence a ballot question. The Anderson opinion applies to the use of such public resources, but does not extend to the use of privately-funded resources. A person’s status as a public official does not preclude him or her from engaging in political activity when not at work, including activity supporting or opposing a ballot question. The campaign finance law does not prohibit officials from acting or speaking in favor of or in opposition to a ballot question on an individual basis on their own time. It is important to keep in mind, however, that appointed, paid public employees may not, be involved *at any time* in fundraising to support or oppose a ballot question. See M.G.L. c. 55, § 13, which state that public employees may not “directly or indirectly solicit or receive” any contributions of anything of value for any political purpose. For more information regarding restrictions on fundraising, see OCPF’s *Campaign Finance Guide: Public Employees, Public Resources and Political Activity*.

Specifically, public officials may, on their own time:

**A. Serve on a ballot question committee or perform services for such a committee.** An official may, on his or her own behalf, perform services or serve as a member of a political committee, or hold any committee position, aside from treasurer or any other position that involves fundraising (if the official is appointed as opposed to elected, as noted above). In addition, as discussed below, some activities of public officials acting or speaking in favor of or opposition to ballot questions may raise issues relating to the conflict of interest law, M.G.L. c. 268A, which is enforced by the State Ethics Commission.

**B. Contribute to a ballot question committee or make expenditures to support or oppose a ballot question.** An official may use his or her own personal funds to contribute to a ballot question committee or otherwise to support or oppose a ballot question. There is no monetary limit to such contributions or expenditures.

### III. Conflict of Interest Issues

Some activities of public officials acting or speaking in favor of or opposition to ballot questions may raise issues relating to the conflict of interest law, M.G.L. c. 268A, which is enforced by the State Ethics Commission. The Ethics Commission has stated that a municipal official may be a member of a ballot question committee and may speak in favor of or in opposition to a ballot question. The Commission has advised, however, that such an official may not speak “on behalf of and/or as the representative of” a ballot question committee before a municipal board or in a forum sponsored by a municipality. In addition, an official should publicly disclose any relationship “that gives the reasonable basis for the impression that any person or entity can improperly influence” the official in the performance of his duties. See Commission Advisory No. 4 and Conflict of Interest Opinion EC-COI-92-5. If you have questions regarding c. 268A, contact the State Ethics Commission at (617) 727-0060.

**This bulletin provides general guidance. To ensure compliance with the campaign finance law, OCPF strongly encourages officials to contact this office if they are in doubt regarding the scope of permissible involvement in ballot question campaigns.**

If you have any questions or need further information regarding this interpretive bulletin or any other campaign finance matter, please call OCPF at (800) 462-OCPF or (617) 727-8352. The office’s web site, [www.mass.gov/ocpf](http://www.mass.gov/ocpf), provides additional guidance on this and other campaign finance topics.

Michael J. Sullivan  
Director