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

**Current Developments
in
Municipal Law**



2012

Legislation and Agency Decisions

Book 1

**Amy A. Pitter, Commissioner
Robert G. Nunes, Deputy Commissioner**

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LEGISLATION AND AGENCY DECISIONS

Book 1

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**PLEASE NOTE THIS COMPILATION WAS MADE FROM
ELECTRONIC, NOT OFFICIAL, EDITIONS OF ACTS AND
RESOLVES (SESSION LAWS) OF MASSACHUSETTS**

2011 LEGISLATION

CHAPTER 198 – COLLECTIVE BARGAINING EVERGREEN CLAUSES

Effective November 22, 2011

Amends G.L. c. 150E, § 7 to permit so-called “evergreen clauses” in public sector collective bargaining agreements. Those clauses provide that contract provisions remain in full force and effect until a new agreement takes effect. In 2010, the Supreme Judicial Court had held that the three-year limitation on collective bargaining agreements covered by M.G.L. c. 150E, § 7 prohibited the parties from agreeing in advance to extend the contract beyond three years. *Boston Housing Authority v. National Conference of Firemen and Oilers, Local 3*, 458 Mass. 155 (2010). The amendment does not apply to specific matters pending or adjudicated by a court between October 22, 2010 and November 22, 2011.

CHAPTER 198 OF THE ACTS OF 2011 An Act Relative to the Terms of Collective Bargaining Agreements.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to ensure that public employers and public employees have appropriate tools to negotiate collective bargaining agreements, 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. Subsection (a) of section 7 of chapter 150E of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word “years”, in line 3, the following words:- ; provided, however, that the employer and the exclusive representative through negotiation may agree to include a provision in a collective bargaining agreement stating that the agreement’s terms shall remain in full force and effect beyond the 3 years until a successor agreement is voluntarily negotiated by the parties.

SECTION 2. Section 1 shall apply to any collective bargaining agreement that: (i) contained a provision stating that the terms of the agreement remain in full force and effect beyond 3 years while the parties negotiate a successor agreement; and (ii) expired before the effective date of this act; provided, however, the application of section 1 to specific matters may be prohibited under section 3.

SECTION 3. Section 2 shall not apply to specific matters that were pending or adjudicated in a court of competent jurisdiction between October 22, 2010 and the effective date of this act; provided, however, that an agreement that has been the subject of such specific matters shall be in full force and effect for all other purposes if the agreement: (i) contained a provision stating that the terms of the agreement remain in full force and effect beyond 3 years while the parties negotiate a successor agreement; and (ii) expired before the effective date of this act.

Approved November 22, 2011

CHAPTER 205 - ASSISTANT COLLECTORS AND TREASURERS

Effective November 29, 2011

Amends G.L. c. 41, §§ 39A and 39C to eliminate the requirement that persons appointed by cities and towns as assistant collectors or assistant treasurers be Massachusetts residents.

**CHAPTER 205 OF THE ACTS OF 2011
An Act Eliminating the Residency Requirement for Certain Assistant
Treasurers and Assistant Collectors.**

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to eliminate forthwith the residency requirement for certain assistant treasurers and assistant collectors, 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 39A of chapter 41 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 6 and 7, the words “a resident of the commonwealth, and”.

SECTION 2. Section 39C of said chapter 41, as so appearing, is hereby amended by striking out, in lines 6 and 7, the words “a resident of the commonwealth, and”.

Approved November 29, 2011.

2012 LEGISLATION

CHAPTER 36 – FISCAL YEAR 2012 SUPPLEMENTAL STATE BUDGET

Effective February 17, 2012

§ 13 Emergency Borrowing Term. Amends G.L. c. 44, § 8, Clause 9, which authorizes a city, town or district to borrow for up to two years for emergency purposes. Under the amendment, the Director of Accounts may authorize a longer borrowing term of up to 10 years based on the ability of the city, town or district to provide public service and pay the debt service when due, the amount of federal and state payments to address to the emergency and other factors the Director decides are appropriate.

CHAPTER 36 OF THE ACTS OF 2012 (EXCERPTS)
An Act Making Appropriations for the Fiscal Year 2012 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 2012 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 13. Clause (9) of section 8 of chapter 44 of the General Laws, as appearing in section 3 of chapter 52 of the acts of 2011, is hereby further amended by striking out the words “as determined by the director” and inserting in place thereof the following words:- or such longer period not to exceed 10 years as determined by the director after taking into consideration the ability of the city, town or district to provide other essential public services and pay, when due, the principal and interest on its debts, the amount of federal and state payments likely to be received for the purpose of the appropriations and such other factors as the director may deem necessary or advisable.

Approved (in part) February 17, 2012

CHAPTER 43 – EDUCATION COLLABORATIVE REFORMS
Effective March 2, 2012

Makes substantial amendments to G.L. c. 40, § 4E, which governs the operation of education collaboratives. These reforms are intended to provide greater transparency in collaborative governance, operations and finances. The Department of Elementary and Secondary Education (DESE) is given expanded oversight and regulatory authority over collaboratives, including requirements that it train collaborative board members and appoint a member to each board. Membership agreements must include provisions regarding the adoption of an annual budget, as well as the financial terms and conditions of membership. Collaboratives are required to adhere to certain generally accepted governmental accounting standards and supplemental standards set by DESE and the Department of Revenue (DOR) and must have an independent audit of its financial statements every year. Standards of conduct are also established for collaborative board members, executive directors and employees in order to prevent self-dealing. Existing collaboratives must amend their agreements consistent with the amended statute and have

the new agreements approved by DESE. See [DESE School Finance website](#) for detailed information about the law and implementation requirements.

CHAPTER 43 OF THE ACTS OF 2012
An Act Relative to Improving Accountability and Oversight of Education Collaboratives.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to improve forthwith the accountability and oversight of education collaboratives, 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 40 of the General Laws is hereby amended by striking out section 4E, as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

Section 4E. (a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Charter school”, commonwealth charter schools and Horace Mann charter schools unless specifically stated otherwise.

“Charter school board”, the board of trustees of a charter school established under section 89 of chapter 71.

“Commissioner”, the commissioner of elementary and secondary education.

“Department”, the department of elementary and secondary education.

“District”, or “school district”, the school department of a city, town, regional school district or county agricultural school.

“Related for-profit or non-profit organization”, a for-profit or non-profit organization established under the laws of the commonwealth or any other state: (i) that, on average over a 3-year period, receives more than 50 per cent of its funding from 1 or more education collaboratives; or (ii) a primary purpose of which is to benefit or further the purposes of an education collaborative and which engages in business transactions or business arrangements, including pledges or assignments of collateral and loan guarantees or other contracts of suretyship, with the education collaborative.

“Superintendent”, the superintendent of the district.

(b) Two or more school committees of cities, towns and regional school districts and boards of trustees of charter schools may enter into a written agreement to provide shared programs and services, including instructional, administrative, facility, community or any other services; provided that a primary purpose of such programs and services shall be to complement the educational programs of member school committees and charter schools in a cost-effective manner. The association of school committees and charter school boards which is formed to deliver the programs and services shall be known as an education collaborative.

(c) The education collaborative shall be managed by a board of directors which shall be comprised of 1 person appointed annually by each member school committee or member charter school board. All appointed persons shall be either a school committee

member, the superintendent of schools or a member of the charter school board. The commissioner shall appoint an individual to serve as a voting member of the education collaborative board of directors; provided that, to the extent feasible, the commissioner shall appoint an individual who has expertise in 1 or more of the following areas: educational programming and services, finance, budgeting and management oversight. Each member of the board of directors shall be entitled to a vote. No member of the board of directors shall receive an additional salary or stipend for their service as a board member. No member of the board of directors of an education collaborative shall serve as a member of a board of directors or as an officer or employee of any related for-profit or non-profit organization. The board of directors shall elect a chairperson from its members and provide for such other officers as it may determine are necessary, and may establish advisory committees as desired. Each collaborative board shall meet not fewer than 6 times annually. Each member of the board of directors shall be responsible for providing information and updates on the activities of the collaborative on a quarterly basis to the member's appointing school committee or charter school board at an open meeting.

Each collaborative board member shall complete training provided by the department on the roles and responsibilities of the member's office within 60 days of the member's appointment. Said training shall include, but not be limited to, a review of the open meeting law, public records law, conflict of interest law, special education law, the budgetary process and the fiduciary and management oversight responsibilities of board members. The department shall develop the training with input from relevant stakeholders and shall promulgate regulations relative to the certification of completion of said training.

The written agreement which shall form the basis of the education collaborative shall set forth the following: (1) the mission, purpose and focus of the collaborative; (2) the program or service to be offered by the collaborative; (3) the financial terms and conditions of membership of the education collaborative, including a limit on the amount of cumulative surplus revenue that may be held by the collaborative at the end of a fiscal year; (4) the detailed procedure for the preparation and adoption of an annual budget; (5) the method of termination of the education collaborative and of the withdrawal of member school committees and charter school boards; (6) the procedure for admitting new members and for amending the collaborative agreement; (7) the powers and duties of the board of directors of the education collaborative to operate and manage the education collaborative; and (8) any other matter not incompatible with law which the member school committees and charter school boards consider advisable. No agreement or subsequent amendments shall take effect unless approved by the member school committees and member charter school boards and by the board of elementary and secondary education upon the recommendation of the commissioner. A member school committee or member charter school board shall not delegate the authority to approve amendments to the collaborative agreement to any other person or entity. Each education collaborative, each member school committee or member charter school board and the department shall maintain a copy of the collaborative agreement, including any amendments to the agreement.

The board of directors of the education collaborative shall establish and manage a fund, to be known as an education collaborative fund, and each such fund shall be designated by an appropriate name. All monies contributed by the member cities or towns and charter schools and all grants or gifts from the federal government, state

government, charitable foundations, private corporations or any other source shall be paid to the board of directors of the education collaborative and deposited in the fund.

The board of directors of the education collaborative shall appoint a treasurer who may be a treasurer of a city, town or regional school district belonging to the collaborative. The treasurer may, subject to the direction of the board of directors of the education collaborative, receive and disburse all money belonging to the collaborative without further appropriation. The treasurer shall give bond annually for the faithful performance of duties as collaborative treasurer in a form approved by the department of revenue and in a sum not less than the amount established by the department, as shall be fixed by the board of directors of the education collaborative. The board of directors of the education collaborative may pay reasonable compensation to the treasurer for services rendered. No member of the board of directors or other employee of the education collaborative shall be eligible to serve concurrently as treasurer of the collaborative

The treasurer of the education collaborative board of directors may make appropriate investments of the money of the collaborative consistent with section 55B of chapter 44. A business manager or employee of the education collaborative with responsibilities similar to those of a town accountant shall be subject to section 52 of chapter 41 and shall not be eligible to hold the office of treasurer of the collaborative.

The board of directors of an education collaborative may borrow money, enter into long-term or short-term loan agreements or mortgages and apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purpose for which such collaborative is established; provided, however, that the board of directors has determined that any borrowing, loan or mortgage is cost-effective and in the best interest of the collaborative and its member cities or towns and charter schools. The borrowing, loans or mortgages shall be consistent with the written agreement and articles of incorporation of the education collaborative and shall be consistent with standard lending practices. The board of directors of an education collaborative shall notify each member school committee and charter school board within 30 calendar days of applying for real estate mortgages.

(d) Each education collaborative shall adopt and maintain a financial accounting system, in accordance with generally accepted accounting principles as prescribed by the governmental accounting standards board and any supplemental requirements prescribed jointly by the commissioner of elementary and secondary education and the commissioner of revenue, in consultation with the state auditor. Each collaborative shall maintain books of original entry, general and subsidiary ledgers, related accounting records and as appropriate, memorandum records, work sheets, supporting cost allocations and computations, payroll and expenditure warrants, written contracts, staff logs, appointment books, evidence of teaching credentials or approval by programs, teaching schedules, canceled checks and paid invoices. The department, the state auditor and the department of revenue may review or audit any part of an education collaborative's records to ascertain whether the student, personnel and financial data reported by a collaborative are accurate, to ensure that the collaborative is complying with the applicable laws and regulations and to determine whether the collaborative is maintaining effective controls over revenues, expenditures, assets and liabilities. The department may enter into an interdepartmental service agreement with the operational services division to assist in reviewing collaborative finances.

Each board of directors of an education collaborative shall annually prepare financial statements, including: (1) a statement of net assets; (2) a statement of revenues,

expenditures and changes in net assets; and (3) such supplemental statements and schedules as may be required by regulation. Each board of directors of an education collaborative shall annually cause an independent audit to be made of its financial statements consistent with generally accepted governmental auditing standards and shall discuss and vote to accept the audit report at an open meeting of the board. Each board of directors shall file such audit report and any related management letters annually on or before January 1 for the previous fiscal year with the department and the state auditor, and shall transmit a copy of such audit report and any related management letters to each member school committee and charter school board. The purchase by a government unit of social service programs, as defined in section 22N of chapter 7, from a collaborative, shall also require the collaborative to adhere to the uniform system of financial accounting, allocation, reporting and auditing requirements of the bureau of purchased services of the operational services division, in accordance with the requirements of said section 22N of said chapter 7.

The audited financial statements, accompanying notes and supplemental schedules shall disclose: (1) transactions between the education collaborative and any related for-profit or non-profit organization; (2) transactions or contracts related to the purchase, sale, rental or lease of real property; (3) the names, duties and total compensation of the 5 most highly compensated employees; (4) the amounts expended on administration and overhead; (5) any accounts held by the collaborative that may be spent at the discretion of another person or entity; (6) the amounts expended on services for individuals age 22 and older; and (7) any other items as may be required by regulation.

The department shall also be responsible for making information from the audits publicly available online, in human readable and machine readable formats; provided, however, that the department may designate the state agency with whom the department enters into an interdepartmental service agreement as the party responsible for making such information publicly available online.

(e) Each education collaborative shall submit an annual report, on or before January 1 for the previous fiscal year, to the commissioner, to each member school committee and to each member charter school board. The annual report shall be in such form as may be prescribed by the board of elementary and secondary education and shall include, but not be limited to: (1) information on the programs and services provided by the education collaborative, including discussion of the cost-effectiveness of such programs and services and progress made towards achieving the objectives and purposes set forth in the collaborative agreement; and (2) audited financial statements and the independent auditor's report, as described in subsection (d). Each education collaborative shall publish such annual report on its internet website and shall provide a printed hard copy of the most recent annual report to members of the public upon request.

(f) The board of directors of the education collaborative may employ an executive director who shall serve under the general direction of the board and who shall be responsible for the care and supervision of the education collaborative. Said executive director shall not serve as a board member, officer or employee of any related for-profit or non-profit organization.

The board of directors of the education collaborative shall be considered to be a public employer and may employ personnel, including teachers, to carry out the purposes and functions of the education collaborative. No person shall be eligible for employment by the education collaborative as an instructor of children with severe

special needs, teacher of children with special needs, teacher, guidance counselor, school psychologist, adjustment counselor, social worker, library media specialist, principal, supervisor, director, administrator of special education, assistant superintendent of schools or superintendent of schools unless the person has been granted a certificate by the commissioner under said section 38G of said chapter 71 or an approval under the regulations promulgated by the board of elementary and secondary education under chapter 74 with respect to the type of position for which the person seeks employment; provided, however, that nothing in this subsection shall be construed to prevent a board of directors of an education collaborative from prescribing additional qualifications. The board of the directors of an education collaborative shall appoint 1 or more registered nurses, subject to certification as a school nurse under said section 38G of said chapter 71, and shall provide such school nurse with all proper facilities for the performance of the school nurse's duties. The education collaborative shall consider and meet the staffing level required to address the specific health care needs of the students enrolled in the education collaborative. A board of directors of an education collaborative may, upon its request, be exempted by the commissioner for any 1 school year from the requirements of this section to employ certified or approved personnel when compliance with this subsection would in the opinion of the commissioner constitute a great hardship. No employee of an education collaborative shall be employed at any related for-profit or non-profit organization.

(g) The trustee, trustees or governing board of any related for-profit or non-profit organization shall file a copy of the annual written report for the preceding fiscal year as required under section 8F of chapter 12, including all attachments and schedules, with the commissioner within 10 days of filing said report with the attorney general; provided that any related for-profit or non-profit organization not required to submit a complete audited financial statement under section 8F of chapter 12 shall file a copy of said statement with the commissioner on or before January 1 for the preceding fiscal year. The audited financial statement shall be prepared and examined by an independent certified public accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion on the audited financial statement.

(h) The education collaborative shall be considered to be a public entity and shall have standing to sue and be sued to the same extent as a city, town or regional school district. An education collaborative, acting through its board of directors, may, subject to chapter 30B, enter into contracts for the purchase of supplies, materials and services and for the purchase or leasing of land, buildings and equipment as considered necessary by the board of directors.

A school committee of a city, town or regional school district or charter school board may authorize the prepayment of monies for an educational program or service of the education collaborative to the treasurer of an education collaborative, and the city, town or regional school district or charter school treasurer shall be required to approve and pay the monies in accordance with the authorization of such school committee or charter school board.

(i) Each education collaborative shall establish and maintain an internet website that allows the public at no cost to search for and obtain: (1) a list of the members of the board of directors of the education collaborative; (2) copies of the minutes of open meetings held by the board of directors, which shall be posted within 30 days after the board has approved such minutes; (3) a copy of the written agreement and any subsequent amendments to the agreement; and (4) a copy of the annual report required under subsection (e).

(j) The department shall annually furnish a supplemental report on the Massachusetts Comprehensive Assessment System performance results of students served by each education collaborative.

(k) The department shall, at least once every 6 years, review and evaluate the programs and services provided by each education collaborative. Such review shall, at a minimum, assess compliance with the written agreement and any conditions imposed by the board of elementary and secondary education, and with the requirements of this section and any other applicable state and federal laws and regulations.

(l) Upon receipt of information regarding an education collaborative which, in the opinion of the commissioner, indicates the presence of circumstances at the collaborative that impede its viability or demonstrate deficiencies in programmatic quality or significant malfeasance, financial or otherwise, by any board member or employee of the collaborative, the commissioner may place such collaborative on probationary status to allow the implementation of a remedial plan. If such plan is unsuccessful, the commissioner may direct school districts and charter schools to withhold payments of public funds to the collaborative, and may, in consultation with the secretary of administration and finance, withhold state funds being directed to the collaborative; provided, further, that the board of elementary and secondary education may suspend or revoke for cause the written agreement of an education collaborative upon the recommendation of the commissioner. Any withholding of funds that occurs under this paragraph shall conclude when the commissioner finds and communicates in writing to the member school committees and member charter school boards that sufficient corrective actions are being taken by the collaborative to address the concerns that resulted in the withholding of funds.

(m) The board of elementary and secondary education shall promulgate, amend and rescind rules and regulations as may be necessary to carry out this section. At a minimum, the board shall promulgate regulations which prescribe (1) requirements and standards for the amount of cumulative surplus revenue that may be held by an education collaborative at the end of a fiscal year and (2) requirements and guidelines for administrative proceedings conducted under subsection (l).

SECTION 2. The department of elementary and secondary education shall develop a model collaborative agreement that addresses the requirements and standards for approval within 6 months of the effective date of this act. The model agreement, which may be used by existing or future education collaboratives formed under section 4E of chapter 40 of the General Laws, shall be made available on the department's website.

SECTION 3. Any education collaborative formed under section 4E of chapter 40 of the General Laws prior to the effective date of this act shall revise its agreement to conform to said section 4E, as amended by this act, and shall resubmit such revised agreement to member school committees, member charter school boards of trustees and the board of elementary and secondary education for approval within 12 months of the effective date of this act.

SECTION 4. An education collaborative formed under section 4E of chapter 40 of the General Laws shall not provide services to individuals over the age of 22; provided, however, that an education collaborative or a related for-profit or non-profit organization providing services to individuals over the age of 22 prior to the effective date of this act may continue the provision of such services; provided, further, that a related for-profit or

non-profit organization providing services to individuals over the age of 22 prior to the effective date of this act, may transfer the provision of such services to the education collaborative to which it is related and the education collaborative may continue the provision of such services after such transfer.

SECTION 5. There shall be a special commission to study the role of education collaboratives. The commission shall consist of 11 members: the house and senate chairs of the joint committee on education, or designees, who shall serve as co-chairs of the commission; the senate minority leader, or designee; the house minority leader, or designee; the secretary of education, or designee; the commissioner of elementary and secondary education, or designee; a representative nominated jointly by the Federation for Children with Special Needs, Inc., Massachusetts Advocates for Children and the Disability Law Center; a representative of Massachusetts Administrators for Special Education; and 3 persons to be appointed by the secretary of education, 1 of whom shall be selected from a list of 3 persons nominated by the Massachusetts Association of School Superintendents, Inc., 1 of whom shall be selected from a list of 3 persons nominated by the Massachusetts Association of School Committees, Inc. and 1 of whom shall be selected from a list of 3 persons nominated by the Massachusetts Organization of Educational Collaboratives.

The commission shall examine, report and make recommendations on topics including, but not limited to: (1) whether a statewide network of education collaboratives should be established to implement new programs and provide technical assistance in partnership with the department of elementary and secondary education, and if so, how such network should be organized and funded; (2) whether education collaboratives are appropriate settings for providing programs and services to developmentally disabled adults over the age of 22, and, if so, what measures should be taken to ensure proper accounting of, and funding for, all services provided by education collaboratives and related for-profit and non-profit organizations, as that term is defined in section 4E of chapter 40 of the General Laws, for individuals not enrolled in or employed by elementary or secondary schools in the commonwealth; (3) how to maximize the efficiency and capacity of existing education collaboratives; (4) the appropriate role and relationship, if any, between education collaboratives and related for-profit and non-profit organizations; (5) appropriate compensation levels and authority of collaborative management employees; (6) the merits of merging or consolidating existing education collaboratives, including the effect on collective bargaining agreements, staff, operational systems, debt obligations, regional school districts and transportation costs and whether districts and students would benefit from the merger of existing education collaboratives; and (7) the provision of non-education related services by education collaboratives to other government entities and the appropriateness and effect of those provisions on the core mission and purpose of the collaborative.

The commission shall consult with and solicit input from various persons and groups, including, but not limited to: the attorney general; the state auditor; the inspector general; the department of developmental services; the division of local services; the executive directors of education collaboratives of varying size and scope in the commonwealth; the chairs of the joint committee on children, families and persons with disabilities; organizations representing individuals with developmental disabilities, including the Arc of Massachusetts and the Association of Developmental Disabilities Providers, Inc.; organizations representing children with disabilities and their parents;

and associations representing special education administrators and other educational administrators, school business officers, municipal officials and charter schools.

The first meeting of the commission shall take place within 60 days after the effective date of this act. The commission shall file a report containing its recommendations, including legislation and regulations necessary to carry out its recommendations, with the clerks of the house and senate not later than 12 months following the first meeting of the commission.

SECTION 6. Notwithstanding subsection (f) of section 4E of chapter 40 of the General Laws or any other general or special law to the contrary, education collaboratives that employ registered nurses serving in the function of school nurse on or before February 1, 2012, who are not certified under section 38G of chapter 71, may retain the services of such nurses as school nurses; provided, however, that upon retirement or separation of employment, the board of directors of an education collaborative shall appoint 1 or more registered nurses, subject to certification as a school nurse under section 38G of chapter 71.

SECTION 7. The executive director of any education collaborative which has been issued an audit report with adverse or critical audit results by the state auditor within the 12 months preceding the effective date of this act shall annually present the collaborative's budget and annual report required under section 4E of chapter 40 of the General Laws, to each member school committee and member charter school board in an open meeting at which the executive director responds to questions from said school committees and charter school boards; provided, however, that an education collaborative with more than 10 school districts may make the presentation in regional presentations to not more than 5 member school committees at a time; provided, further, that a school committee or charter school board of trustees may waive its right to such a presentation. The executive director shall make such annual presentation for fiscal years 2013 to 2017, inclusive.

SECTION 8. Section 1 of this act shall take effect 90 days after the effective date of this act.

Approved March 2, 2012

CHAPTER 66 – COMPENSATED ABSENCES SPECIAL FUND

Effective July 3, 2012

Adds a new local acceptance statute, G.L. c. 40, § 13D, that lets cities, towns, districts and regional school districts establish and appropriate monies into a reserve fund for future payment of accrued liabilities for compensated absences owed to employees and full-time officers when they terminate employment. Accrued liabilities would include accrued and unused sick and vacation leave and unused compensatory time earned pursuant to collective bargaining agreements, ordinances, by-laws and the like, which become due and payable upon retirement or other termination of employment as specified in the agreement or other binding provision. Acceptance of the statute is by majority vote of a city council, town or district meeting, or regional school committee. The treasurer of the governmental unit may invest the funds in the manner authorized for trust funds under

G.L. c. 44, § 54 and the interest remains with the fund. The governmental unit may designate the official authorized to make payments from the fund, and if no designation is made, the chief executive officer of the city, town or district may do so.

Regional school districts may only include an appropriation into the compensated absences fund in the annual district budget submitted to the appropriating bodies of its member cities and towns. It cannot be included in a supplemental budget or be funded through use of the district school committee's budget transfer authority. Any regional school district operating such a fund on the effective date of the act may continue doing so under the terms of G.L. c. 40, § 13D.

CHAPTER 66 OF THE ACTS OF 2012
An Act Relative to Compensated Absences in Cities and Towns.

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 40 of the General Laws is hereby amended by inserting after section 13C the following section:-

Section 13D. Any city, town or district which accepts the provisions of this section by majority vote of its city council, the voters present at a town meeting or district meeting or by majority vote of a regional school committee may establish, appropriate or transfer money to a reserve fund for the future payment of accrued liabilities for compensated absences due any employee or full-time officer of the city or town upon the termination of the employee's or full-time officer's employment. The treasurer may invest the monies in the manner authorized by section 54 of chapter 44, and any interest earned thereon shall be credited to and become part of the fund. The city council, town meeting or district meeting may designate the municipal official to authorize payments from this fund, and in the absence of a designation, it shall be the responsibility of the chief executive officer of the city, town or district. In a regional school district, funds may be added to the reserve fund for the future payment of accrued liabilities only by appropriation in the annual budget voted on by the city council of member cities or at the annual town meeting of member towns.

SECTION 2. Any regional school district maintaining such a fund on the effective date of this act may continue maintaining the fund pursuant to this act.

Approved April 4, 2012

CHAPTER 108 - VETERAN TAX REDUCTIONS

Effective May 31, 2012

§ 7A Veterans Exemption. Amends G.L. c. 59, § 5, Clause 22A, which provides a \$750 exemption for veterans who lost or lost use of certain extremities or received certain service awards. Under the amendment, a person who is recalled to active service continues to qualify for the exemption.

§ 8 Surviving Spouse Exemption. Amends G.L. c. 59, § 5, Clause 22D, which provides an exemption for the domiciles of certain surviving spouses of service members who were killed in combat, or whose death was the proximate result of an injury sustained or disease contracted in a combat zone. Under the amendment, the exemption will be 100 per cent of the taxes assessed in all years granted. Previously, the exemption was capped at \$2,500 in years six and after. The amendment is effective for FY2013 exemptions.

§ 8A Veteran Work-off Abatement Program. Adds a new local acceptance statute, G.L. c. 59, § 5N, to allow cities and towns to create work-off abatement program for veterans. The statute is almost identical to G.L. c. 59, § 5K under which communities may establish those programs for seniors (60 or older). Acceptance is by vote of the legislative body subject to charter. G.L. c. 4, § 4. Under the program, veterans may earn “abatements” of their property taxes by working for the community. Each community will set its own program and eligibility requirements, but the taxpayer’s hourly earnings may not exceed the state minimum wage and the earned abatement may not exceed \$1,000, or if voted by legislative body, 125 hours of service. The earned abatement is not income for state tax and worker's compensation purposes.

CHAPTER 108 OF THE ACTS OF 2012 (EXCERPTS)
An Act Relative to Veterans’ Access, Livelihood, Opportunity and Resources. (VALOR Act).

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith benefits to certain veterans and servicemembers, 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 7A. Clause Twenty-second A of section 5 of chapter 59 of the General Laws, as so appearing, is hereby amended by adding the following sentence:- No person who has received an exemption under this clause shall be denied the benefit of the exemption because the person returns to active service.

SECTION 8. Said section 5 of said chapter 59 of the General Laws, as so appearing, is hereby further amended by striking out, in lines 765 to 767, inclusive, the words “; provided, however, that in no case shall the abatement amount exceed the sum of \$2,500 in any fiscal year following the fifth fiscal year of receipt of the abatement”.

SECTION 8A. Said chapter 59 of the General Laws is hereby further amended by inserting after section 5M the following section:-

Section 5N. In any city or town which accepts this section, the board of selectmen of a town, or in a municipality having a town council form of government, the town council or the mayor, with the approval of the city council in a city, may establish a program to allow veterans, as defined in clause Forty-third of section 7 of chapter 4, to volunteer to provide services to that city or town. In exchange for such volunteer services, the city or

town shall reduce the real property tax obligations of that veteran on the veteran's tax bills and that reduction shall be in addition to any exemption or abatement to which that person is otherwise entitled; provided, however, that person shall not receive a rate of, or be credited with, more than the current minimum wage of the commonwealth per hour for the services provided pursuant to that reduction; and provided further, that the reduction of the real property tax bill shall not exceed \$1,000 in a given tax year. It shall be the responsibility of the city or town to maintain a record for each taxpayer including, but not limited to, the number of hours of service and the total amount by which the real property tax has been reduced and to provide a copy of that record to the assessor in order that the actual tax bill reflect the reduced rate. A copy of that record shall also be provided to the taxpayer prior to the issuance of the actual tax bill. The cities and towns shall have the power to create local rules and procedures for implementing this section in a way that is consistent with the intent of this section. Nothing in this section shall be construed to permit the reduction of workforce or otherwise replace existing staff.

The amount by which a person's property tax liability is reduced in exchange for the volunteer services shall not be considered income, wages or employment for purposes of taxation as provided in chapter 62, for the purposes of withholding taxes as provided in chapter 62B, for the purposes of workers' compensation as provided in chapter 152 or any other applicable provisions of the General Laws. While providing such volunteer services, that person shall be considered a public employee for the purposes of chapter 258 and those services shall be deemed employment for the purposes of unemployment insurance as provided in chapter 151A.

A city or town, by vote of its legislative body, subject to its charter, may adjust the exemption in this clause by: (i) allowing an approved representative for persons physically unable to provide such services to the city or town; or (ii) allowing the maximum reduction of the real property tax bill to be based on 125 volunteer service hours in a given tax year, rather than \$1,000.

Approved May 31, 2012

CHAPTER 118 – FISCAL YEAR 2012 SUPPLEMENTAL STATE BUDGET

Effective June 19, 2012

§§ 9-11 Municipal and District Health Insurance. Amends G.L. c. 32B, §§ 19, 21 and 23 provisions regarding the deadline for municipalities to notify the Group Insurance Commission (GIC) of transfer of their employees to GIC coverage. Notice must be made by December 1 to transfer subscribers the following July 1 and by July 1 to transfer subscribers by the following January 1. Also allows districts other than regional school districts to change benefits under municipal health insurance reform by vote of their governing boards or district meetings. Under prior law, a district meeting vote was the exclusive means of changing the benefits.

CHAPTER 118 OF THE ACTS OF 2012 (EXCERPTS) An Act Making Appropriations for the Fiscal Year 2012 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 2012 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 9. Section 19 of chapter 32B of the General Laws is hereby amended by striking out, in lines 165 to 167, inclusive, as so appearing, the words “not later than October 1 of each year and the transfer of subscribers to the commission shall take effect on the following July” and inserting in place thereof the following words:- on or before December 1 of each year for the transfer of subscribers to the commission effective the following July 1, or on or before July 1 of each year for the transfer of subscribers to the commission effective the following January.

SECTION 10. The first sentence of subsection (a) of section 21 of said chapter 32B, as appearing in section 3 of chapter 69 of the acts of 2011, is hereby amended by adding the following words:- or by vote of the district’s governing board.

SECTION 11. The second sentence of subsection (a) of section 23 of said chapter 32B, as so appearing, is hereby amended by striking out the words “and the transfer of subscribers to the commission shall take effect on the following July” and inserting in place thereof the following words:- for the transfer of subscribers to the commission effective the following July 1, or on or before July 1 of each year for the transfer of subscribers to the commission effective the following January.

Approved June 19, 2012

CHAPTER 139 – FISCAL YEAR 2013 STATE BUDGET

Effective July 1, 2012, unless otherwise noted

§ 3 Local Aid Advances. Authorizes the State Treasurer to advance payments of FY2013 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 DOR and approved by the Secretary of Administration and Finance (A & F).

§§ 69-83, 155 and 218 Community Preservation Act. Sections 69-83 amend several sections in G.L. c. 44B, the Community Preservation Act (CPA). The amendments broaden the allowable uses of CPA funds to make capital improvements and rehabilitate existing parks, playgrounds and other outdoor active or passive recreational sites. Previously, communities could only use CPA funds to rehabilitate recreational assets acquired or created with CPA funds. *Seideman v. City of Newton*, 452 Mass. 472 (2008). Use of CPA funds for installation of artificial turf at recreational sites is prohibited. Also lets communities use CPA funds to provide direct financial assistance to low income persons or low or moderate income seniors in need of housing, through security deposits, rental vouchers, loans and the like. Previously, the allowable statutory uses had to result in an expansion of the community’s affordable housing stock. Communities may adopt a

new optional exemption for the surcharge attributable to the real estate taxes on the first \$100,000 of assessed value for commercial and industrial properties. A similar optional exemption already exists for residential properties. Communities may also accept the CPA with a surcharge rate of 1 per cent of local property taxes and still qualify for full state Community Preservation Trust Fund distributions provided they commit other municipal revenues equal to 2 per cent of those taxes to the CPA fund. Section 155 provides a one-time deposition of \$25 million in the state trust fund from the state FY2013 budgetary surplus to be used to provide matching funds to CPA communities in FY2014. **See technical amendment made by St. 2012, c. 239, § 48 below.**

§ 84 Local Tax E-billing. Adds a new sub-section (e) to G.L. c. 60, § 3A, which relates to the form and content of local tax bills. Local collectors may now establish voluntary e-billing programs for motor vehicle, boat or farm animal excises, betterments and special assessments or any tax committed to them by the assessors. Previously, the statute allowed voluntary e-billing programs for just real and personal property taxes.

§ 85 Motor Vehicle Excise Bills. Amends G.L. c. 60A, § 2 to eliminate the requirement that taxpayers' driver's license numbers appear on their motor vehicle excise bills.

§ 168 Education Reform Waivers. Permits cities, towns and regional school districts to apply for various adjustments in their FY2013 minimum required contributions to schools under the Education Reform Act. Municipalities may seek adjustments if (1) non-recurring revenues were used to support FY2012 operating budgets and those revenues are not available in FY2013, (2) they have extraordinary non-school related expenses in FY2013, or (3) their FY2013 municipal revenue growth factor is at least 1.5 times the statewide average and is deemed to be excessive. Regional school districts that used non-recurring revenues in FY2012 that are unavailable for FY2013 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, 2012. **See Informational Guideline Release (IGR) 12-202, Fiscal Year 2012 Waivers to Education Reform Spending Requirements and Minimum Required Local Contributions, issued August 2012.**

CHAPTER 139 OF THE ACTS OF 2012 (EXCERPTS)
An Act Making Appropriations for the Fiscal Year 2013 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, 2012, 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 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 69. Section 2 of chapter 44B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the definition of "Annual income" the following definition:-

"Capital improvement", reconstruction or alteration of real property that: (1) materially adds to the value of the real property or appreciably prolongs the useful life of the real property; (2) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and (3) is intended to become a permanent installation or is intended to remain there for an indefinite period of time.

SECTION 70. Said section 2 of said chapter 44B, as so appearing, is hereby further amended by striking out, in line 24, the words "or eligible for listing".

SECTION 71. Said section 2 of said chapter 44B, as so appearing, is hereby further amended by striking out the definition of "Maintenance" and inserting in place thereof the following definition:-

"Maintenance", incidental repairs which neither materially add to the value of the property nor appreciably prolong the property's life, but keep the property in a condition of fitness, efficiency or readiness.

SECTION 72. Said section 2 of said chapter 44B, as so appearing, is hereby further amended by striking out, in line 54, the words ", but not including maintenance".

SECTION 73. Said section 2 of said chapter 44B, as so appearing, is hereby further amended by striking out the definition of "Rehabilitation" and inserting in place thereof the following 2 definitions:

"Rehabilitation", capital improvements, or the making of extraordinary repairs, to historic resources, open spaces, lands for recreational use and community housing for the purpose of making such historic resources, open spaces, lands for recreational use and community housing functional for their intended uses including, but not limited to, improvements to comply with the Americans with Disabilities Act and other federal, state or local building or access codes; provided, that with respect to historic resources, "rehabilitation" shall comply with the Standards for Rehabilitation stated in the United States Secretary of the Interior's Standards for the Treatment of Historic Properties codified in 36 C.F.R. Part 68; and provided further, that with respect to land for recreational use, "rehabilitation" shall include the replacement of playground equipment and other capital improvements to the land or the facilities thereon which make the land or the related facilities more functional for the intended recreational use.

"Support of community housing", shall include, but not be limited to, programs that provide grants, loans, rental assistance, security deposits, interest-rate write downs or

other forms of assistance directly to individuals and families who are eligible for community housing or to an entity that owns, operates or manages such housing, for the purpose of making housing affordable.

SECTION 74. Section 3 of said chapter 44B, as so appearing, is hereby amended by inserting after subsection (b) the following subsection:-

(b1/2) Notwithstanding chapter 59 or any other general or special law to the contrary, as an alternative to subsection (b), the legislative body may vote to accept sections 3 to 7, inclusive, by approving a surcharge on real property of not less than 1 per cent of the real estate tax levy against real property and making an additional commitment of funds by dedicating revenue not greater than 2 per cent of the real estate tax levy against real property; provided, however, that additional funds so committed shall come from other sources of municipal revenue including, but not limited to, hotel excises pursuant to chapter 64G, linkage fees and inclusionary zoning payments, however authorized, the sale of municipal property pursuant to section 3 of chapter 40, parking fines and surcharges pursuant to sections 20, 20A and 20A1/2 of chapter 90, existing dedicated housing, open space and historic preservation funds, however authorized, and gifts received from private sources for community preservation purposes; and provided further, that additional funds so committed shall not include any federal or state funds. The total funds committed to purposes authorized under this chapter by means of this subsection shall not exceed 3 per cent of the real estate tax levy against real property, less exemptions, adopted. In the event that the municipality shall no longer dedicate all or part of the additional funds to community preservation, the surcharge of not less than 1 per cent shall remain in effect, but may be reduced pursuant to section 16.

SECTION 75. Said section 3 of said chapter 44B, as so appearing, is hereby further amended by striking out, in lines 28 to 30, inclusive, the words "or (3) for \$100,000 of the value of each taxable parcel of residential real property" and inserting in place thereof the following words:-

(3) for \$100,000 of the value of each taxable parcel of residential real property; or
(4) for \$100,000 of the value of each taxable parcel of class three, commercial property, and class four, industrial property as defined in section 2A of said chapter 59.

SECTION 76. Section 5 of said chapter 44B, as so appearing, is hereby amended by inserting after the word "preservation", in lines 23 and 24, the following words:-, including the consideration of regional projects for community preservation.

SECTION 77. Subsection (b) of said section 5 of said chapter 44B, as so appearing, is hereby further amended by striking out paragraph (2) and inserting in place thereof the following paragraph:-

(2) The community preservation committee shall make recommendations to the legislative body for the acquisition, creation and preservation of open space; for the acquisition, preservation, rehabilitation and restoration of historic resources; for the acquisition, creation, preservation, rehabilitation and restoration of land for recreational use; for the acquisition, creation, preservation and support of community housing; and for the rehabilitation or restoration of open space and community housing that is acquired or created as provided in this section; provided, however, that funds expended pursuant to this chapter shall not be used for maintenance. With respect to community housing, the community preservation committee shall recommend, whenever possible, the reuse of

existing buildings or construction of new buildings on previously developed sites. With respect to recreational use, the acquisition of artificial turf for athletic fields shall be prohibited.

SECTION 78. Said section 5 of said chapter 44B, as so appearing, is further amended by striking out subsection (d) and inserting in place thereof the following subsection:-

(d) After receiving recommendations from the community preservation committee, the legislative body shall take such action and approve such appropriations from the Community Preservation Fund as set forth in section 7, and such additional non-Community Preservation Fund appropriations as it deems appropriate to carry out the recommendations of the community preservation committee. In the case of a city, the ordinance shall provide for the mechanisms under which the legislative body may approve or veto appropriations made pursuant to this chapter, in accordance with the city charter.

SECTION 79. Said chapter 44B is hereby further amended by striking out section 6, as so appearing, and inserting in place thereof the following section:-

Section 6. In each fiscal year and upon the recommendation of the community preservation committee, the legislative body shall spend, or set aside for later spending, not less than 10 per cent of the annual revenues in the Community Preservation Fund for open space, not less than 10 per cent of the annual revenues for historic resources and not less than 10 per cent of the annual revenues for community housing. In each fiscal year, the legislative body shall make appropriations from the Community Preservation Fund as it deems necessary for the administrative and operating expenses of the community preservation committee and such appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation Fund. The legislative body may also make appropriations from the Community Preservation Fund as it deems necessary for costs associated with tax billing software and outside vendors necessary to integrate such software for the first year that a city or town implements the this chapter; provided, however, that the total of any administrative and operating expenses of the community preservation committee and the first year implementation expenses shall not exceed 5 per cent of the annual revenues in the Community Preservation Fund.

Funds that are set aside shall be held in the Community Preservation Fund and spent in that year or later years; provided, however, that funds set aside for a specific purpose shall be spent only for the specific purpose. Any funds set aside may be expended in any city or town. The community preservation funds shall not replace existing operating funds, only augment them.

SECTION 80. The second paragraph of section 7 of said chapter 44B, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The following monies shall be deposited in the fund: (i) all funds collected from the real property surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 11; (ii) additional funds appropriated or dedicated from allowable municipal sources pursuant to subsection (b1/2) of section 3, if applicable; (iii) all funds received from the commonwealth or any other source for such purposes; and (iv) proceeds from the disposal of real property acquired with funds from the Community Preservation Fund.

SECTION 81. Said chapter 44B is hereby further amended by striking out section 10, as so appearing, and inserting in place thereof the following section:

Section 10. (a) The commissioner of revenue shall annually on or before November 15 disburse monies from the fund established in section 9 to a city or town that has accepted sections 3 to 7, inclusive, and notified the commissioner of its acceptance. The community shall notify the commissioner of the date and terms on which the voters accepted said sections 3 to 7, inclusive. The municipal tax collecting authority shall certify to the commissioner the amount the city or town has raised through June 30 by imposing a surcharge on its real property levy and shall certify the percentage of the surcharge applied. In the event a city or town accepts said sections 3 to 7, inclusive, pursuant to subsection (b1/2) of section 3 the municipal tax collecting authority shall certify to the commissioner by October 30, the maximum additional funds the city or town intends to transfer to the Community Preservation Fund from allowable municipal sources for the following fiscal year. Once certified, the city or town may choose to transfer less than the certified amount during the following fiscal year.

(b) The commissioner shall multiply the amount remaining in the fund after any disbursements for operating and administrative expenses pursuant to subsection (c) of section 9 by 80 per cent. This amount distributed in the first round distribution shall be known as the match distribution. The first round total shall be distributed to each city or town accepting said sections 3 to 7, inclusive, in an amount not less than 5 per cent but not greater than 100 per cent of the total amount raised by the additional surcharge on real property by each city or town and, if applicable, the additional funds committed from allowable municipal sources pursuant to subsection (b1/2) of section 3. The percentage shall be the same for each city and town and shall be determined by the commissioner annually in a manner that distributes the maximum amount available to each participating city or town.

(c) The commissioner shall further divide the remaining 20 per cent of the fund in a second round distribution, known as the equity distribution. The commissioner shall determine the equity distribution in several steps. The first step shall be to divide the remaining 20 per cent of the fund by the number of cities and towns that have accepted said sections 3 to 7, inclusive. This dividend shall be known as the base figure for equity distribution. This base figure shall be determined solely for purposes of performing the calculation for equity distribution and shall not be added to the amount received by a participant.

(d) Each city and town in the commonwealth shall be assigned a community preservation rank for purposes of the equity distribution. The commissioner shall determine each community's rank by first determining the city or town's equalized property valuation per capita ranking, ranking cities and towns from highest to lowest valuation. The commissioner shall also determine the population of each city or town and rank each from largest to smallest in population. The commissioner shall add each equalized property valuation rank and population rank, and divide the sum by 2. The dividend shall be the community preservation raw score for that city or town.

(e) The commissioner shall then order each city or town by community preservation raw score, from the lowest raw score to the highest raw score. This order shall be the community preservation rank for each city or town. If more than 1 city or town has the same community preservation raw score, the city or town with the higher equalized valuation rank shall receive the higher community preservation rank.

(f) After determining the community preservation rank for each city and town, the commissioner shall divide all cities or towns into deciles according to their community preservation ranking, with approximately the same number of cities and towns in each decile, and the cities or towns with the highest community preservation rank shall be placed in the lowest decile category, starting with decile 10. Percentages shall be assigned to each decile as follows:

decile 1	140 per cent of the base figure.
decile 2	130 per cent of the base figure.
decile 3	120 per cent of the base figure.
decile 4	110 per cent of the base figure.
decile 5	100 per cent of the base figure.
decile 6	90 per cent of the base figure.
decile 7	80 per cent of the base figure.
decile 8	70 per cent of the base figure.
decile 9	60 per cent of the base figure.
decile 10	50 per cent of the base figure.

After assigning each city and town to a decile according to their community preservation rank, the commissioner shall multiply the percentage assigned to that decile by the base figure to determine the second round equity distribution for each participant.

(g) Notwithstanding any other provision of this section, the total state contribution for each city and town shall not exceed the actual amount raised by the city or town's surcharge on its real property levy and, if applicable, additional funds committed from allowable municipal sources pursuant to subsection (b1/2) of section 3.

(h) When there are monies remaining in the Massachusetts Community Preservation Trust Fund after the first and second round distributions and any necessary administrative expenses have been paid in accordance with section 9, the commissioner may conduct a third round surplus distribution. Any remaining surplus in the fund may be distributed by dividing the amount of the surplus by the number of cities and towns that have accepted sections 3 to 7, inclusive. The resulting dividend shall be the surplus base figure. The commissioner shall then use the decile categories and percentages as defined in this section to determine a surplus equity distribution for each participant.

(i) The commissioner shall determine each participant's total state grant by adding the amount received in the first round distribution with the amounts received in any later round of distributions, with the exception of a city or town that has already received a grant equal to 100 per cent of the amount the community raised by its surcharge on its real property levy.

(1) Only those cities and towns that adopt the maximum surcharge pursuant to subsection (b) of section 3 and those cities and towns that adopt the maximum surcharge and additional funds committed from allowable municipal sources such that the total funds are the equivalent of 3 per cent of the real estate tax levy against real property pursuant to subsection (b1/2) of said section 3 shall be eligible to receive additional state monies through the equity and surplus distributions.

(2) If less than 10 per cent of the cities and towns have accepted sections 3 to 7, inclusive, and imposed and collected a surcharge on their real property levy, the commissioner may calculate the state grant with only 1 round of distributions or in any other equitable manner.

(j) After distributing the Massachusetts Community Preservation Trust Fund in accordance with this section, the commissioner shall keep any remaining funds in the trust for distribution in the following year.

SECTION 82. Section 12 of said chapter 44B, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:

(a) A real property interest that is acquired with monies from the Community Preservation Fund shall be bound by a permanent restriction, recorded as a separate instrument, that meets the requirements of sections 31 to 33, inclusive, of chapter 184 limiting the use of the interest to the purpose for which it was acquired. The permanent restriction shall run with the land and shall be enforceable by the city or town or the commonwealth. The permanent restriction may also run to the benefit of a nonprofit organization, charitable corporation or foundation selected by the city or town with the right to enforce the restriction. The legislative body may appropriate monies from the Community Preservation Fund to pay a nonprofit organization created pursuant to chapter 180 to hold, monitor and enforce the deed restriction on the property.

SECTION 83. Section 16 of said chapter 44B, as so appearing, is hereby amended by inserting after the word "chapter", in line 5, the following words:- , including reducing the surcharge to 1 per cent and committing additional municipal funds pursuant to subsection (b 1/2) of section 3.

SECTION 84. Section 3A of chapter 60 of the General Laws, as so appearing, is hereby amended by adding the following subsection:-

(e) The collector may issue an electronic bill or notice for any other tax, excise, betterment or assessment committed by the assessors under a voluntary electronic billing program established for such tax, excise, betterment or assessment in the manner set forth in subsection (a). The electronic bill or notice issued under the program shall meet the standards required by law for such tax, excise, betterment or assessment bills or notices.

SECTION 85. The first paragraph of section 2 of chapter 60A of the General Laws, as so appearing, is hereby amended by striking out the seventh sentence.

SECTION 155. (a) Notwithstanding any general or special law to the contrary, after complying with clause (a) of section 5C of chapter 29 of the General Laws, the comptroller shall dispose of the consolidated net surplus in the budgetary funds for fiscal year 2013 in the following order to the extent that funds are available: (i) transfer \$25,000,000 to the Massachusetts Community Preservation Trust Fund, established by section 9 of chapter 44B of the General Laws; and (ii) transfer the remaining balance from the General Fund to the Commonwealth Stabilization Fund.

(b) All transfers pursuant to this section shall be made from the undesignated fund balance in the budgetary funds proportionally from the undesignated fund balances; provided, however, that no such transfers shall cause a deficit in any of the funds.

SECTION 168. (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 city with a plan E form of government 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, 2013. 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 are not available for use in the next fiscal year or that shall be required to use revenues for extraordinary non school-related expenses for which it did not have to use revenues in the preceding fiscal year or that has an excessive certified municipal revenue growth factor which is also greater than or equal to 1.5 times the state average municipal revenue growth factor may appeal to the department of revenue not later than October 1, 2012, for an adjustment of its minimum required local contribution and net school spending.

(c) If an appeal 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 June 30, 2013, 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 a municipality's appeal 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 constitute a permanent reduction in the minimum required local contribution.

(e) The board of selectmen in a town, the city council in a city with a plan E form of government, 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 are not available for use in the next fiscal year may appeal to the department of revenue not later than October 1, 2012, for an adjustment to its net school spending requirement. If an appeal 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 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 in this section, the local appropriating authority shall determine the extent to which the community shall avail itself of any relief authorized by this section.

(i) The amount of financial assistance due from the commonwealth in fiscal year 2013 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 to implement their respective duties pursuant to this section.

SECTION 218. Sections 57 to 71, inclusive, shall apply to all Community Preservation Fund appropriations approved by a city or town's legislative body on or after the effective date of acceptance of sections 3 to 7, inclusive, of chapter 44B of the General Laws in any such city or town.

SECTION 229. Except as otherwise specified, this act shall take effect on July 1, 2012.

Approved (in part) July 8, 2012

CHAPTER 140 – LONG TERM LESSEES

Effective July 8, 2012

§ 1 Long-term Lessees. Adds G.L. c. 186, § 1A, which restores treatment of lessees of long-term leases as owners for all purposes. The prior version, G.L. c.186, § 1, was repealed as part of the enactment of the Uniform Probate Code in 2008. As a result, the lessee of a lease with a term of 100 or more years and 50 or more years left to run is considered the assessed owner of property for local tax purposes.

CHAPTER 140 OF THE ACTS OF 2012 (EXCERPTS)

An Act Further Regulating the Probate Code and Establishing a Trust Code.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to further regulate forthwith the probate code and to establish a trust code, 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 186 of the General Laws is hereby amended by inserting before section 3 the following section:-

Section 1A. If land is demised for the term of 100 years or more, the term shall, so long as 50 years thereof remain unexpired, be regarded as an estate in fee simple as to everything concerning the descent and devise thereof upon the decease of the owner, the sale thereof by personal representatives, guardians, conservators or trustees, the levy of execution thereon and the redemption thereof if mortgaged or taken on execution.

Whoever holds as lessee or assignee under such a lease shall, so long as 50 years of the term remain unexpired, be regarded as a freeholder for all purposes.

Approved July 8, 2012

CHAPTER 165 – LOCAL AID DISTRIBUTIONS

Effective July 27, 2012

§§ 116 and 136 Local Aid Distributions. Amends G.L. c. 58, § 18C to require that certain local aid distributions, including Unrestricted General Government Aid, Chapter 70 and State-owned Land reimbursements, be paid on a monthly basis rather than quarterly or annually. The change is effective beginning in Fiscal Year 2014.

CHAPTER 165 OF THE ACTS OF 2012 (EXCERPTS)

An Act to Improve the Administration of State Government and Finance.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to update forthwith the state financing laws, facilitate the measurement of the performance of all budgeted agencies and to enable better programmatic decision-making, 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 116. Chapter 58 of the General Laws is hereby amended by striking out section 18C, as amended by section 25 of chapter 194 of the acts of 2011, and inserting in place thereof the following section:-

Section 18C. (a) In this section, “budgeted aid” shall mean unrestricted aid to cities and towns, including proceeds from the state lottery established under chapter 10, payments in lieu of taxes from the commonwealth to cities and towns and education aid to cities and towns under chapter 70.

(b) The state treasurer shall, subject to appropriation but not subject to allotment under section 9B of chapter 29, distribute budgeted aid to cities and towns. The distribution shall be made in 12 equal payments, on or before the last day of each month.

Notwithstanding clause Forty-first of section 7 of chapter 4 or any other general or special law to the contrary, the commissioner of revenue or any official responsible for a local reimbursement or assistance program reported by said commissioner under section 25A shall use, as appropriate, the most recent city and town population estimates of the United States Bureau of the Census in calculating distributions or assessments under local reimbursement or assistance programs. Such distribution programs shall include, but not be limited to, the chapter 70 school aid program, and aid to regional public libraries. Such assessments shall include, but not be limited to, air pollution control districts, the metropolitan area planning council, the old colony planning council, the Massachusetts Bay Transportation Authority and any other entity for which said commissioner is required to give notice under said section 25A.

(c) This section shall not be construed to prohibit the distribution of other state government payments to cities and towns that are not budgeted aid through 1 or more of the monthly payments to cities and towns. Nor shall this section be construed to prohibit the deduction from distributions to satisfy amounts owed to the state by cities and towns under section 20A or any other general or special law.

SECTION 136. Section 116 shall take effect for the fiscal year starting on July 1, 2013.

Approved July 27, 2012

CHAPTER 238 – ECONOMIC DEVELOPMENT

Effective August 7, 2012 (Emergency Declaration)

§ 14 Local Infrastructure Development Program (LIDP). Adds G.L. c. 23L, which lets a city or town create one or more development zones to construct, maintain, repair and operate various public improvements, amenities and infrastructure that service residents and businesses within the zone. The improvements may include water, sewer and storm water systems, roads, bridges, sidewalks, lighting, parking facilities, public safety and public works buildings, parks and recreational facilities, cultural and performing arts facilities, marine facilities, transportation stations, energy and telecommunications systems. The zones may encompass more than one municipality. To finance the infrastructure, the municipality may impose an infrastructure assessment or a special assessment similar to a betterment.

Creation of a development zone is initiated by petition of property owners within the proposed zone filed with the municipal clerk and the Massachusetts Development Finance Agency (MDFA). The petitioners must have the consent of all record owners of real property acreage included within the zone, except governmental owners. The petitioners must provide a proposed improvement plan for the zone, which sets forth the planned infrastructure improvements, their estimated cost and construction timetable and the procedure for reimbursing the municipality for its costs in creating and administering the zone and collecting infrastructure assessments.

Within 120 days, the selectboard or city or town council must hold a hearing on the petition, after mailing notices to property owners within the zone at least 14 days in advance. Notice must be given by newspaper publication as well. Within 90 days, the selectboard, mayor or manager must make recommendations and findings on the petition, including whether the plan is consistent with the master plan of the municipality as verified by the planning board and the improvements are compatible with capacity and use of existing local and regional infrastructure. Within 21 days, the selectboard, or city or town council with the approval of the mayor or manager must approve or disapprove the petition. If approved, notice must be filed with the municipal clerk, MDFA and Secretary of State. Upon filing, the zone is created and plan approved.

Once approved, the owner of public facilities that are part of the approved plan has the rights and powers necessary to carry out the plan, such as to contract with the municipality, other municipalities, the Commonwealth, utility companies and other parties to provide services needed to support the improvement plan, hire employees, adopt an annual budget

and raise revenues for its purposes, which includes the power to issue debt and pledge its revenues.

The municipality may assess infrastructure assessments on real estate, leaseholds and other interests within the zone consistent with the improvement plan. Governmental owners are exempt unless they agree to accept the assessments. The assessments may be set to cover: the administrative expenses of the zone, debt service on bonds issued to finance improvements, reserves required by agreements pledging revenues to secure the bonds, costs to maintain, repair, replace and renew improvements and certain related MDFA expenses. Alternatively, it may assess a “special assessment” to finance the cost of administration, the improvements and their maintenance, repair, replacement and renewal. It may use value, frontage, per lot, square foot or other method to allocate the costs based on benefits received. A public hearing must be held on the schedule of assessments.

The assessments are generally subject to the same administrative provisions as betterments and special assessments, except they may be made before construction and property owners may pay in up to 25 years. There is a lien to secure payment upon recording the improvement plan and assessment schedules in the registry of deeds. The liens are subordinate to municipal liens. The assessments can be collected in the same manner as property taxes, betterments and other special assessments owed to the municipality.

MDFA may issue special obligation (revenue) bonds for up to 25 years to provide financing for the improvements. The bonds are not general obligations of the Commonwealth or the municipality. Infrastructure assessments, other revenues, assets and property related to the development zone may be pledged to secure payment of the debt. The bonds are legal investments for municipalities and other public entities.

MDFA may also issue debt secured by the infrastructure assessments in place of debt issued by a municipality that approves an invested revenue district development plan to carry out certain improvements under G.L. c. 40Q, the District Improvement Financing (DIF) program. Under DIF, a municipality may dedicate a portion of the real estate tax revenues generated within the district to financing the improvements (the tax increment). The municipality must include in its invested revenue district program a description of the rights and responsibilities of the MDFA and municipality and can use this financing for projects relating to just one parcel.

§§ 19-23 Business Improvement Districts (BIDs). Amends G.L. c. 40Q, §§ 1, 4 and 9 so that all property owners within BIDs must pay the BID assessment. A petition to create a BID needs to be signed by the owners of at least 51 per cent of the assessed valuations, and 60 per cent of all owners, of real property within the proposed BID. The municipality then holds a public hearing on the petition. Under the amendments, all owners within the proposed district will continue to get notice of the hearing, but once the municipality approves the BID, they are all members and must pay the assessment. Previously, property owners could elect to opt out from membership and the assessment. In addition, every five years, the BID members will have to vote on whether to renew the BID.

§ 24 District Improvement Financing (DIF). Amends G.L. c. 40Q, § 2 to allow a municipality to establish a DIF program to finance improvements within a certain area

with a portion of real estate tax revenues generated within that area (the tax increment) without obtaining approval of its improvement plan from the Economic Assistance Coordinating Council (EACC).

CHAPTER 238 OF THE ACTS OF 2012 (EXCERPTS)
**An Act Relative to Infrastructure Investment, Enhanced Competitiveness
and Economic Growth in the Commonwealth.**

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

SECTION 14. The General Laws are hereby amended by inserting after chapter 23K the following chapter:-

CHAPTER 23L
LOCAL INFRASTRUCTURE DEVELOPMENT PROGRAM

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

“Agency”, the Massachusetts Development Finance Agency established in section 2 of chapter 23G.

“Amended improvement plan”, a plan describing any change to the improvement plan with respect to the boundaries of a development zone or any material change to the method of assessing costs, description of improvements, the maximum cost of the improvements or method of financing the improvements that is approved through the same procedures as the original improvement plan adopted under this chapter.

“Assessing party”, the municipalities identified in the improvement plan to assess any infrastructure assessments in the development zone.

“Cost”, the cost of: (i) construction, reconstruction, renovation, demolition, maintenance and acquisition of all lands, structures, real or personal property, rights, rights-of- way, utilities, franchises, easements and interests acquired or to be acquired by the public facilities owner; (ii) all labor and materials, machinery and equipment, including machinery and equipment needed to expand or enhance services from the municipality, the commonwealth or any other political subdivision thereof to the development zone; (iii) financing charges and interest prior to and during construction, and for 1 year after completion of the improvements, interest and reserves for principal and interest, including costs of municipal bond insurance and any other type of credit enhancement or financial guaranty and costs of issuance; (iv) extensions, enlargements, additions, and enhancements to improvements; (v) architectural, engineering, financial and legal services; (vi) plans, specifications, studies, surveys and estimates of costs and revenues; (vii) administrative expenses necessary or incident to the construction, acquisition and financing of the improvements; and (viii) other expenses necessary or incident to the construction, acquisition, maintenance and financing of the improvements.

“Development zone”, 1 or more parcels of real estate in the municipality, contiguous or not, described in the improvement plan and to be benefited by the improvements and subject to infrastructure assessments as described in the improvement plan.

“Improvement plan”, a plan set forth in the petition for the establishment of a development zone setting forth the proposed improvements, services and programs,

revitalization strategy, replacement and maintenance plan, the cost estimates for the improvements and the replacement and maintenance program, the identity of the public facilities' owners and the administrator of the plan, the boundaries of the development zone, the analysis of any costs of financing the improvements, the identification of the assessing party, the method and structure of the infrastructure assessments, the allocation of assessments among parcels, the selection of any or all of the assessing powers listed in section 4 that shall be utilized by the assessing party within the development zone, a statement that no funds of the municipality shall be used to pay infrastructure assessments, a description of the infrastructure development project within the development zone, the proposed use of any bonds or notes to finance the project by the agency, including the possible use of any refunding bonds or notes, the participation of the agency, if any, in a district improvement financing program as described in section 7, and if so, a description of any assessing powers to be utilized and the amount of assessments to be levied and assessed on the real estate in the development zone.

“Improvements”, the acquiring, laying, constructing, improving and operating of capital improvements to be owned by a public facilities' owner including, but not limited to, storm drainage systems, dams, sewage treatment plants, sewers, water and well systems, roads, bridges, sound barriers, culverts, tunnels, streets, sidewalks, lighting, traffic lights, signage and traffic control systems, parking, including garages, public safety and public works buildings, marine facilities, such as piers, wharfs, bulkheads and sea walls, transportation stations and related facilities, fiber and telecommunication systems, facilities to produce and distribute electricity, including alternate energy sources such as co-generation and solar installations, and other infrastructure-related improvements; provided, however, that “improvements” shall not include improvements located in, or serving, gated communities, other than age-restricted developments operated by nonprofit organizations, that prohibit access to the general public and any type of improvement that is specifically prohibited in the United States Internal Revenue Code from using tax-exempt financing.

“Infrastructure assessments”, assessments, betterments, special assessments, charges or fees as described in this chapter and the improvement plan and assessed by the assessing party upon the real estate within the development zone to defray the cost of improvements financed under this chapter.

“Infrastructure development project”, the acquisition, construction, expansion, improvement or equipping of improvements serving any new or existing commercial, retail, industrial, residential or mixed use project.

“Municipal governing body”, in a city, the city council with the approval of the mayor, in a city having a Plan D or Plan E form of charter, the city council with the approval of the city manager, in a town with a town council form of government, the town council, and the board of selectmen in a town with a town meeting form of government.

“Municipality”, a city or town, or multiple cities and towns, if the development zone is located in more than 1 municipality.

“Person”, an individual or corporation, including a body politic and corporate, public department, office, agency, authority or political subdivision of the commonwealth, other corporation, trust, limited liability company, society, association or partnership or a subordinate instrumentality of a political subdivision of the commonwealth.

“Petition”, the document initiating the creation of a development zone as described in subsection (b) of section 2.

“Project”, an infrastructure development project.

“Public facilities’ owner”, a municipality, the commonwealth or any other political subdivision, agency or public authority of the commonwealth identified in the improvement plan as an owner of the improvements described in an improvement plan or an amended improvement plan.

Section 2. (a) Notwithstanding any general or special law or charter provision to the contrary, a municipality, acting through its municipal governing body, may establish development zones under this chapter. In the event that 2 or more municipalities elect to jointly establish or consolidate contiguous development zones, the municipal governing body of each municipality wherein the development zone shall be located shall approve by a majority vote the petition for the establishment of such a development zone.

(b) The establishment of a development zone shall be initiated by the filing of a petition signed by all persons owning real estate within the proposed development zone in the office of the clerk of the municipality and the office of the agency. The petition shall contain at least:

- (1) a legal description of the boundaries of the proposed development zone;
- (2) the written consent to the establishment of the development zone and to the adoption of the improvement plan or an amended improvement plan, by the persons with the record ownership of 100 per cent of the acreage to be included in the development zone; provided, however, that any real estate owned by the commonwealth or an agency or political subdivision thereof, included in the boundaries of the development zone, shall not be included in the count of persons owning tax parcels or acreage in the proposed development zone for the purposes of this clause;
- (3) the name of the proposed development zone;
- (4) a map of the proposed development zone, showing its boundaries and any current public improvements which may be added to or modified by any improvements;
- (5) the estimated timetable for construction of the improvements;
- (6) estimates of any other private or public funding sources;
- (7) the improvement plan for the proposed development zone; and
- (8) the procedure by which the municipality shall be reimbursed for any costs incurred by it in establishing the development zone and for any administrative costs to be incurred in the administration and collection of infrastructure assessments imposed within the proposed development zone.

Section 3. (a) Upon receipt of a petition under section 2, the municipal governing body shall, within 120 days of such receipt, hold a public hearing on the petition. Written notification of the hearing and a summary of the petition and the improvement plan shall be provided by the clerk of the municipality to all owners and tenants of properties in the proposed development zone and to the regional planning agency, not later than 14 days before the hearing, by mailing a notice to the address listed in the municipality’s property tax records or other appropriate listings of owners and residents. Notification of the hearing shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the municipality and in a newspaper of general circulation in all municipalities within one-half mile of the borders of the proposed development zone, the first publication shall be at least 14 days before the hearing. The public notice shall state the proposed boundaries of the development zone, the improvements proposed to be

provided in the development zone, the proposed basis for determining any infrastructure assessments with respect to those improvements and any locations for viewing and copying the petition, including the improvement plan.

(b) A public hearing under subsection (a) shall be held to determine if the petition satisfies the criteria of this chapter for a development zone and to obtain public comment regarding the improvement plan and the effect that the development zone may have on the owners of real estate, tenants and other persons within the development zone and on the municipality or adjacent communities. Within 90 days after the conclusion of the public hearing, the municipal governing body shall issue recommendations on the petition; provided, however, that the recommendations shall include, but not be limited to, the following findings:

(1) whether the establishment of the development zone is consistent with any applicable element or portion of a master plan of the municipality, which shall be confirmed in writing by the municipality's planning board; and

(2) whether the proposed improvements in the development zone will be compatible with the capacity and uses of existing local and regional infrastructure services and facilities.

(c) Within 21 days after receipt of the recommendations required under subsection (b), the municipal governing body shall vote on the petition to establish the development zone and the improvement plan.

(d) Upon the approval of the petition by a majority vote of the municipal governing body under subsection (c), notice of such approval shall be promptly filed with the clerk of the municipality, the agency and the secretary of the commonwealth. Upon such filing, the development zone shall be deemed established and the improvement plan shall be deemed approved.

(e) The public facilities' owner shall have all rights and powers necessary or convenient to carry out and effectuate this chapter that are consistent with the improvement plan as approved by the municipal governing body, including, but not limited to, the authority:

(1) to make and enter into all contracts and agreements necessary or incidental to the exercise of any power granted by this chapter, including agreements with the municipality, the commonwealth, the agency and any other municipality or political entity or utility for the provision of services that are necessary to the acquisition, construction, operation or financing of the improvements within the development zone;

(2) to purchase or acquire by lease, lease-purchase, sale and lease-back, gift or devise, or to obtain or grant options for the acquisition of, any property, real or personal, tangible or intangible, or any interest therein, in the exercise of its powers and the performance of its duties and to acquire real estate or any interest therein, within the boundaries of the development zone itself, if authorized in the improvement plan, and to acquire real estate or any interest therein outside the boundaries of the development zone, necessary for the acquisition, construction and operation of the improvements or services relating thereto that are located within the development zone or are related to or provided by the public facilities' owner;

(3) to construct, improve, extend, equip, enlarge, repair, maintain and operate and administer the improvements for the benefit of the development zone within or without the development zone and to acquire existing improvements or construct new improvements, including those located under or over any roads, public ways

or parking areas and to enter upon and excavate any private land within the development zone for the purpose of constructing the improvements or repairing the same;

(4) to accept goods or gifts of funds, property or services from any source, public or private;

(5) to sell, lease, mortgage, exchange, transfer or otherwise dispose of or grant options for any such purposes with respect to any of the improvements, real or personal, tangible or intangible, within the development zone or serving the development zone or any interest therein;

(6) to pledge or assign any money, infrastructure assessments or other revenues relating to any improvements within or related to the development zone and any proceeds derived therefrom;

(7) to enter into contracts and agreements with the municipality, the agency, the commonwealth or any political subdivision thereof, the property owners of the development zone and any public or private party with respect to all matters necessary, convenient or desirable for carrying out this chapter including, but not limited to, the acquisition of existing improvements, collection of revenue, data processing and other matters of management, administration and operation and to make other contracts of every name and nature and execute and deliver all instruments necessary or convenient for carrying out any of its purposes;

(8) to exercise the powers and privileges of, and to be subject to the limitations upon, municipalities under sections 38 to 42K, inclusive, of chapter 40 and chapters 80 and 83, insofar as such provisions may be applicable and consistent with this chapter; provided, however, that any requirement in said sections 38 to 42K, inclusive, of said chapter 40 and in said chapters 80 and 83 for a vote by the governing body of a municipality or for a vote by the voters of a municipality, shall be satisfied by a vote or resolution duly adopted by the board of selectmen, city council or town council as the case may be;

(9) to invest any funds in such manner and to the extent permitted under the General Laws for the investment of such funds by the treasurer of a municipality;

(10) to employ such assistants, agents, employees and persons as may be necessary in the public facilities' owner's judgment and to fix their compensation according to the terms of the improvement plan;

(11) to procure insurance against any loss or liability that may be sustained or incurred in carrying out this chapter in such amount as the public facilities' owner shall deem necessary and appropriate with insurers licensed to furnish such insurance in the commonwealth;

(12) to apply for any loans, grants or other types of assistance from the United States government, the commonwealth or any political subdivision thereof that are described in the improvement plan or any amended improvement plan;

(13) to adopt an annual budget and to raise, appropriate and assess funds in amounts necessary to carry out the purposes for which development zone is formed as described in this chapter and the improvement plan;

(14) to sue and be sued in its own name, plead and be impleaded; and

(15) to do all things necessary, convenient or desirable for carrying out this chapter.

Section 4. (a) Consistent with the improvement plan, the assessing party may fix, revise, charge, collect and abate infrastructure assessments, for the cost, maintenance, operation

and administration of the improvements imposed on the real estate, leaseholds or other interests therein, located in the development zone. All real estate within a development zone owned by the commonwealth or any political subdivision, political instrumentality, agency or public authority thereof shall be exempt from such charges unless the charges are specifically accepted by the commonwealth, political subdivision, political instrumentality, agency or public authority. In providing for the payment of the cost of the improvements or for the use of the improvements, the assessing party may avail itself of all other laws relative to the assessment, apportionment, division, fixing, reassessment, revision, abatement and collection of infrastructure assessments by cities and towns or the establishment of liens therefor and interest thereon and the procedures set forth in sections 5 and 5A of chapter 254 for the foreclosure of liens arising under section 6 of chapter 183A, as it shall deem necessary and appropriate for purposes of the assessment and collection of infrastructure assessments. The assessing party shall file copies of the improvement plan and any amendments thereof and all schedules of assessments with the appropriate registry of deeds and the municipality's assessors so that notice thereof shall be reported on a municipal lien certificate for any real estate parcel located in a development zone. Notwithstanding any general or special law to the contrary, the assessing party may pay the entire cost of any improvements, including the acquisition thereof, during construction or after completion, or the debt service of notes or bonds used to fund such costs, from infrastructure assessments and may establish such infrastructure assessments before, during or within 1 year after completion of construction or acquisition of any improvements. The assessing party may establish a schedule for the payment of infrastructure assessments not to exceed 25 years. The assessing party shall hold at least 1 public hearing on its schedule of infrastructure assessments or any revision thereof prior to adoption by the assessing party, notice of which shall be delivered to the municipality and published in a newspaper of general circulation in the municipality at least 14 days in advance of the hearing. Not later than the date of the publication, the assessing party shall make available to the public and deliver to the municipality the proposed schedule of infrastructure assessments.

Notwithstanding any general or special law to the contrary, the assessing party may contract with the agency for any services required by the assessing party regarding the assessment, apportionment, division, fixing, reassessment, revision, collection and enforcement of infrastructure assessments under this chapter and the fees, costs and other expenses for these services may be included in the calculation of the infrastructure assessments levied by the assessing party under this chapter.

The infrastructure assessments established by the assessing party in accordance with this chapter shall be fixed in respect of the aggregate thereof so as to provide revenues at least sufficient to: (i) pay the administrative expenses of the assessing party and the agency; (ii) pay the principal of, premium, if any, and interest on bonds, notes or other evidences of indebtedness of the agency under this chapter as the same becomes due and payable; (iii) create and maintain such reasonable reserves as may be reasonably required by any trust agreement or resolution securing bonds; (iv) provide funds for paying the cost of the operation and necessary maintenance, repairs, replacements and renewals of the improvements; and (v) pay or provide for any amounts that the agency, including reasonable administrative fees, may be obligated to pay or provide for by law or contract, including any resolution or contract with or for the benefit of the holders of its bonds and notes.

Notwithstanding any general or special law to the contrary, the agency shall not be precluded from carrying out its obligations under this chapter if it has previously

provided technical, real estate, lending, financing or other assistance to: (i) an infrastructure development project including, but not limited to, a project in which the agency may have an economic interest; (ii) a development zone; or (iii) a municipality associated with, or that may benefit from, an infrastructure development project.

(b) As an alternative to levying infrastructure assessments under this chapter or any other law, the assessing party may levy special assessments on real estate, leaseholds or other interests therein within the development zone to finance the cost of the improvements and the maintenance, repair, replacement and renewal thereof, and the expense of administration thereof. In determining the basis for and amount of the special assessment, the cost of the improvements and the maintenance, repair, replacement and renewal thereof, and the expense of administration thereof, including the cost of the repayment of the debt issued or to be issued by the agency to finance the improvements, may be calculated and levied using any of the following methods that result in fairly allocating the costs of the improvements to the real estate in the development zone:

- (i) equally per length of frontage or by lot, parcel or dwelling unit or by the square footage of a lot, parcel or dwelling unit;
- (ii) according to the value of the property as determined by the municipality's board of assessors; or
- (iii) in any other reasonable manner that results in fairly allocating the cost, administration and operation of the improvements according to the benefit conferred or use received, including, but not limited to, by classification of commercial or residential use or distance from the improvements.

The assessing party, consistent with the improvement plan, may also provide for the following:

- (1) a maximum amount to be assessed with respect to any parcel;
- (2) a tax year or other date after which no further special assessments under this section shall be levied or collected on a parcel;
- (3) annual collection of the levy without subsequent approval of the assessing party;
- (4) the circumstances under which the special assessments may be reduced or abated; and
- (5) the prepayment of infrastructure assessments under this chapter under procedures that may be established by the assessing party.

(c) Infrastructure assessments levied under this chapter shall be collected and secured in the same manner as property taxes, betterments and assessments and fees owed to the municipality unless otherwise provided by the assessing party and shall be subject to the same penalties and the same procedures, sale and lien priority in case of delinquency as is provided for such property taxes, betterments, assessments and fees owed to the municipality. Any liens imposed by the municipality for the payment of property taxes and any betterments and assessments and fees within the development zone shall have priority in payment over any liens placed on real estate within the development zone.

(d) Notwithstanding any general or special law to the contrary, the agency, the municipality or any other public facilities' owner may contract with owners of real estate within a development zone to acquire or undertake improvements within the development zone. Upon completion, such improvements shall be conveyed to the public facilities' owner; provided, however, that the consideration for the conveyance shall be limited to the cost thereof.

Section 5. (a) In addition to the powers granted under chapters 23G and 40D, the agency may borrow money and issue and secure its bonds for financing improvements as provided in and subject to this chapter; provided, however, that said chapters 23G and 40D shall apply to bonds issued under this section, except that subsection (b) of section 8 of said chapter 23G and section 12 of said chapter 40D shall not apply to bonds issued under this chapter or the improvements financed thereby; and provided further, that the improvements financed by the agency under this chapter shall constitute a project within the meaning of section 1 of said chapter 23G and section 1 of said chapter 40D, but shall not be considered facilities to be used in a commercial enterprise. With respect to the issuance of bonds or notes for the purposes of this chapter in the event of a conflict between this chapter and chapter 23G, this chapter shall control.

Nothing in this chapter shall be construed to limit or otherwise diminish the power of the agency to finance the costs of projects authorized under said chapters 23G and 40D within the development zone or the municipality upon compliance with said chapters 23G and 40D.

(b) The agency may provide by resolution of its board of directors for the issuance of bonds or notes of the agency for any of the purposes set forth in this chapter. Bonds issued hereunder shall be special obligations payable solely from particular funds and revenues generated from infrastructure assessments levied under this chapter as provided in the resolution. No bonds or notes shall be issued by the agency under this chapter until the agency's board of directors has determined that the bonds or notes trust agreement and any related financing documents are reasonable and proper and comply with this chapter. The agency may charge a reasonable fee in connection with the review of such documentation by its staff and board of directors. Without limiting the generality of the foregoing, such bonds may be issued to pay or refund notes issued under this chapter, to pay the cost of acquiring, laying, constructing and reconstructing the improvements. The bonds of each issue shall be dated, shall bear interest at the rates, including rates variable from time to time, and shall mature at such times not exceeding 25 years from the dates of the bonds, as determined by the agency, and may be redeemable before maturity, at the option of the agency or the holder thereof, at such price and under such terms and conditions as may be fixed by the agency before the issuance of the bonds. The agency shall determine the form of the bonds and the manner of execution of the bonds and shall fix the denomination of the bonds and the place of payment of principal and interest, which may be at any bank or trust company within or without the commonwealth and such other locations as designated by the agency. In the event an officer whose signature or a facsimile of whose signature shall appear on any bonds shall cease to be an officer before the delivery of the bonds, the signature or facsimile shall be valid and sufficient for all purposes to the same extent as if the officer had remained in office until the delivery. The bonds shall be issued in registered form. The agency may sell the bonds in a manner and for a price, either at public or private sale, as it may determine to be for the best interests of the development zone.

Before the preparation of definitive bonds, the agency may, under like restrictions, issue interim receipts or temporary bonds exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The agency may also provide for the replacement of any bonds that shall become mutilated, destroyed or lost. The issuance of the bonds, the maturities, and other details thereof, the rights of the holders thereof, and the agency in respect of the same, shall be governed by this chapter insofar as the same may be applicable.

While any bonds or notes of the agency remain outstanding, its powers, duties or existence shall not be diminished or impaired in any way that will affect adversely the interests and rights of the holders of such bonds or notes. Bonds or notes issued under this chapter, unless otherwise authorized by law, shall not be deemed to constitute a debt of the commonwealth or the municipality or a pledge of the faith and credit of the commonwealth or of the municipality, but the bonds or notes shall be payable solely by the agency as special obligations payable from particular funds collected from infrastructure assessments levied under this chapter and any revenues derived from the operation of the improvements. Any bonds or notes issued by the agency under this chapter shall contain on their face a statement to the effect that neither the commonwealth, nor the municipality, shall be obliged to pay the same or the interest thereon, and that the faith and credit or taxing power of the commonwealth, the municipality or the agency is not pledged to the payment of the bonds or notes. All bonds or notes issued under this chapter shall have all the qualities and incidents of negotiable instruments as defined in section 3-104 of chapter 106.

Issuance by the agency of bonds or notes for any purpose shall not preclude the agency from issuing other bonds or notes in connection with the same project or any other project; provided, however, that the resolution or trust indenture wherein any subsequent bonds or notes may be issued shall recognize and protect any prior pledge made for any prior issue of bonds or notes unless, in the resolution or trust indenture authorizing such prior issue, the right is reserved to issue subsequent bonds on a parity with such prior issue.

(c) In the discretion of the agency, bonds issued under this chapter may be secured by a trust agreement between the agency and the bond owners or a corporate trustee which may be any trust company or bank having the powers of a trust company within or without the commonwealth. A trust agreement may pledge or assign, in whole or in part, the revenues, funds and other assets or property held or to be received by the assessing party or the agency including, without limitation, all monies and investments on deposit from time to time in any fund of the assessing party or the agency or any account thereof and any contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the assessing party or the agency, and the proceeds thereof. A trust agreement may pledge or assign, in whole or in part, assessments, development zone revenues, funds and other assets or property relating to the development zone held or to be received by the assessing party or the agency. A trust agreement may contain, without limitation, provisions for protecting and enforcing the rights, security and remedies of the bondholders, provisions defining defaults and establishing remedies, which may include acceleration, and may also contain restrictions on the remedies by individual bondholders. A trust agreement may contain covenants of the agency concerning the custody, investment and application of monies, the issue of additional or refunding bonds, the use of any surplus bond proceeds, the establishment of reserves and the regulation of other matters customarily treated in trust agreements. A bank or trust company may act as a depository of any fund of the assessing party or the agency or trustee under a trust agreement if the bank or trust company furnishes such indemnification and reasonable security as the agency may require. Any assignment or pledge of revenues, funds and other assets and property made by the assessing party or the agency shall be valid and binding and shall be deemed continuously perfected for the purposes of chapter 106 and other laws when made. The revenues, funds and other assets and property, rights therein and thereto and proceeds so pledged and then held or

thereafter acquired or received by the assessing party or the agency shall immediately be subject to the lien of such pledge without any physical delivery or segregation or further act, and the lien of any such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the trust, whether or not such parties have notice thereof. The trust agreement by which a pledge is created shall not be required to be filed or recorded to perfect the pledge except in the records of the agency and no filing shall be required under said chapter 106. Any pledge or assignment made by the agency shall be an exercise of its political and governmental powers, and revenues, funds, assets, property and contract or other rights to receive the same and the proceeds thereof which are subject to the lien of a pledge or assignment created under this chapter shall not be applied to any purposes not permitted by the pledge or assignment.

(d) The agency may issue notes of the agency in anticipation of federal, state or local grants for the cost of acquiring, constructing or improving the development zone's improvements or in anticipation of bonds to be issued under this chapter. Such notes shall be authorized, issued and sold in the same manner as, and shall otherwise be subject to, the other provisions of this chapter. Such notes shall mature at such times as provided by the issuing resolution of the agency and may be renewed from time to time; provided, however, that all such notes and renewals thereof shall mature on or before 20 years from their date of issuance.

(e) In addition to other security provided herein, or otherwise provided by law, bonds, notes or obligations issued by the agency under this chapter may be secured, in whole or in part, by a letter of credit, line of credit, bond insurance policy, liquidity facility or other credit facility for the purpose of providing funds for payments in respect of bonds, notes or other obligations required by the holder thereof to be redeemed or repurchased prior to maturity or for providing additional security for such bonds, notes or other obligations. In connection therewith, the agency may enter into reimbursement agreements, remarketing agreements, standby bond purchase agreements and any other necessary or appropriate agreements. The assessing party may pledge or assign any of its revenues as security for the reimbursement by it to the agencies or providers of such letters of credit, lines of credit, bond insurance policies, liquidity facilities or other credit facilities of any payments made under the letters of credit, lines of credit, bond insurance policies, liquidity facilities or other credit facilities.

(f) In connection with, or incidental to, the issuance of bonds, notes or other obligations, the agency may enter into such contracts as the agency may determine to be necessary or appropriate relative to the issuance thereof and the interest payable thereon or to place the bonds, notes or other obligations of the agency, as represented by the bonds or notes, or other obligations in whole or in part, on such interest rate or cash flow basis as the agency may determine appropriate including, without limitation, interest rate swap agreements, insurance agreements, forward payment conversion agreements, futures contracts, contracts providing for payments based on levels of, or changes in, interest rates or market indices, contracts to manage interest rate risk including, without limitation, interest rate floors or caps, options, puts, calls and similar arrangements. Such contracts shall contain such payment, security, default, remedy and other terms and conditions as the agency may deem appropriate and shall be entered into with such parties as the agency may select, after giving due consideration, where applicable, for the creditworthiness of any counter party, including any rating by a nationally recognized rating agency, the impact on any rating on outstanding bonds, notes or other obligations or any other criteria the agency may deem appropriate.

(g) The agency may use any funds available therefor to purchase its bonds or notes. The agency may hold, pledge, cancel or resell such bonds or notes, subject to and in accordance with agreements with bondholders. The agency may issue refunding bonds for the purpose of paying any of its bonds at maturity or upon acceleration or redemption. Refunding bonds may be issued at such times prior to the maturity or redemption of the refunded bonds as the agency deems to be in the public interest. Refunding bonds may be issued in sufficient amounts to pay or provide for the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expense of issuing the refunding bonds, the expense of redeeming bonds being refunded and such reserves for debt service or other capital from the proceeds of such refunding bonds as may be required by a trust agreement or resolution securing the bonds and, if considered advisable by the agency, for the additional purpose of the acquisition, construction or reconstruction and extension or improvement of improvements. All other provisions relating to the issuance of refunding bonds shall be as set forth in this chapter insofar as the same may be applicable.

(h) All moneys received under this chapter, whether as proceeds from the issue of bonds or notes or as revenue or otherwise, shall be deemed trust funds to be held and applied solely as provided in this chapter.

(i) Bonds or notes issued under this chapter shall be securities in which all public officers and public bodies of the commonwealth and its political subdivisions, all insurance companies, trust companies in their commercial departments and within the limits set by the General Laws, banking associations, investment companies, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of a similar nature may properly and legally invest funds, including capital in their control and belonging to them and the bonds shall be obligations that may properly and legally be made eligible for the investment of savings deposits and income thereof in the manner provided in section 2 of chapter 167E. The bonds or notes shall be securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the commonwealth for any purpose for which the deposit of bonds or other obligations of the commonwealth is now or may hereafter be authorized by law. Notwithstanding any general or special law to the contrary or any provision in their respective charters, agreements of associations, articles or organization or trust indentures, domestic corporations organized for the purpose of carrying on business within the commonwealth including, without limitation, any electric or gas company as defined in section 1 of chapter 164, railroad corporation as defined in section 1 of chapter 160, financial institutions, trustees and the municipality may acquire, purchase, hold, sell, assign, transfer or otherwise dispose of any bonds, notes, securities or other evidences of indebtedness of the agency provided that they are rated similarly to other governmental bonds or notes and make contributions to the agency, all without the approval of any regulatory authority of the commonwealth.

(j) Any holder of bonds or notes issued under this chapter, and a trustee under a trust agreement, except to the extent its rights may be restricted by the trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce all rights under the laws of the commonwealth or granted hereunder or under the trust agreement and may enforce and compel the performance of all duties required by this chapter or by the trust agreement, to be performed by the agency or by any officer thereof.

(k) Notwithstanding this chapter or any recitals in any bonds or notes issued under this chapter, all such bonds or notes shall be deemed to be investment securities under chapter 106.

(l) Bonds or notes may be issued under this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the commonwealth or the municipality, and without any proceedings or the happening of any other conditions or things other than those proceedings, conditions or things that are specifically required by this chapter, and the validity of and security for any bonds or notes issued by the agency shall not be affected by the existence or nonexistence of any such consent or other proceedings, conditions or things.

Section 6. Bonds or notes issued by the agency and their transfer and their interest or income, including any profit on the sale thereof, and the improvements belonging to the public facilities' owner shall at all times be exempt from taxation within the commonwealth; provided, however, that nothing in this chapter shall limit or restrict the ability of the commonwealth or the municipality to otherwise tax the individuals and companies or their real or personal property or any person living or business operating within the boundaries of the development zone.

Section 7. For purposes of this chapter, the agency may issue bonds secured by infrastructure assessments under and according to the terms of chapter 40Q. With the approval of the municipal governing body, the agency may issue its bonds in place of those of the municipality under chapter 40Q provided that the municipality has fulfilled all requirements set forth in said chapter 40Q that would be required of the municipality if it were itself issuing bonds under said chapter 40Q. In addition, the municipality shall include in its invested revenue district development program as defined in said chapter 40Q, a description of the rights and responsibilities of the assessing party, the agency and the municipality with respect to the program. In such case, the municipality may designate the agency as the issuer of bonds under said chapter 40Q for the purpose of financing any of the project costs as defined in said chapter 40Q and that are located in, or functionally serving the needs of, the development zone. The municipality shall determine the percentage of the captured assessed valuation, as defined in said chapter 40Q, of property within the boundaries of the development zone that the municipality is pledging under an invested revenue district development program as defined in said chapter 40Q for the payment of the agency's bonds. With the written agreement of the persons owning specific tax parcels in the development zone, the assessing party may adopt a plan whereby any of the assessing powers described in this chapter are made applicable exclusively to those parcels in order to secure and fund the debt service for the bonds. The project costs as defined in said chapter 40Q shall not be reduced by the amount of the revenues derived under this chapter and the revenues derived from such a plan may be made contingent upon or abated, in whole or in part, by the assessing party upon the receipt of the anticipated revenues generated through the pledged captured assessed valuation. At its option, the municipality may waive any adjustment for the inflation factor as defined in said chapter 40Q in order to increase the captured assessed valuation available to finance improvements benefiting the development zone. The assessing party, the agency and the municipality shall enter into an agreement delineating the rights and responsibilities of each under such district improvement financing.

Section 8. The agency may make representations and agreements for the benefit of the holders of the agency's bonds and notes or other obligations to provide secondary market disclosure information. The agreement may include: (i) covenants to provide secondary market disclosure information; (ii) arrangements for such information to be provided with the assistance of a paying agent, trustee, dissemination or other agent; and (iii) remedies for breach of the agreements, which remedies may be limited to specific performance.

Section 9. The collector-treasurer of each municipality, at the option of the municipality and the agency, may collect any infrastructure assessments, including any recording fees, on behalf of the agency under an agreement between the municipality and the agency and to disburse the funds to any designated management entity or financial institution selected by the agency. The collector-treasurer shall disburse revenues to the management entity or financial institution within 30 days after the collection of such fees, together with the interest earned on the holding of such fees.

Section 10. (a) If any provision of this chapter is inconsistent with any general or special law, administrative order or regulation or any resolution or ordinance of the municipality, this chapter shall control. Without limiting the generality of the foregoing, no provision of any resolution or ordinance of the municipality requiring ratification by the voters of certain bond issues shall apply to the issuance of bonds or notes of the agency under this chapter, nor shall any such provision be applicable to the manner of voting or the limitations as to the amount and time of payment of debts incurred by the agency.

(b) Except as specifically provided in this chapter, all other statutes, ordinances, resolutions, rules and regulations of the commonwealth and the municipality shall be fully applicable to the property, property owners, residents and businesses located in the development zone. This chapter shall not obligate the municipality or the agency to pay any costs for the acquisition, construction, equipping or operation and administration of the improvements located within the development zone.

SECTION 19. Section 1 of chapter 40O of the General laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 11, the words "elects to participate" and inserting in place thereof the following word:- participates.

SECTION 20. Section 4 of said chapter 40O, as so appearing, is hereby amended by striking out, in lines 9 to 11, inclusive, the words " , the basis for determining the district fee, and the process by which a property owner may elect not to participate in or benefit from such BID" and inserting in place thereof the following words:- and the basis for determining the district fee.

SECTION 21. Said section 4 of said chapter 40O, as so appearing, is hereby further amended by striking out, in lines 24 to 26, inclusive, the words "for property owners to follow who elect not to participate in or benefit from said BID in accordance with the provisions of this section" and inserting in place thereof the following words:- by which eligible property owners may vote not to renew such BID.

SECTION 22. Said section 4 of said chapter 40O, as so appearing, is hereby further amended by striking out the fifth and sixth paragraphs and inserting in place thereof the following 3 paragraphs:-

Notice of the declaration of the organization of the BID shall be mailed or delivered to each property owner within the proposed BID. The notice shall explain that membership in the BID is irrevocable until the failure to renew the BID as provided in this section or the dissolution under section 10, and shall include a description of the basis for determining the district fee, the projected fee level and the proposed services to be provided by the BID. Such notice shall be published for 2 consecutive weeks in a newspaper of general circulation in the area, the last publication being not more than 30 days after the vote to declare the district organized.

Participation in the BID shall be permanent until after the discontinuation of the BID as provided in this section, or until the dissolution of the BID under section 10. A non-participating owner in the district shall become a participating member on the date of a renewal vote, as provided below. On or before the fifth anniversary of the organization of a newly created BID and on or before January 1, 2018 and the fifth anniversary thereafter of the date of the most recent renewal of the BID under this section, the board of directors of the BID or of its designated management entity shall call a renewal meeting of the BID members to review the preceding 5-year history of the BID, to propose an updated improvement plan to succeed the then current improvement plan and to consider whether to continue the BID. The renewal meeting shall be held at a location within the district. Notice of the meeting shall be given to participating members in the manner provided in the by-laws, at least 30 days prior to the meeting. The BID shall continue after each renewal meeting if a majority of participating property owners who are not more than 30 days in arrears in any payment due to the BID and are present at the renewal meeting, in person or by proxy, vote to renew the BID for a term of 5 years commencing on the first day of the next fiscal year of the BID.

If the eligible participating property owners elect not to continue the BID, the board shall conclude the business of the BID prior to the sixth anniversary of the BID's creation, or of the prior renewal vote, as the case may be, and proceed to discontinue the BID. Notice of the discontinuation vote shall be given to the local municipal governing board, which shall formally declare the BID dissolved as of such sixth anniversary; provided, however, that the BID shall not be dissolved until it has received the accounts receivable due to the BID and until it has satisfied or paid in full all of its outstanding indebtedness, obligations and liabilities, or until funds are on deposit and available therefor, or until a repayment schedule has been formulated and approved by the local municipal governing board. Except as necessary to conclude the business of the BID, the BID shall not incur any new or increased financial obligations after such sixth anniversary. Upon the dissolution of a BID, the remaining assets shall first be applied to repay obligations of the BID, and then in accordance with the improvement plan, as updated.

SECTION 23. Section 9 of said chapter 40O, as so appearing, is hereby amended by striking out, in lines 30 and 31, the words "and may elect not to participate in the BID as provided in such section".

SECTION 24. Section 2 of chapter 40Q of the General Laws, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) Notwithstanding any general or special law to the contrary, any city or town by vote of its town meeting, town council or city council with the approval of the mayor where required by law may designate development districts within the boundaries of the

city or town provided, however, a development district may consist of 1 or more parcels or lots of land, whether or not contiguous, or 1 or more buildings or structures, whether or not adjacent, on 1 or more parcels of land, provided that the total area of all development districts shall not exceed 25 per cent of the total area of a city or town; and provided that the boundaries of a development district may be altered only after meeting the requirements for adoption under this subsection. The city or town shall find that the designation of the development district is consistent with the requirements of this section and will further the public purpose of encouraging increased residential, industrial and commercial activity in the commonwealth.

Approved (in part) August 7, 2012

CHAPTER 239 – FISCAL YEAR 2012 SUPPLEMENTAL STATE BUDGET

Effective August 7, 2012

§ 48 CPA Technical Amendment. Makes a technical correction to St. 2012, c. 139, § 218, which makes CPA amendments in outside sections of the FY2013 State Budget apply to prior CPA appropriations. It corrects the outside sections cited in § 218.

CHAPTER 239 OF THE ACTS OF 2012 (EXCERPTS) An Act Making Appropriations for the Fiscal Year 2012 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 2012 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 48. Section 218 of said chapter 139 is hereby amended by striking out the words “57 to 71” and inserting in place thereof the following words:- 69 to 83.

Approved (in part) August 7, 2012

CHAPTER 256 - WATER STORAGE FACILITY CONTRACTS

Effective November 20, 2012

Adds G.L. c. 40, §§ 61-69, which allow governmental units to enter contracts for the inspection, maintenance, repair or modification of water storage facilities that structure annual payments to include the cost of completed or prospective capital improvements. Governmental units include cities, towns, water and wastewater districts and municipal or regional water and sewer commissions. Water storage facilities include below and above ground tanks, towers or other storage structures. The payment structure cannot amortize

the costs over a period longer than the useful life of the capital improvements and those costs related to prospective work must be secured by a bond or other guaranty. The contract may be for up to 15 years, with an option to renew for up to five years. The procurement is subject to G.L. c. 30B, § 6 and the contract must be approved by a two-thirds vote of the local legislative body. The contract may make payments for annual costs subject to appropriation, but the governmental unit is liable for payment of all costs amortized for completed capital improvements.

CHAPTER 256 OF THE ACTS OF 2012

An Act Authorizing Governmental Bodies to Enter into Contracts for the Inspection, Maintenance, Repair or Modification of Water Storage Facilities.

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 40 of the General Laws is hereby amended by adding the following 9 sections:

Section 61. As used in this section and sections 62 to 69, inclusive, the following words shall have the following meanings unless the context clearly requires otherwise:

“Governmental unit”, a city, town, county, water district, wastewater district, municipal water and sewer commission or regional water and sewer district commission established under chapter 40N or by special act or an independent water and sewer commission; provided, however, that “governmental unit” shall not include the Massachusetts Water Resources Authority.

“Local legislative body”, in a city, the city council, in a town, the town meeting or as otherwise more specifically defined by the municipal charter, municipal water and sewer commission or regional water and sewer district commission established under chapter 40N or by special act, in a district, the district meeting, in an independent water and sewer commission, the commissioners.

“Water storage facility”, an above ground or below-ground facility or tank, standpipe, water tower or other building or structure used to store water for, without limitation, public drinking water supply and fire protection.

Section 62. Pursuant to sections 61 to 69, inclusive, a governmental unit may enter into contracts for the inspection, maintenance, repair or modification of a water storage facility to maintain adequate services to users and to ensure that the water storage facility is in compliance with federal, state and local laws. All contracts shall be awarded in accordance with section 6 of chapter 30B and approved by a 2/3 vote of the local legislative body of the governmental unit. An approved contract may provide that the governmental unit: (i) may make annual payments to fund capital modifications, repairs or installation of equipment and systems at a water storage facility that have been completed or are to be completed pursuant to the terms of the request for proposals; provided, however, that costs shall be amortized over a period that shall not be longer than the useful life of the modifications or repairs or the equipment and systems installed; and (ii) may make payments for future capital modifications, repairs or installation of equipment and systems or a second interior or exterior coating at a water storage facility pursuant to the terms of the request for proposals based on estimated costs of such capital

modifications, repairs or installation of equipment and systems at a water storage facility, only if the payments for the full accumulated amount are guaranteed by a bond, letter of guaranty or other form of guaranty to be submitted on an annual basis and approved by the governmental unit for the 100 per cent accumulated amount.

Section 63. (a) A contract awarded under section 62 may provide for a term, not exceeding 15 years, and an option for renewal or extension of inspection, maintenance, repair or modification services for 1 additional term not exceeding 5 years. When a contract is to contain an option for renewal or extension, the solicitation shall include notice of that provision. A renewal or extension shall be at the sole discretion of the governmental unit under the terms and conditions of the original contract. Subject to subsection (b), a contract awarded under said section 62 shall contain a provision stating that the governmental unit may terminate the contract upon 90 days written notice.

(b) A contract entered into under section 62 may provide that the governmental unit's obligation under the contract for payment of the annual costs to inspect, maintain, repair or modify a water storage facility shall be subject to appropriation; provided, however, that a governmental unit shall not be exempt from liability for the payment of the amounts amortized for completed capital modifications, repairs or installation of equipment and systems at a water storage facility. Costs shall be amortized over a period that shall not be longer than the useful life of the modifications or repairs or the equipment and systems installed. A governmental unit's payment obligation for any inspection, maintenance, repair or modification services shall be contingent upon the contractor's performance of the services under the terms of the contract. A contract entered into pursuant to this section shall include the independent professional engineer's report that was used as the basis of the solicitation and shall include a breakdown of the portion of the annual fee that is: (i) allocated to inspection, maintenance, operation, testing and ordinary repair which shall be subject to the provisions concerning annual appropriation in this section; and (ii) attributable to capital modification, capital repairs or installation of equipment and systems at a water storage facility for which the amount of the lump sum cost of such capital modification, capital repairs or installation of equipment and systems at a water storage facility has been amortized over the life of the contract. In addition, if the local legislative body votes to make payments for future capital modifications, capital repairs, installation of equipment and systems or a second interior or exterior coating, a contract entered into pursuant to this section shall include a schedule of the payments to be made based on the estimated costs of such future capital modifications, capital repairs, installation of equipment and systems or a second interior or exterior coating as submitted by the selected offeror in response to the request for proposals, which shall be used to determine the full accumulated amount to be guaranteed. In the event of a termination, the amounts held for future capital modifications, capital repairs or installation of equipment and systems or a second interior or exterior coating shall be refunded to the governmental unit in accordance with the terms and conditions of the request for proposals.

(c) A contract entered into under section 62 may provide for any activities deemed necessary to carry out sections 61 to 69, inclusive, which may include, but shall not be limited to, equipment installation and replacement, studies, permitting, design and engineering, capital modification, capital repairs, painting, ordinary repairs and maintenance and the furnishing of all related material, supplies and services required for a water storage facility and the management, maintenance and repair of and improvements to the facility. In the event that the contract and any lawfully executed

extension of the initial term includes payments for future capital modifications, capital repairs, installation of equipment and systems or a second interior or exterior coating, prior to proceeding the governmental unit shall seek the consultation of a professional engineer or independent certified tank consultant to complete an independent review of the proposed scope in relation to the condition of the water storage facility. The engineer or tank consultant shall prepare a written report to advise the governmental unit on proceeding with the contractor's proposal.

Section 64. The chief procurement officer of a governmental unit shall solicit proposals in conformance with section 6 of chapter 30B. Information from the governmental unit shall contain a full and complete description of the condition of the water storage tank as written by an independent professional engineer. The scope of services shall contain a detailed description of the services to be provided by the selected proposer. A contract entered into under sections 61 to 69, inclusive, shall specifically state that the offeror and any subcontractor under the offeror shall comply with all federal and state occupational health and safety requirements applicable to the activities provided for in the contract.

Section 65. The chief procurement officer of a governmental unit shall award the contract to the most advantageous proposal from a responsible and responsive offeror taking into consideration price and the evaluation criteria set forth in the request for proposals; provided, however, that such proposal shall be in full compliance with all applicable requirements of federal, state and local laws, including section 26 to 27H, inclusive, of chapter 149. The governmental unit shall provide written notice to the selected offeror within the time for acceptance specified in the request for proposals. The governmental unit and the offeror may extend the time for acceptance by mutual agreement. If the contract award is made to an offeror who did not have the lowest overall price proposal, then the chief procurement officer shall publish a timely written statement of reasons for its selection in the central register.

Section 66. A contract awarded under sections 61 to 69, inclusive, shall be subject to such terms and conditions as the governmental unit shall determine to be in its best interest. The selected offeror shall furnish to the governmental unit performance bonds, payment bonds or other forms of security for the selected offeror's obligations, and insurance, satisfactory to the governmental unit.

Section 67. The department of environmental protection may issue project approval certificates with respect to capital project costs identified with a contract procured by a governmental unit under sections 61 to 69, inclusive, for facilities improvements.

Section 68. A contract made in violation of sections 61 to 69, inclusive, shall be void and the governmental unit shall make no payment under any such contract. Minor informalities shall not render a contract void.

Section 69. Public notice of the request for proposals shall be published in the central register pursuant to section 20A of chapter 9 at least 30 days before the time specified for receipt of proposals in the request for proposals.

Approved, August 22, 2012

Commonwealth of Massachusetts

State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851

EC-COI-12-1

FACTS:

A municipality seeks guidance with respect to whether municipal employees may fundraise for a tax-exempt municipal trust fund. In general, persons and entities solicited to make donations to the fund do not have business dealings with the department of the particular municipal employee principally responsible for soliciting such donations, but in some instances they may have such dealings. In addition, the solicited persons and entities are likely to have business dealings with some other municipal department or agency.

QUESTION:

May a municipal employee, consistent with G.L. c. 268A, the conflict of interest law, solicit donations to a municipal trust fund from persons and entities with whom he, or other municipal employees, has or expects to have official dealings?

ANSWER:

Yes, provided that (1) the solicitation is carried out in accordance with G.L. c. 44, § 53A, which authorizes acceptance of gifts by municipal employees on behalf of the municipality and, by implication, solicitation of gifts; (2) the solicitation is not made in circumstances that are inherently coercive because the person or entity solicited may be directly and significantly affected by a pending or anticipated decision of the same municipality; (3) no overt pressure is exerted in connection with any such solicitation; (4) the municipality and its employees apply objective standards in all dealings with persons and entities who are solicited, and do not favor those who give or disfavor those who do not; and (5) the municipal employee principally responsible for making such solicitations discloses the names of all those solicited in any manner (oral, written, electronic, or other), by himself or other municipal employees; these disclosures must be made publicly and in writing pursuant to G.L. c. 268A, § 23(b)(3).

1. Statutory Authorization for Solicitation

Sections 3 and 23(b)(2) of the conflict of interest law generally prohibit public employees from soliciting anything of substantial value. Section 3(b), in pertinent part, prohibits a public employee from asking for or soliciting anything of substantial value for himself, for or because of any official act, or to influence or attempt to influence him in an official act, “otherwise than as provided by law for the proper discharge of official

duty.” Sections 23(b)(2)(i) and (ii), respectively, prohibit public employees from “solicit[ing] or receiv[ing] anything of substantial value for [themselves], which is not otherwise authorized by statute or regulation, for or because of [their] official position;” and from using their official positions to “secure for [themselves] or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.” “Substantial value” is \$50 or more.

Most of our opinions applying these statutes to public employee solicitations have involved solicitations for non-governmental purposes.² In that context, we have consistently stated that public employees may not use their titles, public work time, or public resources to solicit for non-governmental purposes.³ We have explained that such solicitations are problematic for numerous reasons, including because they raise questions about the soliciting public employee’s objectivity and impartiality and may cause persons solicited by the public employee to feel compelled to comply.⁴

In two prior opinions we have concluded that proposed solicitations by public employees for specific governmental purposes did not violate the conflict of interest law.⁵ In both cases, the state agencies seeking to carry out the solicitations had provisions in their enabling acts that authorized them to accept gifts, and therefore, by implication, to solicit gifts. The proposed solicitations were for specific purposes that bore some relation to the interests of the entities to be solicited, or might even benefit them.⁶ The solicitations were made to entire industries or groups of businesses, and were not targeted to individuals or specific entities. While employees of the soliciting public agencies anticipated having future dealings with the entities to be solicited, the solicited entities did not have specific, significant matters pending before the soliciting agencies at the time of the solicitations.⁷ In those circumstances, we permitted the proposed solicitations because the agencies’ enabling acts implicitly authorized them to solicit gifts, but advised the agencies to use objective standards in their future dealings with the entities solicited, and not reward or penalize them based on whether or not they contributed. In the later decision we also concluded that the requirement of § 23(b)(3), that public employees not engage in conduct which gives a reasonable basis for the impression that they can be improperly influenced, was satisfied by public disclosures identifying all the contributing companies.

The present opinion request by a municipality that wishes to solicit donations to a municipal trust fund is less specific than the opinion requests we have previously considered, with respect to both the purposes of the proposed solicitations and the intended targets. The municipality does not state that the purpose of its solicitations will be to raise funds for specified municipal actions that may benefit the targets of those solicitations; instead, the municipality apparently wishes to be able to solicit donations for any of the broadly defined purposes for which the municipal trust fund may be used.⁸ In addition, the proposed targets of solicitation are not limited to those who may at some point have official dealings with the municipality, but include persons and entities with

matters pending before municipal employees, including matters of significance to those persons and entities.

Our two prior opinions in the area of public employee solicitation for governmental purposes did not explicitly address whether such a solicitation may occur only when there is statutory or regulatory authority for the solicitation. The requesting municipality argues that statutory authorization should not be required for fundraising that serves a governmental purpose. While there is statutory authority for a municipality to accept gifts in some circumstances,⁹ the requesting municipality does not rely upon those statutes, but instead argues that no statutory authorization should be required because of the public purposes for which its trust fund will be used.

We disagree. The conflict of interest law requires that there be express statutory or regulatory authority for public employee solicitations for governmental purposes. Section 3 prohibits public employee solicitation of gifts “otherwise than as provided by law for the proper discharge of official duty.” Sections 23(b)(2)(i) prohibits solicitations “not otherwise authorized by statute or regulation,” and Section 23(b)(2)(ii) prohibits the use of one’s official position to obtain “unwarranted” privileges. In determining whether a privilege is “unwarranted,” we have stated that conduct explicitly authorized by statute or regulation is not “unwarranted,”¹⁰ while conduct prohibited by statute is “unwarranted.”¹¹ In sum, §§ 3 and 23 prohibit solicitations by public employees for governmental purposes absent statutory or regulatory authorization. This conclusion is consistent with our two prior opinions in this area.

G.L. c. 44, § 53A authorizes acceptance of gifts by municipal employees on behalf of their municipality, and, by implication, solicitation of gifts to be used for municipal purposes. The municipal employee who is the subject of the present request may solicit donations from persons and entities that have business before him and other municipal employees in accordance with G.L. c. 44, § 53A, subject to the further limitations on such solicitations set forth below.

2. Inherently Coercive Solicitations

The Commission has consistently interpreted § 23(b)(2) to prohibit public employees from soliciting private business relationships from individuals over whom the public employee has authority or a regulatory relationship. We have repeatedly expressed concern that a solicitation made by a public employee to someone under his authority or regulatory control is inherently coercive, stating, for example, “In these circumstances, one may never know whether the private party is objectively responding to the solicitation or whether his decision is influenced by a pressure to maintain good relationships with the public employee, or whether any official dealings are affected by the private dealing.”¹² Similarly, we have stated, “Regardless of the purpose of a solicitation, the dangers of compromising a public employee’s impartiality and objectivity and of creating an atmosphere where potential vendors feel compelled to

contribute to foster the agency's or the public employee's good will remain."¹³ We have repeatedly applied that principle in our enforcement actions, and have found violations of § 23(b)(2) when a public employee asked for something from someone at a time when a matter of significance to the person receiving the request was pending before the public employee.¹⁴

Solicitations for governmental purposes by public employees from those under their authority or regulation raise the same concern: a solicitation made at the time when the person solicited may be directly and significantly affected by the authority of the soliciting public employee, or by his public employer, is inherently coercive. Indeed, the purpose of a solicitation -- whether it is for governmental or non-governmental purposes -- is irrelevant to whether the person who receives it will feel pressured to comply because of the possibility of adverse governmental action if he declines.

We therefore take this occasion to state explicitly that we will find a violation of § 23(b)(2) when a municipal employee uses his official position to make a solicitation for municipal purposes under inherently coercive circumstances, i.e., when the solicitation is made by the municipal employee, knowingly or with reason to know, to a person or entity who may be directly and significantly affected by a pending or anticipated decision of the same municipality. A municipal employee soliciting for a municipal purpose has a duty to make reasonable inquiry into whether the person or entity whom he intends to solicit has a matter pending or anticipated before his employing municipality such that a solicitation would be inherently coercive.¹⁵ If a solicitation would be inherently coercive in the circumstances, it may not be made. Any doubt as to whether a pending or anticipated matter will have a direct and significant effect on a potential target of a solicitation should be resolved against making the solicitation.

3. Solicitations Accompanied by Overt Pressure

Of course, § 23(b)(2) prohibits not just inherently coercive solicitations, as discussed above, but also solicitations accompanied by overt pressure.¹⁶ Just as a municipal employee's solicitation for municipal purposes may not be made in inherently coercive circumstances, such a solicitation may not be accompanied by overt pressure.

4. Objective Standards in Dealing with Those Solicited

Our prior opinions in the area of public employee solicitations for government purposes have emphasized that persons or entities who receive such solicitations cannot be rewarded for donating to a governmental purpose or penalized for declining to do so.¹⁷ This principle applies to all municipal employees who have official dealings with persons or entities solicited to contribute to the municipal trust fund. That is, municipal employees who have dealings with persons or entities who have been solicited to contribute to the municipal fund must apply objective standards in those dealings, and

may not give preferential treatment for donating, or adverse treatment for declining to donate.

5. Written Disclosures

Section 23(b)(3) of the conflict of interest law prohibits a public employee from engaging in conduct which gives a reasonable basis for the impression that any person or entity can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, or the position of any person. In one of our earlier opinions concerning solicitations by public employees for governmental purposes, we approved the agency's proposal to comply with this requirement by publicly disclosing the names of all donors to the Secretary of the Executive Office that included the soliciting agency, and to the Commission.¹⁸ The purpose of the disclosure was to dispel any appearance of favoritism towards the donors.

The requesting municipality should follow the disclosure procedure set forth in our earlier opinion, and require the municipal employee principally responsible for soliciting donations to the municipal trust fund to disclose the names of all those solicited in any manner, whether the solicitation was oral, written, electronic, or by some other means, by himself or other municipal employees. The disclosures should be made publicly and in writing pursuant to § 23(b)(3). These written disclosures should be updated at appropriate intervals and filed with the municipal clerk, who will maintain them as public records. This will dispel any appearance that donors, or those who do not donate, will influence the discretion or decisions of municipal employees in any way.

CONCLUSION:

A municipal employee may, consistent with the conflict of interest law, solicit donations to a municipal trust fund from persons and entities with whom he, or other municipal employees, has or expects to have official dealings, provided that (1) the solicitation is carried out in accordance with G.L. c. 44, § 53A; (2) the solicitation is not made in circumstances that are inherently coercive because the person or entity solicited may be directly and significantly affected by a pending or anticipated decision of the same municipality; (3) no overt pressure is exerted in connection with any such solicitation; (4) the municipality and its employees apply objective standards in all dealings with persons and entities solicited, and do not favor those who give or disfavor those who do not; and (5) the municipal employee principally responsible for making such solicitations discloses the names of all those solicited in any manner (oral, written, electronic, or other), by himself or other municipal employees; these disclosures must be made publicly and in writing pursuant to G.L. c. 268A, § 23(b)(3).

DATE AUTHORIZED: July 20, 2012

¹ 930 CMR 5.05.

² *EC-COI-95-9; 93-23; 93-11; 93-6; 92-28; 92-12; 92-7*. These citations reference Commission conflict of interest opinions available on our website, www.mass.gov/ethics.

³ *Id.*

⁴ *EC-COI-92-28*.

⁵ *EC-COI-92-38; 84-128*.

⁶ In *EC-COI-84-128*, the Secretary of the Executive Office of Public Safety wished to solicit donations for a public education campaign concerning the use and sale of drugs and alcohol in high schools from drug and liquor companies, distributors, and private drug and alcohol treatment centers, all entities with an interest in responsible drug and alcohol use. In *EC-COI-92-38*, employees of the Mass. Office of Business Development wished to solicit donations from representatives of the biotechnology and telecommunications industries to fund two agency positions that would assist those industries.

⁷ In *EC-COI-84-128*, the solicited entities were under the Secretary's enforcement authority. In *EC-COI-92-38*, the agency employees who would carry out the solicitation anticipated future dealings with the biotechnology and telecommunications industries.

⁸ The purposes recognized as tax-exempt under Internal Revenue Code § 501(c)(3) are charitable, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. The IRS uses the term "charitable" "in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency."

⁹ G.L. c. 44 § 53A authorizes municipalities to accept gifts, but requires that the city council authorize their expenditure, and also that such funds be deposited with the city treasurer. G.L. c. 44 § 53A½ authorizes city councils to accept and use gifts of tangible personal property without specific appropriation.

¹⁰ *EC-COI-02-3; 98-2; 95-5; 92-38 n. 2; 92-37; 92-28; 92-23*.

¹¹ *Advisory 11-1; EC-COI-98-2*.

¹² *EC-COI-93-23* and opinions cited therein.

¹³ *EC-COI-92-28*.

¹⁴ See, for example, *Craven v. State Ethics Commission*, 390 Mass. 191, 202 (1983), affirming *In Re Craven*, 1980 SEC 17 (state representative asked agency to award grant at a time when agency's budget request was pending before representative's committee); *In Re Piatelli*, 2010 SEC 2296, 2301-2 (college president asked subordinate to consider hiring her brother when subordinate's employment contract was about to be up for renewal); *In Re Smith*, 2008 SEC 2152 (City Council employee requested special consideration by parking company in dealing with damage to car when parking-related matters were before City Council); *In Re Hamilton*, 2006 SEC 2043 (public employee sought to sell product to person who had building permit pending before his board); *In Re Travis*, 2001 SEC 1014 (state representative sought contribution from bank that had or would have issues before his committee); *In Re Mazzilli*, 1996 SEC 814

(public employee asked landfill operator to continue accepting old tires while company's contract pending before landfill committee); *In Re Galewski, 1991 SEC 504* (building inspector, while conducting permit inspection, asked developer to build him a house he could afford).

¹⁵ Public employees have a duty of reasonable inquiry to determine whether their actions will violate the conflict of interest law. *EC-COI-02-2*.

¹⁶ *In Re Singleton, 1990 SEC 476* (fire chief violated § 23(b)(2) by telling a developer that "it could take forever" to obtain a Fire Department inspection in the context of seeking private work from the developer).

¹⁷ *EC-COI-92-38; 84-128*.

¹⁸ *EC-COI-92-38*.

What's New with the Open Meeting Law?

Open Meeting Law Determination Lookup Database

In October 2011, the Division of Open Government launched the Open Meeting Law determination lookup database. Individuals can now search all of the Attorney General's Open Meeting Law determinations by keyword, whether or not there was a violation found, date of complaint, public body, and municipality.

Open Meeting Law Web Training

The Attorney General launched a free, web-based Open Meeting Law training. The training is divided into six segments and runs about one hour. Viewers can watch the entire presentation, or may select specific videos on topics of interest. The Open Meeting Law web training can be found on the Open Meeting Law website.

Remote Participation

The Attorney General promulgated regulations on November 11, 2011 that allow members of public bodies to participate remotely in meetings under certain circumstances, provided the practice has been properly adopted by the appropriate authority. These regulations can be found at 940 CMR 29.10. While these regulations were promulgated to promote greater participation in government, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible.

Discussion of Tax Abatement Applications or Exemptions

Answers to certain frequently asked questions (FAQ) about the consideration of applications for tax abatement or exemption were recently posted on the Attorney General's website. The FAQ clarifies that boards of assessors may enter into executive session to discuss and vote on applications for tax abatement or exemption under Purpose 7, "to comply with, or act under the authority of, any general or special law," citing G.L. c. 59, § 60 as the statute requiring confidentiality. The FAQ also answers questions about notice specificity and public participation.

Definition of Intentional Violation Regulation

On September 14, 2012, the Attorney General published a revision to the existing regulation defining "Intentional Violation." The definition mirrors the one in the Open Meeting Law, but provides additional guidance about the types of conduct that may be considered evidence of an intentional violation of the law. The new regulation, which can be found at 940 CMR 29.02, reads:

Intentional Violation means an act or omission by a public body or a member thereof, in knowing violation of M.G.L. c. 30A, sec. 18-25. Evidence of an intentional violation of M.G.L. c. 30A, sec. 18-25 shall include, but not be limited to, that the public body or public body member (a) acted with specific intent to violate the law; (b) acted with

deliberate ignorance of the law's requirements; or (c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08, that the conduct violates M.G.L. c. 30A, sec. 18-25. Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements or, after full disclosure, acted in good faith compliance with the advice of the public body's legal counsel, such conduct will not be considered an intentional violation of M.G.L. c. 30A, sec. 18-25.

Public Bodies Meeting During Subcommittee Meetings

In determination OML 2012-6 (January 24, 2012), the Division of Open Government issued guidance concerning attendance and participation by a quorum of a parent public body during meetings of its subcommittees. The decision explained that members of a parent public body may attend meetings of its subcommittees without posting notice of a meeting of the parent body, provided the subcommittee has properly posted notice for its meeting and that the members of the parent body do not deliberate during the meeting. Visiting members of the parent body must sit in the audience and may participate on the same terms as members of the public, meaning they may address the subcommittee after receiving permission from the chair, and may only address matters currently under consideration by the subcommittee. If a quorum of the parent body wants to discuss matters within that body's jurisdiction during a meeting of a subcommittee, then the parent body can post notice of a meeting and allow the subcommittee to hold a joint meeting to conduct its business.

Supplement to the Open Meeting Law Guide

The Division of Open Government recently added a one-page supplement to the Open Meeting Law Guide. This supplement clarifies the Attorney General's interpretation of the Town Meeting exemption in the definition of "Meeting" in the Open Meeting Law.

The Attorney General's Open Meeting Law regulations, determinations, FAQs, Open Meeting Law web training, and the supplement to the Open Meeting Law Guide can be found at the Attorney General's Open Meeting Law website, www.mass.gov/ago/openmeeting. If you have any questions, please contact the Open Meeting Law hotline at 617-963-2540, or email us at openmeeting@state.ma.us.

The Official Website of the Attorney General of Massachusetts

Attorney General Martha Coakley



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OML FAQ: Applications For Tax Abatement or Exemption

Applications For Tax Abatement or Exemption

When considering applications for tax abatement or exemption, must a Board of Assessors list the names and addresses of applicants in its meeting notice?

No, the Board does not need to list applicants' names or addresses in the Board's meeting notice, and the Department of Revenue's Division of Local Services has stated that Boards may be legally prohibited from doing so. Applications for abatement or exemption are confidential under G.L. c. 59, § 60. Although certain information about the application, such as the name or title in which the tax stands assessed, must be made public once an abatement or exemption has been granted, the Board is not required to release that information before that time. It is therefore sufficient for the meeting notice to state that the Board is considering applications for abatement or exemption. Boards may also wish to include the number of applications under consideration in their meeting notices. This provides the public with additional detail about the topic to be discussed without compromising applicant confidentiality.

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May a Board of Assessors meet in executive session to discuss applications for tax abatement or exemption?

A Board of Assessors may enter executive session to discuss and vote on applications for tax abatement or exemption. Massachusetts General Laws state that applications for tax abatement or exemption may only be disclosed to a select group of public officials, though certain information about the application must be made public if it is granted. G.L. c. 59, § 60. If a Board of Assessors plans to discuss the content of an application for tax abatement or exemption, therefore, the Board may convene in executive session under Purpose 7, "to comply with, or act under the authority of, any general law," citing G.L. c. 59, § 60 as the statute requiring confidentiality. See G.L. c. 30A, § 21(a)(7). The Board may also wish to discuss tax returns, health records, and other sensitive material that is often submitted along with applications for tax exemption in executive session, and may do pursuant to Purpose 7 by citing the statutory right to privacy, G.L. 214, § 1B, or any other statute requiring confidentiality of these records. See id. If the Board believes it can effectively discuss an application for tax abatement or exemption and supporting documents without revealing protected information, it may hold the discussion in open session. However, Boards should be aware that any document that is "used" during an open session meeting is no longer exempt from disclosure pursuant to any of the exemptions to the Public Records Law. See G.L. c. 30A, § 22(e). If a Board has questions about how to comply with the confidentiality requirements of other statutes in that situation, it should consult municipal counsel.

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Does an applicant for tax abatement or exemption have a right to be present and participate in a Board of Assessors' discussion regarding his or her request?

If a Board of Assessors chooses to discuss an application for tax abatement or exemption in executive session, the applicant does not have a right to be present or to speak during the executive session, though he or she may attend and participate at the discretion of the Board. In contrast, all members of the public have a right to attend any open session meeting of a public body; therefore, an applicant for tax abatement or exemption may be present during any open session discussion by a Board of Assessors of his or her application. See G.L. c. 30A, § 20(a). The Open Meeting Law does not require that a public body allow public participation, however, even during an open session meeting. The Open Meeting Law states that "[n]o 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." G.L. c. 30A, § 20(f). Public bodies should consult with municipal counsel about whether any other law requires that a member of the public be permitted to speak during a meeting.

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Must a public body list in its minutes all applications for tax abatement or exemption that are considered during a meeting?

Yes. The Open Meeting Law requires that the minutes of a public body's meetings contain "a list of documents and other exhibits used at the meeting," thus if a specific application and supporting documents are discussed by the body during a meeting, those documents should be identified in the minutes. G.L. c. 30A, § 22(a). However, the minutes of an executive session and all documents used at the session may be withheld from disclosure to the public as long as publication may defeat the lawful purposes of the executive session. G.L. c. 30A, § 22(f). Therefore, if a Board discusses an application in executive session under Purpose 7, "to comply with, or act under the authority of, any general law," citing G.L. c. 59, § 60 as the statute requiring confidentiality, the minutes may be withheld as long as that statute's confidentiality restrictions apply. Similarly, tax returns, health records, and other sensitive material discussed in executive session along with an application for tax exemption may also be withheld as long as a statute requiring their confidentiality applies. See G.L. c. 30A, § 21(a)(7); G.L. c. 30A, § 22(f). While the Open Meeting Law requires that a public body release executive session minutes once the executive session purpose has expired, a public body may still redact or withhold minutes subject to the exemptions to the Public Records Law contained within clause twenty-sixth of G.L. c. 4, § 7, or where discussions may be protected by the attorney/client privilege. See G.L. c. 30A, § 22(f). If an application for tax abatement or exemption and supporting documentation are used during an open session meeting, however, neither those documents nor the minutes identifying them are exempt from disclosure pursuant to any of the exemptions to the Public Records Law. See G.L. c. 30A, § 22(e). If a Board has questions about how to comply with the confidentiality requirements of other statutes in that situation, it should consult municipal counsel.

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