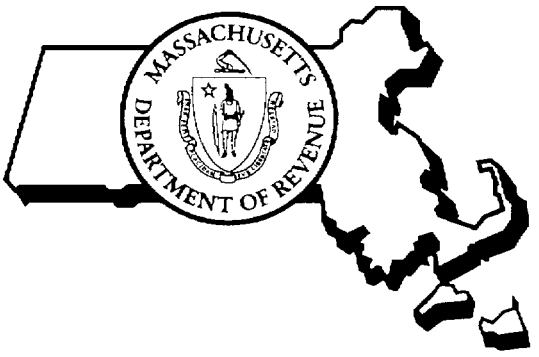
Massachusetts Department of Revenue
Division of Local Services

# Current Developments in Municipal Law




2008

Legislation & Agency Decisions

Book 1

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

www.mass.gov/dls

# WHAT'S NEW IN MUNICIPAL LAW?
## 2008

| | | |
|---|---|---|
| **INTRODUCTION** | | 9:00 a.m. - 9:20 a.m. |
| Robert G. Nunes | | |
| Kathleen Colleary | | |
| **LEGISLATION** | | |
| Gary A. Blau | | 9:20 a.m. - 9:40 a.m. |
| Kathleen Colleary | | 9:40 a.m. - 10:00 a.m. |
| **COURT DECISIONS** | | |
| Kathleen Colleary | | 10:00 a.m. - 10:05 a.m. |
| Daniel J. Murphy | | 10:05 a.m. - 10:30 a.m. |
| | BREAK | 10:30 a.m. - 11:00 a.m. |
| **COURT DECISIONS** | | |
| Christopher M. Hinchey | | 11:00 a.m. - 11:25 a.m. |
| James F. Crowley | | 11:25 a.m. - 11:50 a.m. |
| Mary C. Mitchell | | 11:50 a.m. - 12:15 p.m. |
| | LUNCH | 12:15 p.m. - 1:30 p.m. |
| **WORKSHOPS** | | 1:30 p.m. - 3:00 p.m. |

A. **LOCAL TAXES.** A review of tax assessment and collection issues.
Daniel J. Murphy
James F. Crowley

B. **LOCAL ENTERPRISES.** An exploration of enterprise and special revenue fund issues.
Kathleen Colleary
Christopher M. Hinchey

C. **LOCAL EMPLOYEES.** A discussion of compensation, benefit and other employment issues.
Gary A. Blau
Mary C. Mitchell

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# TABLE OF CONTENTS
## Book 1


**PRESENTATION NOTES** 1

**2007 LEGISLATION**

**Ch. 169** **Property Tax Classification** 12

**2008 LEGISLATION**

**Ch. 61** **Property Tax Exemption for Veterans Organizations** 13

**Ch. 80** **Employee Compensation** 14

**Ch. 85** **Annual Town Meeting Schedule** 18

**Ch. 169** **Energy Conservation and Alternatives (Green Communities)** 19
§ 7 Regional Greenhouse Gas Initiative (RGGI) Reimbursement
§ 50 Borrowing for Energy Improvements

**Ch. 173** **State Corporate Tax Reform** 25
§§ 2-10, 101 Local Taxation of Business Corporations
§ 97 Municipal Relief Commission

**Ch. 182** **Fiscal Year 2009 State Budget** 29
§ 3 Local Aid Advances
§§ 13, 74, 116 Community Preservation Recording Fee Surcharges
§ 14 Senior Property Tax Deferrals
§ 15 Demand Fees
§ 16, 117 Motor Vehicle Excise Exemptions
§ 17 Motor Vehicle Excise Deferral for Deployed Guardsmen and Reservists
§§ 62-66, 114 Regional Transit Authority Assessments
§ 77 Compensation of Public Employees in Military Service
§ 100 Education Reform Waivers
§ 112 Municipal Budget Commission

**Ch. 188** **Intermunicipal Agreements** 45

**Ch. 302** **Fiscal Year 2008 Supplemental Budget** 47
§§ 13, 68 Borrowing for School Project Feasibility Studies

**Ch. 310** **Dairy Farm Preservation** 50
§ 2 Optional Assessment of Farm Animal Excise

**Ch. 312** **Environmental Bond Bill** 52
§ 4 RGGI Reimbursement
§ 6-7 Option to Purchase Classified Farm and Recreational Land
§ 10 Sewer Assessments

**AGENCY DECISIONS OR ADVISORIES**

Office of the Inspector General – *Procuring Outside Consultants with Fees from Applicants* (July 2008) 59

## Property Tax Classification

Chapter 169 of the Acts of 2007
Effective 11/16/2007 [1:12]

- Repeals St. 2004, c. 3, § 1
- Restores tax allocation formula under G.L. c. 58, § 1A to 175% maximum shift to business taxpayers

## Veterans Organizations

Chapter 61 of the Acts of 2008
Effective 6/17/2008 [1:13]

- Adds local option G.L. c. 59, § 5, Clause 5C
- Allows property tax exemption of up to $1.5m worth of real and personal property of organization

## Employee Compensation

Chapter 80 of the Acts of 2008
Effective 7/13/2008 [1:14]

- Amends G.L. c. 149, §§ 27-27H, 150 & 151 (prevailing wage and prompt payment of wages laws)
- Requires award of treble damages and litigation costs for prevailing employee

## Annual Town Meetings

Chapter 85 of the Acts of 2008
Effective 7/14/2008 [1:18]

- Amends G.L. c. 39, §§ 9 and 9A
- Allows annual town meetings and elections to begin in June
- Annual meetings must still conclude by 6/30

## Green Communities Act

Chapter 169 of the Acts of 2008
Effective 7/2/2008 [1:19]

- 7 Regional Greenhouse Gas Initiative (RGGI) Reimbursement
- Reimburses cities and towns for lost property tax revenues from devaluation of generating plants by RGGI regulation of carbon dioxide emissions
- Payments from trust fund of permit auction proceeds
- Applies to coal-fired plants only (c. 312, § 4 of 2008)

## Chapter 169 of 2008 (continued)

§ 50 Energy Improvement Debt

- Amends G.L. c. 44, § 7, Clause 3B
- Allows borrowing inside debt limit for energy conservation or alternative energy improvements to buildings, facilities or property owned or leased by municipality
- Increases term for energy related loans from 10 to 20 years

## State Corporate Tax Reforms

Chapter 173 of the Acts of 2008
Effective 7/3/2008 [1:25]

- Changes corporate taxation at state level
- Requires same business entity classification for state and federal tax purposes
- Eliminates differences between domestic and foreign corporations
- See TIR 08-11

## Chapter 173 of 2008 (continued)

### §§ 2-10 & 101 Local Taxation of Business Corporations

- Conforms G.L. c. 59, § 16 and other c. 59 sections to state corporate tax reforms
- Entities classified as corporations for state taxes usually treated as corporations for local taxes
- Local tax treatment of some business entities may change
- Effective 1/1/2009.

## Chapter 173 of 2008 (continued)

### § 97 Municipal Relief Commission

- 13 member legislative commission to study local revenue initiatives
- Study due 12/15/2008

## FY2009 State Budget

Chapter 182 of the Acts of 2008

Effective 7/1/2008 unless noted [1:29]

§§ 13, 74 & 116 Community Preservation Act (CPA) Recording Fee Surcharges

- Amends G.L. c. 44B, § 8
- Requires separate fee and CPA surcharge for documents that need separate indexing for references to other documents
- Reverses 2008 Appeals Court decision

Chapter 182 of 2008 (continued)

§ 14 Senior Property Tax Deferrals

- Increases cap on amount cities and towns may allow in gross receipts for Clause 41A deferral
- Maximum now tied to state circuit breaker income tax credit limit for single filers
- DOR makes annual cost of living adjustment in limit
- See IGR 08-208

Chapter 182 of 2008 (continued)

§ 15 Demand Fees

- Amends G.L. c. 60, § 15
- Allows charge for issuance of demand by collector of any amount up to $30
- See Bulletin 2008-09B

Chapter 182 of 2008 (continued)

## §§ 16 & 117 Motor Vehicle Excise Exemptions

- Effective 1/1/2010
- Adds new local option exemption to G.L. c. 60A, § 1
- Adds new standing provision G.L. c. 60A, § 1 that applies to all excise exemption applications

Chapter 182 of 2008 (continued)

- New local option exemption for MA residents on active military duty outside US for 45 days
- 45 day waived for service members wounded or killed in armed conflict
- 1 vehicle registered for personal use exempt
- Delinquent taxpayers charged extra $3 when excises sent to deputy collector for collection action
- Effective 1/1 after calendar year accepted

Chapter 182 of 2008 (continued)

- New standing provision allows persons other than the qualified taxpayer to file excise application
- Spouse may apply if vehicle jointly owned
- Surviving spouse, executor or administrator may apply if qualifying taxpayer is deceased
- Effective for 2010 excises

Chapter 182 of 2008 (continued)

## § 17 Motor Vehicle Excise Payment Deferral

- Adds new local option G.L. c. 60A, § 9
- Gives MA guardsmen and reservists deployed outside MA, or dependents, 180 days after deployment ends to pay excise without interest or costs
- Similar to local option G.L. c. 59, § 5L for property tax payments

Chapter 182 of 2008 (continued)

## §§ 62-66 & 114 Regional Transit Authority (RTA) Assessments

- Codifies current MBTA calculation of RTA members credit in their MBTA assessments using most recently audited RTA assessments as of 1/1
- RTA member assessments now based on same audited assessments as MBTA credit

Chapter 182 of 2008 (continued)

## §§ 77 Payment of Public Employees in Military Service

- Extends 2003 local option that required counties, cities, towns and school districts to pay employees in national guard or reserves on military leave of absence after 9/11/2001 their base salaries less military pay
- New sunset date of 9/11/2011

Chapter 182 of 2008 (continued)

## §§ 100 Education Reform Waivers

- FY09 Ed Reform Waivers
- Allows DOR to adjust minimum required contribution for local & regional school districts for FY09
- Applications Due 10/1/2008
- See IGR 08-302

Chapter 182 of 2008 (continued)

## §§ 112 Municipal Budget Commission

- 10 member commission on municipal budgeting and accounting practices
- Study due 12/31/2008

## Intermunicipal Agreements

Chapter 188 of the Acts of 2008

Effective 7/18/2008 [1:45]

- Amends G.L. c. 40, § 4A
- Allows boards of selectmen and prudential committees to enter into agreements with state, county and local governments for joint activities

## FY2008 Supplemental Budget

Chapter 302 of the Acts of 2008

Effective 8/8/2008 unless noted [1: 47]

§ 13 & 68 School Project Feasibility Studies

- Amends G.L. c. 70B, § 6
- Allows cities, towns and regional school districts to borrow for 5 years for feasibility studies required for School Building Authority school facility grants
- Debt outside limit and subject to G.L. c. 44
- Effective retroactive to 1/1/2008

## Dairy Farm Preservation

Chapter 310 of the Acts of 2008

Effective 8/14/2008 [1:50]

§ 2 Optional Assessment of Farm Animal Excise

- Amends G.L. c. 59, § 8A
- Allows boards of selectmen or city/town councils with mayor's approval if required to place referendum before voters asking not to assess farm animal excise
- 2/3 vote of board/council to place on ballot

## Environmental Bond Bill

Chapter 312 of the Acts of 2008

Effective 8/14/2008 [1:52]

§ 4 RGGI Reimbursement

- Amends § 7 of Green Communities Act, c. 269 of 2008
- Limits reimbursement to cities and towns with lower property tax revenues due to generating plant devaluation under RGGI emission control regulations to coal-fired plants
- Measures revenue reduction from FY2008

Chapter 312 of 2008 (continued)

§§ 7 & 8 Classified Farm & Recreational Land Option to Purchase

- Makes technical corrections to G.L. c. 61A, § 14 and c. 61B, § 9 from 2006 chapter land reforms (c. 394)

Chapter 312 of 2008 (continued)

§ 10 Sewer Assessments

- Adds G.L. c. 83, §§ 1A-1H
- Allows cities, towns and sewer districts that build sewer system to reduce or eliminate nutrient enrichment of water supply or surface waters to limit abutter's right to connect
- Requires adoption of G.L. c. 83, § 1A and approval by MA Department of Environmental Protection (DEP) of Comprehensive Water Resources Management Plan (CWMP)

Chapter 312 of 2008 (continued)

- Restricts connections to properties:

1. within CWMP,
2. with failed septic systems that are unable to be served by new septic or enhanced system under remedial use, or
3. with 15% affordable housing units

## Chapter 312 of 2008 (continued)

- Allows mandatory hook-up for abutters with enhanced systems under remedial use unless DEP approved monitoring and inspection plan in place
- Allows board of health to assess fee to fund inspections
- Allows connections after system operational based on capacity

## Chapter 312 of 2008 (continued)

- Allows communities and districts to borrow for up to 50 years, or DEP approved useful life, whichever is shorter, for the system
- Allows temporary debt for 5 years
- Allows communities and districts to give property owners up to 50 years to pay any sewer betterments assessed to recover costs

## Chapter 312 of 2008 (continued)

- Allows special revenue fund for payments from property owners and earmarks monies for system construction, maintenance and operation

## Inspector General Advisory

Procuring Outside Consultants

7/2008 [1:59]

- G.L. c. 44, § 53G allows special project revolving funds for fees charged applicants for local permits and approvals
- Funds limited to fees paid for certain applications to Zoning Boards of Appeals, Low and Moderate Income Housing, Planning Boards, Boards of Health and Conservation Commissions

## IG Advisory (continued)

- Fees may be spent without appropriation to hire outside consultants to assist local board review the applications
- G.L. c. 30B applies to services of "outside consultants" hired using G.L. c. 44, § 53G revolving funds
- Local rules must also allow applicant to appeal choice of consultant

H 3119

Chapter 164

THE COMMONWEALTH OF MASSACHUSETTS

*In the Year Two Thousand and Seven*

AN ACT RELATIVE TO PROPERTY TAX CLASSIFICATION IN CITIES AND TOWNS.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is forthwith to further regulate property tax classifications in cities and towns, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

SECTION 1. Section 1 of chapter 3 of the acts of 2004 is hereby repealed.

SECTION 2. This act shall be effective for taxable years beginning on or after July 1, 2007.

House of Representatives, November 8, 2007.

Preamble adopted, , Acting Speaker.

In Senate, November 8, 2007.

Preamble adopted, Acting President.

House of Representatives, November 8, 2007.

Bill passed to be enacted, R.J.D , Acting Speaker.

In Senate, November 8, 2007.

Bill passed to be enacted, Acting President.

16 November, 2007.

Approved,

at 10 o'clock and 31 minutes, A . M.

Governor.

H 3045

Chapter 61.

THE COMMONWEALTH OF MASSACHUSETTS

*In the Year Two Thousand and Eight*

*AN ACT* INCREASING THE LOCAL PROPERTY TAX RELIEF TO NONPROFIT VETERANS ORGANIZATIONS IN CERTAIN 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 5 of chapter 59 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after clause Fifth B the following clause:-

Fifth C, The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of $1,500,000, if used and occupied by such association, and if the net income from the property is used for charitable purposes, but the estate shall not be exempt for any year in which the association, or the trustees holding for the benefit of the association, willfully fails to file with the assessors the list and statement required by section 29. This clause shall take effect upon its acceptance by any city or town. In a city or town which accepts this clause, clauses Fifth, Fifth A and Fifth B shall not be applicable.

House of Representatives, March 12, 2008.

Passed to be enacted, Paul Donato, Acting Speaker.

In Senate, March 13, 2008.

Passed to be enacted, Stephen M. Brewer, Acting President.

March 19, 2008.

Approved,

Governor.

S 1059

*Chapter* 80

THE COMMONWEALTH OF MASSACHUSETTS

*In the Year Two Thousand and Eight*

AN ACT FURTHER REGULATING EMPLOYEE COMPENSATION.

*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 27 of chapter 149 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:-

An employee claiming to be aggrieved by a violation of this section may, 90 days after the filing of a complaint with the attorney general, or sooner if the attorney general assents in writing, and within 3 years after the violation, institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits. An employee so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys' fees.

SECTION 2. Section 27F of said chapter 149, as so appearing, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:-

An employee claiming to be aggrieved by a violation of this section may, 90 days after the filing of a complaint with the attorney general, or sooner if the attorney general assents in writing, and within 3 years after the violation, institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits. An employee so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys' fees.

SECTION 3. Section 27G of said chapter 149, as so appearing, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:-

An employee claiming to be aggrieved by a violation of this section may, 90 days after the filing of a complaint with the attorney general, or sooner if

the attorney general assents in writing, and within 3 years after the violation, institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits. An employee so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys' fees.

SECTION 4. Section 27H of said chapter 149, as so appearing, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:-

An employee claiming to be aggrieved by a violation of this section may, 90 days after the filing of a complaint with the attorney general, or sooner if the attorney general assents in writing, and within 3 years after the violation, institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits. An employee so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys' fees.

SECTION 5. Section 150 of said chapter 149, as so appearing, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph:-

An employee claiming to be aggrieved by a violation of sections 33E, 148, 148A, 148B, 150C, 152, 152A or 159C or section 19 of chapter 151 may, 90 days after the filing of a complaint with the attorney general, or sooner if the attorney general assents in writing, and within 3 years after the violation, institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits. An employee so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys' fees.

SECTION 6. The first paragraph of section 1B of chapter 151 of the General Laws, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following 3 sentences:- In addition, if a person is paid by an employer less than such overtime rate of compensation, the person may institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action

for injunctive relief, for any damages incurred, and for the full amount of the overtime rate of compensation less any amount actually paid to him by the employer. An agreement between the person and the employer to work for less than the overtime rate of compensation shall not be a defense to such action. An employee so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated damages, for lost overtime compensation and shall also be awarded the costs of the litigation and reasonable attorneys' fees.

SECTION 7. The first paragraph of section 20 of said chapter 151, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 3 sentences:- If a person is paid by an employer less than the minimum fair wage to which the person is entitled under or by virtue of a minimum fair wage regulation, or less than $1.85 per hour in a manufacturing occupation or in any other occupation not covered by a minimum fair wage regulation, the person may institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief, for any damages incurred and for the full amount of the minimum wages less any amount actually paid to him by the employer. An agreement between the person and the employer to work for less than the minimum wage shall not be a defense to such action. An employee so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated damages, for any loss of minimum wage and shall also be awarded the costs of the litigation and reasonable attorneys' fees.

House of Representatives, February 8, 2008.

Passed to be re-enacted, Paul J. Donato, Acting Speaker.

In Senate, ~~March~~ April 3, 2008.

Passed to be re-enacted, , President.

, 2008.

Approved,

Governor.

S 1059

SECRETARY OF THE COMMONWEALTH Boston, Massachusetts April, 14, 2008

The foregoing was laid before the Governor on the third day of April, 2008 and after ten days has the force of law as prescribed by the Constitution as it was not returned by him to the branch in which it originated with his objections thereto within that time.

William Francis Galvin
Secretary of the Commonwealth

H 1943

*Chapter* 85

THE COMMONWEALTH OF MASSACHUSETTS

*In the Year Two Thousand and Eight*

*AN ACT* ALLOWING TOWN MEETINGS TO BE HELD IN JUNE.

*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 9 of chapter 39 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 6, the words "or May" and inserting in place thereof the following words:- , May or June.

SECTION 2. Section 9A of said chapter 39, as so appearing, is hereby amended by striking out, in lines 6 and 9, the words "or May" and inserting in place thereof, in each instance, the following words:- , May or June.

House of Representatives, April 7 , 2008.

Passed to be enacted, Paul J. Donato Acting , Speaker.

In Senate, April 8 , 2008.

Passed to be enacted, Acting , President.

15 April , 2008.

Approved,

Governor.

S 2768

*Chapter* 169

THE COMMONWEALTH OF MASSACHUSETTS

*In the Year Two Thousand and Eight*

*AN ACT* RELATIVE TO GREEN COMMUNITIES.

*Whereas,* The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for renewable and alternative energy and energy efficiency in the commonwealth, 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 9A of chapter 7 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following 4 paragraphs:-

When purchasing new motor vehicles, the commonwealth shall purchase hybrid or alternative fuel vehicles, as defined in section 1 of chapter 90, to the maximum extent feasible and consistent with the ability of such vehicles to perform their intended functions, at a rate of not less than 5 per cent annually for all new motor vehicle purchases so that, taking into account the existing number of such vehicles owned and operated by the commonwealth, not less than 50 per cent of the motor vehicles owned and operated by the commonwealth shall be hybrid or alternative fuel vehicles by the year 2018.

The division of operational services shall forward to the department of energy resources all requests for motor vehicle acquisitions by agencies of the commonwealth. The department of energy resources shall thereafter report to the division of operational services regarding the availability of a hybrid or alternative fuel vehicle that shall achieve the intended use designated by the requesting agency. The division of operational services, in consultation with the departments of energy resources and environmental protection, shall adopt a fuel efficiency standard for passenger vehicles owned or operated by the commonwealth.

The division of capital asset management and maintenance, in consultation with the department of energy resources, shall develop a system of protocols for the acquisition of alternative fuel vehicles and hybrids, including identifying the potential for acquisition of heavy, medium and light-duty vehicles, based on the anticipated mileage and usage of such vehicles, and

Section 97A. The board of registration of home inspectors, in consultation with the state board of building regulations and standards, the executive office of energy and environmental affairs and the energy efficiency advisory council, shall develop requirements and adopt regulations to require documents to be provided to a buyer of a single-family residential dwelling or a multiple-family residential dwelling with less than 5 dwelling units, or a condominium unit at the time of closing, outlining the procedures and benefits of a home energy audit; provided however, that no additional fees shall be imposed or collected in connection with the provision of such documents.

SECTION 6. Section 7 of chapter 21A of the General Laws, as so appearing, is hereby amended by striking out, in the first sentence, the word "division" and inserting in place thereof the following word:- department.

SECTION 7. Said chapter 21A is hereby further amended by adding the following 2 sections:-

Section 21. The secretary, in conjunction with the secretary of administration and finance, shall design and implement a bidding process for the competitive procurement of electric generation on behalf of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth procuring electricity from a local distribution company via basic service under section 1B of chapter 164. Any such competitive bid received shall include payment options with rates that remain uniform for a minimum period of 1 year. In lieu of designing and implementing a competitive bidding process as required by this section, the secretary may become a member of programs organized and administered by the Health and Educational Facilities Authority or its subsidiary organization for the purpose of such competitive group purchasing of electricity.

Section 22. (a) As used in this section, the following words shall have the following meanings, unless the context clearly requires otherwise:

"Allowance", an authorization to emit a fixed amount of carbon dioxide.

"Cap and trade program", a policy approach for controlling emissions from a group of emitting sources, such as electric generating stations, at a total cost that is expected to be lower than if sources were regulated individually by setting an overall cap or maximum amount of emissions from all regulated sources per compliance period that will achieve the desired environmental effects; provided, however, that a certain number of authorizations to emit in the form of emissions allowances shall be created, issued and made available to persons, companies, organizations or other entities through a sale by auction or direct allocation; and provided further that the total

number of allowances made available in a compliance period shall not exceed the cap.

"Department", department of environmental protection.

"RGGI" or "Regional Greenhouse Gas Initiative", the Memorandum of Understanding dated December 20, 2005, and any amendments thereto and the corresponding Model Rule and any amendments thereto that establishes a cap and trade program within the northeast region of the United States and other regions to the extent that the Memorandum of Understanding is amended.

(b) The department, in consultation with the department of energy resources, shall adopt rules and regulations establishing a carbon dioxide cap and trade program to limit and reduce the total carbon dioxide emissions released by electric generating stations that generate electric power. The rules and regulations shall comply with RGGI and permit the holders of carbon dioxide allowances to trade them in a regional market to be established through the RGGI.

(c)(1) The department shall provide, by regulation that all allowances issued under the program shall be offered for sale by auction. The proceeds recovered from the allowance auctions shall be deposited in the RGGI Auction Trust Fund established in section 35II of chapter 10. The proceeds shall be used without further appropriation for the following purposes only and shall be in a proportion to be determined by the department of energy resources with the approval of the secretary:

(i) to reimburse a municipality in which the property tax receipts, including, for the purposes of this clause, payments in lieu of taxes, are reduced as a result of the mandates of RGGI or the regulation of carbon dioxide emissions from electric generating stations; provided, however, that the amount of the payment shall be the difference between the amount of the tax receipts in the current tax year and the amount of the tax receipts in the year before implementation of RGGI; provided further, that no reimbursement shall be made if, in a tax year, the aggregate amount paid to a municipality by the owner of an electric generating station including, but not limited to, payments in lieu of taxes and property taxes, exceeds the aggregate amount paid to that municipality by that owner in the year before implementation of RGGI; and provided further, that payments from the fund shall be prioritized so that the first payments from the fund shall be made to municipalities under this clause;

(ii) to fund the green communities program established in section 10 of chapter 25A;

(iii) to provide zero interest loans to municipalities, which are not green communities under section 10 of chapter 25A for energy efficiency projects;

(iv) to promote energy efficiency, conservation and demand response; and

(v) to reimburse the commonwealth for costs associated with the administration of the cap and trade program.

(2) Notwithstanding this section, the department may set aside up to 1 per cent of the commonwealth's annual allocation of allowances to support the voluntary green power market which enables electricity consumers to support the development of renewable resources.

(d) The department of energy resources shall adopt regulations governing the auction of allowances. The department of energy resources may hire an independent contractor determined by the office to be qualified to conduct the auction in a manner that ensures the efficiency of the auction, or may provide for participation in a regional auction.

(e) The responsibilities created by establishing a carbon dioxide cap and trade program shall be in addition to any other responsibilities imposed by any other general or special law or rule or regulation and shall not diminish or reduce any power or authority of the department, including the authority to adopt standards and regulations necessary for the commonwealth to join and fully participate in a multistate program at any stage in the development and implementation of such a program intended to control emissions of carbon dioxide or other substances that are determined by the department to be damaging or altering the climate.

(f) Notwithstanding any general or special law or rule or regulation to the contrary, the state comptroller shall grant a permanent waiver or exemption from any applicable charges or assessments made against the proceeds from the auction of allowances under this section by the office of the comptroller under its authority under sections 5D of chapter 29.

(g) Notwithstanding any general or special law or regulation to the contrary, any information required by the department of energy resources or the department of any party participating in the cap and trade program, with the exception of any emission. offset and allowance tracking information required for compliance with the cap and trade program, shall be maintained for the sole and confidential use of the commonwealth, the department, the department of energy resources and their agents. This information shall not be deemed to be a public record as defined in clause Twenty-sixth of section 7 of chapter 4 and shall not be subject to demand for production under section 10 of chapter 66. Aggregates of such information may be prepared and such aggregates shall be public records. All information collected under

this section may be shared with other states which afford such information similar protection from public disclosure.

SECTION 8. Clause (ii) of subsection (a) of section 3D of chapter 23A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 50, the word "space." and inserting in place thereof the following:- space;

(K) the area has been designated by the municipality as an area with potential for the development of a Class I renewable energy generating sources, as defined by section 11F of chapter 25A.

SECTION 9. Chapter 25 of the General Laws is hereby amended by inserting after section 5D the following section:-

Section 5E. The department may, from time to time, audit all companies subject to its jurisdiction, except steam distribution companies. Such audits may include, but shall not be limited to, review of the following documents: (a) all financial statements, the balance sheet, the income statement, the statement of cash flows, the statement of retained earnings, the notes to the financial statements, and the information in the annual return to the department; (b) all documents concerning reconciling mechanisms related to rates, prices, charges, or costs and savings related to a merger, acquisition or consolidation within 3 years after the merger, acquisition or consolidation; and (c) documents concerning service quality measure statistics and service quality performance at least every 3 years or whenever service quality penalties equal to or exceed 50 per cent of the maximum.

Upon written complaint of the attorney general requesting an independent audit of a company subject to the department's jurisdiction, the department shall commence a proceeding within 30 days of receipt of the complaint for the purpose of ordering the requested audit in a reasonable time. The results of any audit so ordered shall be filed promptly with the department and each audit shall be paid for by the company that is the subject of the audit.

SECTION 10. Said chapter 25 is hereby further amended by inserting after section 18 the following section:-

Section 18A. The commission may make an assessment against each steam distribution company under the jurisdictional control of the department. Each steam distribution company shall annually report by March 31 its intrastate operating revenues for the previous calendar year to the department. The assessments shall be apportioned according to each steam distribution company's intrastate operating revenues, to produce an annual amount not greater than $600,000, as shall be determined and certified annually by the commission as sufficient to reimburse the commonwealth for funds appropriated

furtherance of the public purposes of the corporation and for such costs of departments and agencies that support or are otherwise consistent with the purposes of the fund.

SECTION 50. Section 7 of chapter 44 of the General Laws, as so appearing, is hereby amended by striking out clause (3B) and inserting in place thereof the following clause:-

(3B) For energy conservation, alternative energy or renewable energy improvements to public buildings or facilities owned or leased by the city or town, or on property owned or leased by the city or town, 20 years.

SECTION 51. Section 1 of chapter 90 of the General Laws, as amended by section 1 of chapter 79 of the acts of 2008, is hereby further amended by inserting before the definition of "Ambulance" the following 2 definitions:-

"Alternative fuel", an energy source used to power a vehicle that does not meet the definition of fuel in section 1 of chapter 64A and is not diesel motor fuel.

"Alternative fuel vehicle", a vehicle powered by alternative fuel with the following attributes:

(a) the capability of operating only on alternative fuel;

(b) its original use was commenced with the taxpayer;

(c) acquired by the taxpayer for use or lease, but not for resale;

(d) is designed to use and uses alternative fuel for a significant portion of the total fuel used for propulsion energy for the vehicle; and

(e) when operating on petroleum fuel, the vehicle model's miles per gallon rating from the United States Environmental Protection Agency exceeds the agency's corporate average fuel economy requirement for the class of vehicles, whether cars or light trucks, in which the vehicle model is classified. The model specification shall include characteristics that affect fuel economy and for which the United States Environmental Protection Agency issues distinct miles per gallon ratings, such as transmission type and engine size.

SECTION 52. Said section 1 of said chapter 90, as so appearing, is hereby further amended by inserting after the definition of "House trailer" the following definition:-

"Hybrid vehicle", a vehicle (a) which draws propulsion energy from onboard sources of stored energy which are both: (1) an internal combustion or heat engine using combustible fuel; and (2) a rechargeable energy storage system; or (b) which, in the case of a passenger vehicle, medium duty passenger vehicle or light truck: (1) for model year 2002 and later model year vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission

Chapter 173

THE COMMONWEALTH OF MASSACHUSETTS

*In the Year Two Thousand and Eight*

*AN ACT* RELATIVE TO TAX FAIRNESS AND BUSINESS COMPETITIVENESS.

*Whereas,* The deferred operation of this act would tend to defeat its purpose, which is to authorize forthwith changes in the rate and administration of the corporate excise, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

SECTION 1. The sixth paragraph of section 5B of chapter 29 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following sentence:- Any revision of the revenue estimate made by the commissioner shall be published and made available to the general public in a conspicuous manner on the commonwealth's official website within 14 days of submission of such revisions to the governor.

SECTION 2. Clause Sixteenth of section 5 of chapter 59 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out paragraph (2) and inserting in place thereof the following paragraph:-

(2) In the case of a business corporation subject to tax under section 39 of chapter 63 that is not a manufacturing corporation, all property owned by the corporation other than the following:- real estate, poles, underground conduits, wires and pipes, and machinery used in the conduct of the business, which term, as used in this clause, shall not be considered to include stock in trade or any personal property directly used in connection with dry cleaning or laundering processes or in the refrigeration of goods or in the air-conditioning of premises or in any purchasing, selling, accounting or administrative function.

SECTION 3. Said clause Sixteenth of said section 5 of said chapter 59, as so appearing, is hereby amended by striking out, in lines 247 to 251, inclusive, the words "(a) a domestic manufacturing corporation or a domestic research and development corporation as defined in section thirty-eight C of chapter sixty-three or (b) a foreign manufacturing corporation or a foreign research and development corporation as defined in section forty-two B of said chapter" and inserting in place thereof the following words:- a

manufacturing corporation or a research and development corporation as defined in section 42B of chapter 63.

SECTION 4. Said clause Sixteenth of said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out, in lines 264 and 265, the words "domestic research and development corporation as defined in section 38C of chapter 63 or a foreign".

SECTION 5. Said clause Sixteenth of said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out paragraph (5) and inserting in place thereof the following paragraph:-

(5) The classification by the commissioner or the appellate tax board of a corporation as a business corporation or a manufacturing corporation, as respectively defined as aforesaid, shall be followed in the assessment under this chapter of machinery used in the conduct of the business.

SECTION 6. Said section 5 of said chapter 59, as so appearing, is hereby further amended by striking out clause Sixteenth A.

SECTION 7. Section 18 of said chapter 59, as so appearing, is hereby amended by striking out, in lines 18 and 19, the words "domestic business and foreign corporations as defined in section thirty of chapter sixty-three" and inserting in place thereof the following words:- business corporations subject to tax under section 39 of chapter 63.

SECTION 8. Said section 18 of said chapter 59, as so appearing, is hereby further amended by striking out, in lines 38 and 39, the words "domestic business or foreign corporation, as defined in section thirty of chapter sixty-three" and inserting in place thereof the following words:- business corporation subject to tax under section 39 of chapter 63.

SECTION 9. Section 33 of said chapter 59, as so appearing, is hereby amended by striking out, in lines 6 to 10, inclusive, the words "domestic business corporations and foreign corporations as respectively defined in section thirty of chapter sixty-three, and domestic manufacturing corporations and foreign manufacturing corporations as respectively defined in sections thirty-eight C and forty-two B of said chapter" and inserting in place thereof the following words:- business corporations subject to tax under section 39 of chapter 63.

SECTION 10. Section 83 of said chapter 59, as so appearing, is hereby amended by striking out, in line 2, the words "domestic and foreign".

SECTION 11. Section 1 of chapter 62 of the General Laws, as so appearing, is hereby amended by adding the following 3 paragraphs:-

(p) "Partnership", an entity that is classified for the taxable year as a partnership for federal income tax purposes, except as otherwise provided in this chapter.

of gain or loss in the event of a conversion of an entity's Massachusetts tax status resulting from this act, with corresponding adjustments to basis or other tax attributes if and as determined by the commissioner to be appropriate.

SECTION 97. There shall be a special municipal relief commission to investigate and study the feasibility of innovative local revenue-generating measures in an effort to provide revenue relief to municipalities. The study shall include, but not be limited to, the expansion of the meals tax, the extension of the rooms tax to other transient accommodations not currently covered under the rooms tax, and other methods of enhancing revenues or containing expenses. The commission shall consist of the senate and house chairs of the joint committee on municipalities and regional government, the chairs of the senate and house committees on ways and means, the senate and house chairs of the joint committee on revenue, the minority leader of the senate or his designee, the minority leader of the house of representatives or his designee, 3 senate members to be appointed by the president of the senate, and 3 house members to be appointed by the speaker of the house of representatives. The senate president and the speaker of the house shall each designate one member as co-chair of the commission. The commission shall report its findings to the joint committee on revenue, the joint committee on municipalities and regional government, and the senate and house committee on ways and means not later than December 15, 2008.

SECTION 98. Notwithstanding any general or special law or rule or regulation to the contrary, the department of revenue shall prepare a feasibility study, together with a draft of legislation amending chapters 64H and 64I of the General Laws, and such other changes in the General Laws as may be necessary to bring the commonwealth into full compliance with the Streamlined Sales and Use Tax Agreement in furtherance of section 82 of chapter 4 of the acts of 2003. The department shall file its report, together with any recommendations for legislation, with the joint committee on revenue and the house and senate committees on ways and means not later than December 1, 2008.

SECTION 99. Notwithstanding any general or special law or rule or regulation to the contrary, the department of housing and economic development, after consultation with the department of revenue and the department of business and technology, shall report by March 15, 2012, and every 3 years thereafter, on the impacts of this act on employment in the commonwealth. Said report shall be submitted to the clerks of the senate and the house of representatives and the chairs of the senate and house committees on ways and means.

SECTION 100. There shall be a special commission to review the corporate tax laws of the commonwealth. The investigation shall include, but not be limited to, the modernization and simplification of the current business tax laws, as well as rate structure, reporting mechanisms of corporations, and the use and effectiveness of the single-sales tax formula, including such formula's impact on job growth, business expansion and state tax revenues and the overall contribution of the formulas to the economic climate in the commonwealth, and a recommendation on retaining, expanding or terminating the use of the single-sales tax formula or adopting a new apportionment formula or formulas. The commission shall consist of the chairs of the senate and house committees on ways and means or their designees, who shall serve as co-chairs, the senate and house chairs of the joint committee on revenue, or their designees, 2 house members appointed by the speaker, 2 house members appointed by the house minority leader, 2 senate members appointed by the senate president and 2 senate members appointed by the senate minority leader. The commission shall collect and evaluate data, and shall file a report of the results of its investigation with the clerks of the senate and the house of representatives on or before March 31, 2009. The report shall include recommendations and a draft of any legislation necessary to address the revision of the corporate tax laws of the commonwealth.

SECTION 101. Sections 2 to 93, inclusive, shall be effective for tax years beginning on or after January 1, 2009.

SECTION 102. Section 1 and sections 94 to 100, inclusive, shall take effect upon enactment.

House of Representatives, July 1, 2008.

Preamble adopted, Paul J. Donato, Acting Speaker.

In Senate, July 1, 2008.

Preamble adopted, Joan M. Menard, Acting President.

House of Representatives, July 1, 2008.

Bill passed to be enacted, Paul J. Donato, Acting Speaker.

In Senate, July 1, 2008.

Bill passed to be enacted, , President.

3 July, 2008.

Approved,

at 10 o'clock and 50 minutes, A. M.

Governor.

H 4900

*Chapter* 182

THE COMMONWEALTH OF MASSACHUSETTS

*In the Year Two Thousand and Eight*

*AN ACT* MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2009 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, 2008, 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 1. To provide for the maintenance of the several departments, boards, commissions and institutions and other services, and for certain permanent improvements and to meet certain requirements of law, the sums set forth in sections 2, 2B, 2D and 3, for the several purposes and subject to the conditions specified in sections 2, 2B, 2D and 3, are hereby appropriated from the General Fund unless specifically designated otherwise, subject to the provisions of law regulating the disbursement of public funds and the approval thereof for the fiscal year ending June 30, 2009. All sums appropriated under this act, including supplemental and deficiency budgets, shall be expended in a manner reflecting and encouraging a policy of nondiscrimination and equal opportunity for members of minority groups, women and handicapped persons. All officials and employees of an agency, board, department, commission or division receiving monies under this act shall take affirmative steps to ensure equality of opportunity in the internal affairs of state government, as well as in their relations with the public, including those persons and organizations doing business with the commonwealth. Each agency, board, department, commission or division, in spending appropriated sums and discharging its statutory responsibilities, shall adopt measures to ensure equal opportunity in the areas of hiring, promotion, demotion or transfer, recruitment, layoff or termination, rates of compensation, in-service or apprenticeship training programs and all terms and conditions of employment.

SECTION 3. Notwithstanding any general or special law to the contrary, for the fiscal year ending June 30, 2009 the distribution to cities and towns of the balance of the State Lottery Fund, as paid by the treasurer from the General Fund in accordance with clause (c) of the second paragraph of section 35 of chapter 10 of the General Laws, shall be $810,875,000 and shall be apportioned to the cities and towns in accordance with this section.

Notwithstanding any general or special law to the contrary, the total amounts to be distributed and paid to each city and town from the General Fund, shall be $124,153,283 and shall be apportioned to the cities and towns in accordance with this section; provided further, that said payments shall be considered part of the distribution to cities and towns of the balance of the State Lottery Fund for the purpose of the definition of "General revenue sharing aid" in section 2 of chapter 70 of the General Laws.

Notwithstanding any general or special law to the contrary, the total amounts to be distributed and paid to each city and town from item 0611-5500 of section 2 shall be as set forth in the following lists. The amounts to be distributed from said item 0611-5500 of said section 2 shall be in full satisfaction of the amounts due under section 37 of chapter 21 of the General Laws.

Notwithstanding section 2 of chapter 70 of the General Laws or any other general or special law to the contrary, except for section 12B of chapter 76 and section 89 of chapter 71 of the General Laws, for fiscal year 2009 the total amounts to be distributed and paid to each city and town from item 7061-0008 of section 2 shall be as set forth in the following lists. The specified amounts to be distributed from said item 7061-0008 of said section 2 shall be in full satisfaction of the amounts due under chapter 70 of the General Laws.

For fiscal year 2009, the foundation budget categories for each district shall be calculated in the same manner as in fiscal year 2008. The target local share shall be calculated using the same methodology used in fiscal year 2008. Preliminary local contribution shall be the municipality's fiscal year 2008 minimum required local contribution, increased or decreased by the municipal revenue growth factor; provided, that if a municipality's preliminary contribution as a percentage of foundation is more than 5 percentage points lower than the target local share, the preliminary contribution shall be recalculated using the municipality's revenue growth factor plus 1 percentage point; provided further, that if a municipality's preliminary contribution as a percentage of foundation is more than 10 percentage points lower than the target local share, the preliminary contribution shall be recalculated using the municipality's revenue growth

factor plus 2 percentage points. Required local contributions shall be calculated using the same methodology used in fiscal year 2008; provided, that in any municipality with a preliminary contribution higher than its target local contribution, required local contribution shall be the preliminary local contribution reduced by 33 per cent of the gap between the preliminary local contribution and the target local contribution. Required local contribution shall be allocated among the districts to which a municipality belongs in direct proportion to the foundation budgets for the municipality's pupils at each of those districts.

For fiscal year 2009, the "foundation aid increment" shall be the difference between: (a) the positive difference between a district's foundation budget and its required district contribution; and (b) prior year aid. The "down payment aid increment" shall be 33 per cent of the positive difference between 100 per cent of a district's target aid share and its prior year chapter 70 aid, minus the foundation aid increment; provided, that the target aid share shall be calculated in the same way as in fiscal year 2008 using updated income, equalized valuation and foundation budget data. The minimum target aid share shall be 17.5 per cent. The "growth aid increment" shall be equal to (a) the product of the target aid percentage multiplied by the difference between the current and prior year foundation budget minus (b) the foundation aid increment and down payment aid increment. The "minimum aid increment" shall be equal to (a) $50 multiplied by the district's foundation enrollment minus (b) the sum of the foundation aid increment, down payment aid increment and growth aid increment. In no case shall the foundation aid increment, down-payment aid increment, growth aid increment, or minimum aid increment be less than zero.

Chapter 70 aid for fiscal year 2009 shall be the sum of prior year aid plus the foundation aid increment plus the down payment aid increment, if any, plus the growth increment, if any, plus the minimum aid increment, if any. No district shall receive chapter 70 aid in an amount greater than the district's foundation budget. If there is a conflict between the language of this section and the distribution listed below, the distribution below shall control.

The department of education shall not consider health care costs for retired teachers to be part of net school spending for any district in which such costs were not considered part of net school spending in fiscal year 1994.

No payments to cities, towns or counties maintaining an agricultural school pursuant to this section shall be made after November 30 of the fiscal year by the state treasurer until he receives certification from the

commissioner of revenue of the commissioner's acceptance of the prior fiscal year's annual financial reports submitted pursuant to section 43 of chapter 44 of the General Laws. The state treasurer shall make advance payments 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 administration and finance, pursuant to guidelines established by the secretary.

| Municipality | 7061-0008 Chapter 70 | 0611-5500 Additional Assistance | Lottery Aid Funded Through Lottery Revenues | General Fund Supplement to Hold Harmless Lottery Aid | Total Lottery |
|---|---|---|---|---|---|
| ABINGTON | 7,808,577 | 0 | 2,123,221 | 325,087 | 2,448,308 |
| ACTON | 5,228,141 | 29,696 | 1,484,039 | 227,222 | 1,711,261 |
| ACUSHNET | 6,510,503 | 23,875 | 1,615,787 | 247,394 | 1,863,181 |
| ADAMS | 9,141 | 35,042 | 2,148,435 | 328,947 | 2,477,382 |
| AGAWAM | 16,486,547 | 0 | 3,976,245 | 608,804 | 4,585,049 |
| ALFORD | 0 | 0 | 14,564 | 2,230 | 16,794 |
| AMESBURY | 9,079,191 | 0 | 2,099,746 | 321,493 | 2,421,239 |
| AMHERST | 6,266,707 | 222,910 | 8,513,025 | 1,303,431 | 9,816,456 |
| ANDOVER | 7,467,975 | 0 | 1,928,601 | 295,289 | 2,223,890 |
| AQUINNAH | 0 | 0 | 2,521 | 386 | 2,907 |
| ARLINGTON | 6,229,294 | 4,491,775 | 4,293,083 | 657,315 | 4,950,398 |
| ASHBURNHAM | 0 | 0 | 755,093 | 115,613 | 870,706 |
| ASHBY | 0 | 0 | 411,706 | 63,036 | 474,742 |
| ASHFIELD | 99,291 | 0 | 200,377 | 30,680 | 231,057 |
| ASHLAND | 4,593,982 | 291,598 | 1,206,702 | 184,758 | 1,391,460 |
| ATHOL | 0 | 4,377 | 2,464,613 | 377,358 | 2,841,971 |
| ATTLEBORO | 30,251,302 | 0 | 6,157,435 | 942,766 | 7,100,201 |
| AUBURN | 5,807,803 | 0 | 1,848,442 | 283,015 | 2,131,457 |
| AVON | 880,355 | 400,636 | 400,636 | 61,342 | 461,978 |
| AYER | 4,253,186 | 44,218 | 778,730 | 119,232 | 897,962 |
| BARNSTABLE | 7,744,649 | 0 | 2,270,301 | 347,606 | 2,617,907 |
| BARRE | 17,858 | 0 | 877,692 | 134,384 | 1,012,076 |
| BECKET | 81,381 | 8,580 | 90,577 | 13,868 | 104,445 |
| BEDFORD | 3,025,145 | 484,271 | 819,014 | 125,400 | 944,414 |
| BELCHERTOWN | 13,164,100 | 0 | 1,836,460 | 281,181 | 2,117,641 |
| BELLINGHAM | 8,560,993 | 0 | 1,831,429 | 280,411 | 2,111,840 |
| BELMONT | 4,603,815 | 827,483 | 1,719,422 | 263,261 | 1,982,683 |
| BERKLEY | 5,537,165 | 0 | 656,712 | 100,549 | 757,261 |
| BERLIN | 539,078 | 0 | 217,605 | 33,318 | 250,923 |
| BERNARDSTON | 0 | 0 | 306,124 | 46,871 | 352,995 |
| BEVERLY | 7,254,770 | 2,452,442 | 4,176,202 | 639,419 | 4,815,621 |
| BILLERICA | 17,465,958 | 2,349,321 | 4,247,616 | 650,354 | 4,897,970 |
| BLACKSTONE | 127,344 | 0 | 1,291,572 | 197,753 | 1,489,325 |
| BLANDFORD | 45,414 | 0 | 136,166 | 20,849 | 157,015 |
| BOLTON | 5,769 | 0 | 213,098 | 32,628 | 245,726 |
| BOSTON | 221,422,839 | 164,211,152 | 62,079,987 | 9,505,083 | 71,585,070 |
| BOURNE | 5,049,097 | 352,555 | 1,276,459 | 195,439 | 1,471,898 |
| BOXBOROUGH | 1,394,863 | 0 | 272,260 | 41,686 | 313,946 |
| BOXFORD | 1,653,884 | 36,411 | 493,108 | 75,500 | 568,608 |
| BOYLSTON | 460,908 | 0 | 369,704 | 56,605 | 426,309 |
| BRAINTREE | 9,517,288 | 3,378,041 | 3,246,720 | 497,106 | 3,743,826 |
| BREWSTER | 957,078 | 0 | 426,164 | 65,250 | 491,414 |
| BRIDGEWATER | 85,768 | 0 | 3,456,202 | 529,180 | 3,985,382 |
| BRIMFIELD | 1,190,971 | 0 | 420,808 | 64,430 | 485,238 |
| BROCKTON | 128,909,020 | 4,310,392 | 18,861,064 | 2,887,822 | 21,748,886 |

SECTION 12. Section 102 of said chapter 32, as so appearing, is hereby amended by striking out, in lines 32, 36 and 43, the figure "$12,000" and inserting in place thereof, in each instance, the following figure:- $16,000.

SECTION 13. Section 8 of chapter 44B of the General Laws, as so appearing, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-

(a) Except as otherwise provided, the fees of the registers of deeds to be paid when a document or instrument is recorded shall be subject to a surcharge of $20; provided, however, that if the document or instrument to be filed includes multiple references to a document or instrument intending or attempting to assign, discharge, release, partially release, subordinate or notice any other document or instrument, each reference shall be separately indexed and separately assessed an additional $20 surcharge. The fee for recording a municipal lien certificate shall be subject to a surcharge of $10; provided, however, that if the certificate includes multiple references to a document or instrument intending or attempting to assign, discharge, release, partially release, subordinate or notice any other document or instrument, each reference shall be separately indexed and separately assessed an additional $10 surcharge. The surcharges imposed shall be used for community preservation purposes. No surcharge shall apply to a declaration of homestead under chapter 188. No surcharge shall apply to the fees charged for additional pages, photostatic copies, abstract cards or additional square feet for the recording of plans.

SECTION 14. Section 5 of chapter 59 of the General Laws, as so appearing, is hereby amended by striking out, in line 991, the words "forty thousand dollars" and inserting in place thereof the following words:- the amount of income determined by the commissioner of revenue for the purposes of subsection (k) of section 6 of chapter 62, for a single person who is not a head of household.

SECTION 15. Section 15 of chapter 60 of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the words "five dollars" and inserting in place thereof the following words:- not more than $30.

SECTION 16. Section 1 of chapter 60A of the General Laws, as so appearing, is hereby amended by inserting after the seventh paragraph the following 2 paragraphs:-

In any city or town accepting the provisions of this paragraph, the excise imposed by this chapter shall not apply to a motor vehicle owned and registered by a resident who is in active and full-time military service as a member in the armed forces of the United States or the national guard, army

or air, of any state, and has been deployed or stationed outside the territorial boundaries of the continental United States for a period of at least 45 days in the calendar year of the exemption. If the military member is wounded or killed in an armed conflict, he shall not be subject to the foregoing period of service qualification for the calendar year in which he is wounded or killed. This exemption shall apply only to a motor vehicle owned and registered by a military member in his own name or jointly with a spouse for a non-commercial purpose and a military member may qualify for this exemption for only 1 motor vehicle for each calendar year. A municipality which accepts the provisions of this paragraph shall, in connection with the issuance of warrant to collect unpaid motor vehicle or trailer excise tax from a delinquent taxpayer, add $3 to the fee prescribed in clause 9 of section 15 of chapter 60. The acceptance by a municipality of this paragraph shall take effect on the first day of January next occurring after the approval by the municipality to accept this paragraph.

A person who qualifies for any calendar year for exemption from the excise imposed by this section on a motor vehicle owned and registered by him shall be entitled to the exemption upon application to the assessors for that year as provided in section 2 for the procedure of an owner aggrieved by the excise assessed. An application for exemption may be made by such person; his spouse, if the motor vehicle is jointly owned and registered in the names of the person and spouse; or, if the person is deceased, a surviving spouse, administrator, executor or trustee of the estate, will or trust, as the case may be.

SECTION 17. Said chapter 60A is hereby further amended by adding the following section:-

Section 9. In any city or town accepting the provisions of this section and notwithstanding any other provision of this chapter to the contrary, any excise due under this chapter by a member of the Massachusetts National Guard or reservist or a dependent of a member of the Massachusetts National Guard or reservist shall be deferred while that member is on active service outside the commonwealth and for a period of up to 180 days after completion of that service. No interest or penalties shall be assessed for any period before the expiration of the 180 days.

SECTION 18. Section 6 of chapter 62 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in line 191, the word "five" and inserting in place thereof the following figure:- 6.

SECTION 19. Section 2 of chapter 62B of the General Laws, as so appearing, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:-

(c) A limited liability company administratively dissolved continues in existence, but shall not carry on any business except that necessary to wind up and liquidate its affairs.

Section 71. A limited liability company administratively dissolved under section 70 or whose authority to transact business in the commonwealth has been revoked under section 72 may apply to the state secretary for reinstatement at any time. The application shall:

(1) recite the name of the limited liability company and the effective date of its administrative dissolution or revocation;

(2) state that the grounds for dissolution or revocation either did not exist or have been corrected;

(3) state that the name of the limited liability company satisfies the requirements of section 3; provided, however, that if the state secretary determines that the application contains the full and correct information, he shall reinstate the limited liability company.

Section 72. (a) The state secretary may commence a proceeding to revoke the authority of a foreign limited liability company to transact business in the commonwealth if:

(1) the limited liability company has failed for 2 consecutive years to comply with the laws requiring the filing of annual reports; or

(2) he is satisfied that the revocation of the limited liability company's authority to transact business in the commonwealth would be in the public interest.

(b) If the state secretary determines that grounds exist under subsection (a), he shall serve the limited liability company with written notice of his determination. The notice shall be sent to the address of the foreign limited liability company. If, within 90 days after the notice, the limited liability company fails to correct each ground for revocation or demonstrates to the reasonable satisfaction of the state secretary that each ground determined by the secretary of state does not exist, the state secretary shall administratively revoke the authority of the foreign limited liability company to transact business in the commonwealth.

(c) The authority of the foreign limited liability company to transact business in the commonwealth shall cease on the date on which the state secretary makes such revocation effective.

SECTION 62. Section 9 of chapter 161A of the General Laws, as so appearing, is hereby amended by inserting after the word "assessment", in lines 25 and 26, the following words:- ; and provided further, that the amount credited shall be the most recently audited regional transit authority

assessment available on January 1 of each year and shall be used to calculate the upcoming fiscal year's estimated cherry sheet assessments.

SECTION 63. The second paragraph of section 9 of chapter 161B of the General Laws, as so appearing, is hereby amended by adding the following sentence:- Amounts assessed under this section shall be the most recently audited regional transit authority assessment available on January 1 of each year and shall be used to calculate the upcoming fiscal year's estimated cherry sheet assessments.

SECTION 64. The last paragraph of section 9A of said chapter 161B of the General Laws, as so appearing, is hereby amended by adding the following sentence:- Amounts assessed under this section shall be the most recently audited regional transit authority assessment available on January 1 of each year and shall be used to calculate the upcoming fiscal year's estimated cherry sheet assessments.

SECTION 65. Section 10 of said chapter 161B, as so appearing, is hereby amended by inserting after the third paragraph the following paragraph:-

If at any time any principal or interest is due or about to come due on any note issued by the authority pursuant to this section and funds to pay the same are not available, the administrator shall certify to the state treasurer the amount required to meet the obligation and the commonwealth shall thereupon pay over to the authority that amount. If the commonwealth shall not make the payment within a reasonable time, the authority or any holder of an unpaid note issued by the authority pursuant to this section, acting in the name and on behalf of the authority, shall have the right to require the commonwealth to pay the authority the amount remaining unpaid, which right shall be enforceable as a claim against the commonwealth. The authority or any holder of an unpaid note issued pursuant to this section may file a petition in the superior court to enforce a claim or intervene in any proceeding already commenced to enforce such a claim. Chapter 258 shall apply to the petition insofar as it relates to the enforcement of a claim against the commonwealth. Any holder of an unpaid note who shall have filed such a petition may apply for an order of the court requiring the authority to apply funds received by the authority on its claim against the commonwealth to the payment of the holder's unpaid note, and, if the court finds such amount to be due to the holder, shall issue the order.

SECTION 66. Section 12 of chapter 161B of the General Laws, as so appearing, is hereby amended by inserting the following paragraph:

A copy of each biennial audit shall be provided to the chairs of the senate and house committees on ways and means and the senate and house chairs of the joint committee on bonding, capital expenditures and state assets.

SECTION 72. Section 94 of said chapter 221, as so appearing, is hereby amended by striking out, in line 16, the figure "78.27" and inserting in place thereof the following figure:- 82.50.

SECTION 73. Chapter 252 of the General Laws is hereby amended by inserting after section 14C the following section:-

Section 14D. Mosquito control projects and mosquito control districts shall have sole authority in all personnel decisions including, but not limited to, the following: the hiring and firing of personnel; the establishment of rates of compensation for personnel representative of the regional economy; and the hiring of appropriate outside professionals deemed necessary to carry out and fulfill statutory obligations.

SECTION 74. Chapter 262 of the General Laws is hereby amended by striking out section 38 and inserting in place thereof the following section:-

Section 38. Except as otherwise provided, the fees of the registers of deeds to be paid when an instrument is recorded shall be as follows:

For entering and recording any paper, certifying the same on the original, and indexing it and all other duties pertaining thereto, $50; provided, however, that if the paper includes multiple references to a document or instrument intending or attempting to assign, discharge, release, partially release, subordinate or notice any other document or instrument, each reference shall be separately indexed and separately assessed an additional $50 fee;

For recording a declaration of trust, $200;

For recording a deed or conveyance, $100;

For recording a mortgage, $150;

For recording a declaration of homestead, $30;

For recording and filing a plan, $50 per sheet; and

For all copies of documents, whether copied out of books or generated electronically, $1 per page, and all coin-operated copy machines shall be $.50 per page.

Except as otherwise provided, the fees of the registers of deeds to be paid when the instrument is recorded shall be subject to a surcharge under section 8 of chapter 44B.

SECTION 75. Chapter 278 of the General Laws is hereby amended by inserting after section 28C the following section:-

Section 28D ½. The clerk of the appellate division shall receive from the commonwealth as salary an amount equal to 10 per cent of, and in addition to, the salary established and paid to said clerk of the superior court for criminal business in the county of Suffolk.

SECTION 76. Section 44 of chapter 85 of the acts of 1994, as most recently amended by section 19 of chapter 23 of the acts of 2002, is hereby further amended by inserting after the words "Mount Greylock state reservation" the following words:- , Whitehead House at Willowdale state forest, Kerighan House at Bradley Palmer state park.

SECTION 77. Chapter 137 of the acts of 2003, as amended by section 2 of chapter 77 of acts of 2005, is hereby further amended by striking out section 21 and inserting in place thereof the following section:-

Section 21. Section 1 shall expire on September 11, 2011. Sections 2 and 3 shall expire on September 11, 2005.

SECTION 78. Section 417 of chapter 149 of the acts of 2004, is hereby amended by striking out, in line 2, the figure "2009", inserted by section 82 of chapter 139 of the acts of 2006, and inserting in place thereof the following figure:- 2011.

SECTION 79. Chapter 58 of the acts of 2006 is hereby amended by striking out section 128, as amended by section 40 of chapter 61 of the acts of 2007, and inserting in place thereof the following section:-

Section 128. Notwithstanding any general or special law to the contrary and in accordance with section 13B of chapter 118E of the General Laws, in fiscal year 2007, $90,000,000 shall be made available from the Commonwealth Care Trust Fund, established pursuant to section 2000 of chapter 29 of the General Laws, to pay for an increase in the Medicaid rates paid to acute hospitals and physicians; but not less than 15 per cent of the increase shall be allocated to rate increases for physicians. For fiscal year 2008, an additional $90,000,000, for a total of $180,000,000, shall be made available from said Commonwealth Care Trust Fund in accordance with this section, to pay for an increase in the Medicaid rates paid to acute hospitals and physicians; but not less than 15 per cent of the increase shall be allocated to rate increases for physicians. In fiscal year 2009, an additional $90,000,000, for a total of $270,000,000, shall be made available from said Commonwealth Care Trust Fund to pay for an increase in the Medicaid rates paid to acute hospitals, as defined in section 1 of chapter 118G of the General Laws, and physicians; but not less than 15 per cent of the increase shall be allocated to rate increases for physicians. In fiscal year 2008, not more than $20,000,000 of the amounts to be made available to acute hospitals under this section shall be contingent on hospital adherence to quality standards and achievement of performance benchmarks, including the reduction of racial and ethnic disparities in the provision of health care, in accordance with said section 13B of said chapter 118E, and may be paid in fiscal year 2009. In fiscal year 2009, not more than $58,000,000 of the

of the General Laws. To the extent that the amount transferred pursuant to paragraph (1) of section 22C of said chapter 32 exceeds the amount necessary to adequately fund the annual pension obligations, the excess amount shall be credited to the Pension Reserves Investment Trust Fund of the commonwealth for the purpose of reducing the unfunded pension liability of the commonwealth.

SECTION 100. (a) Notwithstanding any general or special law to the contrary, upon the request of the board of selectmen in a town, the city council in a plan E city, or the mayor in any other city, the department of revenue may recalculate the minimum required local contribution, as defined in section 2 of chapter 70 of the General Laws, in the fiscal year ending June 30, 2009. Based on the criteria established in this section, the department shall recalculate the minimum required local contribution for a municipality's local and regional schools and shall certify the amounts calculated to the department of education.

(b) A city or town that used qualifying revenue amounts in a fiscal year which will not be available for use in the next fiscal year, or that will be required to use revenues for extraordinary non school-related expenses for which it did not have to use revenues in the preceding fiscal year, or that has an excessive certified municipal revenue growth factor which is also greater than or equal to 1.5 times the state average municipal revenue growth factor, may appeal to the department of revenue on or before October 1, 2008 for an adjustment of its minimum required local contribution and net school spending.

(c) If a claim is determined to be valid, the department of revenue may reduce proportionately the minimum required local contribution amount based on the amount of shortfall in revenue or based on the amount of increase in extraordinary expenditures in the current fiscal year, but no adjustment to the minimum required local contribution on account of an extraordinary expense in the budget for the fiscal year ending on June 30, 2009 shall affect the calculation of the minimum required local contribution in subsequent fiscal years. Qualifying revenue amounts shall include, but not be limited to, extraordinary amounts of free cash, overlay surplus and other available funds.

(d) If, upon submission of adequate documentation, the department of revenue determines that the municipality's claim regarding an excessive municipal revenue growth factor is valid, the department shall recalculate the municipal revenue growth factor and the department of education shall use the revised growth factor to calculate the preliminary local contribution, the minimum required local contribution and any other factor that directly or

indirectly uses the municipal revenue growth factor. Any relief granted as a result of an excessive municipal revenue growth factor shall be a permanent reduction in the minimum required local contribution.

(e) The board of selectmen in a town, the city council in a plan E city, the mayor in any other city, or a majority of the member municipalities of a regional school district, which used qualifying revenue amounts in a fiscal year that will not be available for use in the next fiscal year, may appeal to the department of revenue not later than October 1, 2008 for an adjustment to its net school spending requirement. If the claim is determined to be valid, the department of revenue shall reduce the net school spending requirement based on the amount of the shortfall in revenue and reduce the minimum required local contribution of member municipalities accordingly. Qualifying revenue amounts shall include, but not be limited to, extraordinary amounts of excess and deficiency, surplus and uncommitted reserves.

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

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

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

(i) The amount of financial assistance due from the commonwealth in fiscal year 2009 pursuant to chapter 70 of the General Laws or any other law shall not be changed on account of any redetermination of the minimum required local contribution pursuant to this section.

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

SECTION 101. Notwithstanding any general or special law to the contrary, the executive office of health and human services may promulgate regulations allowing any dentist participating in the MassHealth program to limit the number of MassHealth patients in his practice in accordance with standards or procedures to be established by the executive office.

SECTION 102. Notwithstanding any general or special law to the contrary, the executive office of health and human services under section 16 of chapter 6A of the General Laws, acting in its capacity as the single state agency under Title XIX of the Social Security Act and as the principal agency for all of the agencies within the executive office, and other federally assisted programs administered by the executive office, may enter into interdepartmental services agreements with the University of Massachusetts medical school to perform activities that the secretary, in consultation with the comptroller, determines are appropriate and within the scope of the proper administration of Title XIX and other federal funding provisions to support the programs and activities of the executive office. These activities shall include: (1) providing administrative services, including, but not limited to, activities such as providing the medical expertise to support or administer utilization management activities, determining eligibility based on disability, supporting case management activities and similar initiatives; (2) providing consulting services related to quality assurance, program evaluation and development, integrity and soundness and project management; and (3) providing activities and services for the purpose of pursuing federal reimbursement or avoiding costs, third party liability and recouping payments to third parties. Federal reimbursement for any expenditures made by the University of Massachusetts medical school relative to federally reimbursable services the university provides under these interdepartmental service agreements or other contracts with the executive office of health and human services shall be distributed to the university, and recorded distinctly in the state accounting system. The secretary may negotiate contingency fees for activities and services related to the purpose of pursuing federal reimbursement or avoiding costs, and the comptroller shall certify these fees and pay them upon the receipt of this revenue, reimbursement or demonstration of costs avoided. Contracts for contingency fees shall not extend longer than 3 years, and shall not be renewed without prior review and approval from the executive office of administration and finance. The secretary shall not pay contingency fees in excess of $40,000,000 for state fiscal year 2009. The secretary of health and human services shall submit to the secretary of

1 of whom shall be appointed by the house minority leader; 3 of whom shall be members of the senate, 2 of whom shall be appointed by the senate president and 1 of whom shall be appointed by the senate minority leader; and 4 members to be appointed by the governor, 1 of whom shall be a private citizen who shall serve as chair of the commission and shall not be a member of any of the 106 contributory retirement systems, 1 of whom shall have professional experience in employee benefits or in actuarial science, 1 of whom shall be a member of the Massachusetts Municipal Association; and 1 of whom shall be a member of the Retired State, County and Municipal Employees Association of Massachusetts. The commission shall convene its first official meeting no later than September 1, 2008.

The commission shall make a comprehensive study of the Massachusetts contributory retirement systems. The study shall include but shall not be limited to: contribution rates paid by employers and employees; vesting periods; the weight given to age versus years of service in the current system; the portability of benefits in the current system; cost-of-living-adjustments with special attention paid to the cost of increasing the cost-of-living-adjustments base and the cost of any recommendations the commission may make.

The public employee retirement administration commission shall conduct an actuarial analysis to determine the costs of any recommendations made by the commission. The commission shall file a report of its study together with the actuarial analysis and any recommendations for legislation, if any, with the clerks of the house and senate, the chairs of the house and senate committee on ways and means and the chairs of the joint committee on public service no later than July 1, 2009.

SECTION 112. There shall be established a special commission to investigate and study the manner in which municipalities and towns of the commonwealth balance their fiscal year budgets, including the accounting methods utilized by said cities and towns. The commission shall be appointed by the governor and shall consist of 10 members as follows: the house and senate chairmen of the joint committee on municipalities who shall serve as co-chairs of this special commission, the house and senate chairmen of the committees on ways and means, or their designees, the speaker of the house of representatives or his designee, the president of the senate or her designee, the state auditor, or his designee, the commissioner of the department of revenue or his designee, a representative of the executive office of administration and finance, and a representative of the Massachusetts Municipal Association. The commission shall report to the general court the results of its study, together with drafts of legislation necessary to carry

such recommendations into effect, by filing the same with the clerks of the house of representatives and senate on or before December 31, 2008.

SECTION 113. The department of developmental services shall serve the same population as the department of mental retardation and shall not exclude any class of individuals that is currently receiving services from the department of mental retardation. This name change is solely for administrative purposes and shall not determine the scope of individuals served by the department.

SECTION 114. Notwithstanding any general or special law to the contrary, any additional costs that are incurred by a regional transit authority as a result of the implementation of sections 62, 63 and 64 shall not be the obligation of the commonwealth and shall not be paid for by any funds of the commonwealth.

SECTION 115. Sections 9 and 113 of this act shall take effect on June 30, 2009.

SECTION 116. Sections 13 and 74 of this act shall take effect as of March 5, 2003.

SECTION 117. Sections 16 and 18 of this act shall take effect on January 1, 2010.

SECTION 118. Sections 20, 27 to 31, inclusive, 37, 38 and 97 of this act shall take effect on October 1, 2008.

SECTION 119. Sections 26 of this act shall take effect on January 1, 2009.

SECTION 120. Sections 40, 42 and 43 of this act shall apply to sales of tobacco products occurring on or after September 1, 2008, by manufacturers, wholesalers, unclassified acquirers and other persons specified in section 43.

SECTION 121. Except as otherwise specified, this act shall take effect on July 1, 2008.

ENDORSEMENTS FOLLOW ON PAGE 476

House of Representatives, July 3, 2008.

Preamble adopted,

Paul J. Donato, Acting Speaker.

In Senate, July 3, 2008.

Preamble adopted,

President.

House of Representatives, July 3, 2008.

Bill passed to be enacted,

Paul J. Donato, Acting Speaker.

In Senate, July 3, 2008.

Bill passed to be enacted,

President.

I disapprove the following items:

in Section 2

7003-1641
7061-0222
7061-9805

I disapprove Sections 18, 73, 90, 91, and 92.

I reduce the following items in Section 2 to the following amounts:

| Section 2 | Reduce By | Reduce To |
|---|---|---|
| 0320-0010 | 53,554 | 1,229,651 |
| 0321-1500 | 458,465 | 28,836,138 |
| 0321-2100 | 145,824 | 840,000 |
| 0321-2205 | 100,000 | 2,129,671 |
| 0330-3200 | 859,469 | 65,251,601 |
| 0330-3337 | 2,768,854 | 18,454,205 |
| 0339-1001 | 7,630,158 | 134,741,944 |
| 0339-1003 | 1,656,417 | 6,119,837 |
| 0339-1004 | 206,045 | 19,110,141 |
| 0340-0300 | 42,900 | 8,708,824 |
| 0340-0400 | 45,125 | 9,205,303 |
| 0340-0500 | 40,828 | 8,288,151 |
| 0340-0600 | 25,421 | 5,160,501 |
| 0340-0700 | 41,810 | 8,487,415 |
| 0340-0800 | 100,000 | 7,299,913 |
| 0340-0900 | 165,000 | 7,536,237 |
| 0340-1000 | 18,447 | 3,744,701 |
| 0340-1100 | 17,968 | 3,647,611 |
| 0611-5800 | 607,500 | 1,592,500 |
| 0640-0096 | 11,066 | 355,945 |
| 1231-1000 | 5,000,000 | 15,000,000 |
| 1599-2009 | 1,220,000 | 1,200,000 |
| 2030-1000 | 107,334 | 11,463,655 |
| 2300-0100 | 46,337 | 747,559 |
| 2800-0401 | 150,000 | 944,643 |
| 2820-0300 | 165,325 | 1,438,634 |
| 4510-0110 | 307,981 | 7,457,772 |
| 4590-0250 | 390,000 | 17,067,134 |
| 5920-2000 | 600,000 | 568,961,352 |

S 2401

*Chapter* 188

THE COMMONWEALTH OF MASSACHUSETTS

*In the Year Two Thousand and Eight*

AN ACT FURTHER REGULATING INTERMUNICIPAL AGREEMENTS.

*Whereas,* The deferred operation of this act would tend to defeat its purpose, which is forthwith to further regulate intermunicipal 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. The first paragraph of section 4A of chapter 40 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The chief executive officer of a city or town, or a board, committee or officer authorized by law to execute a contract in the name of a governmental unit may, on behalf of the unit, enter into an agreement with another governmental unit to perform jointly or for that unit's services, activities or undertakings which any of the contracting units is authorized by law to perform, if the agreement is authorized by the parties thereto, in a city by the city council with the approval of the mayor, in a town by the board of selectmen and in a district by the prudential committee; provided, however, that when the agreement involves the expenditure of funds for establishing supplementary education centers and innovative educational programs, the agreement and its termination shall be authorized by the school committee.

SECTION 2. Said first paragraph of said section 4A of said chapter 40, as so appearing, is hereby further amended by striking out the last sentence and inserting in place thereof the following sentence:- For the purposes of this section, a "governmental unit" shall mean a city, town or a regional school district, a district as defined in section 1A, a regional planning commission, however constituted, a regional transit authority established under chapter 161B, a water and sewer commission established under chapter 40N or by special law, a county, or a state agency as defined in section 1 of chapter 6A.

House of Representatives, Ju 30 2008.

Preamble adopted,

Paul J. Donato Acting, Speaker.

S 2401

In Senate, June 30, 2008.

Preamble adopted, Stan Rosenberg, Acting President.

House of Representatives, June 30, 2008.

Bill passed to be enacted, Paul J. Donato, Acting Speaker.

In Senate, July 8, 2008.

Bill passed to be enacted, Karen O. Spilka, Acting President.

18 July, 2008.

Approved,

at 3 o'clock and 52 ~~minutes~~, P. M.

Governor.

Chapter 302

THE COMMONWEALTH OF MASSACHUSETTS

*In the Year Two Thousand and Eight*

*AN ACT* MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2008 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 2008 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 1. To provide for supplementing certain items in the general appropriation act and other appropriation acts for fiscal year 2008, the sums set forth in section 2 are hereby appropriated from the General Fund unless specifically designated otherwise in this act or in those appropriation acts, for the several purposes and subject to the conditions specified in this act or in those appropriation acts, and subject to the laws regulating the disbursement of public funds for the fiscal year ending June 30, 2008. These sums shall be in addition to any amounts previously appropriated and made available for the purposes of those items. Notwithstanding any general or special law to the contrary, appropriations made in section 2 shall not revert and shall be available for expenditure until June 30, 2009.

SECTION 2.

JUDICIARY

*Trial Court*

0330 3337 ..... $4,000,000

DISTRICT ATTORNEYS

*Suffolk District Attorney*

0340-0101 ..... $41,802

*Northern District Attorney*

0340-0201 ..... $74,813

*Eastern District Attorney*

0340 0301 ..... $27,584

*Worcester District Attorney*

0340-0401 ..... $11,000

SECTION 10. The second paragraph of section 4 of chapter 32A of the General Laws, as so appearing, is hereby amended by striking out the second sentence.

SECTION 11. Section 2A of chapter 64C of the General Laws, as so appearing, is hereby amended by inserting after the word "safety", in line 13, the following words:- and security, or his designee.

SECTION 12. Section 6 of said chapter 64C, is hereby amended by striking out the last paragraph, added by section 2 of chapter 168 of the acts of 2008, and inserting in place thereof the following paragraph:

Notwithstanding section 28, a portion of cigarette excise revenues paid under this section shall be credited to the Commonwealth Care Trust Fund, established in section 2000 of chapter 29. The amount credited to the fund in fiscal year 2009 shall be the sum of: (1) all revenues received in fiscal year 2009 attributable to the inventory tax under chapter 168 of the acts of 2008; and (2) the monthly excess, if any, on cigarette excise payments received in August 2008 to June 2009 over the cigarette excise payments received in the same months in the previous fiscal year, less the amount that the commissioner may reasonably determine equals increased revenues in 2009 due to cigarette stamp encryption and due to taxation of little cigars as cigarettes. The amount credited to the Fund in fiscal year 2010 shall be the monthly excess in cigarette excise payments received in fiscal year 2010 over cigarette excise payments received in the same months in fiscal year 2008, less the amounts that the commissioner may reasonably determine are increased revenues in 2009 due to cigarette stamp encryption and due to taxation of little cigars as cigarettes. The amount credited to the fund in fiscal year 2011 and thereafter shall be the monthly cigarette revenue received in each such year multiplied by the percentage of cigarette excise collections in 2010 that were credited to the fund.

SECTION 13. Section 6 of chapter 70B of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following subsection:-

(e) A city, town or regional school district may borrow for a term of not more than 5 years for the cost of such feasibility studies as may be required to apply for a school facilities grant under this chapter.

SECTION 14. Subparagraph (1) of paragraph (a) of subdivision (1) of section 24 of chapter 90 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

There shall be an assessment of $250 against a person who is convicted of, is placed on probation for, or is granted a continuance without a finding

rate not to exceed an annual percentage rate of 18 per cent and late fees or penalties at a rate not to exceed 5 per cent per month.

SECTION 67. Section 6 shall take effect as of July 1, 2007.

SECTION 68. Section 13 shall take effect as of January 1, 2008.

SECTION 69. Sections 5, 24, 26, 27, 28, 29, 61, 63, 64 and 65 shall take effect as of June 30, 2008.

SECTION 70. Sections 4, 7, 8, 9, 12, 13, 14, 15, 16, 20, 21, 22 and 31 to shall take effect as of July 1, 2008.

SECTION 71. Sections 18, 19 and 58 shall take effect on October 1, 2008.

SECTION 72. Sections 21B and 21D shall take effect on July 1, 2011.

House of Representatives, July 31, 2008.

Preamble adopted, , Speaker.

In Senate, July 31, 2008.

Preamble adopted, , President.

House of Representatives, July 31, 2008.

Bill passed to be enacted, , Speaker.

In Senate, July 31, 2008.

Bill passed to be enacted, , President.

I disapprove Sections 21A, 21B, 21C, 21D, 34, 35, 36, 37, 38, 39, 40 and 72, for the reasons set forth in a separate letter of this date to the Senate and House of Representatives.

The remainder of this bill I approve.

Approved. August 8, 2008

at 9 o'clock and 30 minutes, A .M.

Governor

S 2743

Chapter 310

THE COMMONWEALTH OF MASSACHUSETTS

*In the Year Two Thousand and Eight*

AN ACT RELATIVE TO THE PRESERVATION OF DAIRY FARMS.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to aid in the preservation of the dairy farming industry in the commonwealth, 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 20 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following 5 sections:-

Section 27. Notwithstanding any general or special law to the contrary, the department may offer farm viability technical assistance and implementation funding to an owner of land subject to an agricultural preservation restriction, as defined by section 31 of chapter 184 if such owner demonstrates, in the case of implementation funding, that: the implementation shall improve the economic viability of the farm; retain or create private sector jobs and tax revenue either directly or indirectly associated with a farm business; improve farm productivity and competitiveness; expand farm facilities as part of a modernization or business plan; support renewable energy or environmental remediation projects on farms; or expand and support markets and infrastructure to strengthen the farming industry. The department shall adopt regulations to carry out this section.

Section 28. (a) For the purposes of this section and section 29, the following words and phrases shall have the following meanings:-

"Agriculture", farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer.

"Eligible borrower", any farmer who is a resident of the commonwealth and is at least 18 years of age. A borrower who is otherwise eligible shall not

Section 31. There shall be established and set upon the books of the commonwealth a separate fund to be known as the Dairy Promotion Trust Fund, consisting of revenues received pursuant to subsection (d) of section 30, including any interest or investment earnings on such monies and all other monies credited or transferred thereto from any other fund or source pursuant to law. Any unexpended balance in the fund at the end of the fiscal year shall not revert to the General Fund but shall remain available for expenditure in subsequent fiscal years. No expenditure made from the fund shall cause the fund to become deficient at any point during a fiscal year.

The dairy promotion board, established in subsection (a) of section 30, shall have exclusive authority to receive, deposit, invest and expend monies pursuant to section 30. The books and records of the Dairy Promotion Trust Fund shall be subject to an annual audit by the state auditor.

SECTION 2. Section 8A of chapter 59 of the General Laws, as so appearing, is hereby amended by adding the following paragraph:-

The local appropriating authority, as defined in section 21C, may, by a two-thirds vote, seek voter approval to not impose the excise established by this section.

SECTION 3. Section 6 of chapter 62 of the General Laws, as most recently amended by section 17 of chapter 130 of the acts of 2008, is hereby amended by adding the following subsection:-

(o)(1) There shall be established a dairy farmer tax credit program under which a taxpayer who holds a certificate of registration as a dairy farmer pursuant to section 16A of chapter 94 may be allowed a refundable income tax credit based on the amount of milk produced and sold. The credit shall be claimed against the taxes due pursuant to chapter 62. The credit shall be established to offset the cyclical downturns in milk prices paid to dairy farmers and shall be based on the United States Federal Milk Marketing Order for the applicable market such that if the United States Federal Milk Marketing Order price drops below a trigger price anytime during the taxable year such taxpayer may receive the tax credit.

(2) The commissioner of agricultural resources, in consultation with the commissioner of revenue, shall adopt regulations for the implementation, administration and enforcement of this subsection, including the establishment of the trigger price, which shall take into account the operating costs of milk production, including hired labor and some portion of the value of unpaid labor, and the amount of the tax credit which shall be based upon volume of milk production.

*Chapter* 312

THE COMMONWEALTH OF MASSACHUSETTS

*In the Year Two Thousand and Eight*

*AN ACT* PROVIDING FOR THE PRESERVATION AND IMPROVEMENT OF LAND, PARKS, AND CLEAN ENERGY IN THE COMMONWEALTH.

*Whereas,* The deferred operation of this act would tend to defeat its purpose, which is to provide for preservation and improvement of the environmental assets of the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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

SECTION 1. To provide for a capital outlay program of improvement and preservation of the environmental assets of the commonwealth, the sums set forth in section 2A, for the several purposes and subject to the conditions specified in this act, are hereby made available, subject to the law regulating the disbursement of public funds, which sums are in addition to amounts previously appropriated for such purposes.

NO SECTION 2.

SECTION 2A.

SECRETARY OF THE COMMONWEALTH

*Massachusetts Historical Commission*

0526 2010 For a grant program to units of municipal government and to private, nonprofit organizations for the preservation of historic properties, landscapes and sites; provided further, that such funds shall be awarded in accordance with regulations promulgated by the state secretary, chairman of the Massachusetts historical commission; and provided further, that $20,000 be expended for the Northampton St. Patrick's Association in coordination with the Halligan-Daley Commemoration Committee for the study, preparation of plans, site maintenance and access improvements at the Halligan-Daley Memorial site located in the city of Northampton ..... $30,000,000

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

*Office of the Secretary*

the department of highways under any interagency service agreement shall be carried out according to standards developed by the department of conservation and recreation pursuant to historic parkways preservation treatment guidelines to protect the scenic and historic integrity of the bridges and parkways under its control; and provided further, that final design of the bridges shall be subject to the review and approval of the commissioner of conservation and recreation; provided further, that notwithstanding this act or any other general or special law to the contrary, the Storrow Drive tunnel, as part of the Storrow Esplanade parkland in Boston, shall continue to be under the design control of the department of conservation and recreation, including compliance sections 61 to 62H, inclusive of chapter 30 of the General Laws ..... $250,000,000.

SECTION 3. Chapter 10 of the General Laws is hereby amended by inserting after section 35II the following section:

Section 35JJ. (a) There shall be established the Salisbury Beach Preservation Trust Fund to be used, without further appropriation, for the long-term preservation and maintenance of Salisbury Beach. Any balance in the fund at the end of the fiscal year shall not revert to the General Fund, but shall remain available for expenditure in subsequent fiscal years. No expenditure made from the fund shall cause the fund to become deficient at any point during a fiscal year.

(b) Notwithstanding any general or special law to the contrary, the department of conservation and recreation shall impose a surcharge of $2 upon each fee charged and collected from admission into, camping, and parking in, the Salisbury Beach Reservation. The additional monies collected from the surcharge shall be deposited into the Salisbury Beach Preservation Trust Fund.

SECTION 4. Paragraph (1) of subsection (c) of section 22 of chapter 21A of the General Laws, as appearing in section 7 of chapter 169 of the acts of 2008, is hereby amended by striking out clause (i) and inserting in place thereof the following clause:-

(i) to reimburse a municipality in which the property tax receipts from a coal-fired electric generating station including, for the purposes of this clause, payments in lieu of taxes and other compensation specified in an agreement between a municipality and an affected property owner, are reduced; provided, however that the amount of the payment shall be the difference

between the amount of the property tax receipts, as described above, in fiscal year 2008 and the amount of the property tax receipts, as described above, in subsequent tax years; provided further, that no reimbursement shall be made if, in a tax year, the aggregate amount paid to a municipality by the owner of an electric generating station including, but not limited to, payments in lieu of taxes and property taxes, exceeds the aggregate amount paid to that municipality by that owner in fiscal year 2008; and provided further, that payments from the fund shall be prioritized so that the first payments from the fund shall be made to municipalities under this clause.

SECTION 5. Section 6 of chapter 29C of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the words "cent", in line 34, the following words:- , but all permanent loans and other forms of financial assistance made by the trust to finance the costs of certain water pollution abatement projects on the department's intended use plan for calendar year 2009 to calendar year 2019, inclusive, that meet the criteria listed below shall provide for a subsidy or other assistance in the payment of debt service such that the loans and other forms of financial assistance shall be the financial equivalent of a loan made at a zero rate of interest, and the costs of water pollution abatement projects on an intended use plan that are eligible for a permanent loan or other financial assistance from the trust at the financial equivalent of a loan made at a zero rate of interest shall not exceed 35 per cent of the total costs of all water pollution abatement projects on the intended use plan. Projects that meet the following criteria, as verified by the department of environmental protection, are eligible for the zero rate of interest loans:

(1) the project is primarily intended to remediate or prevent nutrient enrichment of a surface water body or a source of water supply;

(2) the applicant is not currently subject, due a violation of a nutrient-related total maximum daily load standard or other nutrient based standard, to a department of environmental protection enforcement order, administrative consent order or unilateral administrative order, enforcement action by the United States Environmental Protection Agency or subject to a state or federal court order relative to the proposed project;

(3) the applicant has a Comprehensive Wastewater Management Plan approved pursuant to regulations adopted by the Department of Environmental Protection;

(4) the project has been deemed consistent with the regional water resources management plans if one exists;

(5) the applicant has adopted land use controls, subject to the review and approval of the department of environmental protection in consultation

with the department of housing and economic development and, where applicable any regional land use regulatory entity, intended to limit wastewater flows to the amount authorized under zoning and wastewater regulations as of the date of the approval of the CWMP.

SECTION 6. Section 14 of chapter 61A of the General Laws, as so appearing, is hereby amended by striking out, in line 11, the words "forest use of" and inserting in place thereof the following words:- agricultural or horticultural use of such.

SECTION 7. Section 9 of chapter 61B of the General Laws, as so appearing, is hereby amended by striking out, in line 11, the words "forest use of such land" and inserting in place thereof the following words:- use and care of such land for recreational purposes.

SECTION 8. Section 6 of chapter 62 of the General Laws is hereby amended by adding the following subsection:-

(o)(1) As used in this subsection, the following words shall have the following meanings:

"Bargain sale", the sale of an interest in real property by a taxpayer at a cost below appraised market value, when a portion of the value of the interest in real property is a qualified donation, as such term is defined herein and which meets the requirements of section 1011(b) of the Internal Revenue Code of 1986, as amended.

"Certified land", an interest in real property, the donation or bargain sale of which has first been determined by the secretary of environmental affairs to be in the public interest for natural resource protection including, but not limited to, drinking water supplies, wildlife habitat and biological diversity, agricultural and forestry production, recreational opportunities, or scenic and cultural values; provided, however, that the secretary of environmental affairs shall assure that all certified lands are protected in perpetuity.

"Interest in real property", any right in real property in the commonwealth, with or without improvements thereon, or water including, but not limited to, fee simple, life estate, restriction, easement, covenant, condition, partial interest, remainder, future interest, lease, license, mineral right, riparian right or other interest or right in real property that may be conveyed concerning the power to transfer property

"Public or private conservation agency", the commonwealth, or any subdivision thereof, or any municipality, or private nonprofit corporation organized for the purposes of land conservation, which is authorized to do business in the commonwealth, and which has tax-exempt status as a nonprofit

partnership, limited liability corporation, subchapter S organization, or other fiduciary shall be used either by such entity in the event it is the taxpayer on behalf of such entity or by the member, partner, shareholder, or beneficiary, as the case may be, in proportion to its interest in such entity in the event that income, deductions, and tax liability passes through such entity to such member, partner, shareholder, or beneficiary. Such tax credits may not be claimed by both the entity and the member, partner, shareholder, or beneficiary, for the same conveyance.

SECTION 10. Chapter 83 of the General Laws is hereby amended by inserting after section 1 the following 8 sections:-

Section 1A. Notwithstanding the provisions of sections 1 and 3 to the contrary, any municipality or sewer district adopting this section is hereby authorized to lay out, construct, maintain and operate a system or systems of common sewers and main drains in public or private ways for that part of its territory as it adjudges necessary to reduce or eliminate the impacts of nutrient enrichment on surface water bodies or sources of drinking water with such connections and other works as may be required for a system or systems of sewerage and drainage, and sewage treatment and disposal. Adoption of this section is subject to majority vote of the municipality and subject further to said municipality having an approved comprehensive water resources management plan hereinafter referred to as (CWMP) as defined by the department of environmental protection hereinafter referred to as (DEP).

Section 1B. At the commencement of operation of the municipalities' sewer system authorized by section 1A, the owner of land abutting upon a private or public way in which a common sewer has been laid shall be required by the board or officer having charge of the maintenance and repair of sewers to connect such land with a common sewer only if the land in question is within the areas identified in the department of environmental protection-approved CWMP and has been specifically identified in the plan as requiring wastewater collection and treatment for flows in existence on said properties at the time of adoption of this act in order to protect surface waters or drinking water resources from the effects of nutrient enrichment; or the on-site subsurface sewage disposal system serving said land fails to comply with the provisions of 310 CMR 15.000, et seq. and an on-site subsurface sewage disposal system cannot be constructed on the property in compliance with said regulations and an enhanced treatment system under remedial use cannot be designed and constructed to adequately treat sewage from said property; or to service housing of which at least 15 per cent of the housing units are deed restricted to residents with incomes no greater than 80 per cent of the area median income paying no more than 30 per cent of their income towards

housing. The town shall not allow an abutting property owner utilizing an enhanced treatment system under remedial use to opt out of connecting to the sewer system unless the town implements a monitoring and inspection plan approved by the department of environmental protection for such remedial system or systems. Such plan may include the assessment of a reasonable fee by the board of health to implement the monitoring and inspection plan.

Notwithstanding any provision of sections 1 and 3 to the contrary, owners of land not identified in the CWMP as needing to be connected to the municipal treatment works shall not be permitted to connect to the sewer system. Said plan may be amended from time to time by the board or officer having charge of sewers, after a public hearing conducted to consider such amendment, and upon approval of the department of environmental protection. The board or officer having charge of sewers shall adopt regulations within 120 days after the adoption of this act establishing publication and notification procedures to carry out the purposes of this section.

Section 1C. After commencement of operations of the sewer system authorized pursuant to section 1A, additional connections shall be permitted within the final area of concern by such board or officer having charge of the maintenance and repair of sewers, subject to available capacity, only upon certification by the board of health that the on-site subsurface sewage disposal system on land abutting upon a private or public way in which a common sewer has been laid cannot comply with the provisions of 310 CMR 15.000, et seq., or in the case of new construction, expansion of an existing structure, a change in use, or increases in flow from said land, such expansion, change in use, or increase in flow does not result in sewage flow in excess of the amount of said regulations flow capacity or actual flow resulting from a legal use of said land, whichever is greater, which existed on the date of adoption of this act as determined by the board of health. Notwithstanding anything to the contrary contained herein, the board or officer having charge of the maintenance and repair of sewers may at any time permit extensions, new connections or increases in flow to the sewer system, subject to capacity, to serve municipal buildings, public restrooms, or other public service uses, including but not limited to housing of which at least 15 per cent of the housing units are deed restricted to residents with incomes no greater than 80 per cent of the area median income paying no more than 30 per cent of their income towards housing.

Section 1D. Notwithstanding the provisions of chapters 80 and 83 to the contrary, a municipality acting under section 1A may make assessments upon owners of land abutting upon a private or public way in which a common sewer has been laid only at the time of actual connection to the common sewer.

Nothing herein shall preclude the town from making estimated sewer assessments pursuant to section 15E. The municipality may make equitable adjustments to the annual charges established pursuant to section 16 for the use of common sewers by owners of land who connect under this act for the purpose of insuring an equitable distribution of the total sewer system costs, including assessments and sewer use charges.

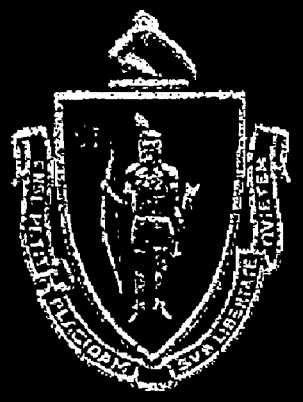
Section 1E. Every decision by the board or officer having charge of sewers permitting or denying a connection to the sewer system pursuant to sections 1A to 1D, inclusive, shall be made in writing. Any person aggrieved by such a decision may appeal said decision within 30 days of issuance pursuant to the provisions of section 14 of chapter 30A.

Section 1F. In carrying out the provisions of sections 1A to 1E, inclusive, a municipality shall not discriminate against any person on the grounds of race, color, marital status, physical disability, age, sex, sexual orientation, religion, ancestry or national origin in any manner prohibited by federal or state law.

Section 1G. Notwithstanding the provisions of any general or special law to the contrary, a municipality with a comprehensive water resources management plan under review or approved by the department of environmental protection may establish and maintain a separate account into which it may collect and deposit and expend funds from property owners for the difference in cost between a conventional subsurface wastewater disposal system as required in 310 CMR 15.00, et seq, and the cost of a subsurface wastewater disposal system designed to reduce the nitrogen discharge from said system as long as the property in question is identified in the CWMP as being a priority for the installation of a wastewater collection and treatment system for the purposes of reducing the impacts of excessive nitrogen on marine waters and drinking water supplies. Funds from this account may be used only for the purpose of the construction, maintenance and operation of said wastewater treatment and collection works and shall be applied to the costs of connection and or betterment assessed to the property in question.

Section 1H. Notwithstanding section 7 of chapter 44, a municipality or sewer district adopting section 1A may borrow and assess betterments for a term not to exceed 50 years or the useful life as approved by the department of environmental protection, whichever is shorter, for the construction its wastewater treatment systems and conveyances determined; and provided further that short term borrowing may extend for a period not to exceed 5 years.

SECTION 11. Chapter 94B of the General Laws is hereby amended by adding the following section:-



# Office of the Inspector General

Commonwealth of Massachusetts

**Gregory W. Sullivan**
Inspector General

# Procuring Outside Consultants With Fees From Applicants

July 2008

**Massachusetts Office of the Inspector General**

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## *Procuring Outside Consultants with Fees from Applicants*

The Office of the Inspector General endeavors to assist municipalities in interpreting the Uniform Procurement Act, M.G.L. c.30B. This advisory was prepared in response to confusion among local jurisdictions about the application of that statute to the process for hiring outside consultants under M.G.L. c.44, §53G. Both statutes are applicable to the hiring process and can easily be followed with the help of the following discussion. This advisory will begin with a brief overview of M.G.L. c.44, §53G, and then proceed to a discussion of how M.G.L. c.30B applies to procurements of outside consultants.

Section 53G of M.G.L. c.44 authorizes Zoning Boards of Appeal, Planning Boards, Boards of Health and Conservation Commissions to establish special revolving funds for fees payable by applicants for permits and approvals. The boards and commissions may use revolving funds, without appropriation, to hire outside consultants to examine the applications. Once an applicant's project is completed or their application is denied, the unused portion of the fee is returned to them, plus interest.

According to the Massachusetts Department of Revenue (DOR), a revolving fund "allows a community to raise revenues for a specific service and use those revenues without appropriation to support the service."[1] Generally, municipal finance law provides that all monies received by municipal departments, boards and committees belong to the community's general fund and prohibits the expenditure of those funds without specific appropriation.[2] Revolving fund statutes specifically exempt particular receipts from these requirements by earmarking them for specific spending purposes and authorizing a particular municipal official to spend them for those purposes without appropriation.

[1] DOR website, http://www.mass.gov/dor

[2] M.G.L. c.44, §53.

**Authority to Hire Consultants**

Funds from an M.G.L. c.44, §53G account may be used when implementing authority conferred by the following laws:

- Zoning Boards of Appeals, M.G.L. c.40A, §§9 or 12
- Low or Moderate Income Housing, M.G.L. c.40B, §21
- Subdivision Control, M.G.L. c.41, §81Q
- Boards of Health, M.G.L. c.111, §31
- Conservation Commissions, M.G.L. c.40, §8C; M.G.L. c.131, §40; or any local wetlands ordinance or bylaw.

It is important to keep in mind that M.G.L. c.44, §53G does not authorize the hiring of consultants or the imposition of fees to do so; it merely provides a means by which to pay the cost of certain consultants without appropriation. Municipalities may only hire these outside consultants without appropriation if they have promulgated rules for the hiring of outside consultants under one of the statutes listed in M.G.L. c.44, §53G.

Some jurisdictions have encountered legal trouble by assuming M.G.L. c.44, §53G grants them the authority to hire a type of consultant that is not expressly authorized by the above-stated laws, and to impose those fees on applicants. For example, one Zoning Board of Appeals enacted a rule providing that "in hiring outside consultants, the Board may engage...lawyers...who can assist the Board in analyzing a project to ensure compliance with all relevant laws," and requiring the permit applicant to pay a "review fee" covering the reasonable cost of legal fees for that service.[3] On its face, the rule appeared to be perfectly reasonable. However, the Massachusetts Housing Appeals Committee held that because the rule was promulgated under the authority of M.G.L. c.40B, which does not contain specific authority to hire lawyers, the review fee was invalid. The Housing Appeals Committee found, based on the language of the statute and cases interpreting it, that M.G.L. c.40B only allows fees to be imposed for "technical review" and not for legal services. Consequently, the jurisdiction had to assume a cost of almost $20,000 in legal fees it had charged to the applicant.

[3] *John B. Wise, Trustee of Plyburn Realty Trust v. Lynnfield Board of Appeals*, 2004 MA. HAC. 02-23, 2004 WL 5052504 (Mass. Hous. App. Ct. 2004).

If you have any questions about whether a given fee or expense may permissibly be transferred to applicants, please check with your legal counsel prior to incurring the expense.

**Implementation of M.G.L. c.44, §53G**

Section 53G of M.G.L. c.44 specifies certain administrative rules a municipality must enact prior to establishing a revolving fund. Among other things, a municipality must establish and vote on rules that:

- Impose a reasonable fee for the employment of outside consultants, and
- Provide a means to appeal the choice of consultants to the city council or town board of selectmen.

While the procedure for appeals is largely at the discretion of the municipality, the subject matter of an appeal is limited to claims that the selected consultant either has a conflict of interest or does not possess the minimum required qualifications. In addition, a consultant must possess minimum qualifications that include either 1) an educational degree in or related to the field at issue or 2) three or more years of practice in the field at issue or a related field. Note that the right to appeal and the procedure for appeals under M.G.L. c.44, §53G are in addition to any rights of bidders to challenge an award under M.G.L. c.30B. Furthermore, the appeals procedure under M.G.L. c.44, §53G does not preclude further judicial review if otherwise permitted by law.

For the accounting procedures that govern special revolving funds for hiring outside consultants under one of the statutes listed in M.G.L. c.44, §53G, see page 3, item B, Accounting Procedures, of Massachusetts Department of Revenue, Property Tax Bureau, Informational Guideline Release: Special Revolving Funds for Hiring Outside Consultants, IGR No. 03-208 (August 2003), available at http://www.mass.gov/Ador/docs/dls/publ/igr/2003/lgr_03_208.pdf.

**M.G.L. c.44, §53G and M.G.L. c.30B**

Chapter 30B establishes procedures to follow for most agreements for supplies and services, dispositions of surplus supplies, and real property acquisitions and dispositions by local governmental bodies. Section 2 of M.G.L. c.30B defines "services" as "The furnishing of labor, time, or effort by a contractor, not involving the furnishing of a specific end product other than reports." Hiring an outside consultant clearly falls under this definition. Using M.G.L. c.44, §53G does not excuse the jurisdiction from complying with the law simply because the services are paid for by the applicant and not the jurisdiction; for the purposes of M.G.L. c.30B, the person who pays for services is irrelevant. The law applies because there is an agreement between the jurisdiction and the vendor to perform consulting services.

When procuring services in connection with M.G.L. c.44, §53G, jurisdictions are required to follow M.G.L. c.30B unless the services are specifically exempt. In limited circumstances, the employment of an outside consultant will fall under one of the statutory exceptions to M.G.L. c.30B. An example of this would be a town conservation commission contracting with a regional planning commission to assist it in reviewing wetland applications. This contract would be exempt as an agreement between political subdivisions under M.G.L. c.30B, §1(b)(9) because the conservation commission is purchasing services from one of the governmental entities that are included in M.G.L. c.30B, §1(b)(9).

It is important to note that the exemption for contracts with "designers" under M.G.L. c.30B, §1(b)(15) only applies to certain services, including studies, surveys, soil tests and cost estimates that are done in connection with construction, and does not include the review of another designer's plans. A contract with a designer to review the work of another designer — such as the review of a subdivision plan submitted by an applicant — is subject to M.G.L. c.30B. "Hybrid" contracts that include both exempt services and a peer review will also be subject to M.G.L. c.30B. For more information on which designer services are exempt from M.G.L. 30B, see "Designer Contracts and Chapter 30B: When are Designer Contracts Exempt from Chapter 30B?" *Procurement Bulletin*, v12 n2 p2 (2006), available at http://www.mass.gov/ig/publ/nlmay06.pdf.

Procurements for contracts valued at less than $5,000 must be based on "sound business practices."[4] Procurements for contracts valued at $5,000 or more, but less than $25,000, require the solicitation of at least three oral or written quotes.[5] Procurements for contracts valued at $25,000 or more require either an Invitation for Bid (IFB)[6] or a Request for Proposal (RFP)[7] process. Note that a separate procurement process must be performed for each new consulting contract.

If you choose to solicit quotes, this Office recommends you use a standardized form, such as the attached sample Request for Quotes form. For a procurement pursuant to M.G.L. c.44, §53G, your quality requirements must include at least one of the "minimum qualifications" listed by the statute: either an educational degree in or related to the field at issue, or three or more years of practice in the field at issue or a related field. You may choose to include additional quality requirements to fit the demands of your particular project. Remember, when soliciting quotes or using an IFB, you must select the responsive and responsible bidder offering the lowest price, so you will want to ensure your quality requirements are written strictly enough that you are willing to award to any vendor who meets your requirements. You will only consider bidders that meet all of your quality requirements, so decide in advance which of the two requirements you will include, or draft a quality requirement that allows either of the two minimum qualifications.

Those governmental bodies that have appointed a Chief Procurement Officer (CPO) may also use an M.G.L. c.30B, §6 RFP process to procure the outside consultant. It is this Office's opinion that an RFP process can be used even when the dollar value of the contract is less than the statutory threshold, but that you must follow all of the requirements of M.G.L. c.30B, §6. If you have any questions about how to implement a procurement process under M.G.L. c.30B, please see our procurement manual, entitled *Municipal, County, District, and Local Authority Procurement of Supplies, Services, and*

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[4] M.G.L. c.30B, §4.

[5] *Id.*

[6] M.G.L. c.30B, §5.

[7] M.G.L. c.30B, §6.

*Real Property,* 5th Edition (September 2006) and contact this Office with any further questions.

If the services you are procuring are exempt from M.G.L. c.30B, this Office recommends that you first check your local by-laws, ordinances, or procurement procedures to determine whether or not your local jurisdiction has established requirements to procure contracts which are not subject to M.G.L. c.30B. This Office recommends conducting a competitive process in order to obtain the needed quality of services at the best price, even if the proposed contract is exempt from M.G.L. c.30B.

**Useful References:**

Complying with M.G.L. c.30B

Massachusetts Office of the Inspector General, *Municipal, County, District and Local Authority Procurement of Supplies, Services and Real Property*, 5th Edition (September 2006), *available at* http://www.mass.gov/ig/publ/30bmanl.pdf.

Drafting Effective IFBs and RFPs

Massachusetts Office of the Inspector General, *Practical Guide to Drafting Effective Invitations for Bids and Requests for Proposals for Supplies and Services* (April 2005), *available at* http://www.mass.gov/ig/publ/pracguid.htm.

Implementing M.G.L. c.44, §53G

Massachusetts Department of Revenue, Property Tax Bureau, *Informational Guideline Release: Special Revolving Funds for Hiring Outside Consultants*, IGR No. 03-208 (August 2003), *available at* http://www.mass.gov/Ador/docs/dls/publ/igr/2003/Igr_03_208.pdf.

Please direct questions about the accounting procedures required by M.G.L. c.44, §53G to:

Bureau of Municipal Finance Law
Division of Local Services
Massachusetts Department of Revenue
P.O. Box 9569
Boston, MA 02114-9569
Local Services "Attorneys of the Day" Hotline: 617-626-2400

Please direct questions about M.G.L. c.30B to:

Office of the Inspector General
One Ashburton Place, Room 1311
Boston, MA 02108
Chapter 30B Hotline: 617-722-8838

# SAMPLE REQUEST FOR QUOTES

| | | | |
|---|---|---|---|
| Requisition #: Department:<br>P.O.#: | | | |
| PURCHASE DESCRIPTION AND CONTRACT TERMS: | | | |
| QUALITY REQUIREMENTS:<br>All consultants selected must possess either an educational degree in or related to the field at issue, from a recognized public or private college or university, or three or more years of practice in the field at issue or a related field. | | | |
| VENDORS CONTACTED | Total Price Quote | Unit Price(s) (if applicable) | Notes |
| 1. Company: _____<br>Contact: _____<br>Address: _____<br>Date:_____Telephone:_____<br>Fax: _____<br>Solicited by: _____ | | | |
| 2. Company: _____<br>Contact: _____<br>Address: _____<br>Date:_____Telephone:_____<br>Fax: _____<br>Solicited by: _____ | | | |
| 3. Company: _____<br>Contact: _____<br>Address: _____<br>Date:_____Telephone:_____<br>Fax: _____<br>Solicited by: _____ | | | |
| RECOMMENDATION:<br>Name: Department:<br>Signature: Date: | | | |