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

**Current Developments
in
Municipal Law**



2013

Legislation and Agency Decisions

Book 1

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LEGISLATION AND AGENCY DECISIONS

Book 1

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LEGISLATION

PLEASE NOTE THIS COMPILATION WAS MADE FROM ELECTRONIC (NOT OFFICIAL) EDITIONS OF MASSACHUSETTS ACTS AND RESOLVES (SESSION LAWS) AND BILLS FILED FOR 2013-2014 SESSION

2012 LEGISLATION

CHAPTER 448 – DAM SAFETY, REPAIR AND REMOVAL

Effective January 9, 2013

§ 4 Borrowing for Dams and Seawalls. Adds Clause 25 to G.L. c. 44, § 8, to allow municipalities to borrow outside their debt limits for up to 40 years to acquire, remove, repair, reconstruct or improve dams, and appurtenant real property, they own. See *DLS Asset Useful Life Schedules – Maximum Borrowing Terms*, effective April 1, 2013.

CHAPTER 448 OF THE ACTS OF 2012

An Act Further Regulating Dam Safety, Repair and Removal.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for the repair and safety of dams, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

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

SECTION 4. The first paragraph of section 8 of chapter 44 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by adding the following clause:-

(25) For the acquisition of a dam or the removal, repair, reconstruction and improvements to a dam owned by a municipality, as may be necessary to maintain, repair or improve such dam, 40 years; provided, however, that this clause shall include dams as defined in section 44 of chapter 253 acquired by gift, purchase, eminent domain under chapter 79 or otherwise and located within a municipality, including any real property appurtenant thereto, if such dam and any appurtenant real property is not at the time of such acquisition owned or held in trust by the commonwealth.

Approved January 9, 2013

2013 LEGISLATION

CHAPTER 3 – FISCAL YEAR 2013 SUPPLEMENTAL STATE BUDGET

Effective February 15, 2013

§ 5 Use of Community Preservation Funds for Artificial Turf. Grandfathers expenditures made from Community Preservation funds to acquire artificial turf fields before July 1, 2012. Communities are prohibited from spending the funds for that purpose on or after that date as a result of a 2012 amendment to G.L. c. 44B. § 5(b)(2). St. 2012, c. 139, § 77.

CHAPTER 3 OF THE ACTS OF 2013 (EXCERPT) An Act Making Appropriations for the Fiscal Year 2013 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects.

Whereas, The deferred operation of this act would tend to defeat its purposes, which is to implement forthwith fiscal stability measures for fiscal year 2013, 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 5. The last sentence of paragraph (2) of subsection (b) of section 5 of chapter 44B of the General Laws, as appearing in section 77 of chapter 139 of the acts of 2012, is hereby amended by adding the following words:- ; provided, however, that any project approved by a municipality for the acquisition of artificial turf for athletic fields prior to July 1, 2012 shall be a permitted use of community preservation funding.

Approved February 15, 2013

CHAPTER 38 – FISCAL YEAR 2014 STATE BUDGET

Effective July 1, 2013, unless otherwise noted

Item 1201-0100 Feasibility Study on Collection of Municipal Taxes. Requires the Department of Revenue, in consultation with the State Comptroller and Massachusetts Municipal Association, to study the feasibility of assisting cities and towns collect their delinquent property taxes. Recommendations from the study are to be reported to the Executive Office for Administration and Finance and House and Senate Committees on Ways and Means by February 3, 2014.

§ 3 Local Aid Advances. Authorizes the State Treasurer to advance payments of FY14 local aid distributions to a city, town, regional school district or independent agricultural and technical school that demonstrates an emergency cash shortfall, as certified by the Commissioner of Revenue and approved by the Secretary of Administration and Finance.

§§ 46-49 Uniform Procurement Act. Increases from \$5,000 to \$10,000 the thresholds found in G.L. c. 30B, §§ 3, 4, 15 and 17 related to maintenance of procurement records, use of sound business practices for certain procurements, disposition of surplus supplies and execution of written contracts.

§ 71 Education Reform Waivers. Adds G.L. c. 70, § 7A, which codifies the process for cities, towns and regional school districts to apply for various adjustments in their annual minimum required contributions to schools under the Education Reform Act. Previously, these waivers were authorized in the state budget each year. Municipalities may seek adjustments if (1) non-recurring revenues were used to support the prior year operating budgets and those revenues are not available in the current year, (2) they have extraordinary non-school related expenses in the current year or (3) their current year 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 the prior year that are unavailable in the current year 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 of each year. See Informational Guideline Release (IGR) 13-302, Annual Fiscal Year Waivers to Education Reform Spending Requirements and Minimum Required Local Contributions, issued July 2013.

CHAPTER 38 OF THE ACTS OF 2012 (EXCERPTS)

An Act Making Appropriations for the Fiscal Year 2014 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, 2013, 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:

1201-0100 For the operation of the department of revenue, including tax collection administration, audits of certain foreign corporations and the division of local services;... provided further, that the department, in consultation with the office of the state comptroller and the Massachusetts Municipal Association, shall report to the executive office for administration and finance and the house and senate committees on ways and means not later than February 3, 2014 on the feasibility of assisting municipalities in the collection of delinquent taxes; provided further, that the report shall include, but not be limited to: (i) recommendations for necessary statutory changes to allow the department

to collect delinquent property taxes; (ii) identifying technical difficulties in coordinating property tax and department data sets; (iii) recommendations for a pilot program in which municipalities would work with the department to improve municipal collections; and (iv) resource requirements for the proposed pilot program

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 46. Section 3 of chapter 30B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 2, the words “five thousand dollars” and inserting in place thereof the following figure:- \$10,000.

SECTION 47. Section 4 of said chapter 30B, as so appearing, is hereby amended by striking out, in lines 3 and 14, the figure “\$5,000” and inserting in place thereof, in each instance, the following figure:- \$10,000.

SECTION 48. Section 15 of said chapter 30B, as so appearing, is hereby amended by striking out, in line 20, the figure “\$5,000” and inserting in place thereof the following figure:- \$10,000.

SECTION 49. Section 17 of said chapter 30B, as so appearing, is hereby amended by striking out, in line 1, the words “five thousand dollars” and inserting in place thereof the following figure:- \$10,000.

SECTION 71. Chapter 70 of the General Laws is hereby amended by inserting after section 6 the following section:-

Section 6A. (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, within any fiscal year, the department of revenue may recalculate the minimum required local contribution for that year. Based on the criteria established in this section, the department of revenue 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 is required to use revenue 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 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, for an adjustment of its minimum required local contribution and net school spending for that fiscal year.

(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; provided however, that no adjustment to the minimum required local contribution on account of an extraordinary expense in the budget for the fiscal year in which the waiver is granted, 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 of revenue 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, for an adjustment to its net school spending requirement for that fiscal year. 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 the 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 or any other general or special law to the contrary, the amounts determined under this section shall be the minimum required local contribution described in this chapter. 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 any fiscal year, under this chapter 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 219. Except as otherwise specified, this act shall take effect on July 1, 2013.

Approved (in part) July 12, 2013

CHAPTER 46 – TRANSPORTATION FINANCE

Effective July 24, 2013, unless otherwise noted.

§§ 29-31, 39, 84 Taxation of Utility Corporations. *Effective as of January 1, 2014 for fiscal years beginning on or after July 1, 2014.* Repeals the separate treatment of utility corporations for state corporate excise purposes under G.L. c. 63, § 52A and treats them as business corporations under G.L. c. 63, § 39. With the exception of telephone corporations subject to G.L. c. 166, utility corporations will also be treated as business corporations for local tax purposes under G.L. c. 59, § 5(16)(2) and will now be taxable for machinery used in the conduct of business. Previously, the only machinery taxable to utility corporations for local tax purposes was machinery used in manufacturing or supplying or distributing water. Machinery taxable to telephone corporations will continue to be limited to machinery used in manufacturing or supplying or distributing water. G.L. c. 59, § 5(16)(1).

§ 50 Taxation of Business Lessees of Massachusetts Bay Transportation Authority (MBTA). Amends G.L. c. 161A, § 24, which exempts property owned by the MBTA from state and local taxation, to make MBTA real property leased, used or occupied in connection with a business conducted for profit taxable to the lessees, users or occupants as if they were the owners of the real estate on January 1.

**CHAPTER 46 OF THE ACTS OF 2013 (EXCERPTS)
An Act Relative to Transportation Finance.**

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to immediately make available monies for transportation financing in the fiscal year beginning July 1, 2013 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 29. Section 5 of chapter 59 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 237, the words “or (d)” and inserting in place thereof the following words:- (d) a telephone corporation subject to chapter 166 or (e).

SECTION 30. Said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out, in lines 238 and 239, the words “, fifty-two A”.

SECTION 31. Said section 5 of said chapter 59, as so appearing, is hereby further amended by inserting after the word “corporation”, in line 255, the following words:- or a telephone corporation subject to chapter 166.

SECTION 39. Section 52A of said chapter 63 is hereby repealed.

SECTION 50. Section 24 of chapter 161A of the General Laws, as so appearing, is hereby amended by adding the following 3 sentences:-

Real property of the authority shall, if leased, used, or occupied in connection with a business conducted for profit shall, for the privilege of such lease, use or occupancy be valued, classified, assessed and taxed annually as of January 1 to the lessee, user, or occupant in the same manner and to the same extent as if such lessee, user, or occupant were the owner thereof in full. No tax assessed under this section shall be a lien upon the real estate with respect to which it is assessed; nor shall any tax be enforced by any sale or taking of such real estate; but the interest of any lessee therein may be sold or taken by the collector of the town in which the real estate lies for the nonpayment of such taxes in the manner provided by law for the sale or taking of real estate for nonpayment of annual taxes. Notwithstanding the previous sentence, such collector may utilize all other remedies provided by chapter 60 for the collection of annual taxes upon real estate and for the collection of taxes assessed under this section.

SECTION 84. Sections 29 to 37, inclusive, 39 to 42, inclusive, 52, 53, 70 and 71 shall take effect on January 1, 2014, and shall be effective for tax years beginning on or after January 1, 2014.

Passed over veto July 24, 2013

PROPOSED LEGISLATION 2013-2014 SESSION

H. 2551 - CLASSIFIED LAND TECHNICAL AMENDMENTS

Makes several technical or conforming amendments to the classified land statutes, G.L. c. 61 (forest), 61A (agricultural and horticultural) and 61B (recreational). In 2006, numerous amendments were made in those statutes in order to clarify and standardize basic features of the programs, such as penalty taxes, right of first refusal and application and appeal procedures. St. 2006, c. 394. However, in some instances, comparable provisions were not revised or other conforming amendments not made. This bill rectifies these inadvertent omissions.

Section 1 of the bill amends G.L. c. 61, § 2 to clarify that the c. 61 application deadline is October 1, same as the deadline for c. 61A and 61B applications. Section 2 adds the same language to c. 61, § 3 that appears in c. 61A and 61B relative to assessing and contesting the annual property tax and any penalty taxes. The 2006 revision eliminated the annual products tax and withdrawal penalty tax assessed under c. 61 and conformed c. 61 to the

other chapters, i.e., an annual property tax on the land and alternative penalty taxes (conveyance or roll-back) for changing the use of the land. It did not conform the billing and appeal provisions, however.

Sections 3 and 4 of the bill add language exempting acquisitions of classified land by the Commonwealth and non-profit organizations for natural resource purposes from c. 61 and 61A roll-back taxes. The 2006 revision included that language in the conveyance and roll-back tax provisions of c. 61B, but only the conveyance tax provisions of c. 61 and 61A.

Sections 5 and 7 of the bill correct drafting errors in the right of first refusal provisions of c. 61A (§ 14) and 61B (§ 9). They inadvertently contained the reference to “forest certification” found in the comparable c. 61, § 8.

Sections 6 and 8 of the bill correct drafting errors on roll-back taxes and abatement applications in c. 61B. The 2006 revision provided for a 5 year look-back for roll-back taxes for all chapters, but it only amended the first reference in c. 61B, § 8 to the prior 10 year period for c. 61B. In addition, the 2006 revision reduced the abatement application period from 60 to 30 days in c. 61A, § 19, but did not make the same change in c. 61B, § 14.

H. 2551

An Act Making Corrective Changes in Certain Laws Regarding the Taxation of Forest, Farm and Recreational Land.

SECTION 1. Section 2 of chapter 61 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking the words “prior to”, as appearing in lines 36 and 37, and inserting in place thereof in both lines the words:- not later than.

SECTION 2. Section 3 of said chapter 61, as so appearing, is hereby amended by striking the third paragraph and inserting in place thereof the following paragraph:-

For general property tax purposes, the factual details to be shown on the tax list of a board of assessors with respect to land which is valued, assessed and taxed under this chapter shall be the same as those set forth by said board with respect to other taxable property in the same city or town and the collector shall notify the person assessed of the amount of the tax in the manner provided in section 3 of chapter 60. For the collection of taxes under this chapter the collector shall have all the remedies provided by chapter 60. The assessment, collection, apportionment and payment over of the roll-back taxes imposed by section 7 shall be governed by the procedures provided for the assessment and taxation of omitted property under section 75 of chapter 59. Such procedures shall apply to each tax year for which roll-back taxes may be imposed notwithstanding the limitation set forth in said chapter 59 with respect to the periods for which omitted property assessments may be imposed. Any person aggrieved by any assessment by the board of assessors under this chapter may within 30 days of the date of notice thereof apply in writing to the assessors for abatement thereof. Any person aggrieved by the refusal of the assessors to make such an abatement or by their failure to act upon such an application may appeal to the appellate tax board within 30 days after the date of notice

of their decision or within 3 months of the date of the application, whichever date is later. It shall be a condition of such appeal with respect to the annual general property tax that the asserted tax be paid, but no payment shall be required as a condition of such appeal with respect to any asserted conveyance tax or roll-back tax. If any payment of any tax imposed by this chapter should be made and as the result of any such abatement by the board of assessors or decision by the appellate tax board it shall appear that any such tax has been overpaid, such excess payment shall be reimbursed by the town treasurer with interest at the rate of 6 per cent per annum from time of payment. Collection of any conveyance or roll back taxes, by sale or taking or otherwise, may be stayed by the appellate tax board while any such appeal is pending. Any partial payment of the asserted tax that may be required by the appellate tax board in connection with such stay shall not exceed one half of the asserted tax.

SECTION 3. The first paragraph of section 7 of said chapter 61, as so appearing, is hereby amended by adding the following sentence: -

Notwithstanding the foregoing provisions, no roll-back taxes shall be assessed if the land involved, or a lesser interest in the land, is acquired for a natural resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold or converted to commercial, residential, or industrial use within 5 years after acquisition by a nonprofit conservation organization, roll-back taxes shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had the transaction been subject to a roll-back tax.

SECTION 4. The first paragraph of section 13 of chapter 61A of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the second sentence the following sentence: -

Notwithstanding the foregoing provisions, no roll-back taxes shall be assessed if the land involved, or a lesser interest in the land, is acquired for a natural resource purpose by the city or town in which it is situated, by the commonwealth or by a nonprofit conservation organization, but if any portion of the land is sold or converted to commercial, residential, or industrial use within 5 years after acquisition by a nonprofit conservation organization, roll-back taxes shall be assessed against the nonprofit conservation organization in the amount that would have been assessed at the time of acquisition of the subject parcel by the nonprofit conservation organization had the transaction been subject to a roll-back tax.

SECTION 5. Section 14 of said chapter 61A, as so appearing, is hereby amended by striking the words “forest certification”, as appearing in line 6, and inserting in place thereof the words:- agricultural or horticultural use.

SECTION 6. Section 8 of chapter 61B of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking the word “ten”, as appearing in line 26, and inserting in place thereof the word:- 5.

SECTION 7. Section 9 of said chapter 61B, as so appearing, is hereby amended by striking the words “forest certification”, as appearing in line 6, and inserting in place thereof the words:- recreational use.

SECTION 8. Section 14 of chapter 61B is hereby amended by striking the word “sixty”, as appearing in line 9, and inserting in place thereof the word:- 30.

S. 1415 - PARAPLEGICS & OPTIONAL ADDITIONAL EXEMPTIONS

This bill amends several statutes related to property tax exemptions for disabled veterans, blind persons, seniors and other taxpayers who qualify for so-called personal exemptions under G.L. c. 59, § 5.

The bill codifies the exemption for paraplegic veterans into a new Clause 22F. These veterans are effectively exempt from any taxes on their domiciles, but the current process requires the assessors to grant them a \$400 exemption as veterans with a minimum 10% disability rating under G.L. c. 59, § 5, Clause 22, and then seek authority from the Department of Revenue to abate the balance under G.L. c. 58, § 8. G.L. c. 58, § 8A. The assessors administer all other exemption statutes on their own and it is not clear why a different process should apply for this group of veterans. Also note that the paraplegic veteran’s surviving spouse continues to benefit under G.L. c. 58, § 8A, but not the veteran’s spouse where ownership of the domicile is held by the spouse during the veteran’s lifetime. The other veteran exemption clauses all provide the same benefit to the spouse in that case. See G.L. c. 59, § 5, Clauses 22A, 22B, 22C and 22E. This bill would remedy that inequity as well.

The bill also places in the General Laws the so-called “optional additional exemption” that was enacted in 1986 when communities were completing their first revaluations in many years and updates it for personal exemptions enacted since then. St. 1986, c. 73, § 4. That option lets communities give taxpayers receiving listed personal exemptions an additional exemption of up to 100% of the exemption amount. Several other statutes also list personal exemption clauses and have not always been updated when new personal exemptions are enacted. This bill updates them in order to have uniformity in the administration of personal exemptions, i.e., one personal exemption per taxpayer and 3 months after tax billing to file an exemption application with the assessors.

S. 1415

An Act Relative to Local Property Tax Exemptions for Certain Persons.

SECTION 1. Section 8A of chapter 58 of the General Laws is hereby repealed.

SECTION 2. Section 5 of chapter 59 of the General Laws, as amended by sections 7A and 8 of chapter 108 of the acts of 2012, is hereby amended by deleting the first paragraph and inserting in place thereof the following paragraph:-

The following property shall be exempt from taxation and the date of determination as to age, ownership or other qualifying factors required by any clause shall be July first of

each year unless another meaning is clearly apparent from the context; provided, however, that any person who receives an exemption under the provisions of clause Seventeenth, Seventeenth C, Seventeenth C½, Seventeenth D, Twenty-second, Twenty-second A, Twenty-second B, Twenty-second C, Twenty-second D, Twenty-second E, Twenty-second F, Thirty-seventh, Thirty-seventh A, Forty-first, Forty-first B, Forty-first C, Forty-first C½, Forty-second, Forty-third, Fifty-sixth or Fifty-seventh shall not receive an exemption on the same property under any other provision of this section, except clause Eighteenth or Forty-fifth.

SECTION 3. Section 5 of chapter 59 of the General Laws, as amended by sections 7A and 8 of chapter 108 of the acts of 2012, is hereby amended by inserting after the fourth paragraph of Clause Twenty-second E, the following clause:-

Twenty-second F, Real estate of soldiers and sailors and their spouses who are legal residents of the commonwealth and who are veterans, as defined in clause 43 of section 7 of chapter 4, and whose last discharge or release from the armed forces was under other than dishonorable conditions, and who were domiciled in Massachusetts for at least 6 months prior to entering such service, or who have resided in the commonwealth for 5 consecutive years next prior to the date of filing for exemption under this clause, and who according to the records of the Veterans Administration or of any branch of the armed forces of the United States by reason of injury received while in such service and in the line of duty are paraplegics, provided, that such real estate is occupied as his domicile by such person; and provided further, that if said property be greater than a single-family house, then only that value of so much of said house as is occupied by said person as his domicile shall be exempted. An exemption under this clause shall continue unchanged for the benefit of the surviving spouse after the death of such disabled veteran as long as the surviving spouse of the qualified veteran shall remain an owner and occupant of a domicile subject to the exemption.

No real estate shall be so exempt which the assessors shall adjudge has been conveyed to such soldier or sailor to evade taxation.

Two thousand dollars of this exemption or up to the sum of 175 dollars, whichever basis is applicable, shall be borne by the city or town; the balance shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

SECTION 4. Section 5 of said chapter 59, as amended by sections 7A and 8 of chapter 108 of the acts of 2012, is hereby further amended by deleting the words “and Twenty-second E”, in the fifth paragraph of Clause Twenty-second E and inserting in place thereof the following words:- , Twenty-second E and Twenty-second F.

SECTION 5. Section 5C of said chapter 59, as appearing in the 2010 Official Edition, is hereby amended by striking the words “of section fifty-eight A of chapter 58 and”, as appearing in line 14.

SECTION 6. Chapter 59 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by adding the following section:-

Section 5C½. In a city or town which accepts this section and is certified by the commissioner to be assessing all property at full and fair cash valuation, a taxpayer who otherwise qualifies for an exemption under any clause specifically listed in the first paragraph of section 5 for which receipt of another exemption on the same property is prohibited, shall be granted an additional exemption which shall be uniform for all exemptions and the amount of which shall not exceed 100 per cent of the exemption for which the taxpayer qualifies, as may be determined by the legislative body of the city or town, subject to its charter, no later than the beginning of the fiscal year to which the tax relates. Notwithstanding any provision of this chapter to the contrary, the exemption shall be in addition to any exemption allowable under section 5; provided, however, that in no instance shall the taxable valuation of such property, after all applicable exemptions be reduced below 10 per cent of its full and fair cash valuation, except through the applicability of clause Eighteenth of section 5; and provided, further, that the additional exemption shall not result in any taxpayer paying less than the taxes paid in the preceding fiscal year. Acceptance of this section by a city or town shall not increase the amount which it otherwise would have been reimbursed by the commonwealth under the respective clause.

SECTION 7. Section 59 of chapter 59, as appearing in the 2010 Official Edition, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

An application for exemption under clause Seventeenth, Seventeenth C, Seventeenth C½, Seventeenth D, Eighteenth, Twenty-second, Twenty-second A, Twenty-second B, Twenty-second C, Twenty-second D, Twenty-second E, Twenty-second F, Thirty-seventh, Thirty-seventh A, Forty-first, Forty-first B, Forty-first C, Forty-first C½, Forty-second, Forty-third, Fifty-second, Fifty-third, Fifty-sixth and Fifty-seventh of section five may be made on or before December fifteenth of the year to which the tax relates, or if the bill or notice is first sent after September fifteenth of such year, within 3 months after the bill or notice is so sent.

SECTION 8. Section 4 of chapter 73 of the acts of 1986, as amended by chapter 126 of the acts of 1988 is hereby repealed.

H. 1860 – CABLE PEG ACCESS SPECIAL FUNDS

This bill provides cities and towns with options for separately accounting for cable franchise fees received under cable franchise agreements to run their own public, educational and governmental (PEG) access channel or to contract with a non-profit organization or other vendor to provide that service. Those fees are general fund revenues under G.L. c. 44, § 53.

Section 1 amends the enterprise fund statute, G.L. c. 44, § 53F½, to allow a community that operates its own cable PEG access facility to adopt an enterprise fund for that facility and separately account for the franchise fees and other facility revenues and expenditures. Section 2 adds a new local acceptance G.L. c. 44, § 53F¾, that lets a community set up a special revenue fund to reserve the franchise fees for appropriation to pay for contracted

PEG services and annual license fees under G.L. c. 166A, § 9 (\$.50 per subscriber) for cable regulatory oversight purposes.

H. 1860

An Act Relative to Cable PEG Access Enterprise Fund.

SECTION 1. Section 53F½ of chapter 44 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after the word “utility”, in line 4, the following words:- , “cable television public access.”

SECTION 2. Said chapter 44, as so appearing, is hereby further amended by inserting after section 53F½ the following section:

Section 53F¾. Notwithstanding section 53 or any other general or special law to the contrary, a municipality that accepts this section may establish in the treasury a separate revenue account to be known as the “PEG Access and Cable Related Funds”, into which may be deposited funds received in connection with a franchise agreement between a cable operator and the municipality. Monies in the fund shall only be appropriated for cable-related purposes consistent with the franchise agreement, including but not limited to, support of public, educational or governmental access cable television services; monitor compliance of the cable operator with the franchise agreement; or prepare for renewal of the franchise license.

H. 3611 (§ 4) - IMPROVE MUNICIPAL OPEB FUNDS AND INVESTMENTS

This legislation amends G.L. c. 32B, § 20, which provides for Other Post-employment Benefit (OPEB) Liability Trust Fund, in order to address technical concerns about the statute and improve the process for allowing local governmental units to create OPEB trust funds that comply with Governmental Accounting Standards Board (GASB) statements and invest these funds in the State Retiree Benefits Trust Fund (state OPEB fund). The proposed changes (1) extend authority to create a fund to housing and redevelopment authorities, regional councils of government and educational collaboratives, (2) clarify the process for establishing a trust and designating trustees, (3) make the treasurer the custodian of the funds, (4) provide investment options including investment in the state OPEB fund, (5) allow a governmental unit to participate in another unit’s fund and (6) allow by 2/3 vote appropriation of the funds for current as well as future retiree health insurance expenses of the governmental unit. The legislation grandfathers funds established by governmental units under the current G.L. c. 32B, § 20 or special acts, but allows the units to accept the amended version and operate under it instead. In addition, it also adds a new § 20A to c. 32B, which provides for governmental units to submit the actuarial valuation reports of their retiree healthcare liabilities to the Public Employee Retirement Administration Commission (PERAC) and the Division of Local Services at the Department of Revenue. PERAC may also request additional information and will file a summary report of the information it receives with the legislature.

H. 3611 (EXCERPTS)
**An Act Making Appropriations for the Fiscal Year 2013 to Provide for
Supplementing Certain Existing Appropriations and for Certain Other
Activities and Projects**

SECTION 4. (A) Chapter 32B of the General Laws is hereby amended by striking out section 20, and inserting in place thereof the following 2 sections:-

Section 20. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

“Chief executive officer”, the mayor in a city and the board of selectmen in a town unless some other municipal office is designated to be the chief executive officer under a local charter, the county commissioners in a county and the governing board, commission or committee in a district or other governmental unit.

“Commission”, the public employee retirement administration commission established under section 49 of chapter 7.

“GASB”, the Governmental Accounting Standards Board.

“Governing body”, the legislative body in a city or town, the county commissioners in a county, the regional district school committee in a regional school district, or the district meeting or other appropriating body in any other governmental unit.

“Governmental unit”, any political subdivision of the commonwealth, which for the purposes of this section shall include a local housing or redevelopment authority, regional council of government established under section 20 of chapter 34B and educational collaborative as defined by section 4E of chapter 40.

“Health Care Security Trust board of trustees”, the board of trustees established by section 4 of chapter 29D.

“Other Post-Employment Benefits Liability Trust Fund” or “OPEB Fund”; a trust fund established by a governmental unit under this section for the deposit of gifts, grants and appropriations and other funds for the benefit of retired employees and their dependents, the payment of required contributions of the unit to the group health insurance benefits provided to employees and their dependents after retirement and the reduction and elimination of the unfunded liability of the unit for such benefits.

“OPEB Fund board of trustees”; an independent board of trustees selected by the governmental unit with investing authority for the OPEB Fund.

“OPEB investing authority” or “investing authority”; the trustee or board of trustees designated by the governmental unit to invest and reinvest the OPEB Fund using the investment standard or investment vehicle established under this section.

(b) A governmental unit that accepts this section shall establish on its books and accounts the Other Post-Employment Benefits Liability Trust Fund, the assets of which shall be held solely to meet the current and future liabilities of the governmental unit for group health insurance benefits for retirees and their dependents. The governmental unit may appropriate amounts to be credited to the fund and the treasurer of the governmental unit may accept gifts, grants and other contributions to the fund. The fund shall be an expendable trust subject to appropriation and shall be managed by a trustee or a board of trustees as provided in subsection (d). Any interest or other income generated by the fund shall be added to and become part of the fund. Amounts that a governmental unit receives as a sponsor of a qualified retiree prescription drug plan under 42 U.S.C. section 1395w-

132 may be dedicated to and become part of the fund by vote of the governing body of the governmental unit. All monies held in the fund shall be accounted for separately from other funds of the governmental unit and shall not be subject to the claims of any general creditor of the governmental unit.

(c) The treasurer of the governmental unit shall be the custodian of the OPEB Fund and shall be bonded in any additional amounts necessary to protect fund assets.

(d) The governing body of the governmental unit shall designate a trustee or board of trustees, which shall have general supervision of the management, investment and reinvestment of the OPEB Fund. The governing body may designate as the trustee or board of trustees (i) the custodian; or (ii) an OPEB Fund board of trustees established by the governmental unit under subsection (e). If no designation is made, the custodian of the fund shall be the trustee and shall manage and invest the fund. The duties and obligations of the trustee or board of trustees with respect to the fund shall be set forth in a declaration of trust to be adopted by the trustee or board, but shall not be inconsistent with this section. The declaration of trust and any amendments thereto shall be filed with the chief executive and the clerk of the governing body of the governmental unit and take effect 90 days after the date filed unless the governing body votes to disapprove any such declaration or amendment within that period. The trustee or board of trustees may employ reputable and knowledgeable investment consultants to assist in determining appropriate investments and pay for those services from the fund, if authorized by the governing body of the governmental unit. The trustee or trustees may, with the approval of the Health Care Security Trust board of trustees, invest the OPEB Fund in the State Retiree Benefits Trust Fund established in section 24 of chapter 32A.

(e) The governing body of the governmental unit may vote to establish a separate OPEB Fund board of trustees to be the investing authority. The board of trustees shall consist of 5 to 13 individuals, including a person or persons with the investment experience desired by the governmental unit, a citizen or citizens of the governmental unit, an employee of the governmental unit, a retiree or retirees of the governmental unit, and a governmental unit officer or officers. The governmental unit employee trustee or trustees shall be selected by current employees of the unit by ballot, and the retiree trustee or trustees shall be selected by current retirees of the unit by ballot. The remainder of the trustees shall be appointed by the chief executive officer of the governmental unit. The trustees will serve for terms of 3 or 5 years as determined by the governing body of the governmental unit, and if a vacancy occurs, a trustee may be elected or selected in the same manner to serve for the remainder of the term. Trustees shall be eligible for reappointment.

(f) The trustee or board of trustees shall act in a fiduciary capacity and shall discharge its duties for the primary purpose of enhancing the value of the OPEB Fund and shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise with like character and with like aims and by diversifying the investments in the fund so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so.

In any civil action brought against a trustee or the board of trustees, acting within the scope of official duties, the defense or settlement of which is made by legal counsel for the governmental unit, such trustee or employee shall be indemnified from the OPEB Fund for all expenses incurred in the defense thereof and for damages to the same extent as provided for public employees in chapter 258. No trustee or employee shall be indemnified for expenses in an action or damages awarded in such action in which there

is shown to be a breach of fiduciary duty, an act of willful dishonesty or an intentional violation of law by such trustee or employee.

(g) Monies in the OPEB Fund not required for expenditures or anticipated expenditures within the investment period, shall be invested and reinvested by the custodian as directed by the investing authority from time to time; provided such investment is made in accordance with (i) section 54 of chapter 44, in the case of the treasurer or OPEB Fund board of trustees as investing authority, unless the governing body of the governmental unit authorizes investment under the prudent investor rule established in chapter 203C; or (ii) section 4 of chapter 29D and section 24 of chapter 32A, if the OPEB Fund is invested in the State Retiree Benefits Trust Fund.

(h) Amounts in the OPEB Fund may be appropriated by a two thirds vote of the governing body of the governmental unit to pay the unit's share of health insurance benefits for retirees and their dependents upon certification by the trustee or board of trustees that such amounts are available in the fund. The treasurer of the governmental unit after consulting with the chief executive officer of the unit shall determine the amount to be appropriated from the fund to the annual budget for retiree health insurance and notify the trustee or board of trustees of that amount at the earliest possible opportunity in the annual budget cycle. Upon notification, the trustee or board of trustees shall take diligent steps to certify those funds as available for appropriation by the governmental unit, or will be available by the time the appropriation would become effective or provide an explanation why the funds are or will not be available or should not be made available.

(i) In a regional school district, appropriations of amounts to the OPEB Fund may be made only in the annual budget submitted to the member cities and towns for approval. The annual report submitted to the member cities and towns pursuant to clause (k) of section 16 of chapter 71 shall include a statement of the balance in the fund and all additions to and appropriations from the fund during the period covered by such report.

(j) A governmental unit that accepts this section may participate in the OPEB Fund established by another governmental unit under this section upon authorization of the governing boards of both units and in accordance with the procedures and criteria established by the trustee or board of trustees of the fund. Each governmental unit shall remain responsible for all costs attributable for the health care and other post-employment obligations for its retired employees and their dependents and for completing an actuarial valuation of its liabilities and funding schedule that conforms to GASB requirements.

The participating governmental unit may appropriate or otherwise contribute amounts to the OPEB Fund as provided in subsection (b). Amounts from the fund may be appropriated by the participating unit for its retiree health insurance expenses in the manner authorized in subsection (h) upon a determination by the treasurer of the unit, after consulting with the chief executive officer of the unit, of the necessary amount and notification of the treasurer of the governmental unit maintaining the fund and the trustee or board of trustees of that amount. The trustee or board of trustees shall certify those funds available for appropriation, as provided in subsection (h), and the treasurer of the governmental unit maintaining the fund shall transfer the amounts certified to the participating governmental unit.

The participating governmental unit shall be separately credited for any contributions made to and appropriations from the OPEB Fund, and interest or other income generated by the fund, in the accounting of the relative liabilities of each governmental unit for its retirees and their dependents.

(k) This section may be accepted in a city or town in the manner provided in section 4 of chapter 4; in a county, by vote of the county commissioners; in a regional school district, by vote of the regional school committee; and in a district or other governmental unit, by vote of the district meeting or other appropriating body.

(l) This section shall also apply to the OPEB Fund established by a governmental unit under a special law, notwithstanding any provision to the contrary, upon the acceptance of this section by the governmental unit.

Section 20A. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

“PERAC”, the public employee retirement administration commission established under section 49 of chapter 7.

“GASB”, the Governmental Accounting Standards Board.

(b) Whenever a governmental unit obtains an actuarial valuation report in accordance with GASB statements of the liabilities of the unit for health care and other post-employment benefits for its retired employees and their dependents, it shall submit a copy to PERAC no later than 90 days after receipt of such report. PERAC may require that the governmental unit provide additional information related to such liabilities, normal cost and benefit payments, as specified by the executive office for administration and finance in consultation with PERAC. The governmental unit shall file the report and the additional information with PERAC and the division of local services. PERAC shall file a summary report of the information received under this section with the chairs of the house and senate committees on ways and means, the secretary of administration and finance and the board of trustees of the Health Care Security Trust established under section 4 of chapter 29D.

(B)(a) Any municipal lighting plant board that established an OPEB Fund under section 20 of chapter 32B of the General Laws before the effective date of this act shall continue it under the terms originally established, unless it elects to merge it with any OPEB Fund established by the municipality. If the lighting plant board continues its OPEB fund, the lighting plant shall be responsible for paying the premiums and assuming the liability for the municipal share of retiree healthcare benefits attributable to lighting plant employees and their dependents from the effective date of this act. If the lighting plant board elects to merge its OPEB Fund into the municipal OPEB Fund, the lighting plant shall be responsible for all costs attributable to the city or town for health insurance contributions to lighting plant retirees and their dependents, offset by contributions to the municipal OPEB Fund from the lighting plant. The lighting plant shall be separately credited for any contributions made to the municipal OPEB Fund in the accounting of the relative liabilities of the municipal government and lighting plant for their retirees and their dependents.

(b) Any city, town, district or county that established an OPEB Fund under section 20 of chapter 32B of the General Laws before the effective date of this act shall continue it under the terms originally established unless it reaccepts section 20 of chapter 32B after the effective date of this act.

AGENCY DECISIONS OR ADVISORIES

MUNICIPAL UNEMPLOYMENT INSURANCE (UI) TASK FORCE REPORT (November 15, 2012)

On November 15, 2012, the Municipal Unemployment Insurance Task Force (Task Force) established by the Governor in March 2012 to consider several issues involving municipalities and the eligibility of their employees, including retirees, for Unemployment Insurance (UI) benefits issued its report. The Task Force was charged with making recommendations that would provide relief to municipalities while maintaining the integrity of the UI system, respecting the rights of unemployed workers with valid claims, and ensuring the UI system's continuing conformity with federal requirements. The Task Force considered and made recommendations regarding municipal contribution methods and specific issues related to retired employees; nontenured teachers, retired educators and school bus drivers; election workers; on-call employees and substitute teachers; and seasonal workers.

The full Municipal Unemployment Insurance Task Force Report is found on the Executive Office of Labor and Workforce Development web site.

DEPARTMENT OF REVENUE LETTER RULING 13-6: TAXABILITY OF THE LEASE/SALE OF COMPUTERS BY PUBLIC SCHOOLS (June 19, 2013)

You have requested a letter ruling with respect to the Massachusetts sales tax as it applies to the sale or lease of computers to the students of ***** ("School"). The following is your representation of the facts upon which this ruling is based.

I. Facts

The School has established an optional laptop computer lease/purchase program for its students. The School District leases for purchase laptop computers through a computer company's financing program. The School District pays the lease/purchase agreement with the computer company with funds received from the lease of the laptops to students. The lease purchase agreement between the computer company and the school district is exempt from the Massachusetts sales tax as a sale to a political subdivision of the Commonwealth (G.L. c. 64H, § 6(d)).

The School's students (or their parents) who participate in the program are required to enter into a formal lease agreement with the school for a term of up to four years. During the length of the agreement the students are required to make lease payments to the School District that include the cost of the laptop and an additional amount for insurance, software updates, and administration fees. If a student leases the computer for the full four year term, the student may purchase the laptop for one dollar at the termination of the lease. If a student graduates or leaves the School district or otherwise terminates the agreement prior to the completion of the four year term, the student may purchase the laptop for a specific dollar amount that equals the remainder due on the lease for the

equipment costs, excluding insurance, software updates or other fees.[1] Alternatively, if student opts not to purchase, the equipment must be returned to School.

II. RULING REQUESTED

Are the lease payments made by the students to the School for a laptop computer and related equipment subject to Massachusetts sales tax?

III. RULING

The lease between the School and a student of computer equipment is subject to Massachusetts sales tax under the particular facts presented here.

IV. LAW AND ANALYSIS

Under Massachusetts General Laws, a sales tax is imposed on all retail sales in Massachusetts, by any vendor, of tangible personal property or of services performed in the Commonwealth, at the rate of 6.25% of the gross receipts of the vendor from all such sales of tangible personal property or services, unless otherwise exempt. G.L. c. 64H, § 2. The definition of a sale includes any transfer of title or possession, or both, for a consideration, including leases or rentals of tangible personal property. If no sales tax is paid on the purchase of tangible personal property, a 6.25% use tax is imposed on the storage, use or other consumption of the property in Massachusetts. G.L. c. 64I, § 2. Otherwise, purchases upon which sales tax has been collected are exempt from use tax by G.L. c. 64I, § 7(a).

The exemptions to the sales tax are found in G.L. c. 64H, § 6. Section 6(d) exempts sales of tangible personal property to the United States, the Commonwealth or any political subdivision thereof, or their respective agencies.

Unlike specific exemptions for sales to the Commonwealth, its agencies or political subdivisions, and 501(c)(3) organizations, there is no corresponding blanket exemption for sales or leases *by* such entities. In fact, the definition of "retailer" in chapter 64H specifically includes the Commonwealth, its agencies or any political subdivision thereof, or their respective agencies when such entities are engaged in making retail sales of a kind ordinarily made by private persons. *See* G.L. c. 64H, § 1. A "vendor" is a retailer or other person selling tangible personal property that is subject to the sales tax. *Id.*

The sale or lease of the laptop computers you describe are sales of items that are ordinarily made by private persons. Therefore, the School is acting as a retailer or vendor within the meaning of G.L. c. 64H, § 1, and if it has not done so already, must register and file returns with the Commissioner as such. *See* Letter Ruling 92-3.

The general rule is that any person or organization, whether a government entity, profit or nonprofit organization, making sales of tangible personal property in the regular course of its business must register as a vendor and collect sales tax. An exception to this general rule is found in G.L. c. 64H, § 6(c) which exempts casual and isolated sales by a vendor, person, group, or organization not regularly engaged in the business of selling tangible personal property. This is generally a question of fact to be determined by the particular

facts and circumstances surrounding the transaction and this exception does not to apply to the facts you have presented, in part because of the number and regularity of such sales. *See* 830 CMR 64H.6.1(5).

Each period for which a lease or rental payment is charged is considered a completed retail sale for the purpose of imposition, collection, and payment of sales tax. Sales of computer hardware, computer equipment, and prewritten computer software, regardless of the method of delivery, and reports of standard information in tangible form are generally subject to the Massachusetts sales tax. Generally, transfers of prewritten software subject to tax include sales in any of the following ways regardless of the method of delivery, including electronic delivery or load and leave: licenses and leases, transfers of rights to use software installed on a remote server, upgrades, and license upgrades. *See* 830 CMR 64H.1.3.

The sales price on which the tax is computed for each period is the total lease or rental charges for that period, including any buyout amount due as the result of early termination of a lease.

Very truly yours,

/s/Amy Pitter

Amy Pitter
Commissioner of Revenue

AP:MTF:jet

LR 13-6

[1] This transaction is not characterized as an installment sale as the lease may be terminated with or without an optional apportioned buy-out under certain circumstances described above. *See generally*, LR 85-27.



The Commonwealth of Massachusetts
William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Shawn A. Williams
Supervisor of Records

June 27, 2013
SPR13/077

Mr. Mark Kaepplein
11 Palmer Street
Arlington, MA, 02474

Dear Mr. Kaepplein:

This office has received your petition appealing the response of Adam Chapdelaine, Town Manager for the Town of Arlington (Town), to your February 15, 2013 request for public records. See G. L. c. 66, § 10(b); see also 950 C.M.R. 32.08(2). Specifically, you requested a listing of resident email addresses subscribed to receive notices and agendas as listed on the Town's website.

In a March 7, 2013 email response to you, Mr. Chapdelaine stated that the Town is withholding responsive records pursuant to Exemptions (b) and (c) of the Public Records Law. In a May 24, 2013 letter to this office, Town Counsel Juliana DeHaan Rice supplemented the Town's original response with respect to its Exemption (c) claim. The applicability of Exemption (c) is first considered.

Exemption (c)

Exemption (c) applies to:

personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy

G. L. c. 4, § 7(26)(c).

Exemption (c) contains two distinct and independent clauses, each requiring its own analysis. Globe Newspaper Co. v. Boston Retirement Bd., 388 Mass. 427, 432-33 (1983). The second clause of Exemption (c) only protects intimate details of a highly personal nature while

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Mr. Mark Kaepplein
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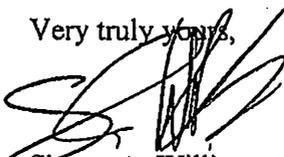
requiring a balancing of the public's right to know against the relevant privacy interests at stake. Att'y Gen. v. Ass't Comm'r of the Real Property Dep't of Boston, 380 Mass. 623, 625 (1980). The types of personal information which the second clause of this exemption is designed to protect includes: marital status, paternity, substance abuse, government assistance, family disputes and reputation. Id. at 626 n. 2.

The second clause of Exemption (c) requires a records custodian to perform a two-step analysis to determine whether the record may be withheld from disclosure. First, the records custodian must determine whether the information constitutes an "intimate detail of a highly personal nature." If so determined, then the records custodian must consider whether the privacy interests of the individual outweigh the public interest in disclosure of this information. Attorney General v. Collector of Lynn, 377 Mass. 151, 156 (1979).

The Town's Privacy Policy admonishes citizens that information disclosed to the Town by citizens may be provided in response to a public records request. This notice does not waive the Town's discretion to redact or withhold records responsive to a public records request in a manner consistent with the Public Records Law and its Access Regulations. Disclosure of a list of resident email addresses could have an aggregate and negative effect on the privacy interests of residents who submitted this information to the Town solely for notification purposes. See Doe v. Registry of Motor Vehicles, 26 Mass. App. Ct. 415, 425 (1988). Further, treatment personal email addresses, which are generally not listed within any sort of directory or available by any other means of a public search, similar in many respects to mobile phone or unlisted phone numbers, favor a finding of non-disclosure. I see no compelling public interest in favor of disclosure that would outweigh the privacy interests of such persons. Accordingly, the Town may permissibly withhold responsive information pursuant to the second clause of Exemption (c).

Whereas the Town may permissibly withhold responsive information pursuant to Exemption (c), an analysis as to the applicability of Exemption (b) is not required. This administrative appeal is now closed.

Very truly yours,



Shawn A. Williams
Supervisor of Records

cc: Mr. Adam W. Chapdelaine
Ms. Juliana DeHaan Rice, Esq.



SUZANNE M. BUMP, ESQ.
AUDITOR

The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

ONE WINTER STREET, 9TH FLOOR
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June 28, 2013

Mr. Richard P. Brazeau, Chairman
Mr. Peter d'Errico, Member
Ms. Julia Shively, Member
Leverett Board of Selectmen
9 Montague Road
Leverett, Massachusetts 01054

RE: Reporting of Other Post-Employment Benefits -- St. 2011, c. 68, § 57

Dear Chairman Brazeau, Mr. d'Errico, and Ms. Shively:

This letter is in response to your request to the State Auditor's Division of Local Mandates (DLM) regarding the costs incurred by the Town of Leverett (the Town) to comply with the reporting requirements of M.G.L. c. 32B, § 20(d), as amended by Section 57 of Chapter 68 of the Acts of 2011. Specifically, you reference the annual requirement that local government entities must submit to the Public Employee Retirement Administration Commission (PERAC) "a summary of its other post-employment benefits [OPEB] cost and obligations and all related information required under Government Accounting Standards Board standard 45." See M.G.L. c. 32B, § 20(d). You state that the audit and software necessary to comply with this requirement will increase the Town's budget by \$750 every three years, and you ask whether this cost obligation is an unfunded state mandate within the meaning of the Local Mandate Law, M.G.L. c. 29, § 27C. DLM has reached the conclusion that the Local Mandate Law does not apply to this amendment, primarily because it has a relatively minor impact on the cost of providing OPEB for Town retirees, and the Town voluntarily incurs OPEB expenses as a result of local option votes to do so. The basis for this conclusion is further explained below.

In relevant part, the Local Mandate Law provides that any post-1980 law imposing additional costs upon any city or town must be subject to local acceptance, "unless the general court, at the same session in which such law is enacted, provides, by general law and by appropriation, for the assumption by the commonwealth of such cost, exclusive of incidental local administration expenses." Any

municipality aggrieved by a law or regulation adopted contrary to these standards may petition the Superior Court to be exempted from compliance, until the Commonwealth assumes the cost. Prior to taking this step, a city or town may request an opinion from DLM as to whether the Local Mandate Law applies in a given case, and if so, to determine the amount of the cost imposed by the law or regulation at issue. DLM's determination of the amount of the compliance cost shall be prima facie evidence of the amount of state funding necessary to sustain the mandate. *See* M.G.L. c. 29, § 27C(a), (d), and (e).

By explicit terms, the Local Mandate Law provides that the Commonwealth is not obliged to assume the cost of state mandates that impose no more than "incidental administration expenses." *See* M.G.L. c. 29, § 27C(a) and (c). The Supreme Judicial Court defines this term as "relatively minor expenses related to the management of municipal services . . . subordinate consequences of a municipality's fulfillment of primary obligations." *City of Worcester v. the Governor*, 416 Mass. 751, 758 (1994). In the *Worcester* decision, the Court did not further define "relatively minor expenses," but did conclude that the cost of a parental notice requirement that averaged approximately \$28,000 per year for the Worcester school department fell within this "relatively minor" parameter. *Id.* In your letter, you indicate that compliance with the Section 20(d) reporting requirement adds \$750 to the Town's budget every three years. This amounts to an annualized cost of \$250. In light of the *Worcester* decision, DLM has concluded that this new requirement, while an unfunded mandate, constitutes incidental administrative expenses.

Moreover, this "relatively minor" cost is a "subordinate consequence" of the primary duty to contribute to the cost of health insurance premiums for retirees. The Town of Leverett voluntarily undertook this obligation as a result of a town meeting vote to accept M.G.L. c. 32B, § 9A in April of 2004; this vote was subsequently ratified by Town election. *See* Town of Leverett Annual Town Meeting Minutes (April 24, 2004).

We note that an initial vote to accept M.G.L. c. 32B authorizes a community to provide group health insurance, as well as other types of coverage, for active employees. This authorization requires that retirees be allowed to maintain participation in the group health insurance plan, provided that each retiree pays the total average premium cost. An additional vote to accept M.G.L. c. 32B, § 9A allows a community to pay fifty percent of the cost for retirees. Finally, a third vote to accept M.G.L. c. 32B, § 20 is required to authorize a community to establish an OPEB Liability Trust Fund to segregate resources dedicated to support OPEB costs. The Town of Leverett voted to establish an OPEB Liability Trust Fund in April of 2011. *See* Town of Leverett Annual Town Meeting Minutes (April 30, 2011).

As indicated above, the Local Mandate Law applies to post-1980 state laws that *impose* new costs upon municipalities. The Supreme Judicial Court has suggested that the state does not impose costs upon cities and town by further regulating a function that communities voluntarily undertake. *See* *City of Cambridge v. Attorney General*, 410 Mass. 165, 171 (1991) (referring to its prior decision in *Town of Norfolk v. Department of Environmental Quality Engineering*, 407 Mass. 233 (1990), the Court wrote "Since the Town of Norfolk chose to operate a landfill and expand it, the costs resulting from the environmental regulation were not 'imposed' according to the meaning of G. L. c. 29, § 27C"). Relative to municipal group insurance plans, the Court also wrote, "the fact that G. L. c. 32B is irrevocable once accepted does not affect the voluntariness of the acceptance." *Cambridge, id.* at 172. *See also* DLM Decision 04-10. (November 24, 2004) (statutes requiring that health insurance policies must cover new

categories of care did not *impose* costs within the meaning of the Local Mandate Law, as communities voluntarily incur expense of employee health insurance by voting to accept M.G.L. c. 32B.)

In light of this precedent, it is the opinion of DLM that the Local Mandate Law does not apply to M.G.L. c. 32B, § 20(d), because the reporting requirements result in no more than incidental administration expenses related to a program of retiree health insurance that the town undertook on a voluntary, local option basis. We regret that this opinion does not aid your efforts to control local spending. Nonetheless, we must apply the Local Mandate Law consistently to each issue, as interpreted by the courts. *See* DLM Decision 13-5 (June 24, 2013) (Local Mandate Law does not apply to costs of conducting fingerprint-based criminal background checks of certain school employees, as requirements are expected to impose no more than incidental administration expenses). Please be aware that this opinion is subject to revision in the event that you offer information that we may not have considered. Additionally, this opinion does not prejudice the right of any city or town to seek independent review of the matter in Superior Court in accordance with Section 27C(e) of Chapter 29.

In closing, Auditor Bump asked that I convey her intent, as a statutory member of PERAC, to continue to use her position to mitigate the local financial effect of matters within the purview of the Commission. We thank you for bringing this issue to our attention, and encourage you to contact us with further concerns you may have on this or other matters impacting local finance.

Sincerely,

A handwritten signature in black ink, appearing to read "Vincent P. McCarthy". The signature is fluid and cursive, with the first name "Vincent" being the most prominent.

Vincent P. McCarthy, Director
Division of Local Mandates

cc: Marjorie McGinnis, Leverett Town Administrator
John Parsons, PERAC General Counsel