The Commonwealth of Massachusetts
Office of the Attorney General

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September 2, 2026

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Re: Petition No. 26-04: Initiative Petition for a Law to Support Public Education in Massachusetts

Dear Mr. Henderson:

In accordance with the provisions of Article 48 of the Amendments to the Massachusetts Constitution, we have reviewed the above-referenced initiative petition, which was submitted to the Attorney General on or before the first Wednesday of August this year. I regret that we are unable to certify that the proposed law complies with Article 48. Our decision, as with all decisions on certification of initiative petitions, is based solely on Article 48's legal standards and does not reflect the Attorney General's policy views on the merits of the proposed laws.

Below, we describe the proposed law and then explain why we are unable to certify it by operation of Article 48, Part II, Section 2, because the measure would make a specific appropriation of money from the treasury of the Commonwealth.

Description of Petition

The proposed law would require digital advertising services received by a user in Massachusetts to be subject to the state sales tax. Under this proposed law, which would amend G.L. c. 64H, § 1, the purchaser of digital advertising services would be responsible for paying state sales taxes on the sale of digital advertising services—including the sale or purchase of advertising space through websites, mobile applications, and internet-connected platforms—if the digital advertising services are received by a user in Massachusetts.

The proposed law would add a new Section 35 to Chapter 65H of the General Laws which would require that all sales taxes collected from the sale of digital advertising services be deposited into the Massachusetts School Modernization and Reconstruction Trust Fund. The Massachusetts School Modernization and Reconstruction Trust Fund, which was established in G.L. c. 10, § 35BB, receives a portion of the sales taxes collected by the Commonwealth, which then may be used by the Massachusetts School Building Authority "for any lawful purpose." The proposed law would take effect on July 1, 2029.

The Petition Would Make a Specific Appropriation of Money from the Treasury

Article 48, Part II, Section 2 provides, in pertinent part, that "[n]o measure . . . that makes a specific appropriation of money from the treasury of the commonwealth, shall be proposed as an initiative petition." A specific appropriation occurs when a measure "'set[s] apart from the public revenue a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object and no other.'" *Slama v. Attorney General*, 384 Mass. 620, 625 (1981). "The essential aspect of a specific appropriation is that it removes public monies, and the decision how to spend them, from the control of the Legislature." *Associated Indus. of Mass. v. Secretary of Comm.*, 413 Mass. 1, 6 (1992).

Under the proposed law, the newly assessed taxes on digital advertising services would be deposited into the Massachusetts School Modernization and Reconstruction Trust Fund, which by statute could then be used "without further appropriation, upon request from time to time of the executive director of the" Massachusetts School Building Authority. G.L. c. 10, § 35BB(c). This mechanism, which allows the executive branch to use money in the Massachusetts School Modernization and Reconstruction Trust Fund at its own discretion, goes beyond "[m]erely setting aside the monies, in the sense of putting them in a separate fund" such that it "does not necessarily remove them from the Legislature's control." *Associated Indus. of Mass.*, 413 Mass. at 8. This initiative proposes the same mechanism the Supreme Judicial Court found was a specific appropriation in *Slama*. 384 Mass. at 626-27 (holding an initiative that "sets aside money from the Commonwealth's treasury and places it in local income tax and local sales and use funds for cities and towns to use as they choose" was a specific appropriation.).

For these reasons, the Attorney General's Office is unable to certify that Petition No. 26-04 complies with Article 48.

Very truly yours,

Anne Sterman
Chief, Government Bureau
617-963-2524

cc: William Francis Galvin, Secretary of the Commonwealth