
**Massachusetts Department of Revenue
Division of Local Services**

**Current Developments
in
Municipal Law**



2009

Legislation & Agency Decisions

Book 1

**Navjeet K. Bal, Commissioner
Robert G. Nunes, Deputy Commissioner**

www.mass.gov/dls

WHAT'S NEW IN MUNICIPAL LAW?

2009

INTRODUCTION 9:00 a.m. - 9:20 a.m.
Robert G. Nunes
Kathleen Colleary

LEGISLATION
Gary A. Blau 9:20 a.m. - 9:45 a.m.
Kathleen Colleary 9:45 a.m. - 10:05 a.m.

COURT CASES
Donald E. Gorton 10:05 a.m. - 10:30 a.m.

BREAK 10:30 a.m. - 10:50 a.m.

COURT CASES
James F. Crowley 10:50 a.m. - 11:15 a.m.
Daniel J. Murphy 11:15 a.m. - 11:35 a.m.
Christopher M. Hinchey 11:35 a.m. - 11:55 a.m.
Mary C. Mitchell 11:55 a.m. - 12:15 p.m.

LUNCH 12:15 p.m. - 1:30 p.m.

WORKSHOPS 1:30 p.m. - 3:00 p.m.

A. LOCAL TAXES. A review of legal issues in recent Appellate Tax Board cases and other current assessment and collection issues.

James F. Crowley
Donald E. Gorton
Daniel J. Murphy

B. LOCAL FINANCES. A discussion of current accounting, special fund and finance issues.

Kathleen Colleary
Mary C. Mitchell

C. LOCAL SERVICES. An exploration of financial, employment and other issues involved in regionalizing the delivery of local services.

Gary A. Blau
Christopher M. Hinchey

BUREAU OF MUNICIPAL FINANCE LAW

617-626-2400 (phone)

617-626-2379 or 617-660-0245 (fax)

DLSSLAW@dor.state.ma.us

Legislation

Table of Contents

Book 1

	Page
<u>2008 LEGISLATION</u>	
Ch. 374 Enrollment of Retirees in Medicare	1
Ch. 377 Fiscal Year 2009 Supplemental Budget §§ 2, 2A, 10 Deadline for Joining Group Insurance Commission	2
Ch. 479 Other Post-Employment Benefits Liability Trust Fund	3
<u>2009 LEGISLATION</u>	
Ch. 1 Fiscal Year 2009 State Budget Reductions	5
Ch. 5 Fiscal Year 2009 Supplemental Budget § 20 Extended Unemployment Benefits	6
Ch. 21 Pension Reform	7
Ch. 26 Fiscal Year 2009 Supplemental Budget § 49 Pension Charges to Federal Education Grants	13
Ch. 27 Fiscal Year 2010 State Budget Item 8000-0040 Police Career Incentive Program § 3 Local Aid Advances § 24 Senior Work-off Abatements §§ 25, 149 Taxation of Telecommunications Corporations Poles and Wires on Public Ways §§ 50-52, 154 Local Room Occupancy Excise §§ 60, 156 Local Meals Excise § 62 Borrowing for School Construction Projects § 114 Education Reform Waivers § 145 Water Infrastructure Commission	14
Ch. 28 Ethics Reform §§ 17-20, 106 Open Meeting Law §§ 35, 54-56, 105 Campaign Finance Law §§ 84, 101-102 Conflict of Interest Law	22
Ch. 60 Regionalization Commission	35
<u>AGENCY DECISIONS OR ADVISORIES</u>	
Office of Campaign & Political Finance – <i>Endorsing Proposition 2½ Questions</i> (October 2008)	37

2008 LEGISLATION

CHAPTER 374 –ENROLLMENT OF MUNICIPAL RETIREES IN MEDICARE

Effective November 7, 2008

Creates a new local option, G.L. c. 32B, § 18A, that allows local governmental employers to require retirees who are eligible for the federal Medicare Part B program (doctors' services and outpatient care) to enroll in that program without the employers having to pay a penalty. Previously, if a city or town accepted G.L. c. 32B, § 18, it had to require all eligible retirees to enroll in Medicare, including those that had already retired. Because those retirees had not enrolled at the time of retirement, they were assessed a penalty by the federal government, which Section 18 required their governmental employer to pay. The new option under Section 18A allows employers to require only those employees who retire after adoption of the option to enroll. Since prior retirees will not be required to enroll, there will no longer be any penalties for their employers to cover.

CHAPTER 374 OF THE ACTS OF 2008

An Act Relative To Certain Health Insurance Options For Municipal Retirees.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith certain health insurance options for municipal employees, 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. Chapter 32B of the General Laws is hereby amended by inserting after section 18 the following section:—

Section 18A. In a governmental unit that has accepted section 10 and that accepts this section, all retirees, their spouses and dependents insured or eligible to be insured under this chapter, if enrolled in Medicare Part A at no cost to the retiree, spouse or dependents or eligible for coverage thereunder at no cost to the retiree, spouse or dependents, shall be required to transfer to a Medicare extension plan offered by the governmental unit under section 11C or section 16, provided, that the benefits under the plan and Medicare Part A and Part B together shall be of comparable actuarial value to those under the retiree's existing coverage; provided, however, that a retiree or spouse who has a dependent who is not enrolled or eligible to be enrolled in Medicare Part A at no cost shall not be required to transfer to a Medicare extension plan if a transfer requires the retiree or spouse to continue the existing family coverage for the dependent in a plan other than a Medicare extension plan offered by the governmental unit. Each retiree shall provide the governmental unit, in such form as the governmental unit 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 coverage. The governmental unit may from time to time request from a retiree, a retiree's spouse or a retiree's dependent, proof, certified by the federal government, of eligibility or ineligibility for Medicare Part A and

Part B coverage. The governmental unit shall pay any Medicare Part B premium penalty assessed by the federal government on the retiree, spouse or dependent as a result of enrollment in Medicare Part B at the time of transfer. For the purpose of this paragraph, “retiree” shall mean a person who retires after the acceptance of this section by a governmental unit.

A retiree who retires prior to the acceptance of this section by a governmental unit, his spouse and dependent shall continue to be eligible for benefits provided under this chapter, but may opt to transfer to a Medicare extension plan offered by the governmental unit under section 11C or section 16, thereby becoming ineligible to participate in any other group health insurance benefits available to active employees under this chapter.

This section shall take effect in a county, except Worcester county, city, town or district upon its acceptance in the following manner: In a county, by vote of the county commissioners; in a city having a Plan D or Plan E charter, by a majority vote of its city council; in any other city, by vote of its city council and approval by the mayor; in a district, except as hereinafter provided, by vote of the registered voters of the district at a district meeting; in a regional school district, by vote of the regional district school committee; and in a town, either by vote of the town at a town meeting or, by a majority of affirmative votes cast in answer to the following question which shall be printed upon the official ballot to be used at an election of said town – “Shall the town require that all retirees, who retire after the acceptance of this section, their spouses and dependents who are enrolled in Medicare Part A at no cost to a retiree, their spouse or dependents, or eligible for coverage thereunder at no cost to a retiree, his spouse or dependents, be required to enroll in a Medicare health benefits supplement plan offered by the town?”.

SECTION 2. Section 18 of chapter 32B of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the word “coverage”, in line 10, the following words:- ; provided, further, that retirees or spouse, who has a dependent who is not enrolled or eligible to be enrolled in Medicare part A at no cost shall not be required to transfer to a Medicare extension plan if a transfer requires the retiree or spouse to continue the existing family coverage for the dependent in a plan other than a Medicare extension plan offered by the governmental unit.

Approved November 7, 2008

CHAPTER 377 - FISCAL YEAR 2009 SUPPLEMENTAL BUDGET

Effective November 7, 2008

§§ 2, 2A and 10 Deadline for Joining Group Insurance Commission. Amends subsection (e) of local option G.L. c. 32B, § 19, which allows local governmental employers to obtain health insurance coverage for employees, retirees and their dependents by joining the state Group Insurance Commission (GIC). Under the amendment, employers that want GIC health benefits to take effect for any fiscal year will now have until December 1 instead of October 1 of the prior year to notify the GIC. As of January 1, 2012, the deadline will revert to October 1.

CHAPTER 377 OF THE ACTS OF 2008 (EXCERPTS)
An Act Making Appropriations For The Fiscal Year 2009 To Provide For Supplementing Certain Existing Appropriations And For Certain Other Activities And Projects.

Whereas, The deferred operation of this act would tend to defeat its purposes, which are to make forthwith supplemental appropriations for fiscal year 2009 and to make certain changes in law, each of which is immediately necessary to carry out those appropriations or to accomplish 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 2. The second sentence of subsection (e) of section 19 of chapter 32B of the General Laws, as appearing in section 4 of chapter 67 of the acts of 2007, is hereby amended by striking out the word “October” and inserting in place thereof the following word:- December.

SECTION 2A. Said second sentence of said subsection (e) of said section 19 of said chapter 32B is hereby further amended by striking out the word “December”, inserted by section 2, and inserting in place thereof the following word:- October.

SECTION 10. Section 2A shall take effect on January 1, 2012.

Approved November 7, 2008

CHAPTER 479 - OTHER POST-EMPLOYMENT BENEFITS TRUST FUNDS

Effective January 10, 2009

Adds a new local option section, Section 20, to G.L. c. 32B, which governs group health insurance for active and retired employees of local governmental entities. The new option allows a city, town, district, county or municipal lighting plant to set up a special trust fund, the Other Post Employment Benefits (OPEB) Liability Trust Fund, for appropriations made to cover the unfunded actuarial liability of health care and other post-employment benefits for its retirees. Reimbursements received by the governmental entity from the federal Medicare program for covering retiree drug costs (Medicare Part D) may be credited to the fund as well. Acceptance is by vote of town meeting in a town, city council in a city having a Plan D or Plan E charter, city council with the approval of the mayor in any other city, the governing board in a district, county commissioners in a county and board for a municipal lighting plant. Previously, municipalities had to obtain special acts to create an OPEB trust fund.

The governmental entity must retain an actuary to establish a funding schedule. The schedule must be reviewed and approved by the Public Employee Retirement Administration Commission’s (PERAC’s) actuary. In addition, the schedule must be reviewed every three years by the chief executive officer of the entity and any update must

be reviewed by PERAC's actuary as well. The governmental entity is not required to make appropriations into the fund according to the schedule, but any appropriations made are held in trust for OPEB obligations.

The governmental entity's treasurer is the custodian of the fund, or in the case of a light plant, an officer designated by the board. Investment of fund monies by the custodian must be consistent with the prudent investor standard set forth in G.L. c. 203C for private trust funds. Interest earned on the investment of fund monies belongs to the fund.

CHAPTER 479 OF THE ACTS OF 2008
An Act Providing For The Establishment Of Other Post Employment Benefits Liability Trust Funds In Municipalities And Certain Other Governmental Units.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith a local option for municipalities and certain other governmental units to establish certain trust funds, 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 32B of the General Laws is hereby amended by adding the following section:-
Section 20. A city, town, district, county or municipal lighting plant that accepts this section, may establish a separate fund, to be known as an Other Post Employment Benefits Liability Trust Fund, and a funding schedule for the fund. The schedule and any future updates shall be designed, consistent with standards issued by the Governmental Accounting Standards Board, to reduce the unfunded actuarial liability of health care and other post-employment benefits to zero as of an actuarially acceptable period of years and to meet the normal cost of all such future benefits for which the governmental unit is obligated. The schedule and any future updates shall be: (i) developed by an actuary retained by a municipal lighting plant or any other governmental unit and triennially reviewed by the board for a municipal lighting plant or by the chief executive officer of a governmental unit; and (ii) reviewed and approved by the actuary in the public employee retirement administration commission.

The board of a municipal lighting plant or the legislative body of any other governmental unit may appropriate amounts recommended by the schedule to be credited to the fund.

Any interest or other income generated by the fund shall be added to and become part of the fund. Amounts that a governmental unit receives as a sponsor of a qualified retiree prescription drug plan under 42 U.S.C. 1395w-132 may be added to and become part of the fund.

The custodian of the fund shall be: (i) a designee appointed by the board of a municipal lighting plant; or (ii) the treasurer of any other governmental unit. Funds shall be invested and reinvested by the custodian consistent with the prudent investor rule set forth in chapter 203C.

This section may be accepted in a city having a Plan D or Plan E charter by vote of the city council; in any other city by vote of the city council and approval of the mayor; in a town by vote of the town at a town meeting; in a district by vote of the governing board; in a municipal lighting plant by vote of the board; and in a county by vote of the county commissioners.

Approved January 10, 2009

2009 LEGISLATION

CHAPTER 1 - FISCAL YEAR 2009 STATE BUDGET REDUCTIONS

Effective January 22, 2009

Expands the Governor's power to make budget cuts under G.L. c. 29, § 9C for the purpose of addressing revenue shortfalls during Fiscal Year 2009. The power ordinarily extends only to appropriations made for executive branch agencies under the Governor's control. For FY09, the power includes appropriations made for certain local aid distributions to cities, towns and regional school districts. See **BULLETIN 2009-04B, Fiscal Year 2009 Local Aid Cuts, issued January 2009.**

CHAPTER 1 OF THE ACTS OF 2009

An Act Expanding The Governor's Authority To Address Deficiencies In Revenue.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to enable the Governor to address forthwith the current fiscal crisis, 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. The first paragraph of section 9B of chapter 29 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Notwithstanding any general or special law to the contrary, except an appropriation act or other law expressly citing and prohibiting the application of this section, any monies appropriated by the general court and any funds distributed in accordance with section 3 of chapter 182 of the acts of 2008, but excluding monies otherwise appropriated to the general court, the courts, the office of the comptroller, the office of inspector general or constitutional officers, shall be expended only in such amounts as may be allotted as provided in this section.

SECTION 2. Said first paragraph of said section 9B of said chapter 29, as amended by section 1, is hereby further amended by striking out the first sentence and inserting in place

thereof the following sentence:- Any monies made available by appropriation or otherwise to state agencies under the control of the governor or a secretary, but not including the courts, the office of the governor and the office of the lieutenant governor, shall be expended only in such amounts as may be allotted as provided in this section.

SECTION 3. Any allotment reduction in item 0611-5500 or item 7061-0008 or in lottery distributions in sections 2 and 3, including the General Fund supplement to hold harmless lottery aid, of chapter 182 of the acts of 2008, shall be not more than 1/3 of the total reductions made by the governor in the current fiscal year.

SECTION 4. The governor shall not reduce the allocation to a city, town or regional school district of state school aid funds appropriated in item 7061-0008 of section 2 of chapter 182 of the acts of 2008, as allocated by section 3 of said chapter 182, so as to reduce the sum of those allocated state school aid funds and the minimum required local contribution below foundation budget for that city, town or regional school district, as calculated pursuant to said section 3 of said chapter 182.

SECTION 5. In any reduction in payments to a municipality or regional school district pursuant to item 0611-5500 or item 7061-0008 or in lottery distributions in sections 2 and 3, including the General Fund supplement to hold harmless lottery aid, of chapter 182 of the acts of 2008, from the amounts appropriated in said chapter 182, the governor shall consider the following: (1) the impact on the annual budget of each municipality or regional school district; (2) the percentage of the municipality's or regional school district's budget that comes from the state; and (3) any other factor that he considers important.

SECTION 6. Section 2 shall take effect on July 1, 2009.

Approved January 22, 2009

CHAPTER 5 - FISCAL YEAR 2009 SUPPLEMENTAL BUDGET

Effective March 19, 2009

§ 20 Extended Unemployment Benefits. Allows the Governor to use funds from the federal Emergency Unemployment Compensation (EUC) Act of 2008 to cover up to 13 additional weeks of benefits for laid off employees before providing state extended benefits. During the period federal EUC funds are used, municipal employers on the reimbursable plan would not be charged for benefits of laid-off employees. However, once federal EUC coverage ends, they would become responsible for 100 percent of any further state paid extended benefits.

Additional Information: Contact the Division of Unemployment Assistance.

**CHAPTER 5 OF THE ACTS OF 2009 (EXCERPTS)
An Act Making Appropriations For The Fiscal Year 2009 To Provide For
Supplementing Certain Existing Appropriations And For Certain Other
Activities And Projects.**

Whereas, The deferred operation of this act would tend to defeat its purposes, which is to make forthwith supplemental appropriations for fiscal year 2009 and to make certain changes in law, 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 20. Notwithstanding any general or special law to the contrary, for weeks of unemployment beginning on or after March 15, 2009, the governor may elect to pay unemployment compensation to otherwise eligible individuals pursuant to the emergency unemployment compensation provisions of the Supplemental Appropriations Act of 2008, Pub. L. 110-252, as amended by the Unemployment Compensation Extension Act of 2008, Pub. L. 110-449, and any further extensions or amendments thereto, prior to the payment of extended benefits under section 30A of chapter 151A of the General Laws.

Approved March 19, 2009

CHAPTER 21 – PENSION REFORM

Effective June 16, 2009

Makes several changes to public employee pension systems that are applicable to members who retire after July 1, 2009. Changes include a new definition of regular compensation that excludes housing allowances and certain other indirect payments. Housing and other allowances allowed under a collective bargaining agreement or employment contract may continue until the contracts expire, or June 30, 2012, if earlier. Accidental disability retirement benefits for someone in a temporary or acting position when the injury occurred will now be based on the person's annual rate of regular compensation during the prior 12 months. If the person was working in his or her permanent position, the benefits will be based on the annual rate of compensation on the date the injury occurred.

The "one-day, one year" provision is eliminated and elected officials will be given creditable service based on actual time served rather than a full year service for working one day in a calendar year. The "termination allowance" for elected officials who are not nominated or reelected is eliminated and elected officials must now have 10 years of creditable service at age 55 to retire. Previously, they needed six years.

Those serving in uncompensated positions will no longer be able to purchase creditable service for that position. Officers and employees who earn \$5,000 or less in compensation will no longer qualify for creditable service after their current terms expire, or July 1, 2012, if earlier. Retirees who return to work as consultants or independent contractors can no longer receive a full salary in addition to their pension benefits. The amount they may earn is limited.

Individuals who are members of more than one retirement system will now have to retire from each system separately. They can no longer combine their compensation and increase their pensions unless they retire before January 1, 2010.

Several changes are made to improve administrative efficiency. They include allowing retirement boards to require direct deposit of pension payments and requiring boards to notify employers when pension payments do not cover a retiree's health insurance premium.

Retirement systems may extend their full funding schedules for two years – until 2030. A special commission on public pensions was reestablished with additional members and additional areas to study and report on by September 1, 2009.

Additional Information: See PERAC Memorandum No. 24 (June 22, 2009).

CHAPTER 21 OF THE ACTS OF 2009

An Act Providing Responsible Reforms In The Pension System.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to reform pension laws for public employees, 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 1 of chapter 32 of the General Laws is hereby amended by inserting after the word “forty-five”, in line 399, as appearing in the 2006 Official Edition, the following words:- through June 30, 2009.

SECTION 2. The definition of “Regular compensation” in said section 1 of said chapter 32, as so appearing, is hereby further amended by adding the following sentence:- “Regular Compensation”, during any period subsequent to June 30, 2009, shall be compensation received exclusively as wages by an employee for services performed in the course of employment for his employer.

SECTION 3. Said section 1 of said chapter 32, as amended by section 15 of chapter 130 of the acts of 2008, is hereby further amended by adding the following definition:- “Wages”, the base salary or other base compensation of an employee paid to that employee for employment by an employer; provided, however, that “wages” shall not include, without limitation, overtime, commissions, bonuses other than cost-of-living bonuses, amounts derived from salary enhancements or salary augmentation plans which will recur for a limited or definite term, indirect, in-kind or other payments for such items as housing, lodging, travel, clothing allowances, annuities, welfare benefits, lump sum buyouts for workers' compensation, job-related expense payments, automobile usage, insurance premiums, dependent care assistance, 1-time lump sum payments in lieu of or for unused vacation or sick leave or the payment for termination, severance, dismissal or any amounts paid as premiums for working holidays, except in the case of police officers, firefighters and employees of a municipal department who are employed as fire alarm signal operators or signal maintenance repairmen money paid for holidays shall be regarded as regular compensation, amounts paid as early retirement incentives or any other payment made as a result of the employer having knowledge of the member's retirement, tuition, payments in kind and all payments other than payment received by an individual from his employing

unit for services rendered to such employing unit, regardless of federal taxability; provided further, that notwithstanding the foregoing, in the case of a teacher employed in a public day school who is a member of the teachers' retirement system, salary payable under the terms of an annual contract for additional services in such school and compensation for services rendered by a teacher in connection with a school lunch program or for services in connection with a program of instruction of physical education and athletic contests as authorized by section 47 of chapter 71 shall be regarded as "regular compensation" rather than as bonus or overtime and shall be included in the salary on which deductions are to be paid to the annuity savings fund of the teachers' retirement system.

SECTION 4. Section 4 of said chapter 32 of the General Laws is hereby amended by striking out, in lines 5 to 7, inclusive, as so appearing, the words " , that he shall be credited with a year of creditable service for each calendar year during which he served as an elected official; and provided, further".

SECTION 5. Subdivision (1) of said section 4 of said chapter 32 is hereby amended by striking out paragraphs (o) and (o ½), as so appearing, and inserting in place thereof the following paragraph:-

(o) The service of a state, county or municipal employee employed or elected in a position receiving compensation of less than \$5,000 annually, which service occurs on or after July 1, 2009, shall not constitute creditable service for purposes of this chapter.

SECTION 6. Section 5 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 69 and 70, the words " , except for elected officials subject to the provisions of paragraph (b) of subdivision (2) of section ten,".

SECTION 7. Subdivision (2) of said section 5 of said chapter 32, as so appearing, is hereby amended by adding the following paragraph:-

(e) A person who has been a member of 2 or more systems and who, on or after January 1, 2010, has received regular compensation from 2 or more governmental units concurrently shall, upon retirement, receive a superannuation retirement allowance to become effective on the date of retirement that is equal to the sum of the benefits calculated pursuant to this section as though the member were retiring solely from each system; provided, however, that notwithstanding paragraph (c) of subdivision (8) of section 3, each system shall pay the superannuation retirement allowance attributable to membership in that system to the member; and provided further, that this section shall not apply to any member who has vested in 2 or more systems as of January 1, 2010.

SECTION 8. Section 7 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 69 to 73, inclusive, the words "or equal to seventy-two per cent of the average annual rate of his regular compensation for the twelve-month period for which he last received regular compensation immediately preceding the date his retirement allowance becomes effective, whichever is greater; provided, however" and inserting in place thereof the following words:- ; provided, however, that if an individual was in a temporary or acting position on the date such injury was sustained or hazard undergone the amount to be provided under this subdivision shall be based on the average annual rate of the individual's regular compensation during the previous 12-month period for which he last received regular compensation immediately preceding the date such injury was sustained or such hazard was undergone; provided, further,.

SECTION 9. Section 10 of said chapter 32, as so appearing, is hereby amended by striking out, in line 4, the words “, or fails of nomination or re-election”.

SECTION 10. Said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 7 to 9, inclusive, the words “, or fails of nomination or re-election, or fails to become a candidate for nomination or re-election”.

SECTION 11. Said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 50 and 51, the words “fails of nomination or re-election, or”.

SECTION 12. Said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 72 to 77, inclusive, the words “one of the following circumstances applies: (1) that the employee has failed of nomination or re-election, (2) that the employee has failed of reappointment, (3) that the employee’s office or position has been abolished, or (4) that” and inserting in place thereof the following words:- : (1) the employee has failed of reappointment; (2) the employee’s office or position has been abolished; or (3).

SECTION 13. Said section 10 of said chapter 32, as so appearing, is hereby further amended by striking out, in line 79, the word “six” and inserting in place thereof the following figure:- 10.

SECTION 14. Subdivision (1) of section 11 of said chapter 32, as so appearing, is hereby amended by adding the following paragraph:-

(d) If a member is entitled to a return of his accumulated total deductions and requests such a return from the board on the prescribed form, then prior to the return of such accumulated total deductions, the board shall contact the member’s employer to determine whether the member owes an obligation to the employer under an employee benefit plan, including a cafeteria plan established pursuant to 26 U.S.C. section 125. If it is determined that the member owes the employer under any such plan, the board shall not return the accumulated total deductions until it has received notice from the employer that the obligation has been satisfied.

SECTION 15. Said chapter 32 is hereby further amended by inserting after section 12C the following section:-

Section 12D. A retirement system subject to this chapter shall pay all benefits in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan as defined in section 414(d) of the Internal Revenue Code.

SECTION 16. Subdivision (1) of section 13 of said chapter 32, as appearing in the 2006 Official Edition, is hereby amended by adding the following paragraph:-

(c) A retirement board may require a member entitled to receive a retirement allowance to designate a financial institution to which shall be directly deposited any payments under any annuity, pension or retirement allowance.

SECTION 17. Section 19A of said chapter 32 is hereby amended by striking out the first paragraph, as so appearing, and inserting in place thereof the following paragraph:-

Any employee of the commonwealth, a city, town, district or other member unit of a retirement system who is retired under this chapter shall, upon the request of the retiring authority paying such pension or retirement allowance, or otherwise may, by assignment made in writing authorize the retiring authority paying such pension or retirement allowance to withhold each month such amount as he may designate for the payment of subscriber premiums applicable to any hospitalization, medical or surgical insurance in effect with a nonprofit hospital and medical service corporation or insurance company at the time of his retirement. 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 18. Section 22D of said chapter 32, as so appearing, is amended by striking out, in line 25, the figure "2028" and inserting in place thereof the following figure:- 2030.

SECTION 19. Said chapter 32 is hereby further amended by inserting after section 22D the following section:-

Section 22E. (a) For the purposes of this section, "statutory adjustment to the commonwealth pension liability" shall mean an adjustment that changes the benefits or contributions of classes of members including, but not limited to, early retirement incentive programs, cost-of-living adjustments, the membership of those classes or any amendments to chapter 32 that may change the actuarial liability of the commonwealth pension system.

(b) Upon request of a joint standing committee of the general court having jurisdiction or upon request of the committee on ways and means of either branch, the actuary of the public employee retirement administration commission shall conduct and prepare a review, evaluation and financial impact of the statutory adjustment to the commonwealth pension liability, in consultation with other relevant state agencies, and shall report to the committee within 90 days of the request.

SECTION 20. Section 91 of said chapter 32 is hereby amended by striking out, in line 3, as appearing in the 2006 Official Edition, the words "or district," and inserting in place thereof the following words:- , district or authority.

SECTION 21. Said section 91 of said chapter 32 is hereby further amended by inserting after the word "authority", in line 84, the following words:- , including as a consultant or independent contractor or as a person whose regular duties require that his time be devoted to the service of the commonwealth, county, city, town, district or authority during regular business hours.

SECTION 22. Chapter 182 of the acts of 2008 is hereby amended by striking out section 111 and inserting in place thereof the following section:-

Section 111. There shall be a special commission to study the Massachusetts contributory retirement systems. The commission shall consist of the secretary of administration and finance or her designee; the state auditor or his designee; the executive director of the public employee retirement administration commission or his designee; the executive director of the state retirement board or his designee; the executive director of the teachers' retirement board or her designee; 3 members of the house of representatives, 1 of whom shall be appointed by the house minority leader; 3 members of the senate, 1 of whom shall be appointed by the senate minority leader; and 6 members to be appointed by the

governor, 1 of whom shall be a private citizen who shall serve as chair of the commission and shall not be a member of any of the 106 contributory retirement systems, 2 of whom shall have professional experience in employee benefits or in actuarial science, 1 of whom shall be a member of the Massachusetts Municipal Association; 1 of whom shall be selected from a list of 3 candidates submitted by the president of the Massachusetts AFL-CIO and 1 of whom shall be a member of the Retired State, County and Municipal Employees Association of Massachusetts. The commission shall convene its first official meeting not later than June 1, 2009.

The commission shall make a comprehensive study of the Massachusetts contributory retirement systems. The study shall include, but not be limited to: contribution rates paid by employers and employees; vesting periods; the weight given to age versus years of service in the current system; the portability of benefits in the current system; the definition of regular compensation including, but not limited to, whether all forms of compensation taxable under the federal income tax code should constitute regular compensation; cost-of-living-adjustments with special attention paid to the cost of increasing the cost-of-living-adjustments base; current and future employee pension plans and contribution structures; termination allowances pursuant to section 10 of chapter 32 of the General Laws; group classification systems, including the classification of department of correction employees under section 28M of said chapter 32; capping annual pension benefits; penalties for pension fraud; eligibility and level of benefits for employees who participate under 2 or more retirement systems; potential costs, savings or benefits related to moving from a defined benefit retirement system to a defined contribution retirement system for new employees, including a system that maintains eligibility for employees to participate in the Social Security system; qualifications for credit for service pursuant to section 4 of said chapter 32, including minimum compensation limits for officials to be eligible for credit for service, and the cost of any recommendations the commission may make.

The public employee retirement administration commission shall conduct an actuarial analysis to determine the costs of any recommendations made by the commission. The commission shall prepare a report of its findings and recommendations, together with the actuarial analysis and any recommendations for legislation, if any, to implement those recommendations by filing the same with the clerks of the senate and house of representatives, the chairs of the house and senate committee on ways and means and the senate and house chairs of the joint committee on public service not later than September 1, 2009.

SECTION 23. Notwithstanding any special or general law to the contrary, any amount, benefit or payment included in the definition of “regular compensation” by law or by regulation prior to the effective date of this act and included in any applicable collective bargaining agreement or individual contract for employment in effect on May 1, 2009, shall continue to be included in the definition of “regular compensation” during the term of that collective bargaining agreement or contract; provided, however, that any such amount, benefit or payment received after June 30, 2012 shall not be considered regular compensation.

SECTION 24. Section 1 of this act shall take effect July 1, 2009.

SECTION 25. Section 5 of this act shall take effect July 1, 2009; provided, however, that creditable service shall be granted for the service of any state, county or municipal employee serving in a paid position earning less than \$5,000 after July 1, 2009, if such service is subject to a specified term as a result of an election, appointment or contract and the election, appointment or contract occurred or was executed prior to July 1, 2009, and if the service is otherwise eligible for creditable service under chapter 32 of the General Laws; and provided further, that such creditable service shall be granted until the expiration of the term, appointment or contract or July 1, 2012, whichever first occurs.

SECTION 26. Notwithstanding any general or special law to the contrary and except as expressly provided otherwise, this act shall apply to all members of retirement systems who retire after July 1, 2009.

Approved June 16, 2009

CHAPTER 26 - FISCAL YEAR 2009 SUPPLEMENTAL BUDGET

Effective June 29, 2009

§ 49 Pension Charges to Federal Education Grants. Waives for federal grants distributed to municipal and regional school districts during FY09 and FY10 through the State Fiscal Stabilization Fund under the American Reinvestment and Recovery Act (ARRA) of 2009, the usual nine percent pension chargeback requirements of G.L. c. 40, § 5D when salaries are funded by the grants. **See Informational Guideline Release (IGR) 90-106, *Pension Charges to Federal Grants*, issued March 1990.** Districts must still make their regular contributions to local retirement systems for personnel not included within the state Teachers' Retirement System.

Additional Information: See Department of Elementary and Secondary Education *Advisory Memorandum on FY10 ARRA State Fiscal Stabilization Fund (SFSF) Grants* (July 15, 2009).

CHAPTER 26 OF THE ACTS OF 2009 (EXCERPTS) An Act Making Appropriations For The Fiscal Year 2009 To Provide For Supplementing Certain Existing Appropriations And For Certain Other Activities And Projects.

Whereas, The deferred operation of this act would tend to defeat its purposes, which are forthwith to make supplemental appropriations for fiscal year 2009 and to make certain changes in law, 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 49. Notwithstanding any general or special law to the contrary, federal grant funds in items 7061-0004 and 7061-0005 distributed to school districts in fiscal years 2009

and 2010 through the State Fiscal Stabilization Fund under Title XIV of the American Reinvestment and Recovery Act of 2009 shall not be subject to indirect charges under section 32A of chapter 35 of the General Laws and section 5D of chapter 40 of the General Laws. Subsection (f) of section 6B of chapter 29 of the General Laws shall not apply to these funds. School districts shall continue to provide for and make contributions to appropriate pension funds, as required by paragraph (c) of subdivision (7) of section 22 of chapter 32 of the General Laws, for employees whose salaries are paid from these federal funds in the same manner as contributions are made when receiving state education aid under chapter 70 of the General Laws.

Approved June 29, 2009

CHAPTER 27 – FISCAL YEAR 2010 STATE BUDGET

Effective July 1, 2009, unless otherwise noted

Item 8000-0040 Police Career Incentive Program. Makes police officers hired on or after July 1, 2009, or employed as of that date, ineligible for police career incentive program (Quinn Bill) benefits if they have not begun to accumulate points.

§ 3 Local Aid Advances. Authorizes the State Treasurer to advance payments of FY10 local aid distributions to a city, town, regional school district or independent agricultural and technical school that demonstrates an emergency cash shortfall, as certified by the Commissioner of Revenue and approved by the Secretary of Administration and Finance.

§ 24 Senior Work-off Abatements. Allows cities and towns to increase the maximum property tax reduction seniors may earn performing work for their communities under local option G.L. c. 59, § 5K. This amendment increases the maximum reduction to \$1,000. Previously, it was \$750.

§§ 25 and 149 Taxation of Telecommunications Corporations Poles and Wires on Public Ways. *Effective as of January 1, 2009 for fiscal years beginning on or after July 1, 2009.* Section 25 amends G.L. c. 59, § 18, Fifth, to eliminate the historical exemption from local taxation for poles and wires owned by telephone and telegraph, cable television, internet, data service and other telecommunications corporations and located on public ways that was based on court decisions. In effect, it makes the 2008 decision of the Appellate Tax Board (ATB) that determined the poles and wires of centrally valued telephone corporations located on public ways are subject to tax applicable to all centrally and locally valued telecommunications corporations beginning in FY10. *Verizon New England, Inc. Consolidated Central Valuation Appeals, ATB Docket No. C273560.* In addition, Section 149 permits assessors who are unable to obtain information from locally valued cable and other telecommunications corporations about these assets and complete valuations before the FY10 actual commitment, to use the omitted and revised assessment procedure to make assessments for FY10. **See BULLETIN 2009-14B, Taxation of Poles and Wires on Public Ways, issued July 2009.**

§§ 50-52 and 154 Local Room Occupancy Excise. *Effective for occupancies on or after August 1, 2009.* Section 50 amends G.L. c. 64G, § 2, which exempts certain occupancies

from the room occupancy excise. Rooms occupied in hotels or motels operated by public or private educational institutions will now be subject to the excise. Sections 51 and 52 amend G.L. c. 64G, § 3A, which allows a city or town, by local acceptance, to impose a local room occupancy excise. The local excise is in addition to the state excise imposed on room occupancies. Communities may now set a local rate up to six percent (six and one-half for Boston). Previously, the maximum local rate was four percent (four and one-half for Boston). See **BULLETIN 2009-15B, *Local Option Excises*, issued July 2009;** **BULLETIN 2009-17B, *Local Option Excise Revenues*, issued July 2009.**

§§ 60 and 156 Local Meals Excise. *Effective for sales of restaurant meals on or after October 1, 2009.* Section 60 adds a new local option tax statute, G.L. c. 64L, which allows a city or town, by local acceptance, to impose an excise of .75 percent on the sales of restaurant meals originating within the municipality. The local excise is in addition to the state tax imposed on the meals. As with the local option room occupancy excise, the Department of Revenue will collect the local option meals excise and distribute the collections to the city or town. See **BULLETIN 2009-15B, *Local Option Excises*, issued July 2009;** **BULLETIN 2009-17B, *Local Option Excise Revenues*, issued July 2009.**

§ 62 Borrowing for School Construction Projects. *Effective as of January 1, 2008.* Makes a technical amendment to subsection (d) to G.L. c. 70B, § 6, which relates to approval of school facility grants by the Massachusetts School Building Authority. It adds “regional school committees” to the first sentence of that subsection which authorizes a 25 year borrowing for the local share of school construction projects. Previously, that sentence only referenced cities and towns.

§ 114 Education Reform Waivers. Permits cities, towns and regional school districts to apply for various adjustments in their FY10 minimum required contributions to schools under the Education Reform Act. Municipalities may seek adjustments if (1) non-recurring revenues were used to support FY09 operating budgets and those revenues are not available in FY10, (2) they have extraordinary non-school related expenses in FY10, (3) their FY10 municipal revenue growth factor is at least 1.5 times the statewide average and is deemed to be excessive, or (4) 95 percent of their FY09 actual contribution was less than their FY10 contribution. Regional school districts that used non-recurring revenues in FY09 that are unavailable for FY10 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, 2009. See **IGR 09-302, *Fiscal Year 2010 Waivers to Education Reform Spending Requirements and Minimum Required Local Contributions*, issued July 2009.**

§ 145 Water Infrastructure Commission. Establishes a 17 member special water infrastructure finance commission to develop a comprehensive, long-range water infrastructure finance plan for the Commonwealth and municipalities within two years. Members include the Commissioner of Environmental Protection and State Treasurer, or their designees, two appointees of the Senate President including one Senator, two appointees of the Speaker of the House including one Representative, one appointee each

by the Minority Leaders of the House and Senate, a representative of the Boston Water and Sewer Commission, and nine appointees of the Governor, including representatives from municipal, business, labor and environmental organizations.

CHAPTER 27 OF THE ACTS OF 2009 (EXCERPTS)
An Act Making Appropriations For The Fiscal Year 2010 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, 2009, 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:

8000-0040. For police career incentives to reimburse certain cities and towns for career incentive salary increases for police officers; provided, however, that regular full-time members of municipal police departments hired on or after July 1, 2009 shall not be eligible to participate in the career incentive pay program established pursuant to section 108L of chapter 41 of the General Laws; provided further, that any current regular full-time member of a municipal police department who has not started accumulating points pursuant to said section 108L of said chapter 41 of the General Laws, as of September 1, 2009, shall not be eligible to participate in the career incentive pay program established pursuant to said section 108L of said chapter 41 of the General Laws; and provided further, that any current regular full-time member of a municipal police department who has begun to accumulate points pursuant to said section 108L of said chapter 41 of the General Laws as of September 1, 2009 shall be allowed to accumulate the maximum number of points permissible pursuant to said section 108L of said chapter 41 of the General Laws..... \$10,000,000

SECTION 3. Notwithstanding ...

Advance payments shall be made for some or all of periodic local reimbursement or assistance programs to any city, town, regional school district or independent agricultural and technical school that demonstrates an emergency cash shortfall, as certified by the commissioner of revenue and approved by the secretary of the executive office for administration and finance, pursuant to guidelines established by the secretary.

SECTION 24. Section 5K of chapter 59 of the General Laws, as so appearing, is hereby amended by striking out, in line 13, the figure “\$750” and inserting in place thereof the following figure:- \$1,000

SECTION 25. Clause Fifth of section 18 of said chapter 59, as so appearing, is hereby amended by adding the following 2 sentences:- Poles, underground conduits, wires and pipes of telecommunications companies laid in or erected upon public or private ways and

property shall be assessed to their owners in the cities or towns where they are laid or erected. For purposes of this clause, telecommunications companies shall include cable television, internet service, telephone service, data service and any other telecommunications service providers.

SECTION 50. The first paragraph of section 2 of chapter 64G of the General Laws, as so appearing, is hereby amended by striking out clause (b) and inserting in place thereof the following clause:- (b) lodging accommodations, including dormitories, at religious, charitable, educational and philanthropic institutions; provided, however, that this exemption shall not apply to accommodations provided by any such institution at a hotel or motel operated by the institution.

SECTION 51. Section 3A of said chapter 64G, as so appearing, is hereby amended by striking out, in line 5, the word “four” and inserting in place thereof the following figure:-
6

SECTION 52. Said section 3A of said chapter 64G, as so appearing, is hereby further amended by striking out, in line 10, the figure “4.5 ” and inserting in place thereof the following figure:- 6.5

SECTION 60. The General Laws are hereby amended by inserting after chapter 64K the following chapter:-

CHAPTER 64L.
Local Option Meals Excise

Section 1. As used in this chapter, the following words shall have the meaning assigned to them in paragraph (h) of section 6 of chapter 64H: "honor snack tray", "meals" and "restaurant".

“Commissioner”, the commissioner of revenue.

“Sale”, a sale of meals by a restaurant for any purpose other than resale in the regular course of business.

“Vendor”, shall have the meaning assigned to it in section 1 of chapter 64H.

Section 2. (a) A city or town which accepts this section in the manner provided in section 4 of chapter 4 may impose a local sales tax upon the sale of restaurant meals originating within the city or town by a vendor at a rate of .75 per cent of the gross receipts of the vendor from the sale of restaurant meals. No excise shall be imposed if the sale is exempt under section 6 of chapter 64H. The vendor shall pay the local sales tax imposed under this section to the commissioner at the same time and in the same manner as the sales tax due to the commonwealth.

(b) All sums received by the commissioner under this section shall, at least quarterly, be distributed, credited and paid by the state treasurer upon certification of the commissioner to each city or town that has accepted this section in proportion to the amount of the sums received from the sales of restaurant meals in that city or town. Any city or town seeking to dispute the commissioner’s calculation of its distribution under this subsection shall notify the commissioner, in writing, not later than 1 year from the date the tax was distributed by the commissioner to the city or town.

c) This section shall take effect in a municipality on the first day of the calendar quarter following 30 days after its acceptance by the municipality or on the first day of a later calendar quarter that the city or town may designate.

(d) Notwithstanding any provisions in section 21 of chapter 62C to the contrary, the commissioner may make available to cities and towns any information necessary for administration of the excise imposed by this section including, but not limited to, a report of the amount of local option sales tax on restaurant meals collected in the aggregate by each city or town under this section in the preceding fiscal year, and the identification of each individual vendor collecting local option sales tax on restaurant meals collected under this chapter.

Section 3. Except as provided herein, a sale of a meal by a restaurant is sourced to the business location of the vendor if (1) the meal is received by the purchaser at the business location of the vendor or (2) if the meal is delivered by the vendor to a customer, regardless of the location of the customer. A vendor with multiple business locations in the commonwealth must separately report sales sourced to each location in a manner prescribed by the commissioner. Restaurant meal delivery companies that purchase meals for resale must source their sales to the delivery location indicated by instructions for delivery to the purchaser and shall separately report sales by municipality in a manner prescribed by the commissioner. The commissioner may also adopt by rule or regulation destination sourcing and reporting rules for caterers or other vendors with a high volume of delivered meals, as the commissioner may determine, in order to mitigate any anti-competitive impact of the local meals tax.

Section 4. Reimbursement for the tax imposed by this chapter shall be paid by the purchaser to the vendor, and each vendor in the commonwealth shall add to the sales price and shall collect from the purchaser the full amount of the tax imposed by this chapter and such tax shall be a debt from the purchaser to the vendor, when so added to the sales price, and shall be recoverable at law in the same manner as other debts.

Section 5. Upon each sale of a meal by a restaurant taxable under this chapter, the amount of tax collected by the vendor from the purchaser shall be stated and charged separately from the sales price and shown separately on any record thereof at the time the sale is made or on any evidence of sale issued or used by the vendor, but in the instance of the sale of alcoholic beverages for on premises consumption, the tax collected need not be stated separately.

Section 6. Every person who fails to pay to the commissioner any sums required by this chapter shall be personally and individually liable therefor to the commonwealth. The term "person", as used in this section, includes an officer or employee of a corporation, or a member or employee of a partnership or limited liability company, who as an officer, employee or member is under a duty to pay over the taxes imposed by this chapter.

SECTION 62. Subsection (d) of section 6 of chapter 70B of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- Any city, town or regional school district which has received, in accordance with subsections (b) and (c), notice of approval and an estimate of the amount of a school facilities grant, may borrow from time to time to finance that portion of the cost of the approved school project not being paid by such grant,

in such amount approved by the board of selectmen, mayor or city manager of the city or town, or the regional district school committee of the regional school district, and may issue bonds or notes therefor which shall bear on their face the words —(name of city, town or regional school district) School Project Loan, chapter 70B.

SECTION 114. (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, 2010. 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 elementary and secondary 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 or whose fiscal year 2008 actual local contributions were lower than the amounts calculated in the one-time adjustment used pursuant to the fiscal year funding formula under chapter 70 of the General Laws, may appeal to the department of revenue not later than October 1, 2009, 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, 2010 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 elementary and secondary 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, 2009, 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 elementary and secondary 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 elementary and secondary 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 2010 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 elementary and secondary education shall issue guidelines for their respective duties pursuant to this section.

SECTION 145. (a) There shall be a special water infrastructure finance commission to develop a comprehensive, long-range water infrastructure finance plan for the commonwealth and municipalities.

(b) The commission shall consist of the commissioner of environmental protection or his designee; the state treasurer or his designee; 2 people to be appointed by the president of the senate, 1 of whom shall be a member of the senate and 1 of whom shall be a representative of a planning organization, environmental consumer organization or other public interest organization; 2 people to be appointed by the speaker of the house of representatives, 1 of whom shall be a member of the house of representatives and 1 of whom shall be a representative of a planning organization, environmental consumer organization or other public interest organization; 1 person to be appointed by the minority leader of the senate and 1 person to be appointed by the minority leader of the house of representatives, each of whom shall be from different geographic regions of the commonwealth and who shall be representatives of the business community; a representative of the Boston Water and Sewer Commission; and 9 persons to be appointed by the governor who shall not be employees of the executive branch and who shall reside in different geographic regions of the commonwealth, 1 of whom shall be a representative of the American Council of Engineering Companies of Massachusetts, 1 of whom shall be a representative of the Utility Contractors' Association of New England, 1 of whom shall be a representative of the Massachusetts Waterworks Association, 1 of whom shall be a representative of the Massachusetts Municipal Association, 1 of whom shall be a representative of Clean Water Action, 1 of whom shall be a representative of Associated Industries of Massachusetts, 1 of whom shall be a representative of the Environmental League of Massachusetts, 1 of whom shall be a representative of the Conservation Law

Foundation and 1 of whom shall be a representative of the Massachusetts Water Pollution Control Association. Each of those organizations shall provide a list of at least 3 but not more than 5 candidates for consideration by the governor. Each of the members shall be an expert or shall have experience in the field of law or public policy, water, wastewater or storm water planning, design and construction of water, wastewater or storm water projects, utility management, management consulting or organizational finance; provided, however, that at least 1 member shall have expertise in organizational finance. The governor shall designate a member to serve as the chairperson of the commission but the chairperson shall not be the commissioner of environmental protection, the state treasurer or their designees. The members of the commission shall be appointed not later 90 days after the effective date of this act and shall serve until the completion of the long-range infrastructure finance plan.

(c) In the course of its deliberations, the commission shall make it a priority to examine the technical and financial feasibility of sustaining, integrating and expanding public water systems, conservation and efficiency programs, wastewater systems and storm water systems of municipalities and the commonwealth, including regional or district systems. Further, the commission shall: (1) examine the water infrastructure needs of the commonwealth for the next 25 years as they relate to the funding gap between the water infrastructure needs of the commonwealth and the existing, available sources of funding; (2) develop mechanisms for additional funding for water infrastructure by increasing investment in critical water, wastewater, storm water and water conservation infrastructure; (3) provide mechanisms for improvements in the handling and management of water programs; (4) examine the potential threats to public health and public safety from the existing shortfalls in funding for water infrastructure; (5) examine and develop recommendations on ways in which the commonwealth and its municipalities may meet operation and maintenance and capital improvement and reconstruction needs for the next 25 years including, without limitation, recommendations regarding debt reduction, enhancing existing sources of revenues, developing new sources of revenues, establishing new incentives for public-private partnerships in the development of real property resources and funding resources; and (6) examine the expanded use of full accounting systems and enterprise funding, asset management systems and best management practices, compliance with chapter 21G of the General Laws, the Massachusetts water policy and current federal and state funding programs.

(d) The commission shall examine the finances of the various municipalities and regional water districts, including state and federal aid levels, and make recommendations for improvements to financial policies and procedures. The commission shall identify areas where cost savings can be achieved across water agencies by consolidation, coordination and reorganization. The commission shall examine the projected federal funding, projected state funding, projected local funding, projected fee-based funding, debt financing and any other sources of projected funding to finance water infrastructure needs identified by the commission.

(e) The commission shall develop recommendations as to what funding or finance measures the commonwealth or municipalities may pursue to satisfy any unmet funding needs identified by the commission. The recommendations shall also include any recommendation for interagency agreements, intermunicipal agreements, consolidations or mergers to enable the commonwealth and municipalities to make the most effective use of water funding resources. The recommendations shall identify fair and equitable means of financing water infrastructure investments through taxes, fees, user charges or other sources.

(f) The commission may hold public hearings to assist in the collection and evaluation of data and testimony.

(g) The commission shall prepare a written report detailing its financials relative to identified funding sources and its recommendations, if any, together with drafts of legislation necessary to carry those recommendations into effect. The commission shall submit its initial report to the governor, the secretary of the executive office of energy and environmental affairs, the clerks of the senate and house of representatives, the chairs of the house and senate committees on ways and means and the joint committee on environment, natural resources and agriculture not later than 2 years after the effective date of this act.

(h) Any research, analysis or other staff support that the commission reasonably requires shall be provided by the executive office of energy and environmental affairs and its agencies, with assistance from the Massachusetts Water Resources Authority.

SECTION 149. Section 25 shall take effect as of January 1, 2009 and shall apply to property taxes assessed for fiscal years beginning on or after July 1, 2009.

Notwithstanding any general or special law to the contrary, for fiscal year 2010, the assessors of any city or town may assess taxes for any personal property taxable under section 25 not included in the fiscal year 2010 annual tax assessment to its owner in the manner and within the time provided by section 75 or 76 of chapter 59 of the General Laws.

SECTION 154. Sections 50, 51 and 52 shall take effect on August 1, 2009.

SECTION 156. Sections 32, 36 and 60 shall take effect on October 1, 2009.

SECTION 161. Except as otherwise specified, this act shall take effect on July 1, 2009.

Approved June 29, 2009

CHAPTER 28 - ETHICS REFORM

Effective September 29, 2009, unless otherwise noted

Makes numerous changes in the state's lobbying, open meeting, campaign finance and ethics laws.

§§ 17-20 and 106 Open Meeting Law. *Effective July 1, 2010.* Provides for consolidation of the separate Open Meeting Laws for state, county and local governmental bodies into a new single law, G.L. c. 30A, §§ 18 – 25, that will be overseen and enforced by the Attorney General (AG) instead of the local district attorney. The AG is expected to provide training for governmental officials and can issue advisory opinions and regulations. The AG will also investigate alleged violations of the law and after a hearing, determine whether a violation occurred and the appropriate sanction from a number of options listed in the law. The law has also been updated so that the definition of deliberation includes certain communications by email. Electronic posting of meeting notices will also be permitted.

§§ 35, 54-56 and 105 Campaign Finance Law. *Effective January 1, 2010.* Changes some reporting requirements for candidates for municipal offices. Requires candidates for mayor

in cities with populations of 40,000 to 100,000 to file electronic campaign finance reports with the Office of Campaign and Political Finance (OCPF) if they raise or spend \$5,000 during an election cycle. Previously, their reports were filed locally. In other cities and towns, city or town clerks are to post the campaign finance reports of candidates who have more than \$1,000 of activity in a reporting period on their municipal web sites (if any) within 30 days of the reporting deadline.

§§ 84, 101 and 102 Conflict of Interest Law. Increases civil fines and expands other enforcement tools and sanctions. Also includes requirement that State Ethics Commission (SEC) publish a summary of the Conflict of Interest Law for state, county, and municipal employees on its website and provide it to employees within 30 days of employment and on an annual basis. In addition, all current employees must be given a summary of the revised law no later than 90 days after the Act takes effect. Employees must acknowledge receipt of these summaries. Municipal employees will receive the summary from and return their acknowledgements to the city or town clerk. The SEC must also provide on-line training for employees, to be completed within 30 days of employment and every two years thereafter. Within 120 days after the Act takes effect, each city and town must designate a senior level employee to serve as its liaison to the commission for the purpose of disseminating the required information and training to municipal employees.

Additional Information: Summary of Chapter 28 available from OCPF and SEC websites. OCPF Reports Newsletter (Summer 2009).

CHAPTER 28 OF THE ACTS OF 2009 (EXCERPTS) **An Act To Improve The Laws Relating To Campaign Finance, Ethics And Lobbying.**

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

SECTION 17. Sections 11A and 11A½ of chapter 30A of the General Laws are hereby repealed.

SECTION 18. Said chapter 30A is hereby further amended by adding the following 8 sections:-

Section 18: As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Deliberation”, an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that “deliberation” shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

“Emergency”, a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

“Executive session”, any part of a meeting of a public body closed to the public for deliberation of certain matters.

“Intentional violation”, an act or omission by a public body or a member thereof, in knowing by violating the open meeting law.

“Meeting”, a deliberation by a public body with respect to any matter within the body’s jurisdiction; provided, however, “meeting” shall not include:

(a) an on-site inspection of a project or program, so long as the members do not deliberate;

(b) attendance by a quorum of a public body at a public or private gathering, including a conference or training program or a media, social or other event, so long as the members do not deliberate;

(c) attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate;

(d) a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it; or

(e) a session of a town meeting convened under section 10 of chapter 39 which would include the attendance by a quorum of a public body at any such session.

“Minutes”, the written report of a meeting created by a public body required by subsection (a) of section 23 and section 5A of chapter 66.

“Open meeting law”, sections 18 to 25, inclusive.

“Post notice”, to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

“Preliminary screening”, the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

“Public body”, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that “public body” shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

“Quorum”, a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

Section 19. (a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting

law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:

- (1) the general background of the legal requirements for the open meeting law;
- (2) applicability of sections 18 to 25, inclusive, to governmental bodies;
- (3) the role of the attorney general in enforcing the open meeting law; and
- (4) penalties and other consequences for failure to comply with this chapter.

(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee.

The commission shall review issues relative to the open meeting law and shall submit to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:

- (1) the number of open meeting law complaints received by the attorney general;
- (2) the number of hearings convened as the result of open meeting law complaints by the attorney general;
- (3) a summary of the determinations of violations made by the attorney general;
- (4) a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;
- (5) an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
- (6) the number of actions filed in superior court seeking relief from an order of the attorney general; and
- (7) any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

Section 20. (a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk's office is located.

For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies. For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website in accordance with procedures established for this purpose.

The attorney general shall have the authority to prescribe or approve alternative methods of notice where the attorney general determines such alternative will afford more effective notice to the public.

(d) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(e) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall inform other attendees of any such recordings.

(f) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(g) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

Section 21. (a) A public body may meet in executive session only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:

- i. to be present at such executive session during deliberations which involve that individual;
- ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
- iii. to speak on his own behalf; and
- iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual's expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;

5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;

8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

(i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and

(ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or

10. to discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:

1. the body has first convened in an open session pursuant to section 21;
2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
5. accurate records of the executive session shall be maintained pursuant to section 23.

Section 22. (a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause

Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g)(1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body's next meeting and such announcement shall be included in the minutes of that meeting.

(2) Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body's next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

Section 23. (a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:

- (1) compel immediate and future compliance with the open meeting law;
- (2) compel attendance at a training session authorized by the attorney general;
- (3) nullify in whole or in part any action taken at the meeting;
- (4) impose a civil penalty upon the public body of not more than \$1,000 for each intentional violation;
- (5) reinstate an employee without loss of compensation, seniority, tenure or other benefits;
- (6) compel that minutes, records or other materials be made public; or
- (7) prescribe other appropriate action.

(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (b).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

Section 24. (a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the person, public body or any other state, regional, county, municipal or other governmental official or entity being investigated does not voluntarily provide relevant information to the attorney general within 30 days of receiving notice of the investigation, the attorney general may: (1) take testimony under oath concerning such alleged violation of the open meeting law; (2) examine or cause to be examined any documentary material of whatever nature relevant to such alleged violation of the open meeting law; and (3) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least 10 days prior to the date of such taking of testimony or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (2) delivering a duly-executed copy to the principal place of business in the commonwealth of the person to be served; or (3) mailing by registered or certified mail a duly-executed copy addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(d) Each such notice shall: (1) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (2) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (3) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (4) prescribe a return date within which the documentary material is to be produced; and (5) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth or require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same; provided, however, that such material or information may be disclosed by the attorney general in court pleadings or other papers filed in court.

(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

Section 25. (a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.

(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.

SECTION 19. Sections 9F and 9G of chapter 34 of the General Laws are hereby repealed.

SECTION 20. Sections 23A to 23C, inclusive, of chapter 39 of the General Laws are hereby repealed.

SECTION 35. Section 18 of said chapter 55, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

Each candidate and each treasurer of a political committee shall, except as provided in this section and section 24, file with the director reports of contributions received and expenditures made. A candidate and a committee organized on behalf of candidates seeking public office at a municipal election shall file such reports with the director, if the candidate is seeking the office of mayor in a municipality with a total population, as determined by the most recent federal decennial census, of between 40,000 and 100,000 persons, if the candidate or the candidate's committee, during the election cycle, can reasonably expect to raise or spend more than \$5,000, or if the committee is required to file such reports with the director pursuant to section 19. All other candidates seeking public office at a city or town election shall file reports with the city or town clerk. A committee organized under section 5 to favor or oppose a question submitted to the voters shall file its reports with the director if the question appears on ballots at a state election, or with the city or town clerk if the question appears on ballots at a city or town election or for use in a city or town at a state election. Reports of contributions received and expenditures made shall be filed using forms prescribed by the director.

SECTION 54. Section 26 of said chapter 55, as so appearing, is hereby amended by striking the first and second sentences and inserting in place thereof the following sentence:- The city or town clerk shall retain all statements and reports required to be filed with such clerk until December 31st of the sixth year following the relevant election. In the

case of committees other than those authorized by a candidate, the city or town clerk shall retain all required statements and reports filed with such clerk until December 31st of the sixth year following the date that the statement or report was filed.

SECTION 55. Said section 26 of said chapter 55, as so appearing, is hereby further amended by adding the following sentence:- Within 30 days after the filing deadline, all campaign finance reports required to be filed with the city or town clerk under section 18 shall be made available for viewing on the internet website of the municipality if such municipality has such a website, if the report discloses that a candidate or committee filing a report has received contributions or made expenditures in excess of \$1,000 during a reporting period or incurred liabilities or acquired or disposed of assets in excess of \$1,000 during a reporting period.

SECTION 56. Said chapter 55 is hereby further amended by striking out section 29, as so appearing, and inserting in place thereof the following section:-
Section 29. Upon failure to file a statement, report or affidavit within 10 days after receiving notice under section 28, the city or town clerk, as the case may be, shall notify the director thereof and shall furnish him with copies of all papers related thereto and the director, if satisfied there is cause, shall assess a penalty and may refer the person or committee to the attorney general pursuant to section 3. If any statement filed with the city or town clerk, as the case may be, discloses any violation of this chapter, such city or town clerk shall notify the director thereof and shall furnish him with copies of all papers relating thereto. The director shall examine every such case referred to him by such clerk and may refer such cases to the attorney general in accordance with section 3. If satisfied that there is cause, the attorney general shall, in the name of the commonwealth, institute appropriate criminal or civil proceedings or refer the case to the proper district attorney for such actions as may be appropriate. Any city or town clerk shall at any time upon the request of the attorney general or the director forward any evidence or information received by such clerk to the attorney general or director for whatever action the attorney general or director deems appropriate pursuant to law.

SECTION 84. Said chapter 268A is hereby further amended by adding the following 4 sections:-

Section 26. (a) Any person who, directly or through another, with fraudulent intent, violates clause (2) or (4) of subsection (b) of section 23, or any person who, with fraudulent intent, causes any other person to violate said clauses (2) or (4) of said subsection (b) of said section 23 or with fraudulent intent offers or gives any privileges or exemptions of substantial value in violation of said clause (2) or (4) of said subsection (b) of said section 23, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both, if the unwarranted privileges or exemptions have a fair market value in the aggregate of more than \$1,000 in any 12 month period.

Section 27. The commission shall prepare, and update as necessary, summaries of this chapter for state, county, and municipal employees, respectively, which the commission shall publish on its official website. Every state, county and municipal employee shall, within 30 days of becoming such an employee, and on an annual basis thereafter, be furnished with a summary of this chapter prepared by the commission and sign a written acknowledgment that he has been provided with such a summary. Municipal employees

shall be furnished with the summary by, and file an acknowledgment with, the city or town clerk. Appointed state and county employees shall be furnished with the summary by, and file an acknowledgment with, the employee's appointing authority or his designee. Elected state and county employees shall be furnished with the summary by, and file an acknowledgment with, the commission. The commission shall establish procedures for implementing this section and ensuring compliance.

Section 28. The state ethics commission shall prepare and update from time to time the following online training programs, which the commission shall publish on its official website: (1) a program which shall provide a general introduction to the requirements of this chapter; and (2) a program which shall provide information on the requirements of this chapter applicable to former state, county, and municipal employees. Every state, county, and municipal employee shall, within 30 days after becoming such an employee, and every 2 years thereafter, complete the online training program. Upon completion of the online training program, the employee shall provide notice of such completion to be retained for 6 years by the appropriate employer.

The commission shall establish procedures for implementing this section and ensuring compliance.

Section 29. Each municipality, acting through its city council, board of selectmen, or board of aldermen, shall designate a senior level employee of the municipality as its liaison to the state ethics commission. The municipality shall notify the commission in writing of any change to such designation within 30 days of such change. The commission shall disseminate information to the designated liaisons and conduct educational seminars for designated liaisons on a regular basis on a schedule to be determined by the commission in consultation with the municipalities.

SECTION 101. Notwithstanding any general or special law to the contrary, in accordance with section 27 of chapter 268A of the General Laws within 90 days after the effective date of this act every state, county, and municipal employee shall be provided a summary of chapter 268A prepared by the state ethics commission and shall file a written acknowledgment as required by that section.

SECTION 102. Notwithstanding any general or special law to the contrary, within 120 days after the effective date of this act, each municipality shall provide written notification to the state ethics commission of the liaison designated under section 29 of chapter 268A of the General Laws.

SECTION 105. Sections 23 to 59, inclusive, of this act shall take effect on January 1, 2010.

SECTION 106. Sections 17 to 20, inclusive, of this act shall take effect July 1, 2010.

Approved July 1, 2009

CHAPTER 60 - REGIONALIZATION COMMISSION

Effective July 1, 2009

Establishes a 19 member regionalization advisory commission to study opportunities for regionalization of services, by April 30, 2010. Members include the Secretaries of Administration and Finance, Health and Human Services, Energy and Environmental Affairs, Public Safety, Transportation, Elder Affairs, Veterans' Affairs, Labor and Workforce Development, Education, Housing and Economic Development, Senate President, Speaker of the House, Senate and House Minority Leaders, or their designees, and three appointees of the Governor and a representative from the Metropolitan Area Planning Council and the Massachusetts Municipal Association.

CHAPTER 60 OF THE ACTS OF 2009 An Act Establishing A Regionalization Advisory Commission.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish forthwith a regionalization advisory commission, 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:

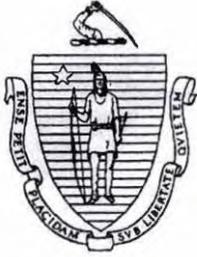
SECTION 1. Notwithstanding any general or special law to the contrary, there shall be a 19 member Massachusetts regionalization advisory commission consisting of the following members: the secretary of the executive office for administration and finance, or his designee, who shall serve as chair of the commission; the secretary of the executive office of health and human services or his designee; the secretary of the executive office of energy and environmental affairs or his designee; the secretary of the executive office of public safety or his designee; the secretary of the executive office of transportation and public works or his designee; the secretary of the executive office of elder affairs or his designee; the secretary of the executive office of veterans' affairs or his designee; the secretary of the executive office of labor and workforce development or his designee; the secretary of the executive office of education or his designee; the secretary of the executive office of housing and economic development or his designee; the president of the senate or his designee; the speaker of the house of representatives or his designee; the minority leader of the senate or his designee; the minority leader of the house of representatives or his designee; a representative from the metropolitan area planning council; a representative from the Massachusetts Municipal Association; and 3 members to be appointed by the governor all of whom shall have knowledge and experience in 1 or more of the following areas: municipal government and services, municipal agreements, shared services or regionalization. Each member shall serve without compensation.

The commission shall review all aspects of regionalization including possible opportunities, benefits and challenges to regionalizing services within the commonwealth. The commission shall consider the costs and effects of regionalizing all services including, but not limited to: education, public safety, public health, public works, housing, veterans' services, workforce development, municipal finance and structure, elder services and transportation.

The commission shall submit its finding and recommendations for regionalizing services, together with drafts of legislation necessary to carry those recommendations into effect by filing the same with the clerks of the house of representatives and senate, the house and senate committees on ways and means and the joint committee on municipalities and regional government not later than April 30, 2010.

SECTION 2. This act shall take effect as of July 1, 2009.

Approved August 6, 2009



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE ROOM 411
BOSTON MASSACHUSETTS 02108

MICHAEL J. SULLIVAN
DIRECTOR

TEL: (617) 727-8352
(800) 462-OCPF
FAX: (617) 727-6549

October 2, 2008
AO-08-08

Gwen Bruns
102 Greenacre Avenue
Longmeadow, MA 01106

Re: Endorsing ballot question

Dear Ms. Bruns:

This letter is in response to your recent request for guidance as to whether the Ludlow School Building Committee may endorse a ballot question, hold informational meetings regarding the ballot question, and discuss the endorsement at such meetings.

You have stated that you are a member of the School Building Committee (SBC) formed pursuant to the Massachusetts School Building Authority's (MSBA) requirements for the Longmeadow High School project. The SBC is comprised of members of local elected and appointed boards, as well as town administrators. You are one of two school committee members on the SBC.

The SBC wants to provide information to the public regarding the debt exclusion ballot question that will be on the November 4, 2008 ballot, which would fund a feasibility study relating to the project. The SBC has drafted a Power Point presentation that will be used at various meetings (including meetings of PTOs, the Rotary Club, and at Senior Centers). The presentation would explain the next step and what the debt exclusion means, e.g., the projected impact on taxes. The presentation would include a slide regarding the source of funding for the project indicating that the source of funding would be a debt exclusion "on the November 4th ballot - Vote YES!"

QUESTION

You have asked if the SBC may endorse a vote in favor of the ballot question and discuss the endorsement in its presentations.

ANSWER

The SBC may endorse the ballot question and discuss the endorsement in its presentations, but it should not use a slide that says "Vote YES!" on the ballot question.



DISCUSSION

Based on the Supreme Judicial Court's opinion in Anderson v. City of Boston, 376 Mass. 178 (1978) appeal dismissed, 439 U.S. 1069 (1979), public resources may not be used to promote or oppose a ballot question. See IB-91-01. Such resources may therefore not be used to distribute, by mail or through student backpacks, informational or advocacy material intended to influence a ballot election, or sponsor a campaign event for or against a ballot question. See IB-91-01.

The Anderson opinion does not, however, preclude public officials from endorsing a ballot question or holding public meetings to provide voters with information regarding a ballot question within the scope of their official responsibilities. The SBC may therefore endorse the ballot question and hold informational meetings regarding the question.

Public resources may be used to prepare and distribute a brief neutral notice to voters announcing the times and dates of such informational meetings, and at such meetings SBC members may, while providing information relating to the ballot question, also indicate their position on the question, or distribute a sheet to persons present at the meeting indicating the vote taken by the SBC. See IB-92-02 (a copy is enclosed, for information). As noted in IB-92-02, public officials may not, however, use public resources to publicize the SBC's endorsement, or to campaign for or against the ballot question. This means, in the context of your question, that the Power Point slide that urges voters to "Vote YES!" should not be included in the SBC's presentations, and the SBC should avoid any other exhortation encouraging electoral action supporting or opposing a ballot question.

Information regarding the project may be presented or discussed at such a meeting, including, for example, the project's specifications, cost projections or anticipated tax consequences. The SBC may distribute a reasonable number of informational documents relating to these topics at the meeting if the materials are designed to facilitate discussion.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of the information provided in your letter. Please contact us if you have further questions regarding this or any other campaign finance issue. You may want to contact the State Ethics Commission to ensure compliance with the Massachusetts Conflict of Interest Law, M.G.L. c. 268A.

Sincerely,

Michael J. Sullivan
Director

Enclosure