

930 CMR: STATE ETHICS COMMISSION

930 CMR 6.00: EXEMPTIONS UNRELATED TO GIFTS

Section

- 6.01: Statutory Authority to Promulgate Exemptions
  - 6.02: Exemptions to Encourage Volunteer Public Service, and to Promote Education, Training, and Professional Development
  - 6.03: Exemption to Permit Public Employees Who Are Parents to Advocate for Their Children
  - 6.04: Exemption for the National Guard and Volunteer Medical or Rescue Organizations in Exigent Circumstances
  - 6.05: Exemption for Certain Payments by the Department of Children and Families
  - 6.06: Exemption to Permit State Employees to Provide Services to the Massachusetts Committee for Public Counsel Services
  - 6.07: Exemption to Permit State Employees to Provide Personal Services to State Agency Clients
  - 6.08: Exemption for Board Members Appointed by Public Agency
  - 6.09: Exemption for School Committee Members and Charter School Trustees
  - 6.10: Exemption to Permit the Conveyance of Fee Interests, Restrictions, and Easements by Public Employees
  - 6.11: Exemption to Allow Public Employees to Hold Additional Jobs on Premises Occupied Pursuant to Contract or Agreement With Public Agencies
  - 6.12: Exemption to Permit Public Employees to Participate in Mitigation, Disaster Relief, and Renewable Energy Programs
  - 6.13: Exemptions to Permit Public Agencies to Contract With Attorneys and Other Consultants of Choice
  - 6.14: Exemption of Affordable Housing Programs and Community Development Programs
  - 6.15: Exemption of Eminent Domain Settlements
  - 6.16: Exemption of Fee-based Contractual Relationships Readily Available to the Public
  - 6.17: Exemption Related to Senior Tax Abatement Programs
  - 6.18: Census Employment
  - 6.19: Exemption Permitting Public Employees to Purchase or Rent Housing and Parking Units in Multi-unit Buildings Subject to Contractual Arrangements With Public Agencies, When Such Transactions Are Readily Available to the General Public
  - 6.20: Exemption Permitting Town Clerks to Perform Certain Election-related Functions
  - 6.21: Exemption of State-sponsored College Savings and Investment Funds
  - 6.22: Exemption Permitting State Employees to Teach at State Educational Institutions In Certain Circumstances
  - 6.23: Exemption Permitting Persons Serving as Members of Public Boards Pursuant to a Legal Requirement That the Board Have Members With a Specified Affiliation to Participate Fully in Determinations of General Policy
  - 6.24: Exemption to Continue Certain Exemptions Affected by Municipal Population Changes Until Next Municipal Election
  - 6.25: Exemption Permitting Elected State Officials To Participate in Particular Matters That Involve Determinations of General Policy When A Financial Interest Is Shared with a Substantial Segment of the Public
  - 6.26: Exemption Permitting Public Employees to Have Financial Interests in Contracts That Pre-date Their Election or Appointment or That are Substantially Similar to Contracts That Pre-date Their Election or Appointment
  - 6.27: Alphabetical Index to Exemptions Unrelated to Gifts
- 6.01: Statutory Authority to Promulgate Exemptions

(1) The State Ethics Commission (Commission) has statutory authority to promulgate exemptions from M.G.L. c. 268A, §§ 3 through 7, 11 through 14, 17 through 20, and 23, pursuant to M.G.L. c. 268B, § 3(a)(2). Pursuant to that authority, the Commission is promulgating 930 CMR 6.00 to create exemptions that will permit, in certain situations, conduct which would otherwise be prohibited by M.G.L. c. 268A, §§ 4 through 7, 11 through 14, 17 through 20, and/or 23, because the Commission has determined that the conduct either serves a legitimate public purpose, or does not present a genuine risk of a conflict of interest or the appearance of a conflict of interest, or both. Exemptions related to gifts to public employees are set forth in 930 CMR 5.00: *Exemptions from M.G.L. c. 268A and M.G.L. c. 268B Related to Gifts*; other exemptions are set forth in 930 CMR 6.00. An alphabetical index of these exemptions is set forth in 930 CMR 6.26.

(2) The exemptions created by 930 CMR 6.00 are in addition to those set forth in M.G.L. c. 268A unless the contrary is stated explicitly.

## 930 CMR: STATE ETHICS COMMISSION

### 6.01: continued

(3) For purposes of these exemptions only, and not for purposes of M.G.L. c. 268B, a public employee is any state, county, or municipal employee, and any special state, county, or municipal employee, as defined in M.G.L. c. 268A, § 1. The term includes full and part-time public employees. It applies regardless of how the public employment began, and includes public employees who were appointed or elected to their positions, or hired by a public agency, or those who provide services to a public agency pursuant to an express or implied contract. It also applies to persons serving in both compensated and uncompensated positions. The definition set forth in 930 CMR 6.01(3): Public Employee is for purposes of these exemptions only, and not for purposes related to M.G.L. c. 268B, § 5. A public employee who complies with the requirements of an exemption in 930 CMR 6.00 is deemed to be in compliance with the sections of M.G.L. c. 268A referenced in that exemption.

(4) The establishment of these exemptions shall not be the basis for any inference that conduct not specifically exempted either is, or is not, prohibited by M.G.L. c. 268A.

(5) The exemptions in 930 CMR 6.00 shall be construed to advance their stated purposes.

(6) For purposes of 930 CMR 6.00, a disclosure is a written statement that sets forth all the relevant facts. Disclosures required by 930 CMR 6.00 must be made on forms prescribed by the Commission. A disclosure is a public record. If a disclosure required by 930 CMR 6.00 will contain information required by law to be kept confidential, the public employee making the disclosure must follow the procedure set forth in 930 CMR 3.02: *Disclosures Containing Confidential Information*.

(a) An appointed public employee must make a disclosure to the employee's appointing authority before the relevant event occurs. An appointing authority is the individual official, board, commission, or other governmental body that has the legal authority to appoint the public employee, or such authority's designee. A disclosure to an appointing authority that is a multi-member body shall be made to the chairperson, and copied to the members of the body. Such multi-member body, by valid vote of such body, may choose to delegate to the chairperson or other member of the body the authority to make any necessary determination in response to such disclosure on behalf of such body, which should then be copied to the members. Judges and judicial branch employees make the disclosures required by 930 CMR 6.00 to the Chief Justice of their respective courts, or to his or her designee.

(b) A state or county public employee who does not have an appointing authority because that employee is elected, or for any other reason, makes a disclosure to the Commission, except that Members of the General Court may make a disclosure to the Senate or House Clerk, as appropriate, or to the Commission. A disclosure must be made before the relevant event occurs.

(c) A municipal employee who does not have an appointing authority because that employee is elected, or for any other reason, makes a disclosure to the town or city clerk. An elected regional school district employee makes a disclosure to the clerk or secretary of such district. Such employees must make the disclosure before the relevant event occurs.

### 6.02: Exemptions to Encourage Volunteer Public Service, and to Promote Education, Training, and Professional Development

(1) Purpose. The purpose of 930 CMR 6.02 is to encourage volunteer public service, and to promote education, training, and professional development, by:

(a) permitting public employees, and persons with existing direct or indirect financial interests in public contracts, to serve in uncompensated positions with public agencies, without violating M.G.L. c. 268A, § 7, 14, or 20;

(b) permitting persons with compensated non-public positions to receive their usual compensation during the time spent serving in uncompensated positions with public agencies, without violating M.G.L. c. 268A, § 4(a), 11(a), or 17(a);

(c) permitting persons with compensated public positions to receive their usual compensation during the time spent serving in uncompensated positions as part of the State Employees Responding as Volunteers (SERV) Program, or in any other public agency program to promote volunteer services by public employees with guidelines comparable to those of the SERV Program, without violating M.G.L. c. 268A, § 4(a), 11(a), or 17(a); and

(d) permitting persons who serve in uncompensated intern positions to accept compensation from other sources for time spent in such service.

6.02: continued

- (2) Definitions. For purposes of the exemptions created by 930 CMR 6.02:
- (a) An uncompensated position is a position for which no pay, benefits, *per diems*, or retirement-related creditable service is provided. A position is not uncompensated because the person holding it waives compensation. A person holding an uncompensated position may receive reimbursement for actual expenses and the position will still be considered uncompensated.
  - (b) To have an indirect financial interest in a contract made by a public agency means to derive financial benefit from a contract between a public agency and another person or entity.
  - (c) Usual compensation does not include a severance package, stipend, or other funds received in anticipation of commencing employment.
- (3) Exemptions.
- (a) A public employee, or a person with an existing direct or indirect financial interest in a public contract, does not violate M.G.L. c. 268A, § 7, 14, or 20 by being elected or appointed to an uncompensated position with a public agency at the same level of government, including such a position with the same agency in which the public employee is serving, provided that the employee makes a disclosure as set forth in 930 CMR 6.01(6). Persons acting within this exemption remain subject to the other prohibitions of M.G.L. c. 268A, including, but not limited to, M.G.L. c. 268A, §§ 8A, 15A, and 21A concerning election and appointment by public boards; M.G.L. c. 268A, §§ 6, 13, and 19 concerning self-dealing; and M.G.L. c. 268A, § 23, the standards of conduct.
  - (b) A person who has a compensated position or contractual arrangement with a non-public employer may receive his or her usual compensation from the non-public employer during the time spent serving a public agency in an uncompensated position without violating M.G.L. c. 268A, § 4(a), 11(a), or 17(a).
  - (c) A public employee may receive the employee's usual compensation during the time spent serving in an uncompensated position as part of the SERV Program, or in any other public agency program to promote volunteer services by public employees with guidelines comparable to those of the SERV Program, without violating M.G.L. c. 268A, § 4(a), 11(a), or 17(a).
  - (d) A person who serves in an unpaid intern or similar position in a public agency for educational, training, or professional development purposes may receive compensation, a fellowship, or loan forgiveness from an accredited educational institution or other educational or professional organization during the time spent serving the public agency without violating M.G.L. c. 268A, § 4(a), 11(a), or 17(a). An accredited educational institution or other educational or professional organization may provide such compensation, fellowship or loan forgiveness without violating M.G.L. c. 268A, § 4(b), 11(b), or 17(b).

6.03: Exemption to Permit Public Employees Who Are Parents to Advocate for Their Children

- (1) Purpose. The purpose of 930 CMR 6.03 is to permit parents or guardians who are public employees to advocate for their children.
- (2) Definitions. For purposes of 930 CMR 6.03:
- Child includes one's biological child, adopted or pre-adoptive child, foster child, ward, or step-child, provided that the child is under 22 years of age.
- To Advocate means to act on behalf of a child in one's private capacity as a parent. Advocating does not include discussing financial matters related to one's child with one's subordinates in the absence of other people who would ordinarily participate in accordance with an established decision-making process.
- (3) Exemption. A public employee may advocate for the employee's child or children with school employees and officials and with employees and officials of state agencies overseeing education without violating M.G.L. c. 268A, § 4, 11, or 17, provided that the public employee follows established procedures and does not seek special consideration for the child by reason of the employee's public position. A person acting within this exemption remains subject to the other prohibitions of M.G.L. c. 268A, including, but not limited to, M.G.L. c. 268A, §§ 6, 13, 19, and 23.

6.03: continued

(4) Persons holding supervisory positions with a school, school department, or agency related to education may use this exemption, but must disclose the fact that they have done so. Such a disclosure may omit identifying information to the extent necessary to protect a student's privacy rights as provided by state or federal statute or regulation.

Example: A school principal whose child attends the school at which the principal works meets with her child's Individual Education Program team to discuss her child's educational program. The team includes some school employees who are the principal's subordinates. The principal makes a disclosure of the fact that she is attending the meeting to the superintendent of the school district. The principal has acted in accordance with the exemption and has not violated the law.

Example: A school committee member whose child attends school in the district participates in a mediation process sponsored by the state Bureau of Special Education Appeals or its successor to resolve issues about who will pay for services for the child. Some of the participants in the mediation are the committee member's subordinates in the school district. The committee member makes a disclosure of his participation in the process. The committee member has acted in accordance with the exemption and has not violated the law.

Example of What is Not Permitted: A school committee member meets privately with the superintendent of schools, who is the committee member's subordinate, to arrive at financial terms with respect to payment for services for the committee member's child. Ordinarily, other school department members including the Director of Special Education Services would participate in such discussions. The committee member makes no disclosure of the meetings. The committee member has violated the law.

6.04: Exemption for the National Guard and Volunteer Medical or Rescue Organizations in Exigent Circumstances

(1) Purpose. The purpose of 930 CMR 6.04 is to allow public employees to act on behalf of volunteer medical or rescue organizations such as the American Red Cross in the event of exigent circumstances, and to allow members of the National Guard to act and be paid in exigent circumstances.

(2) Definition. For purposes of 930 CMR 6.04, exigent circumstances are urgent situations requiring immediate action, such as may arise during wars, riots, terrorist actions, civil disorder, floods, storms, blizzards, hurricanes, tornadoes, tsunamis, volcanoes, epidemics, famines, fires, earthquakes, oil spills, shipwrecks, airplanes crashes, and building collapses.

(3) Exemptions.

(a) A public employee may act as an agent for a volunteer medical or rescue organization such as the American Red Cross in exigent circumstances without violating M.G.L. c. 268A, § 4, 11, or 17.

(b) A public employee may act as an agent for the National Guard, and be paid in relation to performance of such functions, in exigent circumstances, without violating M.G.L. c. 268A, § 4, 7, 11, 14, 17, or 20.

6.05: Exemption for Certain Payments by the Department of Children and Families

(1) Purpose. The purpose of 930 CMR 6.05 is to allow state employees to serve as foster parents, guardians, pre-adoptive and adoptive parents, or in any other comparable capacity.

(2) Exemption. A state employee may have a direct or indirect financial interest in a contract or agreement with the Department of Children and Families to serve as a foster parent, guardian, pre-adoptive or adoptive parent, or in any comparable status, including, but not limited to, the receipt of payments directly or indirectly from the Department of Children and Families, without violating M.G.L. c. 268A, § 4 or 7; provided that:

(a) the state employee has been approved by the Department of Children and Families or its designee to serve as a foster parent, guardian, pre-adoptive or adoptive parent, or in any comparable status; and

(b) the state employee files with the Commission a disclosure of the financial interest on a form designated for such purpose by the Commission.

6.06: Exemption to Permit State Employees to Provide Services to the Massachusetts Committee for Public Counsel Services

(1) Purpose. The purpose of 930 CMR 6.06 is to permit state employees to provide services to persons entitled to receive representation and/or services from the Massachusetts Committee for Public Counsel Services (CPCS), and to provide services to the attorneys assigned by CPCS to represent those persons.

(2) Exemption. A state employee may have a direct or indirect financial interest in a contract or agreement to provide services to, or on behalf of, persons, in connection with matters in which those persons are receiving representation and/or services from CPCS, or attorneys or personnel assigned by CPCS, and may act as an agent or attorney in relation to so doing, without violating M.G.L. c. 268A, § 4 or 7; provided that the state employee files a disclosure of the financial interest with the Commission on a form designated for such purpose by the Commission. If the state employee was appointed, the disclosure must show written approval of the proposed arrangement by CPCS and by the state employee's appointing authority or designee, if different from CPCS, in advance of providing the services. If the state employee was elected or has no appointing authority for any other reason, the disclosure must show written approval of the proposed arrangement by CPCS and must be submitted to the Commission as set forth in 930 CMR 6.01(6) in advance of providing the services.

Example: A psychiatrist employed by the Department of Mental Health may enter into a contract to be paid to carry out an evaluation of a defendant in a criminal case who is represented by a public defender assigned by CPCS, and to testify concerning her evaluation, provided that, before doing so, she discloses her financial interest in writing and obtains DMH approval of the arrangement, and files the written disclosure with the Commission.

6.07: Exemption to Permit State Employees to Provide Personal Services to State Agency Clients

(1) Purpose. The purpose of 930 CMR 6.07 is to increase the availability of providers of personal services to clients of state human or social services agencies, and of educational services to those who serve such agencies, by permitting state employees to provide such services.

(2) Definition. For purposes of 930 CMR 6.07, personal services means any service related to the health or welfare of a client of a state human or social services agency that is provided by a state employee, including services provided in an institutional setting, or in a group, community, home, or other non-institutional setting.

(3) Exemption. A state employee may, without violating M.G.L. c 268A, § 4 or 7, have a direct or indirect financial interest in a contract or agreement, and may act as an agent in relation to any such contract or agreement:

(a) made by a state agency to provide personal services to a person or persons who receive services from, or have services paid for by, state agencies within the Executive Office of Health and Human Services, the Executive Office of Public Safety and Security, the Executive Office of Elder Affairs, the Executive Office of Veterans' Services, the Human Service Transportation Office, and any sheriff's office, or educational services to those who work for such agencies, or

(b) made by a provider or organization funded by any agency within the aforesaid offices for the aforesaid purposes, provided that the state employee files a disclosure of the financial interest with the Commission on a form designated for such purpose by the Commission. The proposed arrangement must be approved by the employee's appointing authority and, if another agency is involved, by an authorized employee of the second agency, before the employee provides personal or educational services. Employees without an appointing authority must following the disclosure procedure set forth in 930 CMR 6.01(6).

Example: An employee of the Department of Developmental Services may enter into a contract to be paid to provide weekend respite services that will be paid for by the Department of Mental Health, provided that the employee files a written disclosure of the arrangement and that authorized employees of both the Department of Developmental Services and the Department of Mental Health have approved the arrangement.

6.08: Exemption for Board Members Appointed by Public Agency

(1) Purpose. The purpose of 930 CMR 6.08 is to allow a non-elected public employee appointed to the board of a nonprofit public interest organization by the employee's employing public agency, to serve as the employing public agency's representative on such board, and to participate fully in board matters and in agency matters.

(2) Exemption. A non-elected public employee who has been appointed to the board of a nonprofit public interest organization by the employee's employing public agency may participate in particular matters in which the organization has a financial interest without violating M.G.L. c. 268A, § 6, 13, 19, or 23.

6.09: Exemption for School Committee Members and Charter School Trustees

(1) Purpose. The purpose of 930 CMR 6.09 is to permit school committee members and charter school trustees to participate in certain circumstances in matters that may affect their own children.

(2) Definitions. For purposes of 930 CMR 6.09:

(a) A general school fee means a fee, waiver or exemption established by a school committee or charter school board of trustees for a school service, program, or activity, including, but not limited to, fees for full day kindergarten, school bus transportation, preschool or after school programs, sports, or extracurricular activities. The term general school fee does not include a fee that applies to a single event or the children of a single family.

(b) Child includes one's biological child, adopted or pre-adoptive child, foster child, ward, and step-child.

(3) Exemption. A school committee member or charter school trustee may participate in a particular matter involving a general school fee that will affect a child of the committee member or trustee, or a child whose parent is an immediate family member of the committee member or trustee, without violating M.G.L. c. 268A, § 6, 13, 19, or 23, if the trustee or committee member first files a disclosure of the financial interest. A charter school trustee files the disclosure with the Commission, and a school committee member files the disclosure with the clerk of the city or town.

6.10: Exemption to Permit the Conveyance of Fee Interests, Restrictions, and Easements by Public Employees

(1) Purpose. The purpose of 930 CMR 6.10 is to permit public employees to sell, transfer, or convey fee interests, easements, conservation restrictions, preservation restrictions, agricultural preservation restrictions, watershed preservation restrictions, and affordable housing restrictions to state, county, and municipal agencies.

(2) Exemption. A public employee may have a direct or indirect financial interest in a contract or agreement to convey a fee interest, easement, or restriction of the types listed in M.G.L. c. 184, § 31 to a state, county, or municipal agency, including, but not limited to, situations where such an agency is administering a federally-funded program, without violating M.G.L. c. 268A, § 7, 14, or 20; provided that:

(a) the public employee does not participate in or have official responsibility for the agency's process of recommending or selecting properties on which to acquire such fee interests, easements, or restrictions, or for decision-making with respect to such recommendation and selection; and

(b) the public employee files a disclosure of the financial interest with the Commission (state and county employees) or with the city or town clerk (municipal employees) prior to entering into such contract or agreement. This disclosure does not take the place of any disclosure required by M.G.L. c. 7, § 40J.

6.11: Exemption to Allow Public Employees to Hold Additional Jobs on Premises Occupied Pursuant to Contract or Agreement with Public Agencies

(1) Purpose. The purpose of 930 CMR 6.11 is to permit a public employee to hold an additional paid position with a second employer, where the only impediment to such employment arises because the second employer occupies premises pursuant to a contract or agreement with the public agency that employs the public employee, or any other public agency at the same level of government.

(2) Exemption. A public employee is not prohibited by M.G.L. c. 268A, § 7, 14, or 20 from receiving compensation from employment, or from a contractual arrangement with an employer or contracting entity, because that employer or entity occupies premises pursuant to a contract or agreement with a public agency at the same level of government as the public employee's agency; provided, that the public employee does not participate in or have official responsibility for the public agency's process for recommending or selecting properties that will be subject to such contracts or agreements, or for decision-making with respect to such recommendation and selection, or any property management responsibilities with respect to such properties. A person acting within this exemption remains subject to the other prohibitions of M.G.L. c. 268A, including, but not limited to, §§ 4, 6, 11, 13, 17, 19, and 23.

Example: A mechanic employed by the Massachusetts Department of Transportation may have a second job at a fast-food restaurant located at a state-owned rest stop on the Massachusetts Turnpike. The second job is consistent with the exemption because, in his state job, the mechanic does not participate in, and would not have official responsibility for, negotiating the terms of the restaurant's contractual arrangement with the Turnpike.

6.12: Exemption to Permit Public Employees to Participate in Mitigation, Disaster Relief, and Renewable Energy Programs

(1) Purpose. The purpose of 930 CMR 6.12 is to permit public employees to participate in mitigation, disaster relief, and renewable energy programs administered by their agencies.

(2) Definition. For purposes of 930 CMR 6.12, a public agency mitigation program is one designed to mitigate the effects of the public agency's projects and activities on the surrounding community.

(3) Exemption. A public employee may participate in, and receive the benefits of, any public agency mitigation program, any public agency disaster relief program (including, but not limited to, the Red Tide Relief program), and any renewable energy or energy efficiency program to the extent that the employee is otherwise eligible for the program, without violating M.G.L. c. 268A, § 7, 14, or 20; provided that the employee does not participate in or have official responsibility for the administration of such program or decision-making with respect to the award of benefits or relief under such program.

6.13: Exemptions to Permit Public Agencies to Contract With Attorneys and Other Consultants of Choice

(1) Purpose. The purpose of 930 CMR 6.13 is to make it easier for public agencies to contract with attorneys and other consultants of choice, and to broaden the pool of attorneys and consultants available to provide services to public agencies.

(2) Definition. For purposes of 930 CMR 6.13, a legitimate public purpose means that the public will obtain an identifiable advantage from the use of the particular person's services under an additional contract.

(3) Exemption for Current Public Employees. A person who is a special public employee by reason of performing contracted legal or other professional services for a public agency may have a financial interest in a contract or contracts made by the agency in which he is serving (additional contract), without violating M.G.L. c. 268A, § 4, 7, 11, 14, 17, or 20; provided that the employee:

(a) did not participate in or have official responsibility for the contents, design, making, or award of the additional contract, and

6.13: continued

(b) either the additional contract was awarded as the result of a competitive selection process in accordance with applicable law or agency policy, or, consistent with applicable public procurement law and agency policy, the agency head certifies in writing that a legitimate public purpose will be served by permitting the additional contract and provides a sole source justification for that contract, and

(c) the person files with the Commission (state and county employees) or the city or town clerk (municipal employees) a disclosure of the nature of services provided to the agency and the employee's financial interest, which includes facts to show compliance with 930 CMR 6.13(3)(a) and (b).

(4) Exemption for Special Assistant Attorneys General. An attorney who is a special state employee by reason of performing services as a special assistant attorney general may directly or indirectly receive or request compensation from, or act as agent or attorney for, a party other than the commonwealth or a state agency, in prosecuting a claim against the Commonwealth or a state agency, or in relation to a particular matter in which the Commonwealth or a state agency is a party or has a direct and substantial interest, without violating M.G.L. c. 268A, § 4(a) or (c) or § 7, provided that such attorney complies in every respect with the provisions of the Massachusetts Rules of Professional Conduct.

(5) Exemption for Former Public Employees. A former special public employee who performed contracted professional services for a public agency may continue to provide such services for a different public agency without violating M.G.L. c. 268A, § 5, 12, or 18, if the first agency assigns the contract to the second agency.

6.14: Exemption of Affordable Housing Programs and Community Development Programs

(1) Purpose. The purpose of 930 CMR 6.14 is to clarify the exemption for housing subsidy programs contained in M.G.L. c. 268A, § 20(g) and (h), by specifying that the statutory language of those sections applies to various types of programs.

(2) Exemption. For purposes of the exemptions created by M.G.L. c. 268A, § 20(g) and (h), housing subsidy program administered by a local housing authority and rental subsidy administered by a local housing authority shall include affordable housing programs and community development programs administered by local housing authorities and municipal agencies, subject to the limitation contained in M.G.L. c. 268A, § 20(g) and (h) that a public employee with responsibility for the administration of such programs is not eligible for the exemption.

6.15: Exemption of Eminent Domain Settlements

(1) Purpose. The purpose of 930 CMR 6.15 is to allow negotiated settlements in eminent domain matters.

(2) Exemption. A public employee may enter into, and receive payment pursuant to, a negotiated settlement agreement with the public agency that employs the public employee, or a public agency at the same level of government that employs the public employee, in an eminent domain matter, without violating M.G.L. c. 268A, § 7, 14, or 20. Persons acting within this exemption remain subject to the other prohibitions of M.G.L. c. 268A, including §§ 4, 6, 11, 13, 17, and 19.

6.16: Exemption of Fee-based Contractual Relationships Readily Available to the Public

(1) Purpose. The purpose of 930 CMR 6.16 is to allow public employees to enter into fee-based contractual relationships readily available to the public.

(2) Exemption. A public employee may enter into, and receive the benefits of, any fee-based contractual relationship with the public agency that employs the public employee, or with a public agency at the same level of government that employs the public agency, provided that the fee-based contractual relationship is readily available at a set price to the public at large, without violating M.G.L. c. 268A, § 7, 14, or 20. Persons acting within this exemption remain subject to the other prohibitions of M.G.L. c. 268A, including §§ 6, 13, and 19.



6.16: continued

Example: A state employee may purchase an MBTA pass.

Example: A municipal employee may pay to send a child to a summer camp run by the municipal recreation department.

Example: A municipal employee may become a paid member at a municipal golf course.

Example: Where a regional vocational high school trains students to perform auto repairs in part by running a program whereby students provide oil changes and other services to members of the public for a set fee payable to the school, a teacher at the school can have his oil changed by the students as part of that program as long as those services are readily available to the public and the teacher pays the applicable fee.

Example: An employee of the Massachusetts Port Authority may purchase a ticket from an airline operating out of a facility owned by that agency.

6.17: Exemption Related to Senior Tax Abatement Programs

(1) Purpose. The purpose of 930 CMR 6.17 is to allow participants in senior tax abatement programs to hold additional municipal positions and to have financial interests in municipal contracts, and *vice versa*.

(2) Exemption. A participant in a senior tax abatement program may hold additional municipal positions and have financial interests in municipal contracts without violating M.G.L. c. 268A, § 20, provided that the employee does not participate in or have official responsibility for the administration of such program or decision-making with respect to the award of benefits or relief under such program.

6.18: Census Employment

(1) Purpose. The purpose of 930 CMR 6.18 is to allow public employees to hold additional paid positions with the federal census.

(2) Exemption. A public employee may hold a paid position with the federal census without violating M.G.L. c. 268A, §§ 4, 11, and 17.

6.19: Exemption Permitting Public Employees to Purchase or Rent Housing and Parking Units in Multi-unit Buildings Subject to Contractual Arrangements With Public Agencies, When Such Transactions Are Readily Available to the General Public

(1) Purpose. The purpose of 930 CMR 6.19 is to allow public employees to purchase or rent housing and parking units in multi-unit buildings that are subject to long-term leases or other contractual arrangements with public agencies, including their own, when the opportunity to enter into such arrangements is readily available to the general public, and the public employee was not involved in creating the opportunity.

(2) Exemption. A public employee may purchase or rent a housing and/or parking unit in a multi-unit building that is subject to a long-term lease or other contractual arrangement with a public agency, including his or her own public agency, without violating M.G.L. c. 268A, § 7, 14, or 20, provided that the following conditions are met:

(a) The public employee did not participate in or have official responsibility for: the negotiation or approval of the long-term lease or contractual arrangement with the public agency; any other aspect of the public agency action that led to the availability of the purchase or lease opportunity; or administration of any program related to the lease or contractual arrangement; and

(b) The purchase or lease opportunity is available to members of the general public on the same terms that it is available to the public employee, and steps have been taken to make the general public aware of the availability of the opportunity.

(3) Persons acting within this exemption remain subject to the other prohibitions of M.G.L. c. 268A, including §§ 6, 13, 19, and 23.

## 6.19: continued

Example: A state agency enters into an agreement with private developers to develop condominiums or rental units on land owned by the agency. Included in the agreement are provisions for payments to be made by the developer to the agency based on occupancy, sale, and resale of the units; in addition, the public agency receives a payment from a unit owner at the time of the sale of a unit. An employee of the agency who had no involvement in negotiating, reviewing, or approving the agreement with the developers, or in managing the property, may purchase a condominium in the building.

6.20: Exemption Permitting Town Clerks to Perform Certain Election-related Functions

(1) Purpose. The purpose of 930 CMR 6.20 is to permit town clerks to perform election-related functions that town clerks are statutorily required to perform, and functions that are not likely to be outcome-determinative.

(a) During elections in which the town clerk, and/or an immediate family member of the town clerk, is a candidate for any office or offices, and

(b) In towns in which the clerk is appointed, during elections in years in which the town clerk's term expires, and the person or persons who appoint the clerk are candidates for any office or offices.

The basis for this exemption is the unique role played by town clerks relating to elections, and the existing extensive regulation of their functions in state election law.

(2) Exemption.

(a) A town clerk may perform the election-related functions that he or she is statutorily required to perform under M.G.L. chs. 51, 53, 54, 55, 55B, and 233, either in his or her capacity as a clerk, or as a member of a board of registrars of voters, without violating M.G.L. c. 268A, § 19, notwithstanding that:

1. The clerk is a candidate for an office or offices in that election; or

2. An immediate family member of the clerk is a candidate for an office or offices in that election; or

3. In towns in which the clerk is appointed, and during elections in years in which the town clerk's term expires, the person or persons who appoint the clerk are candidates for any office.

(b) This exemption as it relates to action by the clerk as a member of the board of registrars of voters applies only when the clerk acts with other members of said board, and does not apply in situations where the board of registrars has delegated its duties to the clerk. Town clerks acting under this exemption remain subject to all other restrictions of M.G.L. c. 268A, including §§ 17, 20, and 23.

Examples: A town clerk who is a candidate for an office or offices may: make determinations with respect to provisional voters as required by M.G.L. c. 54, § 76C; assist a voter who will be absent on the day of the election in completing a ballot as required by M.G.L. c. 54, § 91; receive and enter election results as required by M.G.L. c. 54, §§ 105 and 105A; process absent voting ballots as required by M.G.L. c. 54, §§ 94 and 95; and receive objections to certificates of nomination, nomination papers, and withdrawals as required by M.G.L. c. 55B, § 7. An appointed clerk whose appointing authority is a candidate for an office or offices may act as stated in this example. This list is not intended to be exclusive.

Examples: A town clerk, acting as a member of a board of registrars pursuant to M.G.L. c. 51, § 15, may: perform the duties with respect to absent voting ballot applications required by M.G.L. c. 54, § 91; perform the duties with respect to voter registration required by M.G.L. c. 51, §§ 36 through 47; and perform the duties with respect to nomination papers required by M.G.L. c. 53, § 61. An appointed clerk whose appointing authority is a candidate for an office or offices may act as stated in this example. This list is not intended to be exclusive.

Example of What is Not Permitted: A town clerk who is a member of the board of registrars of voters, and who is a candidate for an office or offices, or whose appointing authority is a candidate for office and it is during the year in which the clerk's term expires, may not, acting by herself and without the participation of other members of the board of registrars of voters, check her own or her adversary's nomination papers or those of her appointing authority and their adversaries, or certify the number of names on her own nomination papers or her adversary's or those of her appointing authority or their adversaries, as required by M.G.L. c. 53, § 7, because state law requires participation by the full board. This list is not intended to be exclusive.

6.20: continued

(c) A town clerk who is a candidate for an office or offices may perform election-related functions that are not required by statute, but that are typically assigned to or performed by the clerk, if such functions are not likely to be determinative of the outcome of the election.

Example: A town clerk who is a candidate for an office or offices, or whose appointing authority is a candidate for office and it is during the year in which the clerk's term expires, may perform duties with respect to marking shelves and guard rails in a polling place, which are delegated to her by the Select Board, since such tasks are not likely to be determinative of the outcome of the election. This list is not intended to be exclusive.

6.21: Exemption of State-sponsored College Savings and Investment Funds

(1) Purpose. The purpose of 930 CMR 6.21 is to allow state employees to participate in state-sponsored college savings and investment fund plans or programs.

(2) Exemption. A state employee may enter into, and receive the benefits of, any state-sponsored college savings and investment fund plan or program, provided that participation in such a program is readily available to the public at large, without violating M.G.L. c. 268A, § 7. Persons acting within this exemption remain subject to the other prohibitions of M.G.L. c. 268A, including § 6.

Example: A state employee may enroll in Massachusetts Educational Financing Authority savings and investment plans.

6.22: Exemption Permitting State Employees to Teach at State Educational Institutions In Certain Circumstances

(1) Purpose. The purpose of 930 CMR 6.23 is to allow a state employee to teach or perform other related duties at an educational institution of the Commonwealth even if the employee participates in financial management matters at the institution, provided that the employee does not participate in financial management matters for the department or program in which the employee wants to teach.

(2) Exemption. A state employee may teach or perform other related duties at an educational institution of the Commonwealth without violating M.G.L. c. 268A, § 7, even if the employee participates in, or has official responsibility for, the financial management of such educational institution, provided that the employee does not participate in the financial management of the department or program in which the employee will teach.

Example: A state employee who manages the Human Resources department for UMass Amherst, including that department's budget, may teach a class in the Accounting Department, because he has no responsibility for the financial management of that department.

6.23: Exemption Permitting Persons Serving as Members of Public Boards Pursuant to a Legal Requirement That the Board Have Members With a Specified Affiliation to Participate Fully in Determinations of General Policy

(1) Purpose. The purpose of 930 CMR 6.23 is to permit persons serving as members of public boards pursuant to a legal requirement that the board have members with a specified affiliation to participate fully in determinations of general policy, and to make it easier to find persons with the specified affiliation who are willing to serve on such boards.

(2) Definition. For purposes of 930 CMR 6.23, a public board is any multi-member governmental body, including boards, commissions, councils, and similar entities.

(3) Exemption. This exemption applies where a public board is legally required by statute, executive order, regulation, ordinance, by-law, warrant article, or comparable legal requirement to have members who are affiliated with a specified entity, industry, constituency or stakeholder group.

## 6.23: continued

(a) A person serving as a member of such a board does not violate M.G.L. c. 268A, § 4(c), 11(c), or 17(c), by participating as a board member in a determination of general policy, even if, in doing so, the board member gives the views of the entity, industry, constituency, or stakeholder group with which he is affiliated. A person serving as an uncompensated member of such a board may receive his or her usual compensation from other employment during the time spent serving the board as provided in 930 CMR 6.02(3), but otherwise remains subject to M.G.L. c. 268A, §§ 4(a), 11(a), and 17(a).

(b) A person serving as a member of such a board does not violate M.G.L. c. 268A, § 6, 13, or 19, by participating as a board member in a determination of general policy, even if the entity, industry, constituency, or stakeholder group with which he is affiliated has a financial interest in the determination. However, this exemption does not permit such a board member to participate in a determination of general policy that affects the financial interest of the member, the member's immediate family member or partner, a business organization in which the member is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment, in a manner not shared with the entity, industry, constituency, or stakeholder group with which the board member is affiliated.

Example: The Forest and Wood Products Education and Development Center Advisory Board is required to have members who are affiliated with the Massachusetts Wood Products Manufacturers Association, the Massachusetts Wood Producers Association, and the Massachusetts Timber Harvesters Association. These members may give the views of the associations with which they are affiliated, and may participate in determinations of general policy in which those associations have a financial interest. However, such a member may not participate in any such determination that affects the financial interest of the member or his employer in a manner different from the way it affects the financial interests of the industry he represents, such as whether to recommend that land owned by the company that employs the member be protected from harvesting.

Example: A municipal Shellfish Advisory Board has been created to provide advice to the Board of Selectmen on policy issues related to shellfishing. The Advisory Board is required to have members who are currently commercial fishermen. A board member who is a commercial fisherman may participate in determinations of general policy in which he has a financial interest common to all commercial fishermen, but may not participate in determinations in which he alone has a financial interest, such as the extension of his own individual permits or leases.

Example: A state licensing board is required by statute to be comprised of seven members appointed by the Governor. One member must be an individual engaged in the operation of a school. The remaining six members must be licensees of the board. The board will be discussing a proposal to increase the continuing education requirements for all licensees. The proposed requirement will cost licensees additional time and tuition, and may increase the income of trade schools and teachers. The board member who is a school operator may participate because his financial interest is the same as that of other school operators, and the other licensee members may participate because their financial interest is the same as that of other licensees.

Example: A seven member education advisory council has been created to advise a state licensing agency about requirements with respect to curriculum, instructors, and staff for licensed trade schools. The advisory council is required to include one member who belongs to a trade school association, one member who owns and operates a private trade school, one member who teaches at a trade school in the private sector, and one member who teaches at a trade school in the public sector. The advisory council members may participate in determinations regarding requirements in which they have a financial interest common to the entities they represent, but may not participate in matters in which their interest is not shared with those entities, such as the extension of their own school's license.

6.24: Exemption to Continue Certain Exemptions Affected by Municipal Population Changes Until Next Municipal Election

(1) Purpose. The purpose of 930 CMR 6.24 is to clarify the application of statutory exemptions to M.G.L. c. 268A, §§ 17 and 20, when the population of a municipality has changed and an exemption from the law becomes unavailable as the result of such change in population.

6.24: continued

(2) Exemptions. When a decennial census results in the unavailability of an exemption under M.G.L. c. 268A, §§ 17 and/or 20, any person who had an exemption under either of those sections based on the prior decennial census may continue to use that exemption as stated in 930 CMR 6.24(2)(a) and (b).

(a) Appointed municipal employees may continue to use the previously available exemption until 120 days after the Commission notifies the affected municipality in writing that population change has rendered a previously available exemption to the conflict of interest law unavailable.

(b) Elected municipal employees may continue to use the previously available exemption until the next municipal election, whether or not the affected employee's term has expired at the time of such election.

6.25: Exemption Permitting Elected State Officials to Participate in Particular Matters That Involve Determinations of General Policy When a Financial Interest Is Shared with a Substantial Segment of the Public

(1) Purpose. The purpose of 930 CMR 6.25 is to permit an elected state official to participate in a particular matter that involves a determination of general policy notwithstanding the fact that the official, or the official's immediate family member, has a financial interest in the matter, where that financial interest is shared with a substantial segment of the public.

(2) Definition. For purposes of 930 CMR 6.25, an elected state official is a public official as defined by M.G. L. c. 268B, § 1.

(3) (a) Exemption: Disclosure Required. An elected state official does not violate M.G.L. c. 268A, § 6 by participating in a particular matter in which the official, or the official's immediate family member, has a financial interest, if the particular matter involves a determination of general policy, and the financial interest of the elected official or immediate family member is shared with at least 10% of the population of the entire geographic area represented by the official and is the same in nature as the constituents' financial interests. A disclosure is required on a form prescribed by the Commission, unless the situation involves home ownership or residence as set forth in 930 CMR 6.25(3)(b)3. An official acting within this exemption remains subject to M.G.L. c. 268A, § 23(b)(2) prohibiting misuse of official position.

Example: The Massachusetts Executive Office of Labor and Workforce Development is considering extending unemployment benefits for an additional three months for unemployed persons whose benefits are exhausted. More than 10% of the residents of a legislator's district are unemployed and have exhausted their benefits, and the legislator's brother is one of those persons. The legislator may present his constituents' views concerning the proposed extension of benefits to the Executive Office, provided that he first makes a written disclosure of the fact that his immediate family member has a financial interest in the matter. The legislator may not use his ability to participate pursuant to this exemption to seek any special treatment for his brother, as this would be a misuse of his position in violation of M.G.L. c. 268A, § 23(b)(2).

Example Where Exemption Not Available: Using the same example of an extension of unemployment benefits, a legislator owns a boarding house. All of his tenants are unemployed and have exhausted their benefits, and will not be able to pay their rent unless their benefits are extended. The legislator, therefore, has a personal financial interest in the matter. This exemption is not available to the legislator because his financial interest is different in nature from that of his unemployed constituents.

(b) Exemption: No Disclosure Required. An elected state official does not violate M.G.L. c. 268A, § 6 by participating in a particular matter in which the official, or the official's immediate family member, has a financial interest, if the particular matter involves a determination of general policy, and

1. the effect of the particular matter on the elected official or immediate family member is no different from or greater than the effect on the general public of the Commonwealth; or
2. the financial interest of the elected official or immediate family member is generally the same in nature and extent as that of non-elected state employees and their immediate family members; or

## 6.25: continued

3. the financial interest of the elected official or immediate family member arises from home ownership or residence in the geographic area that the official represents, the particular matter generally affects the financial interests of home owners or residents in that area or a municipality within that area, and the financial interest of the official or immediate family member is the same in nature and extent as the financial interests of the other home owners or residents in that area or municipality.

No disclosure is required in the above circumstances, either because the facts that would be disclosed are already publicly known (such as where an elected state official is affected in the same manner as other non-elected state employees), or because the financial interest arises from home ownership or residence, and is therefore shared with so many people that no disclosure is necessary. An official acting within this exemption remains subject to M.G.L. c. 268A, § 23(b)(2) prohibiting misuse of official position.

Example: A state legislator whose children use public transportation may participate in her role as a legislator in a public hearing held by the MBTA regarding fare and parking garage fee increases, and a state legislator who regularly rides a public ferry to work may participate in a public hearing held by the MBTA concerning elimination of his ferry route. No disclosure is required in either case, because the effect on the legislators and immediate family members is no different from or greater than the effect on the general public.

Example Where Exemption Not Available: Using the example above of an MBTA fare and MBTA garage fee increase, a different state legislator owns a parking garage near an MBTA station and anticipates a change in business if MBTA parking garage fees rise. This legislator may not use this exemption because her financial interest is not the same in nature as that of her constituents who use public transportation.

Example: An elected state official who has family health insurance arising from his state employment and whose eligibility for coverage is the same as that of any other state employee may comment on a proposal by the state agency that regulates health insurance to increase copayments. No disclosure is required.

Example: A state legislator may participate in a hearing before a state agency regarding residential insurance rates, where those rates affect every homeowner in the legislator's district, and the legislator owns a home in his district. No disclosure is required, where the legislator's only financial interest arises from home ownership in his district, and the particular matter generally affects homeowners in the district.

Example: A state legislator may participate in a community meeting with state officials regarding the siting of a landfill, where the proposed landfill will generally affect property values in the town where the landfill will be located, and the legislator's parents own a home in that town. No disclosure is required, because the legislator's financial interest arises from immediate family members' home ownership in a town in his district, and the particular matter generally affects every homeowner in that town.

6.26: Exemption Permitting Public Employees to Have Financial Interests in Contracts That Pre-date Their Election or Appointment or That are Substantially Similar to Contracts That Pre-date Their Election or Appointment

(1) Purpose. The purpose of 930 CMR 6.26 is to allow public employees who had business interests involving government before they entered public service to retain those interests, while providing safeguards to ensure that they do not use their public positions to advance their business interests.

(2) Definitions. For purposes of 930 CMR 6.26:

A public employee is elected to a position on the date on which the election is held.

A contract is substantially similar to another contract if the two contracts involve the same type of services, goods, benefits (such as insurance coverage), or access to and/or use of premises. Contracts may be substantially similar even though the parties or the contract terms are not the same.

## 6.26: continued

Example: An office furniture company's contract to sell ten desks to state agency A is substantially similar to the company's contract to sell 100 filing cabinets to state agency B, because both contracts involve the sale of office equipment.

Example: The office furniture company's contract to sell 100 filing cabinets to state agency B is not substantially similar to its contract to sell inventory software to state agency C, because the two contracts do not involve the same type of services or goods.

Example: An extermination service company's one-year contract to spray Town Hall for insects is substantially similar to the company's three-year contract to inspect another municipal building for rodents and place glue traps as needed, because the two contracts involve the same type of services.

Contract terms are non-negotiable if the contract is a standard form contract containing only terms and conditions available to any similarly situated public agency, person, or entity, and is not a contract developed for, or containing negotiated terms specific to, a particular transaction between a public agency and the contractor.

Example: A state contract that consists of the Commonwealth of Massachusetts Standard Contract Form, Commonwealth Terms and Conditions, and a Statement of Work negotiated between the state agency and the contractor setting forth what the contractor will do and how much it will be paid, contains negotiated terms, and does not satisfy the definition of non-negotiable contract terms.

(3) Exemption for Financial Interests in Contracts That Pre-date Public Service. A public employee may retain a direct or indirect financial interest in a contract with a public agency (other than a financial interest arising from employment with, or funded by, a public agency, or from the provision of legal or other professional services to a public agency), if the financial interest pre-dates his election or appointment to a state, county, or municipal position, without violating M.G.L. c. 268A, §§ 7, 14, or 20, provided that the public employee makes a disclosure as required by 930 CMR 6.26(6), and complies with the restrictions set forth in 930 CMR 6.26(7). The public employee may retain such financial interest during the original contract term, as well as during any additional term resulting from an automatic extension of the contract or a renewal of the contract upon notice by either party, as long as the same terms and conditions apply during any such additional term, and no action is taken by either party other than the notice to renew. Changes in contract payments will not be considered a change in the terms and conditions as long as the methodology for computing such changes is specified in the original contract, such that no negotiations are needed or required. A "change order", as defined by M.G.L. c. 7C, § 17, shall be considered a continuation of the same contract for purposes of 930 CMR 6.26(3), (4), and (5), rather than an amendment of the contract, only if any added cost resulting from the change order is based upon pre-existing labor rates, unit costs and allowable mark-up for overhead and profit, or similar objective criteria, as established in the original contract. Retention of a financial interest in an amendment to a contract is permissible only in accordance with 930 CMR 6.26(5).

Example: The owner of a construction company is elected mayor. Prior to his election, his company contracted with the municipality to construct an addition to a municipal office building. The mayor may retain his financial interest in that contract until the term of the contract is completed, because it pre-dates his election as mayor, provided that he makes a disclosure as required by 930 CMR 6.26(6), and complies with the restrictions set forth in 930 CMR 6.26(7). The mayor may retain his financial interest in the contract if a change order is executed authorizing the company to buy more pipe than was originally anticipated based upon the unit price for pipe agreed to in the original contract, but he would not be able to retain his financial interest in the contract if a change order were executed involving payment of a negotiated lump sum amount for specified additional work. The mayor may have a financial interest in a new or amended municipal contract entered into after his election only if he can satisfy the requirements of 930 CMR 6.26(5) or some other exemption to M.G.L. c. 268A, § 20.

6.26: continued

Example: A software company has a contract with a state agency to develop software. The term of the contract is six months. An owner of the software company is hired by a state agency during the term of the contract. The new state employee may retain his financial interest in that contract until its term is completed, because it pre-dates his appointment to his new position, provided that he makes a disclosure as required by 930 CMR 6.26(6), and complies with the restrictions set forth in 930 CMR 6.26(7). He may have a financial interest in a new or amended state contract entered into after his appointment only if he can satisfy the requirements of 930 CMR 6.26(5) or some other exemption to M.G.L. c. 268A, § 7.

(4) Exemption for Financial Interests That Are Transferred by a Disabled Family Member or Are Inherited. A public employee may have a direct or indirect financial interest in a contract with a public agency (other than a financial interest arising from the provision of legal or other professional services to a public agency) without violating M.G.L. c. 268A, §§ 7, 14, or 20, if he acquired that financial interest after his election or appointment to a state, county, or municipal position, provided that the public employee acquired the financial interest in the public contract by transfer from an immediate family member because of the family member's incapacitating disability, or by inheritance. The public employee must make a disclosure as required by 930 CMR 6.26(6), and comply with the restrictions set forth in 930 CMR 6.26(7). The public employee may retain such financial interest during the original contract term, as well as during any additional term resulting from an automatic extension of the contract or a renewal of the contract upon notice by either party, as long as the same terms and conditions apply during any such additional term, and no action is taken by either party other than the notice to renew. Changes in contract payments will not be considered a change in the terms and conditions as long as the methodology for computing such changes is specified in the original contract, such that no negotiations are needed or required. A "change order", as defined by M.G.L. c. 7C, § 17, shall be considered a continuation of the same contract for purposes of 930 CMR 6.26(3), (4), and (5), rather than an amendment of the contract, only if any added cost resulting from the change order is based upon pre-existing labor rates, unit costs and allowable mark-up for overhead and profit, or similar objective criteria, as established in the original contract. Retention of a financial interest in an amendment to a contract is permissible only in accordance with 930 CMR 6.26(5).

(5) Exemption for Financial Interests in Contracts That Are Substantially Similar to Contracts That Pre-date Public Service. A public employee may have a direct or indirect financial interest in a contract with a public agency other than his own municipal or county agency as defined in M.G.L. c. 268A § 1(c) and (f), or governmental body as defined in 930 CMR 7.00: *Definition of Governmental Body* (and other than a financial interest arising from employment with, or funded by, a public agency, or from the provision of legal or other professional services to a public agency), which is entered into or amended after the public employee's election or appointment to a public position if all the following criteria are met:

- (a) The new or amended contract is substantially similar to a contract with a public agency that pre-dated the public employee's election or appointment, and in which the public employee had a direct or indirect financial interest, or in which an immediate family member of the public employee had a financial interest for purposes of 930 CMR 6.26(4), provided that the termination date of the earlier contract was within the previous five-year period; and
- (b) Either:
  - 1. the new or amended contract was awarded pursuant to a competitive bidding process, as defined by M.G.L. c. 268A, § 1(b); or
  - 2. the contract terms are non-negotiable, and the contract is available to the public generally and/or to all who meet the eligibility requirements for the contract, in accordance with a standard process that incorporates objective standards and eligibility criteria; and
- (c) The public employee, in any public position he holds or has held, did not participate in or have official responsibility for the contents, design, making or award or management of the contract, and did not participate in or have official responsibility for determining the eligibility requirements for the contract; and
- (d) The public employee makes a disclosure as required by 930 CMR 6.26(6); and
- (e) The public employee complies with the restrictions set forth in 930 CMR 6.26(7).



## 6.26: continued

Example: The owner of a construction company is elected to a board of selectmen. He used the exemption set forth in 930 CMR 6.26(3) to retain a pre-existing financial interest in a municipal contract to construct an addition to a building. The municipality is preparing to award a contract for construction of a new school by making a public announcement soliciting bids, and will award the contract to the lowest responsible bidder. The two contracts are substantially similar, and the contract will be awarded pursuant to a competitive bidding process, as defined by M.G.L. c. 268A, § 1(b), so the requirements of 930 CMR 6.26(5)(a) and (b)1. are satisfied. If the selectman can also meet the requirements of 930 CMR 6.26(5)(c), (d), and (e), then he may use the exemption set forth in 930 CMR 6.26(5) to have a financial interest in the new contract.

Example: A commercial fisherman is elected to his town's board of selectmen. Prior to his election, he leased a municipal boat berth from the town to conduct his business. Subsequent to his election, he has used the exemption set forth in 930 CMR 6.26(3) to retain his financial interest in that contract. He wishes to lease an additional boat berth from the town to expand his fishing operations. The town does not use a competitive bidding process to assign boat berths, but rather requires persons seeking boat berths to submit an application. The town maintains a waiting list of applicants. Applicants who are selected in accordance with the town's process must pay rent according to a set fee schedule. The new contract meets all of the requirements of 930 CMR 6.26(5)(a), (b)2., and (c). The selectman may use the exemption set forth in 930 CMR 6.26(5) provided that he also satisfies the requirements of 930 CMR 6.26(d) and (e).

Example: An owner of a software company has been hired by a state agency and has used the exemption set forth in 930 CMR 6.26(3) to retain a pre-existing financial interest in a state contract. His employing agency is preparing to award a contract for software pursuant to a competitive bidding process. The state employee cannot have a financial interest in that contract, because the contract is with his own agency. He could only have a financial interest in a new state contract if he met all the requirements of 930 CMR 6.26(5).

(6) Disclosure Requirement.

(a) Public employees using the exemption set forth in 930 CMR 6.26(3) shall file a disclosure identifying the public contract and providing information regarding their financial interest in the contract on a form prescribed by the State Ethics Commission within 30 days of election or appointment to a public position.

(b) Public employees using the exemptions set forth in 930 CMR 6.26(4) and/or 930 CMR 6.26(5) shall file a disclosure identifying the public contract and their financial interest in the contract, along with such other information as may be necessary to show that the requirements of 930 CMR 6.26(4) and/or 930 CMR 6.26(5) have been met, on a form prescribed by the State Ethics Commission within 30 days of acquiring the financial interest.

(c) A public employee who makes a disclosure pursuant to 930 CMR 6.26(6), and who subsequently has contacts with the contracting agency, may have an obligation to disclose those facts pursuant to M.G.L. c. 268A, § 23(b)(3).

(d) Disclosures made pursuant to 930 CMR 6.26(6) shall be public records and shall be made:

1. by elected municipal employees, to the municipal clerk, or, in the case of elected regional school district employees to the clerk or secretary of the regional school district;
2. by appointed state, county and municipal employees, to their appointing authorities; and
3. by elected state and county employees, to the State Ethics Commission, which shall list each such disclosure on the Commission website, and may also post each such disclosure in its entirety.

(7) Restrictions on Persons Using Exemptions. A public employee using the exemptions set forth in 930 CMR 6.26(3), 930 CMR 6.26(4), or 930 CMR 6.26(5):

(a) Remains subject to the other prohibitions of M.G.L. c. 268A, including, but not limited to, M.G.L. c. 268A, §§ 4, 6, 11, 13, 17, 19 and 23, except that any compensation derived from or provided for in the pre-existing contract, or new or amended contract, may be received; and

6.26: continued

(b) May not, in either his official or his private capacity, communicate, directly or indirectly, with any public agency concerning any public contract in which he has a financial interest. This restriction shall not prohibit normal business dealings and communications between the private contracting party and the public contracting agency involving persons other than the public employee.

6.27: Alphabetical Index to Exemptions Unrelated to Gifts

<u>Topic</u>	<u>Regulatory Section</u>
Adoptive or Pre-adoptive Parent	930 CMR 6.05
Affordable Housing Programs	930 CMR 6.14
Agricultural Preservation Restriction	930 CMR 6.10
Board Member	930 CMR 6.02, 6.08, 6.23
Census Employment	930 CMR 6.18
Charter School Trustees	930 CMR 6.09
Child, Act on Behalf of	930 CMR 6.03
College Savings	930 CMR 6.21
Commission	930 CMR 6.01(1)
Committee for Public Counsel Services	930 CMR 6.06
Community Development Programs	930 CMR 6.14
Conservation Restriction or Easement	930 CMR 6.10
Consultants	930 CMR 6.13
Department of Children and Families	930 CMR 6.05
Disaster Relief Program	930 CMR 6.12
Disclosure	930 CMR 6.01(6)
Elected State Officials	930 CMR 6.25
Eminent Domain	930 CMR 6.15
Exigent Circumstances	930 CMR 6.04
Expertise	930 CMR 6.23
Fee-based Contractual Relationships	930 CMR 6.16
Foster Parents	930 CMR 6.05
Guardian	930 CMR 6.05
Human Services Agencies, Clients of	930 CMR 6.07
Indirect Financial Interest	930 CMR 6.02(2)(b)
Interns	930 CMR 6.02(3)(d)
Leased Premises, from Public Agency	930 CMR 6.11, 6.19
Mitigation Program	930 CMR 6.12
Parents	930 CMR 6.03, 6.05, 6.09
Personal Services	930 CMR 6.07
Pre-existing Financial Interest	930 CMR 6.26
Population Changes	930 CMR 6.24
Public Employee	930 CMR 6.01(3)
Red Cross	930 CMR 6.04
Red Tide Relief Program	930 CMR 6.12
Renewable Energy Program	930 CMR 6.12
Rented Premises, from Public Agency	930 CMR 6.11
Rescue Organization	930 CMR 6.04
School Committee Member	930 CMR 6.03, 6.09
Senior Tax Abatement Programs	930 CMR 6.17
Social Services Agencies	930 CMR 6.07
Teaching at State Institutions	930 CMR 6.22
Town Clerks	930 CMR 6.20
Uncompensated Position	930 CMR 6.02(2)(a)
Usual Compensation	930 CMR 6.02(2)(c)
Volunteer	930 CMR 6.02
Volunteer Medical Organization	930 CMR 6.04

REGULATORY AUTHORITY

930 CMR 6.00: M.G.L. c. 268B, § 3(a)(2).