



CITY & TOWN

Frederick A. Laskey, Commissioner
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A Publication of the Massachusetts Department of Revenue's Division of Local Services

Capital Improvement Programs

written by Gerard D. Perry

Municipalities wrestle with budget issues each and every year. Local policy makers have to grapple with the decision to spend for operating expenses or to invest funds for infrastructure. The cost of maintaining services has left many communities unable to keep pace with their capital needs. One way to plan for both a town's present and future infrastructure requirements is to have a comprehensive capital improvement program (CIP).

A capital improvement program is an important planning tool that examines the physical components, financial capacity, and long-range needs of a community. A CIP is comprised of two parts — a capital budget and a capital program. A capital item or project is defined as one having a cost of at least \$10,000 with a useful life of at least three years. The capital budget is the capital spending plan for each year. The capital program is a long-range plan, recommended at five years beyond the capital budget, to determine and prioritize the town's needs within its financial constraints. The community should appoint a CIP committee to coordinate this important endeavor and insure that these goals are met. Massachusetts General Laws specifically states, "A town at its annual town meeting may by by-law establish a capital planning committee."¹

A CIP has many benefits, including but not limited to enhancing a town's credit rating, stabilizing its tax rate, identifying revenue sources including potential grants, controlling debt, identifying and prioritizing projects, and keeping the capital needs of the community in the forefront. A capital planning committee works closely with all municipal officials within the community.

There are various steps a town should take to implement a successful CIP. First, the community should adopt a by-law establishing a CIP committee. This policy initiative will formalize and guide the process the municipality is to follow. Next, the committee should prepare an inventory of existing assets including properties. This inventory should identify the age, condition, and use of the asset. A review of previously approved projects should then be undertaken to determine what funds may be avail-

A CIP is an important tool that benefits any community.

able from completed projects once the associated debt has been repaid. One of the most important duties of a CIP committee is to assess the town's financial capacity so that the tax levy and debt service remain stable. The community should try to stabilize the annual amount of debt service. This takes a coordinated effort with the financial and operational officers of the town. The CIP committee should compile and evaluate project requests, using a rating system to prioritize all submissions. Prioritizing the requests is often the most difficult task for the CIP committee, as it requires subjective analysis by the members. Each project should be reviewed to identify outside sources of revenue such as federal or state aid or grants. Utilizing this process is one way to reduce the impact on the community's tax burden.

The recommendations of the CIP committee should be sent to the board of selectmen who, in turn, should have a

public hearing on the committee's findings. Finally, these recommendations can be forwarded to town meeting for its consideration and review. The committee should continuously monitor approved projects, updating the program to meet the needs of the town. A comprehensive CIP will be a major benefit to both the present and future well-being of any community.

The Division of Local Services is available to assist any town that wants to start, develop, or enhance their own CIP. DLS has a manual, *Developing a Capital Improvements Program*, which is available to you upon request. Please contact Elaine Lombardi at (617) 626-2337 for a copy of the manual, or Melinda Ordway of the Technical Assistance Bureau for more information or assistance. ■

1. Chapter 41, Section 106B.

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LEGAL

in Our Opinion

Work Product Doctrine and the Public Records Law

The Supreme Judicial Court's latest pronouncement on access to government records is *General Electric Company v. Department of Environmental Protection*.¹ This case concerns whether a state agency can validly assert a work product privilege in response to a public records request. The agency argued that the documents were prepared in anticipation of litigation, or for trial, and could not be disclosed.

General Electric (GE) owned a manufacturing facility in Pittsfield. Pollution from the site contaminated areas around the Housatonic River. The Environmental Protection Agency, the federal agency, and the Department of Environmental Protection (DEP), the state agency, had concurrent jurisdiction and were cooperating in the investigation and clean-up of the area. The DEP supported the federal agency's efforts to declare the area a Superfund site. GE objected to the proposed designation and sought access to DEP documents relevant to the Superfund issue under the public records law. The DEP claimed that most of the documents were exempt from disclosure. GE then brought suit in superior court to obtain access to these records. The superior court judge ruled that the DEP acted properly in denying access since the documents in question were privileged under the common law work product doctrine and the policy deliberation exemption of the public records law. General Electric appealed, and the Supreme Judicial Court (SJC) agreed to hear the case.

The SJC held that documents privileged as work product under the Massachusetts Rules of Civil Procedure were not protected from disclosure under the public records law unless there was some express statutory exemption. The legislative purpose for Massachusetts' public records law, which was based on the federal Freedom of Information Act, was to ensure access to government documents. Numerous Massachusetts court decisions have held there is a presumption that a record is public and the burden of proof is on the government agency to show why the record is exempt from disclosure. The Legislature broadly defined public records in M.G.L. Chapter 4 and then enumerated certain exemption provisions.² Courts in Massachusetts have strictly interpreted these exemption provisions.

In prior decisions the SJC was reluctant to expand the number of exemption provisions by reading into the public records statute some implied limitation. In the *General Electric* case, the court reviewed the statute's legislative history. In 1973 when the Legislature debated the public records bill, an attempt to create an exemption for a public attorney's work product was defeated. The SJC, therefore, did not want to read a work product exemption, which the Legislature had expressly rejected, into the statute. The court also noted that the Massachusetts public records law, unlike the federal Freedom of Information Act on which it was based, did not contain an express exemption for the work product of a government attorney.

In the *General Electric* case, the court scrutinized the statutory exemption provisions. The DEP had argued that the requested records were exempt under a provision of the law which bars dis-

closure of materials specifically exempted by statute.³ Although the Massachusetts Rules of Civil Procedure containing the work product privilege were promulgated in cooperation with the Legislature, the SJC rejected the notion that the Rules were a formal written enactment of the Legislature. Hence, the exemption by statute provision did not incorporate the Rules of Civil Procedure setting forth the work product doctrine.

The court, however, found that the policy deliberation exemption in another section of that law did apply to some of the documents. Chapter 4 Section 7 Clause 26(d) exempts "inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency" but does not include factual studies or reports on which the development of the policy has been or may be based. In the court's view, the purpose of this policy deliberation provision was to promote discussions to arrive at better governmental decisions. Any documents, even if shared with the EPA, according to the court, would be exempt from disclosure if they were integral to the DEP's internal decision making processes regarding contaminated sites.

Accordingly, materials that can be characterized as work product are not protected from disclosure unless the documents come within some explicit statutory public records exemption provision.

written by James Crowley

1. 429 Mass. 798 (1999).

2. 4 Section 7 Clause 26.

3. Clause 26 paragraph (a).

More legal opinions can be found on page 7.

FOCUS

on Y2K Readiness

State Public Information Campaign on Y2K

The Commonwealth of Massachusetts is nearing the close of its Year 2000 Public Information Campaign, "Be Y2K Wise." Cities and towns that have not yet provided guidance to their citizens on how to prepare their households for the Year 2000 may wish to use the accompanying "Y2K Flyer," (see page 4 for example) but a decision will need to be made right away for the material to be effective. This article provides some ideas on how to use the flyer to provide this information.

In addition to this flyer provided for use by cities and towns, the Be Y2K Wise campaign also involves radio and television public service announcements, radio and television interviews, a website at www.state.ma.us/BEY2KWISE, and a hand card which is being distributed at strategic locations throughout the state.

Personal Preparation Tips

Over the past year, the government of the Commonwealth of Massachusetts has been working hard alongside businesses and local government to minimize any impact the Y2K computer bug may have. Much has been done to repair or replace software and equipment, and to plan for contingencies. However, it is not possible to guarantee absolute perfection, since there are so many participants in every economic sector around the globe. As stated on November 10, 1999, by John Koskinen, Chair of the President's Year 2000 Council, in his Final Summary Assessment on U.S. Readiness for the Year 2000 Date Change:

"Based on the available information, we do not believe the Y2K issue will create

significant problems in the United States, but *no one can rule out the possibility that there won't be temporary disruptions in some services.* We believe it is likely that any disruptions will be short-lived, like temporary problems caused by storms, and will not cause long-term challenges. In light of that situation, *the Council is advising the public to take reasonable steps to prepare themselves and their families for the date change.*"

To help people prepare, the Commonwealth of Massachusetts' Year 2000 Public Information Office (Y2K PIO) has developed a basic checklist which a city or town can distribute to its citizens. The Y2K PIO has assembled a list of items citizens should make sure they have in their homes in the event of a disruption of services due *either* to Y2K or to a winter storm. This can help reduce the dependence of citizens on emergency services in the event of any disruption, not just a Y2K-related event. However, specifically for Y2K, the list also contains advice on maintaining financial records (which may be necessary if a vendor or service provider's information systems are affected), and on avoiding scams. As Koskinen stated, however, "It is important to note ... that we are advising individuals to adapt the recommendations in the checklist to their own personal situations and Y2K information made available by their local service providers. *I think the most important Y2K information any of us can have is about the readiness of our own communities.* There is no "one size fits all" for the entire country with regard to preparing for Y2K. People need to take the time to read Y2K notices being provided by local governments, banks, phone and power companies, supermarkets, and others so that they have a better understanding of what to expect in their neighborhoods and can prepare accordingly."

Readiness of Local Services

Municipal government provides many services, but in some communities very little information is available on the preparedness of these services. Therefore, the PIO is advising citizens to learn about their town's preparedness by watching for local information published by the town, attending meetings held by the town or a recognized local civic action group, or consulting with the municipal administration. In order to provide this readiness information to its citizens, your municipal government can publish this flyer, customized with additional town information.

The Y2K Flyer and How to Use It

The Y2K Flyer contains personal preparedness tips and a space for the municipality to insert its own information. This information could include the municipal seal, a Y2K Readiness Statement, and Contact Information:

Y2K Readiness Statement. To address the most frequently asked questions from citizens, the Y2K Readiness Statement should reflect the status of Y2K remediation work performed by the municipality and its school district(s), and mention whether the municipality's emergency preparedness plans have been adapted to address potential Y2K situations.

If you don't have a Readiness Statement and cannot prepare one in a couple of days, it may be possible to list a municipal telephone number where citizens can ask for information. This number might provide a recorded phone message, as well as the name and telephone number of a municipal official who can answer more specific questions. The municipality's Emer-

continued on page five ➡

We have been working hard, along with businesses and the government of the Commonwealth of Massachusetts, to minimize any impact the Y2K computer "bug" may have on us. Much has been done to repair or replace software and equipment, and to plan for contingencies. According to the President's Council on Year 2000 Conversion, "No one can rule out the possibility that there won't be temporary disruptions in some services. We believe it is likely that any disruptions will be short-lived, like temporary problems caused by storms, and will not cause long-term challenges. In light of that situation, the Council is advising the public to take reasonable steps to prepare themselves and their families for the date change."

Here are some simple steps that you can take to prepare yourself and your family for any minor inconveniences brought about by Y2K.

BE Y2K WISE



Your Simple Y2K Check List of Handy Tips:

- Financial Statements/Transactions** – Collect and file financial statements and records (mortgage/stocks/payroll/insurance/deposits/and withdrawals) for November, December and January.
- Money** – Have some extra cash on hand, but only as much cash as you would require for a long holiday weekend.
- Beware of Y2K Scams** – Don't disclose credit card numbers or passwords to callers. Call the State Attorney General's office at 617. 727. 8400 to report any scam.
- Prepare as if for a Winter Storm** – In general, prepare as you would for a winter storm. Remember, 911 is for emergencies only.
- Health Care/Prescriptions** – Refill prescriptions when they are down to a 7 day supply. Keep reasonable supplies of household medicines, such as aspirin and cold and flu remedies.
- Food/Water** – The Federal government suggests that you stock a 3 day supply of non-perishable food (canned foods and dry goods). Set aside 1 gallon of fresh water per person per day for cooking and drinking. Again, a 3 day supply will do.
- Household Supplies** – Make sure you have a normal stock of flashlights, spare batteries, portable radio and other non-food staples.
- Fuel** – Keep your fuel tanks (car/gasoline, oil and propane) at least half full.
- Personal Computer** – You can check out your PC's compliance on-line at www.pcy2000.org.
- Information** – Stay informed and share what you know with friends and neighbors. Use the Be Y2K Wise Web Site and Telephone Information Line to access resource information.

**For statewide information call toll free 1-877-Y2K-WISE
or visit the BEY2KWISE web site at www.state.ma.us/BEY2KWISE**

Recorded information 24 hours a day, every day.
Resource operators available 9 am to 5 pm Monday through Friday.

The "Be Y2K Wise" Program is brought to you by the Commonwealth of Massachusetts Executive Office of Administration and Finance, Executive Office of Public Safety, the State's Information Technology Division and MEMA.

Y2K Information Campaign
 ➔ *continued from page three*

gency Management Team leader is frequently a good choice, but will need to be prepared with information regarding the municipality's remediation work. This approach will allow a few extra days before people begin calling in order to prepare and record the phone message.

Contact Information. Citizens will want to know where they can go to learn more about your municipality's preparations. If your municipality's readiness information is already available via the Division of Local Services' website, you can direct them to www.state.ma.us/dls/y2kinfo. Additional phone numbers you may want to provide might include the main desk at the Police Department, and Town or City Hall. Finally, you may want to list the emergency shelters available in case of power outages (valuable information during a winter storm), and how citizens can learn if shelters have been activated (perhaps by local radio broadcast).

Making It Available. Once you've made a master copy with changes, you can duplicate the Y2K Flyer and provide supplies at libraries, schools, post offices, community centers, senior centers, etc. If you choose to use schools, it may be easiest to arrange with the school district for distribution via students.

Further Information

We hope this Y2K Flyer is useful in your municipality's efforts to prepare its citizens for the Year 2000. For further information you can contact the BEY2K-WISE help line at 1-877-Y2K-WISE. We wish you happy holidays! ■

*written by Jack Appelmans, Project Manager,
 Y2K Program Management Office*

FY2000 Cherry Sheets Available

The Department of Revenue's Division of Local Services (DLS) posted FY2000 Cherry Sheet estimates on the DLS website within a day of final action on the FY2000 state budget. The paper copies of the FY2000 Cherry Sheets were mailed to municipal and school officials two business days later. The mailing included a program-by-program comparison of the FY1999 and FY2000 Cherry Sheets.

The FY2000 estimated receipts for cities, towns and regional school districts total \$4.538 billion, an increase of \$364.8 million or 8.7 percent from the FY1999 Cherry Sheet totals of \$4.174 billion. The increase is primarily attributable to a \$237.2 million increase in Chapter 70 aid and a \$72.5 million increase in lottery aid.

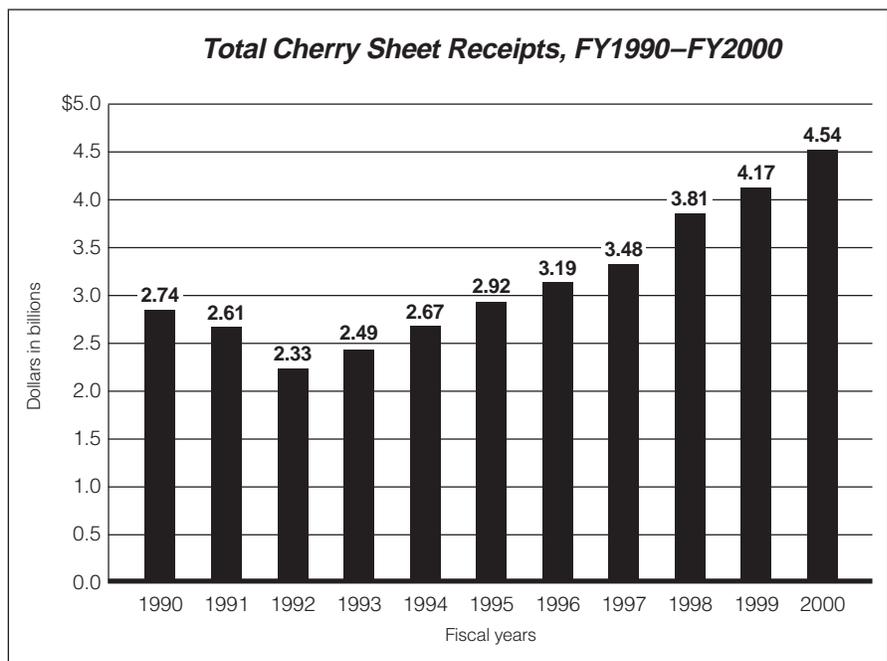
In early March of 1999, the Department of Education (DOE) notified school superintendents, school committees, mayors and boards of selectmen of preliminary estimates of FY2000 net school spending requirements prescribed by the Education Reform Act.¹ In many cases, the community's FY2000 Cherry Sheet reflected a level of Chap-

ter 70 aid different from that included in DOE's March notification. This change resulted in a revision of net school spending requirements and may result in the need for budgetary revisions by town meetings or city/town councils. DOE plans to mail revised and final net school spending requirements to local officials.

Local officials should also be aware that the Legislature made changes to the Massachusetts Bay Transportation Authority (MBTA) funding process. This legislation increases the number of communities that constitute the MBTA and changes the method for assessing member communities. However, these changes will not impact MBTA assessments until FY2002.

Division of Local Services staff are available to answer questions or provide additional information. Call the Local Aid Section, Municipal Data Management and Technical Assistance Bureau, Division of Local Services, at (617) 626-2376 or (617) 626-2386. ■

1. Chapter 71 of the Acts of 1993, as amended.



DLS UPDATE

Millennium Rollover Weekend

The Division of Local Services plans to carefully check essential municipal systems and facilities on Saturday, January 1, 2000 to determine if the public can expect "business as usual" in their communities on Monday, January 3, 2000. Besides closely tracking a sample of about 70 cities and towns, the Massachusetts Emergency Management Agency (MEMA) will be monitoring reports of emergency situations. Working in cooperation with MEMA, DLS will emphasize administrative readiness by attempting to contact each city and town to determine if municipal government systems will be functional on Monday morning. Local communities have already begun contacting DLS with the names and telephone numbers of contact persons. DLS' staff will be at the MEMA bunker in Framingham throughout the day on Saturday to coordinate reporting, ensuring that all emergency reports related to individual communities are reflected in the overall report of community status. If corrective actions require attention at the state level, officials need as much advance notice as possible. The objective is to report on the readiness status of all communities as of 3 p.m. to the Governor, the legislature, the Y2K coordinating Council and the media.

FY2000 EQV Program

Fiscal Year 2000 is a busy one for assessing departments across the Commonwealth. One-third of all communities will have their real and personal property recertified for FY2000, and the remaining two-thirds will participate in the Equalized Valuation Program (EQV). In every even-numbered year, the Commissioner of Revenue determines EQV

for all cities and towns in Massachusetts as required by MGL Ch.58, §10C. During the process, the DLS' Bureau of Local Assessment (BLA) determines the full and fair market value of all taxable property, as well as the level of assessment of the major classes of property in each community. BLA uses that information, supplemented by appraisals when there are insufficient sales of commercial and industrial properties, to determine EQVs. The state uses the EQVs in selected Cherry Sheet formulas to ensure that assessments and distributions are equitable.

From start to finish the EQV program encompasses approximately one year. By mid-January all communities not recertified in FY2000 will submit their property sales reports to the BLA. Since those sales reports are one of the most important components of the EQV program, assessors need to review all sales as of the January 1, 1999 assessment date (calendar year 1998 sales) to determine if they are valid market sales. A market value sale reflects the price a willing buyer would pay a willing seller under no special circumstances. Examples of special circumstances would be divorce, foreclosure or family sales. Coding on the sales reports indicates those sales that do not reflect market value. Before submitting the reports assessors should carefully review the coding and make any necessary changes. Because the EQV study relies heavily on statistical analysis of these sales, BLA closely examines the sales coding for accuracy and consistency.

BLA will send preliminary equalized valuations to assessors in June 2000. Assessors have the opportunity to review these preliminary numbers. They may request adjustments from BLA if they have appropriate documentation. Assessors who remain dissatisfied have the opportunity to file an appeal at the Appellate Tax Board (ATB).

Equalized Valuation Timetable — 2000

- 1/23/2000: Assessors submit sales-reports
- 6/1/2000: BLA mails proposed EQVs
- 6/10/2000: BLA completes public hearings
- 7/20/2000: BLA completes EQV revisions
- 9/10/2000: Municipality appeal of EQV to ATB
- 1/20/2001: ATB acts on EQV appeals
- Early 2001: Legislature accepts EQVs

This year BLA plans to use technology as much as possible. We anticipate receiving and sending data to communities through the Internet. This will reduce the time it takes to conduct analyses by eliminating mail delays and/or time-consuming trips to Boston. If you have any questions on the EQV process, please call Donna Demirai at (617) 626-2391.

Improvements to the DLS Website

DLS is adding links to *City & Town* focus articles to the Municipal Data Bank home page so that local officials can easily find and access information that has appeared in our publication by topic. Although copies of *City & Town* are currently available on the DLS website, they are listed under Publications by date of issue. There has not been a way to find an article by its subject matter prior to this recent upgrade. Future plans for the website include adding definitions of commonly used terms. The address is www.state.ma.us/dls/mdm.htm. ■

More Legal

➔ continued from page two

Zoning and Child Care Facilities

In *Petrucci v. Board of Appeals of Westwood*, the Appeals Court rendered an important decision concerning the siting of a child care facility.¹ The appellant lived in Westwood in a single family home on a 53,000 square foot lot in an area zoned for single family residences. In 1995, the owner decided to renovate a barn on his property to use as a child care facility that would accommodate 47 children and six adults. His application for a building permit was denied. After his appeal to the Westwood Board of Appeals was also denied, he appealed to Land Court which ruled in his favor. The Town of Westwood made a further appeal to the Appeals Court.

At issue is the court's interpretation of the zoning statute, Chapter 40A Section 3. As amended in 1990, this statute prohibits any zoning ordinance from requiring a special permit for the use of land or structures for the primary, accessory or incidental purposes of operating a child care facility. That law also provides that a community may impose reasonable dimensional restrictions. The Westwood Board of Appeals argued that the statute should be narrowly construed. In the board's view, the proposed child care facility would create two principal uses on the property, since such a facility was clearly not accessory or incidental to a residential use. In the opinion of the Board of Appeals, the zoning statute did not afford an exemption for a child care facility where two primary uses would be situated on one property.

The Appeals Court rejected the town's argument. The court analyzed Chapter 40A Section 3 and agreed that the Legislature had employed different language when it provided a zoning exemption for educational or religious uses as compared to the exemption for child care facilities. Chapter 40A Section 3 expressly states that a zoning by-law shall not "prohibit, or require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility. ..." The Appeals Court did not interpret the language "primary, accessory or incidental" as an all-inclusive phrase exempting all child care facilities from local zoning. Rather, the court held that Petrucci's application came within the terms of the statute because he intended to use an existing structure, his barn, for the primary purpose of operating a child care facility. In the court's view, such a proposed use was protected by the statute.

Having established that the use of the barn qualified for the statutory child care facility exemption, the Appeals Court then inquired whether the Town of Westwood had imposed reasonable dimensional set back and height requirements on the proposed use of the barn. The landmark case on this subject is *Trustees of Tufts College v. Medford*.² In *Tufts*, the Supreme Judicial Court ruled that the reasonableness of local zoning requirements had to be determined on a case by case basis. The burden of proof was on the applicant to show that the local requirements were excessive.

In *Petrucci*, the barn was a rare example of transitional Greek-revival Italianate-style architecture built about 1840. According to the evidence presented, the only way the owner could comply with the Westwood dimensional by-law was by relocating the barn. According to the owner, the \$150,000 cost of relocation would exceed the amount needed to renovate the barn to serve as a child care facility. From the evidence, relocating the barn would not promote the town's safety, aesthetics and privacy interests. The Appeals Court, therefore, held that it would be unreasonable to impose any dimensional requirements on the owner.

Accordingly, the Westwood Board of Appeals was ordered to issue the building permit to Petrucci. ■

1. 45 Mass. App. Ct. 818 (1998).

2. 415 Mass. 753 (1993).

DLS Computer System Unavailable on December 31

The Division of Local Services' computer system will not be operational on Friday, December 31, in preparation for the Y2K conversion. Be sure to access any information you may need before that date.

Please note, the Bureau of Accounts will be unable to certify tax rates without the technical support so do not wait until the last minute to submit your tax rate recapitulation sheet.

The computer system should be available for business on Monday, January 3, 2000. ■

Municipal Fiscal Calendar

January 1

Assessors: Property tax assessment date.

January 31

Treasurer: File IRS Form 5500 (Report of Employee Benefit Plan).

Employment Opportunity

Deputy Bureau Chief — The Bureau of Local Assessment is seeking a Deputy Chief to direct real and personal property appraisal programs and manage appraisal staff statewide. Applicants should have seven to 10 years' experience in property appraisal, mass appraisal and property tax administration. A bachelor's degree is required and a master's is preferred. Applicants should have demonstrated ability in management, communication, writing, teaching, mass appraisal, (including computerized) statistical analysis and commercial appraisal. The ideal candidate has a designation, e.g., CAE or MAI and knowledge of Massachusetts' assessment administration and law. Travel is required. Send resumes to Marilyn H. Browne at the *City & Town* address below, by fax to (617) 626-2330, or e-mail to Marilyn.Browne@state.ma.us. ■



Data Bank Highlight

The Municipal Data Bank produces research reports (e.g., Focus articles in *City & Town*), data analyses (e.g., Expenditures by Function), and summary reports (e.g., At-A-Glance) that are available for use by state and local officials, non-profit and academic research groups, the press, and private individuals. The reports are available on the DLS website, or they can be requested by calling the Data Bank staff or sending an e-mail to stanley.nyberg@dor.state.ma.us. In addition to standard reports and primary data, users can request customized reports with the Community Report Builder on the website. Data Bank staff also are available upon request to work with individuals or groups to help them develop specialized reports or analyses.

To obtain Municipal Data Bank information contact Dora Brown or Debbie DePerri at (617) 626-2300. For technical assistance contact Burt Lewis at (617) 626-2358. The World Wide Web address is listed below. ■

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<p>Jean M. McCarthy, Editor</p>	

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