

HOUSE No. 3267

By Representatives Walsh of Boston and Richardson of Framingham, petition of Martin J. Walsh and others for legislation to ensure proper expenditure and accounting procedures for state funds. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

PETITION OF:

Martin J. Walsh	Joseph R. Driscoll
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In the Year Two Thousand and Seven.

AN ACT TO ENSURE PROPER EXPENDITURE OF AND ACCOUNTING FOR PUBLIC FUNDS.

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

1 SECTION 1. Section fifty-six of Chapter seven of the General
2 Laws is hereby amended by striking the entire text thereof and sub-
3 stituting the following:—

4 § 56. Ensuring proper expenditure of and accounting for public
5 funds; prohibiting expenditures for influencing employees with
6 public funds

7 (a) The General Court finds and declares to be the policy of the
8 Commonwealth that (1) sound fiscal management, protection of tax-
9 payers, and proper use of the Commonwealth's resources require
10 vigilance to ensure that funds appropriated or granted by the Com-
11 monwealth for or in connection with the purchase of goods and serv-
12 ices, the performance of public contracts or public works, and the
13 provision of services for or on behalf of the Commonwealth or its

14 citizens, are ultimately expended solely for the purposes for which
15 they were appropriated or granted; that public agencies, and vendors
16 and suppliers to, contractors with, and grantees of the Common-
17 wealth, perform their functions in the most economical and efficient
18 manner, consistent with the requirements of law and public policy;
19 and that subsidized projects are conducted so as to fulfill the goals
20 and objectives which led to the Commonwealth's involvement
21 therein; and (2) when public funds are diverted from their intended
22 use for the purchase of goods and services, the performance of
23 public contracts or public works, the provision of services, or the
24 completion of subsidized projects, and such funds are instead used to
25 exert or to attempt to exert influence on employees as described
26 herein, (A) such diversion in the use of public funds tends to cause
27 interruptions in the supply or impairments in the quality of such
28 goods and services, the performance of such contracts or public
29 works, the provision of such services, and the completion of such
30 subsidized projects; (B) the fiscal and proprietary interests of the
31 Commonwealth are adversely affected; (C) the Commonwealth is
32 compelled to subsidize partisan positions on controversial questions
33 concerning employee representation; and (D) the scarce resources of
34 the Commonwealth are misused.

35 (b) The following words and phrases as used in this Section fifty-
36 six shall have the following meaning unless the context clearly
37 requires otherwise:—

38 “Attorney general”, the attorney general of the Commonwealth.

39 “The Commonwealth” or “Commonwealth”, includes the state of
40 Massachusetts and any agency, office, officer, department, division,
41 board, commission, authority, instrumentality, or political subdivi-
42 sion thereof; any corporation, entity, or body created by state law;
43 and, any individual designated by or with authority to act for the
44 Commonwealth or any of its subordinate units as defined herein.

45 “Employee”, any individual employed by a publicly funded
46 employer, including but not limited to any individual engaged in per-
47 forming work, providing services, or fulfilling contracts that are, in
48 whole or in part, directly or indirectly, paid for, financed, derived, or
49 subsidized by, with, or from public funds, and any individual
50 employed by any employer in connection with a subsidized project.

51 “Employee influence activity”, any activity, effort, or attempt by a
52 publicly funded employer (1) to influence one or more of its

53 employees with respect to their supporting or opposing unionization
54 or a labor organization that represents or seeks to represent some or
55 all of its employees; (2) to encourage or discourage any employee
56 from joining or refraining from joining a labor organization that rep-
57 resents or seeks to represent some or all of its employees; (3) to
58 encourage or discourage any employee from forming, assisting or
59 participating in or refraining from forming, assisting, or participating
60 in any effort by a labor organization that represents or seeks to repre-
61 sent some or all of its employees, or any other form of employee
62 self-organization or any activity in which one or more employees
63 participate for the purpose of mutual aid or protection; or (4) to
64 assist, encourage, discourage, or deter any effort by its employees to
65 obtain representation by a labor organization, or any effort by a labor
66 organization to obtain the right to represent some or all of its
67 employees. The conduct of a meeting with one or more employees
68 during working hours at any location, or at any time in a location
69 where work is conducted or services performed, shall be deemed to
70 be an employee influence activity, if such meeting is conducted for
71 the purpose of or in connection with an employee influence activity.
72 “Employee influence activity” does not include otherwise lawful
73 activities in connection with addressing grievances; negotiating or
74 administering a collective bargaining agreement; performing any
75 action required by federal or state law or by a collective bargaining
76 agreement; or negotiating, entering into, or carrying out any other
77 agreement with a labor organization, not assisted, dominated, or
78 interfered with by the employer, including but not limited to a volun-
79 tary recognition agreement with such a labor organization; informing
80 employees, in a manner truthful and not misleading, of their rights
81 and of the publicly funded employer’s rights and obligations under
82 this or any other law; or obtaining legal counsel with respect to com-
83 pliance with this or any other law or with respect to any legal or
84 administrative proceeding to which the publicly funded employer is
85 or is likely to be a party. If any applicable law permits or requires a
86 publicly funded employer to allow, on a non-discriminatory basis,
87 the use of bulletin boards, email, or other facilities normally used for
88 communication with or by employees, by any employee, labor orga-
89 nization, group of employees, or bona fide employee organization,
90 not assisted, dominated, or interfered with by the employer, for dis-
91 cussion of issues related to unionization or collective bargaining,

92 whether in favor, opposed, or undecided; or if any applicable law
93 permits or requires a publicly funded employer to allow, on a non-
94 discriminatory basis, access to its facilities or property by any
95 employee, labor organization, group of employees, or bona fide
96 employee organization, not assisted, dominated, or interfered with
97 by the employer, then such allowance of use or access to facilities or
98 property shall not be deemed an employee influence activity or
99 expenditure.

100 “Employee influence expenditure”, any cost or expense made or
101 incurred, directly or indirectly, by a publicly funded employer,
102 where such expense is made or incurred (1) for or in connection with
103 any employee influence activity, or for or in connection with an
104 activity which the publicly funded employer knows or reasonably
105 should know constitutes an employee influence activity; (2) to train
106 managers, supervisors, or other personnel regarding methods or
107 techniques of or related to employee influence activities; (3) to hire,
108 retain, pay the salary of or any other compensation to, or to defray
109 any expenses of any individual, corporation, unincorporated associa-
110 tion, partnership, firm, consultancy or other entity, or any individual
111 acting for or on behalf of such individual, corporation, unincorpo-
112 rated association, partnership, firm, consultancy, or other entity, for
113 performing research, planning, advising, preparing, coordinating,
114 carrying out, or engaging in employee influence activities or in con-
115 nection with an employee influence activity, or for training man-
116 agers, supervisors, or other employees and agents of the publicly
117 funded employer to engage in an employee influence activity. Any
118 cost to a publicly funded employer associated with or occasioned by
119 employee influence expenditures, including but not limited to the
120 pro rata share of administrative, accounting, and legal costs attribut-
121 able to considering, planning, preparing, training for, carrying out, or
122 engaging in an employee influence activity, and the pro rata share of
123 managerial, administrative, or supervisory salaries and compensation
124 attributable to considering, planning, preparing, training for, carrying
125 out, or engaging in an employee influence activity, shall be deemed
126 to be an employee influence expenditure.

127 “Employer,” any individual, corporation, unincorporated associa-
128 tion, partnership, institution, trustee, trustee in bankruptcy, receiver,
129 government agency or body, or other legal entity or association, or
130 any director, officer, or managerial employee acting as an agent for

131 such individual, corporation, unincorporated association, partner-
132 ship, institution, trustee, trustee in bankruptcy, receiver, government
133 agency or body, or other legal entity or association, other than the
134 Commonwealth, that employs at least one person in the Common-
135 wealth.

136 “Prohibited expenditure”, any employee influence expenditure
137 made by a publicly funded employer which is defrayed with or for
138 which reimbursement is sought from, public funds, in whole or in
139 part.

140 “Publicly funded employer”, the Commonwealth or any employer
141 that receives public funds, whether through payment, grant, alloca-
142 tion, reimbursement, or subsidy, for supplying goods or services to
143 the Commonwealth, for the performance of public works pursuant to
144 contract with the Commonwealth, for or in connection with the pro-
145 vision of services to or on behalf of the Commonwealth or its citi-
146 zens, or for the performance of any contract with the
147 Commonwealth, or any employer that benefits from a subsidy in
148 connection with any subsidized project.

149 “Public funds”, the revenues of the Commonwealth from what-
150 ever source derived (including but without limitation to fees and
151 tolls charged for the use of public facilities), and any money drawn
152 from the accounts or treasury or any special fund or trust fund of the
153 Commonwealth or any of its subordinate units and political subdivi-
154 sions as provided herein, insofar as such revenues and moneys are
155 appropriated, expended, paid over, granted, transferred, or con-
156 tributed to any other person or entity for the purpose of supplying
157 goods or services to the Commonwealth, for the performance of
158 public works pursuant to contract with the Commonwealth, for or in
159 connection with the provision of services to or on behalf of the
160 Commonwealth or its citizens, for or in connection with the perfor-
161 mance of any contract with the Commonwealth, or for or in connec-
162 tion with any subsidized project.

163 “State auditor”, the auditor of the Commonwealth.

164 “Subsidized project”, any contract, arrangement, agreement, or
165 development project in which the Commonwealth involves itself as
166 an owner, borrower, creditor, lender, lessor, guarantor, pledger,
167 investor, or contributor, or in connection with which the Common-
168 wealth grants any form of tax accommodation or other subsidy as a

169 component of such contract, arrangement, agreement, or develop-
170 ment project.

171 “Subsidy,” any funds or resources, including the value of any
172 credit, good-will, or tax accommodation contributed or extended by
173 the Commonwealth, directly or indirectly, in connection with a sub-
174 sidized project.

175 Whenever the word “he” or “his” appears herein in reference to
176 an official or individual, it shall mean “he or she” or “his or her”, as
177 the case may be.

178 (c) The Commonwealth shall not engage in any employee influ-
179 ence activity or make any prohibited expenditure. Notwithstanding
180 any other provision of law, it shall be unlawful for a publicly funded
181 employer to make any prohibited expenditure. The Commonwealth
182 shall not appropriate, pay, grant, or transfer public funds, or, with
183 public funds, reimburse a vendor, supplier, grantee, contractor, or
184 any other individual or entity, or contribute a subsidy in connection
185 with any subsidized project, to defray costs arising from any
186 employee influence activity. As a condition of receiving public funds
187 or benefiting from a subsidy, a publicly funded employer other than
188 the Commonwealth shall certify to the Commonwealth that it shall
189 not make prohibited expenditures and that it shall otherwise comply
190 with all requirements of this section. Nothing in this section shall be
191 interpreted to limit in any way the right of a publicly funded
192 employer other than the Commonwealth to express any views to its
193 employees or others, or to take any otherwise lawful action in the
194 nature of an employee influence activity, so long as such expression
195 is made or action conducted without utilizing public funds.

196 (d) Publicly funded employers other than the Commonwealth
197 shall maintain records sufficient to show that no reimbursement is
198 sought for employee influence expenditures, and that no public
199 funds are, have been, or will be used for prohibited expenditures.
200 Nothing in this section requires that such records be maintained in
201 any particular form. Such records shall be made available for inspec-
202 tion to the state auditor or to the attorney general within ten business
203 days of receipt of a request from the state auditor or the attorney
204 general. The publicly funded employer shall certify the validity and
205 accuracy of such records on request of the state auditor or the
206 attorney general, or on the motion of any party to a civil action as
207 provided in subsection (g).

208 (e) Any citizen or taxpayer of the Commonwealth who complains
209 that a publicly funded employer has made or is making a prohibited
210 expenditure may request the state auditor to investigate the matter.
211 The state auditor shall commence an investigation if, in his opinion,
212 the complainant's allegations and supporting evidence, if accepted as
213 true, provide reasonable cause to believe a violation of this section
214 has occurred, is occurring, or is likely to occur. The state auditor
215 shall issue reasonable regulations concerning the receipt and pro-
216 cessing of complaints and investigations hereunder, which regula-
217 tions shall, at a minimum, provide for prompt notice to the publicly
218 funded employer against whom a complaint has been lodged or an
219 investigation commenced, and for consultation with, receipt of evi-
220 dence from, and opportunity to be heard by the complainant, the
221 publicly funded employer, and any other party whom the state
222 auditor believes has or may have relevant evidence or information in
223 the matter. Within forty-five days, the state auditor shall prepare and
224 deliver a report summarizing his investigations, findings, and con-
225 clusions to the complainant, the publicly funded employer, and the
226 attorney general.

227 (f) The attorney general shall promptly review the state auditor's
228 report and conduct such further investigation as he deems appro-
229 priate, on notice to the complainant and the publicly funded
230 employer. The attorney general shall attempt to resolve the matter by
231 agreement of the parties, provided that, if the attorney general has
232 reasonable cause to believe that a prohibited expenditure was made
233 or that prohibited expenditures continue to be made by a publicly
234 funded employer other than the Commonwealth, he shall require as a
235 condition of any such resolution the cessation of prohibited expendi-
236 tures and such restitution to the Commonwealth as he in his reason-
237 able discretion shall deem appropriate. The attorney general shall
238 issue reasonable regulations pertaining to the procedures his office
239 shall follow under this section.

240 (g) Where it is alleged that a publicly funded employer has
241 engaged in a prohibited expenditure, a civil action for violation of
242 this section may be brought in the superior court within three years
243 of the alleged prohibited expenditure. If the attorney general is
244 unable to bring about a resolution of a matter as provided in the pre-
245 ceding subsection (f), the attorney general may commence a civil
246 action. If within forty-five days of receipt of the state auditor's

247 report, the attorney general does not initiate a civil action in regard
248 to a complaint, the complainant or any other citizen or taxpayer of
249 the Commonwealth may commence a civil action under this section.
250 If at any time thereafter the attorney general commences an action
251 under this section, the right of the citizen or taxpayer to proceed with
252 his separate action shall terminate. In this event, the citizen or tax-
253 payer may, in the court's discretion and for the assistance of the
254 court, appear and participate in any proceedings connected with the
255 attorney general's action.

256 (h) For a violation of this section, the court shall order a publicly
257 funded employer other than the Commonwealth to cease and desist
258 from such action and to reimburse the Commonwealth in the amount
259 of any prohibited expenditures plus interest, and an equal amount as
260 liquidated damages. If the court finds that such publicly funded
261 employer knowingly and willfully violated this section, it may order
262 the publicly funded employer to pay, in addition to the above reme-
263 dies, an additional sum equal to the amount of any prohibited expen-
264 ditures plus interest. The court shall provide such other and further
265 relief, legal and equitable, as shall in its discretion seem just and
266 appropriate. Any monies recovered in an action under this section
267 shall be deposited in the state treasury or, if the prohibited expendi-
268 ture was made with funds derived from a political subdivision or
269 independent authority or instrumentality of the Commonwealth, in
270 the appropriate account of such subdivision, authority, or instrumen-
271 tality; provided that a plaintiff other than the attorney general in an
272 action that results in a finding of a violation of this section may
273 recover reasonable costs and attorneys fees. A citizen or taxpayer
274 who commences an action later superseded by an action brought by
275 the attorney general that results in a finding of a violation of this
276 section may recover reasonable costs and attorneys fees incurred
277 prior to the initiation of the attorney general's action. For a violation
278 of this section by the Commonwealth, the court shall restrain any
279 continuing violations, order the responsible parties to cease and
280 desist from such violations, and provide for such other and further
281 relief, legal and equitable, as the court in its discretion shall deem
282 just and appropriate. If the court finds that an individual or individ-
283 uals acting on behalf of or with the apparent authority of the Com-
284 monwealth engaged in a knowing and willful violation of this
285 section, it may in its discretion order the individual or individuals

286 responsible to make restitution to the Commonwealth of such por-
287 tion of the amount of any prohibited expenditures as the court shall
288 deem appropriate.

289 (i) The superior court shall have jurisdiction to restrain and enjoin
290 violations of this section. If in an action under this section, the court
291 finds that prohibited expenditures are occurring or are likely to occur
292 or to continue to occur unless restrained, the court may grant tempo-
293 rary, preliminary, or permanent injunctive relief to prevent such pro-
294 hibited expenditures. An action under this section shall not be
295 deemed to concern, involve, or grow out of a labor dispute within
296 the meaning of Section twenty C of Chapter one hundred and forty-
297 nine or any other provision of law; and the provisions of Section
298 twenty-four of Chapter one hundred and forty-nine, and Section six
299 of Chapter two hundred and fourteen shall not apply to any pro-
300 ceeding under this section.

301 (j) In any action under this section, it shall be presumed that any
302 expenditures in connection with an employee influence activity are
303 prohibited expenditures, unless the publicly funded employer estab-
304 lishes by a preponderance of the evidence that, prior to engaging in
305 such activity, the publicly funded employer made reasonable efforts
306 to segregate its public funds from other revenue sources, and that the
307 costs associated with such employee influence activity were entirely
308 defrayed from revenues other than any public funds of which the
309 publicly funded employer is a recipient, grantee, payee, or benefi-
310 ciary. If a publicly funded employer commingles public funds and
311 other revenue sources, any prohibited expenditure made by it shall
312 be presumed to derive pro rata from public funds.

313 (k) Subsections (c), (d), (e), (f), (g), (h), (i), and (j) of this section
314 shall not apply to expenditures, contracts, grants, or subsidies made
315 prior to its effective date, unless such expenditures, contracts, grants,
316 or subsidies were continued, extended, renewed, or modified after
317 said effective date.

1 SECTION 2. If any section, subsection, sentence, clause, or
2 phrase of this Act or of Section fifty-six of Chapter seven of the
3 General Laws as amended by this Act, or any application of same, is
4 held to be unconstitutional or invalid under the constitution and laws
5 of the United States or of the state of Massachusetts by a decision of
6 any court of competent jurisdiction, such decision shall not affect the

7 validity of the remaining portions or other applications of this Act or
8 of the said Section fifty-six as amended. It is hereby declared that
9 this Act and Section fifty-six of Chapter seven of the General Laws
10 as amended by this Act, and each and every section, subsection, sen-
11 tence, clause, or phrase therein not declared unconstitutional or oth-
12 erwise invalid would have been passed without regard to whether
13 any portion or application of the Act or the said Section fifty-six as
14 amended would subsequently be declared unconstitutional or other-
15 wise invalid.