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CITY & TOWN

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Community Preservation Act

written by Joe Markarian

A local option to fund the creation and preservation of community housing, open space and historic resources is now available to cities and towns. On September 14, 2000, Governor Cellucci signed legislation creating the Massachusetts Community Preservation Act.¹ Few communities had pursued special legislation to create land banks before the Cape Cod Open Space and Acquisition Program was created in 1999. Encouraged by the prospect of sharing in a one-time state contribution of \$15 million, all 15 Cape Cod communities adopted the program, agreeing to raise local funding through a three percent surtax on property tax bills. The Community Preservation Act closely mirrors the Cape Cod program in structure; however, its focus is much broader. The Cape program's emphasis on land conservation had little appeal to densely developed and urban communities. Provisions to fund new housing development, as well as historic preservation, were added to preservation efforts, combining in a single program what might otherwise be competing interests in a community.

The goals of the Community Preservation program are summarized in *Figure 1* on page 6. The emphasis on new initiatives is paramount. As a result, program funds may not be expended on properties already owned or controlled by the community. Instead, a city or town may acquire real property using community preservation funds by purchase, lease, gift, grant, rental or devise, and under certain circumstances by way of eminent domain.

A community qualifies for participation in the program though local accep-

tance of Sections 3 through 7 of Chapter 44B. After approval by town meeting or the city council, voters must accept the Community Preservation provisions in the next regular municipal or state election. Once local acceptance is achieved, the community must remain in the program for a minimum of five years.

After acceptance, the city or town must establish a community preservation committee as well as a special fund through town by-law or city ordinance. The community preservation committee must include five to nine elected or appointed members. A minimum of one member each has to come from the conservation commission, the local historical society, the planning board, the park commission and the housing authority. There are no restrictions on the remaining one to four members.

The initial task of the committee is to complete a study of local needs, possibilities and potential. Such a study would draw upon the knowledge of committee members and might involve an inventory of historic buildings including buildings that might qualify for historic designation, of open space and recreational land, and of existing housing units for low and moderate income persons or families. As part of the study process, the committee is obligated to conduct at least one public hearing.

At the completion of its initial study and each year thereafter, the committee must present its recommendations to the town meeting or city council. The legislative body has the option to spend in accordance with committee recommendations or to set money aside for

later expenditure. However, each year at least 10 percent of the annual revenue collected must be expended or set aside for open space preservation, 10 percent for historic preservation and 10 percent for community housing development. Subject to program goals, there is no restriction on how the remainder of the fund revenues are spent. In addition, five percent of annual revenues may be directed to cover the administrative and operating costs of the community preservation committee. A municipality may issue bonds or notes in anticipation of preservation revenue. Fund balances may be invested and appropriations from the local general fund may be made to support committee recommendations. The community preservation fund must be set up as a separate account under the control of the municipal treasurer.

The Massachusetts Community Preservation Act has both local and state funding components:

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LEGAL

in Our Opinion

Teachers' Records Exempt under Public Records Law

In an important decision interpreting the Commonwealth's public records statute, the Supreme Judicial Court ruled that disciplinary records of public school teachers are exempt from public disclosure. The decision is *Wakefield Teachers' Association v. School Committee of Wakefield*.¹

In 1995, school officials received a complaint that a male teacher at Wakefield Junior High School had written inappropriate notes on homework papers of two female students in his class. The Wakefield school superintendent investigated the complaint, conducting interviews with the teacher, union representatives and others. The school superintendent then prepared a report critical of the teacher's actions and suspended the teacher for four weeks without pay. After the suspension, the teacher returned to work. When the incident was reported in the local newspaper, a Wakefield resident requested that the school superintendent furnish information pertaining to the suspension of the teacher. Town counsel referred the request to the Acting Supervisor of Public Records in the Office of the Secretary of State. The Supervisor wrote in her advisory opinion that the Wakefield school officials must disclose the portions of their records that identified the teacher and the nature of his misconduct. The teachers' union immediately filed suit in superior court to block release of the disciplinary report. After adverse lower court rulings, the union appealed to the Supreme Judicial Court.

The Supreme Judicial Court (SJC) acknowledged that the Massachusetts public records law was enacted to en-

sure access to government documents.² It stated that numerous Massachusetts court decisions have held that a presumption exists that a record, regardless of physical form or characteristics, is public, and the burden of proof is on the custodian of the record to show why the record is exempt from disclosure. The Legislature has broadly defined public records in M.G.L. Ch. 4, Sec. 7, Cl. 26 and then enumerated 12 exemption provisions. The issue for the court was whether the Wakefield disciplinary report is exempt from disclosure pursuant to one of those exemption provisions.

In the court's view, the case turned on the proper interpretation of the third exemption provision which exempts: "personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy."³ In the landmark decision of *Globe Newspaper Co. v. Boston Retirement Board*, the SJC had held that this exception exempts two distinct categories of records.⁴ The first category is "personnel and medical files or information." The second category is "other materials or data relating to a specifically named individual." Only the second category, the court said, is modified by the phrase, "the disclosure of which may constitute an unwarranted invasion of personal privacy." The SJC first had to decide whether a disciplinary report falls within the provisions of the first or second clause of paragraph (c). According to the court, a disciplinary report is "personnel information" and is exempt from disclosure. The court recognized that not all items in a personnel file are exempt. The exact scope of the exemption has to be determined on a case by case basis. In the court's view, however, the personnel exemption certainly applies to job appli-

cations, work evaluations, disciplinary documentation, and information relating to employment, promotion, or termination. In reviewing federal court decisions interpreting the analogous Federal Freedom of Information Act and court decisions from other states interpreting similar public records statutes, the SJC found that disciplinary reports are considered to be part of an individual's personnel information.

In the court's view, information within the "personnel" provision of the public record law is absolutely exempt from disclosure. The exemption, however, does not extend to all information in an employee's personnel file. For example, payroll records containing an employee's name, dates of employment, and gross salary do not constitute personnel information even though the same data might be contained in a personnel file. The SJC held, however, that a disciplinary report relating to one teacher is absolutely exempt from disclosure under the express terms of paragraph (c) of the public record law.

Therefore, a teacher's disciplinary record is not open to public inspection. ■

written by James Crowley

1. 431 Mass. 792 (2000).

2. M.G.L. Ch. 66, Sec. 10.

3. M.G.L. Ch. 4, Sec. 7, Cl. 26(c).

4. 388 Mass. 427 (1983).

Bulletin 33

Massachusetts Laws Relating to Municipal Finance and Taxation (Bulletin 33) is available on CD-ROM. One copy has been sent free of charge to each city and town. Additional copies are available for \$24.21 each (the cost of manufacture plus postage) by calling Elaine Lombardi at (617) 626-2337.

FOCUS

on Municipal Finance

New DOR Website for Businesses

This spring, the Massachusetts Department of Revenue (DOR) launched the Bay State Business Connection (BSBC) website. The new website, found at www.baystatebiz.com, is designed to meet the needs of the Commonwealth's business community as a "one-stop shop" for resources on doing business in Massachusetts. As of the end of September, there were close to 17,000 visits to the BSBC website.

BSBC contains business information from many federal and state agencies and business associations. Using BSBC, local officials can locate information, forms and guides on tax and employer obligations, business regulations, economic development resources, and much more. On the site, "The Guide to Massachusetts Tax and Employer Obligations" includes information on federal identification numbers, trustee taxes, business income taxes, unemployment, workers' compensation, and child support enforcement.

One of the many features available on BSBC is an online Form TA-1, used to register new businesses or update existing registrations. When the registration is accepted, the application issues a temporary business certificate, valid for 60-days. BSBC also offers "PC File for Business." This free, downloadable software application allows businesses to register for sales and withholding taxes online and file these taxes via personal computer. This application allows electronic funds transfer (EFT) payments for any tax type. Among the other BSBC features are "fill-in" PDF tax forms, which permit taxpayers to fill in forms online and print out the completed forms for filing. Fill-in forms available include corporate excise tax returns, the business use tax return,

the Application for Abatement and many more.

Of particular interest to local communities, BSBC also includes the "Online Employer Reporting System," an Internet-based option for employers to report all newly hired employees, employees returning to work after 30 days, and independent contractors who will be earning \$600 or more. All employers, regardless of size or type of business, are required by state and federal law to report new hires to DOR within 14 days.¹ DOR uses this information to ensure that children receive their child support on time and in full, and to reduce fraud in entitlement programs. This online option is intended to ease the reporting burden for employers and increase the speed and efficiency of data processing. Previously, employers had to fax these reports or submit them on magnetic media. By the end of September, approximately 28,000 new hires and independent contractors were reported via the new BSBC method.

DOR is also pursuing a joint venture with the Division of Employment and Training (DET) called, "Single File," which will simplify reporting requirements for those employers who choose to use this new web-based filing method. Single File consolidates wage reports and withholding tax returns (filed with DOR), and unemployment insurance contributions, unemployment health insurance contributions, and workforce training (filed with DET) into one transaction. DOR is also working on more closely aligning filing and payment dates for different filing requirements. If all employers used this new filing method, the number of returns filed could be reduced by as much as two-thirds. DOR is gathering employer input to assist in the design of the application.

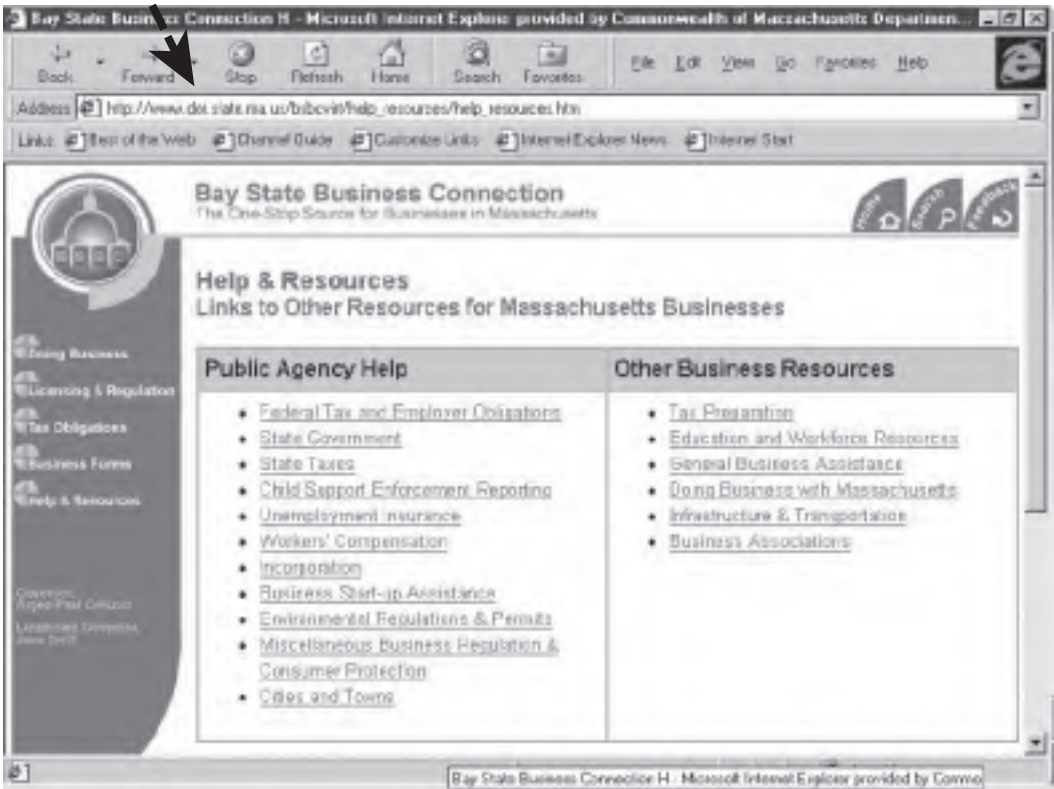
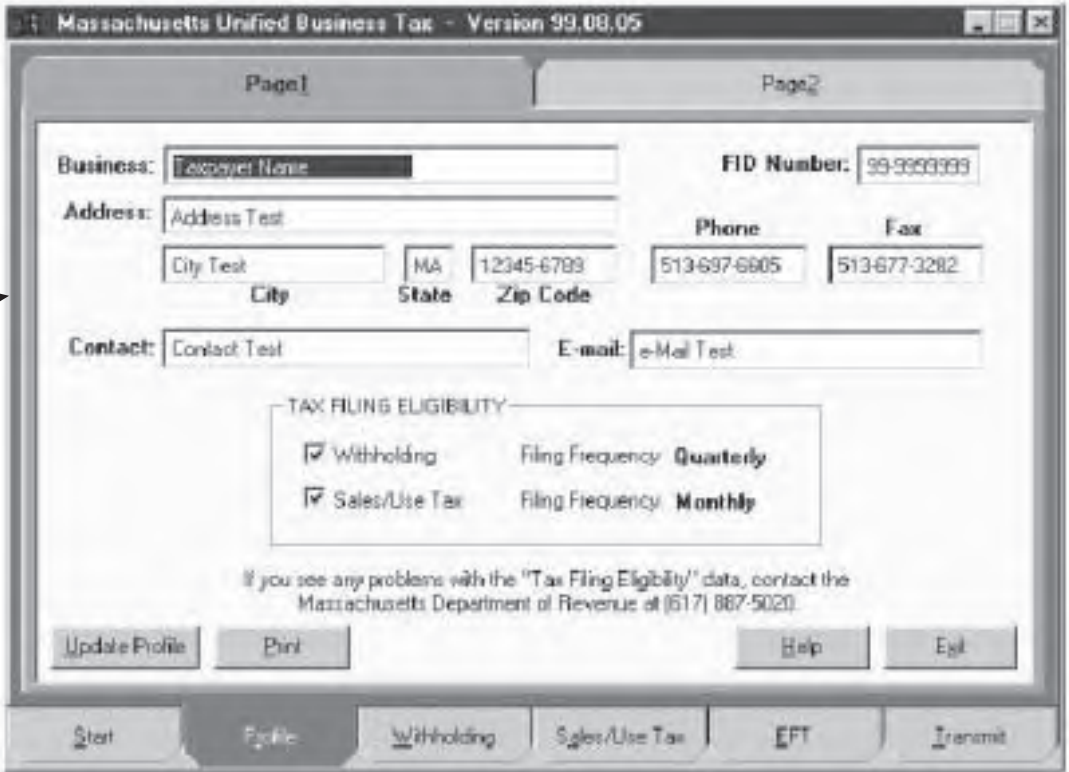
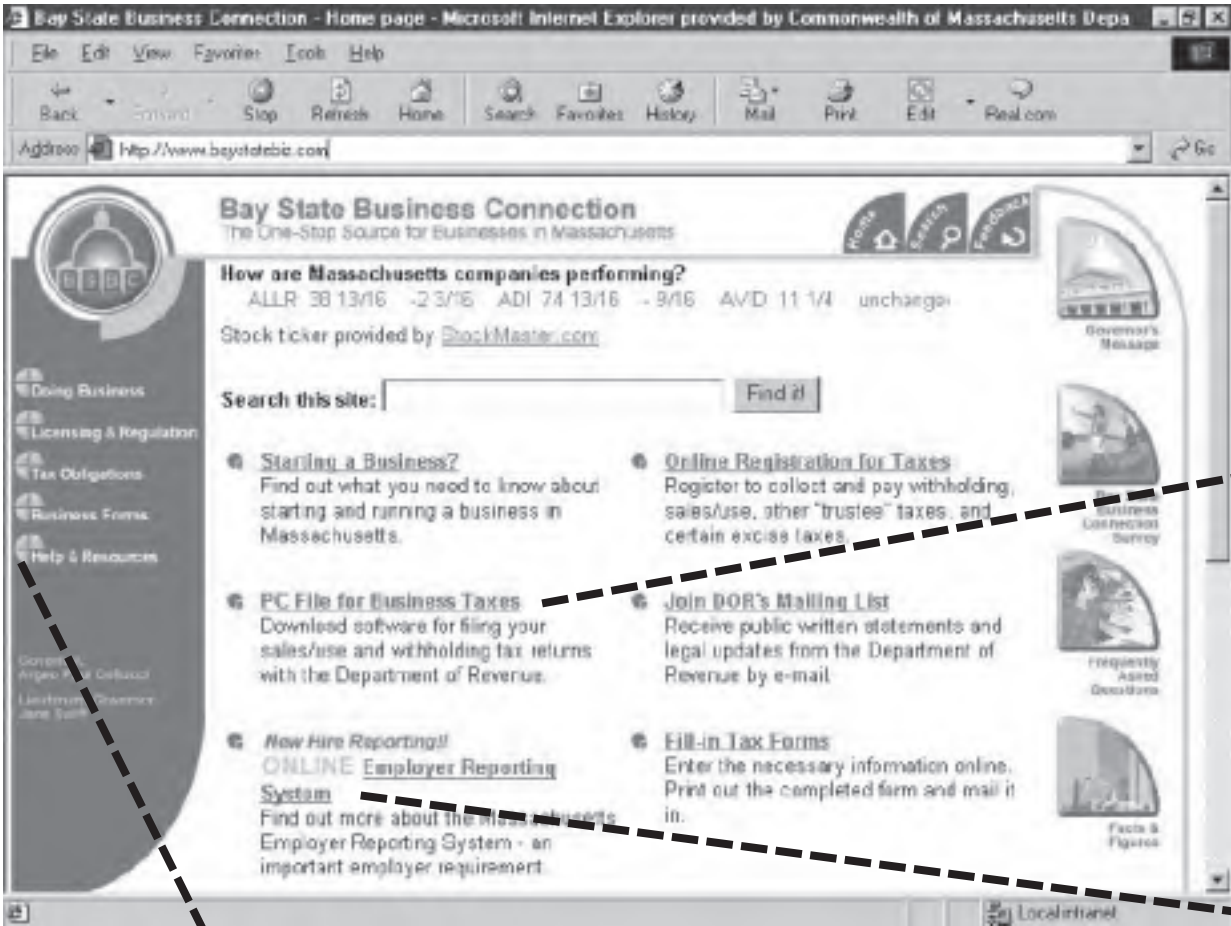
Of particular interest to *City & Town* readers would be "Activities and Trades

Licensed by Local Governments" within BSBC's Licensing & Regulation section. The state mandates licenses for certain business activities and trades, that local governments issue, and each city and town may have its own business regulations. For businesses just starting out, there is information on consulting the appropriate local officials to ascertain whether and how the business is regulated locally. BSBC provides links to Commonwealth Communities, a state website with information about every Massachusetts city and town, and links to city and town websites for communities that have them, as well as the Massachusetts Municipal Association, a nonprofit organization website with listings and links to official city and town websites, or its searchable database to locate key government phone numbers and addresses.

Upcoming enhancements to BSBC include Web-based applications for filing sales, meals, and room occupancy taxes and for making estimated corporate payments. Assisting in the creation and enhancement of this site is GovConnect, a company that has been assisting DOR with its automation efforts since the 1993 creation of the Telefile system. "This is the next logical phase for our business Web portal and serves as an example of the Commonwealth's commitment to providing businesses with a user-friendly, 24/7 single interface with government," said Frederick A. Laskey, Commissioner of Revenue. "We are working with GovConnect to take full advantage of the Internet's capabilities."

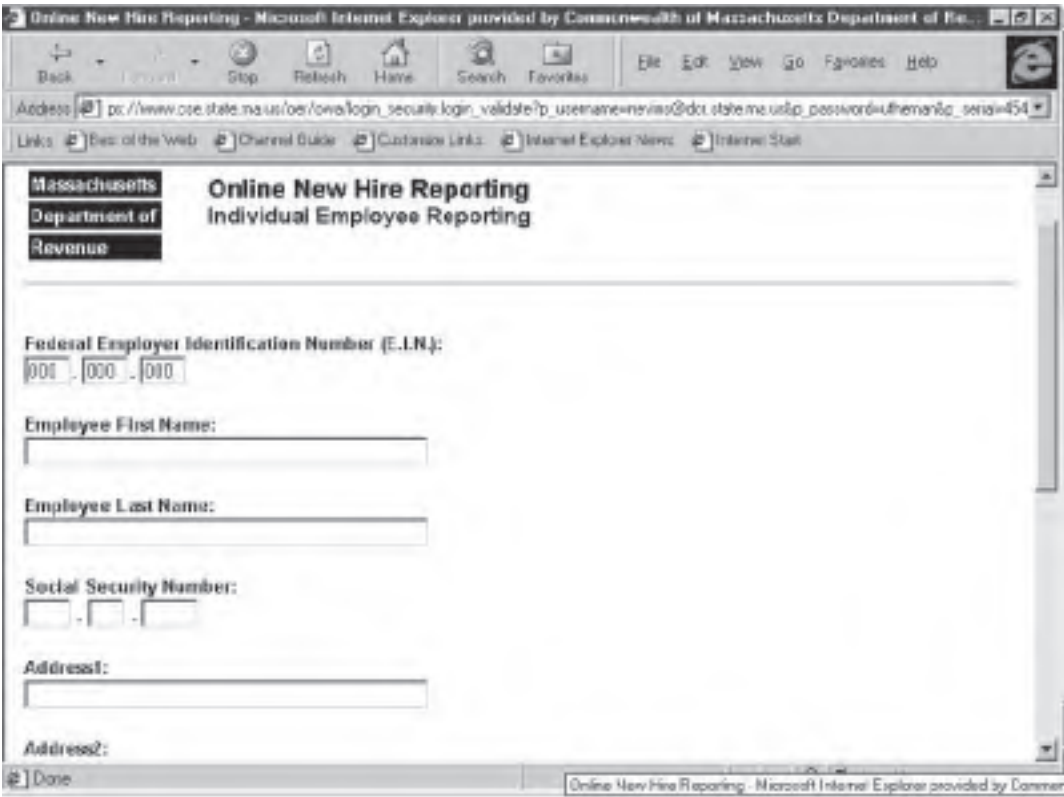
If you would like to receive BSBC e-mail updates on enhancements to the BSBC website, you may subscribe to our mailing list by sending an e-mail to: majordomo@dor-domo.massdor.com with the words "subscribe baystatebiz"

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Bay State Business Connection

The Department of Revenue's new website, the Bay State Business Connection, has a number of features of interest to local officials. One such feature accessible directly from the home page (shown at upper left) is the Online New Hire Reporting system (lower right), which allows employers to report newly hired employees to DOR via the Internet. The site also includes links to other helpful business, consumer and government websites. The Bay State Business Connection is located at www.baystatebiz.com.



Community Preservation Act

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Community Preservation Goals

- Acquisition, creation and preservation of open space, land for recreational use.
- Acquisition and preservation of historic places.
- Creation, preservation and support of community housing.
- Rehabilitation and restoration of properties acquired or created under the community preservation program for open space, historic resources, recreational use, and community housing.

Figure 1

1) Local: Up to a three percent surcharge on local property tax bills. Communities retain all amounts collected in the Community Preservation Fund.

2) State: \$10 and \$20 surcharges on certain Registry of Deed's filings. A projected pool of \$26 million will be deposited to the Community Preservation Trust Fund and distributed annually among participating communities by formula.

If the local option is accepted, the community is obligated to impose a surcharge of not more than three percent on real estate bills. Taxpayers, such as the elderly or veterans, who already receive an exemption are not subject to the new surcharge. At its option, a community can also exempt from the surcharge \$100,000 of the value of each taxable residential parcel; commercial and industrial properties in communities with classified tax rates; and residential property of qualified low and moderate income owner-occupants. The surcharge is subject to the commitment process and is otherwise treated as a tax bill subject to collection procedures.

The state community preservation trust fund, initially estimated at \$26 million per year, will be disbursed in three rounds. Round one is the so-called "match distribution" which allocates 80 percent of the state pool to participating communities. Each city or town will

receive an identical percentage share of the amount raised locally. The distribution will be no less than 5 percent and no more than 100 percent of the amount raised by each respective city or town. Round two, the equity round, distributes most or all of the remaining 20 percent of the pool by a formula that incorporates EQV per capita, population, and assigned deciles. Any trust fund balance is allocated as part of an optional round three surplus distribution, also based on an equity formula. However, in order to qualify for the second and third round distributions, a participating community must impose the maximum three percent local tax surcharge.

The Community Preservation Act (Chapter 267) becomes effective on December 13, 2000. The most rapid sequence of approvals for achieving local acceptance makes FY2002 the earliest year a local surtax can be imposed in towns and FY2003 in cities, and October 15, 2002, the earliest date state preservation funds can be distributed. The Division of Local Services will administer the program. An Informational Guideline Release explaining to local officials the requirements, policies and procedures for implementing the Community Preservation Program will be sent to each city and town. ■

1. Chapter 267 of the Acts of 2000.

New Website

➡ continued from page three

in the body of the message. Once on the list you will receive e-mail directly to your account to alert you to any significant changes made to BSBC. Please note: DOR will not share your e-mail address with any third party for any reason. If you have questions or comments about BSBC (or are having trouble subscribing to the list), please send an e-mail to: bsbcfeedback@massdor.com. ■

written by Betsy Brill

1. MGL Chapter 62E, sec. 2 and 42 U.S.C. 653Ab.

Facts About "The Commonwealth"

- Massachusetts is home to the world's most highly educated and highest paid workforce:
- One-third of all heads of household have a college degree.
- High tech average wages are almost twice the national average.
- Half of all engineering graduates from Massachusetts colleges and universities remain in the state.
- There are 121 institutions of higher learning, public and private, in Massachusetts.
- In 1998 the Corporation for Enterprise Development gave Massachusetts its highest ranking for development capacity and business, and ranked Massachusetts number one in the nation in technological resources.
- Total Research and Development expenditures in the Commonwealth are nearly three times greater than the national average. ■

From the Bay State Business Connection

DLS UPDATE

Romanian Delegation Visit

A delegation of local officials from Romania met with Deputy Commissioner Joseph J. Chessey Jr., and several of his Division of Local Services (DLS) staff on September 15, 2000. The delegation included a member of the legal department at the Ministry of Public Service; the Vice President of Tulcea County Council; five finance directors from the counties of Tulcea and Bistrita and the cities of Zalau, Alba Iulia and Lugoj; four mayors from the cities of Zalau, Alba Iulia, Alexandria and Lugoj, and the Commerce Director of Alexandria. In addition, two consultants from the Research Triangle Institute traveled with the delegation.

The delegation visited the United States to research state and local governments' roles with regard to local finance practices and administration, assessment practices, debt service and real property taxes. The Romanian officials heard presentations on the regulatory and oversight responsibilities of DLS, as well as the services and technical assistance provided to local governments. Through two interpreters, the visitors asked detailed questions and shared their experiences with DLS staff. Because there is no access to long term credit or borrowing in Romania, the delegation was particularly interested in how debt is handled here. They also wanted to learn about the tax rate setting process and year-end reports and audits. Audits are not made public in Romania.

While in Massachusetts, the delegation also met with local officials in Duxbury, Nahant, Northampton, and Worcester; the accounting firm of Powers and Sullivan; MMA Executive Director Geoffrey Beckwith; the Treasurers' and Collectors' Association; and the Joint Committee on Local Aid at the State House.

Identifying State Payments

Has a payment from the state ever left your treasurer or accountant wondering? In the past, communities have sometimes received monies from the state without sufficient detail to enable clear identification of the source and/or purpose of the payment. Others have wondered when to expect a particular payment. VendorWeb, located at massfinance.state.ma.us, is an Internet-based tool designed by the State Comptroller's Office to provide Commonwealth payment information. Updated every weeknight and accessible 24/7, the VendorWeb allows access to information that eases reporting and financial reconciliation functions.

There are two paths to use when using VendorWeb — *Scheduled Payments* and *Payment History*. The *Scheduled Payment* view provides invoices that have been processed in the Massachusetts Management Accounting and Reporting System (MMARS) and scheduled for payment. MMARS is the Commonwealth's financial management system. The *Payment History* view provides detailed information on completed payments, such as the date the State Treasurer's Office issued the payment. Local officials can organize the Payment History data in ways that best suit their needs: by payment, by date ranges, and/or by department(s). Local officials can use VendorWeb to confirm payment status, ensuring that a payment is either scheduled or has been paid.

To use VendorWeb, local officials need a PC with Internet access and their unique 13-digit vendor code. Typically the vendor code is the employer identification number and a four-digit suffix. Most cities and towns have at least two codes, one for local aid and one for other payments.

VendorWeb can be used with any browser but is best viewed with at least Internet Explorer 3 or Netscape 2.01. To access VendorWeb, the 'Cookies Enabled' setting must be activated. An authorization for Electronic Payments (EFT) form is available so that communities, who are not currently doing so, can have their Commonwealth payments directly deposited into their bank accounts.

For questions, call the Office of the Comptroller's Helpline at (617) 727-5995, Monday through Friday from 8 am to 5 pm.

New Property Tax Exemptions

Surviving spouses of disabled veterans who qualified for exemptions ranging from \$425 to \$950 may now continue to receive the higher amount regardless of marital status. Previously, widows of such veterans were entitled only to a reduced benefit of \$250, and that was totally eliminated if the spouse remarried. This new benefit even extends to surviving spouses of qualified veterans who died before the effective date of these amendments. These changes in the law apply to exemptions granted for fiscal years beginning on July 1, 2000, but do not take effect until October 26, 2000.¹

A new local option allows a city or town to establish a *minimum fair cash value required for personal property accounts to be taxed*, and to modify that value, by vote of its appropriating authority.² The minimum value cannot be more than \$10,000. Although a community may accept this provision any time after October 26, 2000, FY2002 is the first year the exemption may be implemented. ■

1. M.G.L. Ch. 59, Sec. 5 (22d), (22A), (22B), (22C), (22E) amended by Ch 159 Sec 109-113 Acts of 2000.

2. M.G.L. Ch. 59, Sec. 5 (54).

Municipal Fiscal Calendar

November 1

Taxpayer: *Semi-annual tax bill — deadline for first payment.*

Taxpayer: *Semi-annual tax bill — application deadline for property tax abatement.*

Taxpayer: *Quarterly tax bill — deadline for second quarterly tax bill without interest.*

Treasurer: *Deadline for payment of first half of county tax.*

November 15

Treasurer: *First quarter reconciliation of cash (due 45 days after end of quarter).*

November 30

Selectmen: *Review budgets submitted by department heads.*

December 15

Taxpayer: *Deadline for applying for property tax exemptions for persons.*

Accountant/Superintendent/School Committee: *Submit amendments to end of school year report to DOE.*

December 31

State Treasurer: *Deadline for notification of quarterly local aid payments.*

Taxpayer: *Deadline for filing application for abatement of motor vehicle excise for prior calendar year.*

Water/Sewer Commissioners: *Deadline for betterments to be included on next year's tax bill (M.G.L. Ch. 80, Sec. 13; Ch. 40, Sec. 42I and Ch. 83, Sec. 27).*

Selectmen: *Begin to finalize budget recommendation for review by Finance Committee.*

Assessors: *Mail 3-ABC forms to all eligible non-profit organizations.*

Collector: *Deadline for mailing third quarterly tax bill.*

Recognition for Service

The Division of Local Services (DLS) is blessed with a small group of employees who work behind the scenes to keep the organization running. On September 15, 2000, the Commissioner of Revenue recognized the long-standing service of two of those employees, Mildred Hernon and Carol Goldberg, at a ceremony at the State House. Millie Hernon has worked for the Department of Revenue (DOR) for 50 years. In her current role as personnel supervisor, she handles a myriad of payroll and employment issues for DLS employees in Boston, Worcester and Springfield, and acts as their ombudsman with other DOR bureaus. Highly respected by her coworkers, Millie epitomizes the professional government employee. Carol Goldberg works as a clerk in the Bureau of Accounts where she has faithfully served for the past 40 years. The staff of the DLS wishes to extend their gratitude and thanks to both of these employees. ■

City & Town



City & Town is published by the Massachusetts Department of Revenue's Division of Local Services (DLS) and is designed to address matters of interest to local officials.

Jean McCarthy, Editor

To obtain information or publications, contact the Division of Local Services via:

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