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To: Executive Office of Administration and Finance  
From: Ken Wertz; MFAA Executive Director  
Re: Response to Listening Tour on ways to ease state regulations of local government.  
Date: December 4, 2015

I would like to thank the Governor's Executive Office of Administration and Finance for offering this listening series for local governments to voice observations on possible improvement of efficiency by adjusting legislation relative to local governments work here in the Commonwealth.

A little about who we are, the MFAA is a community of more than 180 facility directors that provide services for municipal and public K-12 schools in Massachusetts. Our organization has been providing support, networking, and professional development opportunities to members and is now entering its 42nd year of service. Through the sharing of knowledge and resources, we are able to improve the performance and extend the life of our public facilities. Our members take great pride in providing a safe, healthy, and sustainable learning environment for our staff and students of all our public facilities here in the Commonwealth of Massachusetts.

The following list is the product of polling our membership and Board of Directors as critical items that we would like to see brought forward for consideration of subsequent legislative changes.

1. 520 CMR 1: Enforcement of Civil Fines  
520 CMR 16: Enforcement of Civil Fines for Expired Elevator Certificates

The MFAA currently has more than 30+ member communities that have been impacted with the current changes in the elevator regulations as they relate to the fines that have been assessed and levied. Many of our members recently presented at the DPS Listening Session on Civil Fines Regulations Scheduled for Friday, November 13, 2015. Members provide firsthand accounts on how the current enforcement of these fines have created unnecessary costs, administrative burdens, and unneeded complexity to their operations. All of which are the target of Governor Baker's Executive Order No. 562 to reduce unnecessary regulatory burden.

On May 22, 2014, the MFAA met with Walter Zalenski, former Chief of Inspections-Elevators for the Department of Public Safety, to discuss the pending revisions to the statute allowing discretion when assessing fines. As was discussed during that meeting revisions were in fact made to the statute. Under the current 520 CMR 16.03 (5) the commissioner or the commissioner's designee has the ability to waive all or a portion of the \$100 per day fine. To date, the spirit of these subsequent revisions have not been shown to any of the MFAA

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communities. Some of which are dealing with tens of thousands of dollars in fines, primarily on chair lifts. The same chair lifts that under the former code would have been in compliance as the inspections were only required every five years and NOT on an annual basis.

All we are asking for is fairness and objectivity when appeals are filed with the Department of Public Safety. The intent of the code revisions were to provide you with the opportunity to issue sensible level of fines for people that were truly egregious in the operation of unsafe situations. As this relates to Executive Order No. 562 there has to be some latitude provided for owners to provide adequate supporting evidence that can be gathered within reason. The administrative burden of providing all the required backup along with possible legal counsel certainly does not lend itself to reducing unnecessary cost, burden and complexity to towns and schools that are already fiscally taxed with inadequate funding for operations and adequate staffing.

Having had to the opportunity to speak with the Department of Public Safety's new Commissioner, Matt Carlin, we are cautiously optimistic that changes are being made to help relieve some of the unnecessary burden that was placed on communities under the prior statute.

## 2. M.G.L. c.149 Building Construction

With current construction escalation the thresholds for bidding requirements under c.149 provide administrative burdens that could easily be avoided by adjustment to the threshold limits. An example of this would be raising the "Under \$10,000" to a higher limit to reduce some of the burdens that are associated with the formal bidding process where projects would be well suited for more conventional sound business practices along with providing more opportunities for local businesses to compete for this work. ✓

## 3. Re-institute the Operational Service's Division's FAC 70 Tradespeople contract

Many communities rely heavily on the bargaining power and vetting process performed on all state contracts under OSD. They are a huge value add for communities and help reduce administrative work load for departments that are already taxed for staffing. FAC70 couldn't function as it was intended, like many M.G.L. c.30B goods contracts do, and still meet the letter of the law established by M.G.L. c.149. In order to use the previous contract communities would still need to conduct bids for the work, even though the vendors on state contract had been awarded and approved. Thus, making this contract not useful for communities to take advantage of.

There has to be some way that the wording of this particular contract can satisfy the Office of the Inspector General, the Office of the Attorney General, and the Operational Services Division in order to provide a useable small repair tradespersons contract that communities can once again utilize in an interest to support the goals of Executive Order No. 562.

## 4. Re-assess M.G.L c.149 s26-27C Public Works wages/Prevailing wage

Under the current statute all communities hiring construction services for all projects at any dollar threshold are required to comply with the Prevailing Wage Laws. While we understand and support the merits of insuring that all tradespeople are paid a fair and



equitable wage, the current rates for public project creates and increased tax burden on communities (building owners) that an identical, Private sector, project does not have to comply with the fiscal burden. Estimated labor increase on prevailing wage projects add 9.91% to the construction cost.<sup>1</sup>

In a time when communities are continually asked to do more with less, it seems a bit outdated to still require all state and local governments to comply with an unnecessary wage structure that can be satisfied by sound business practices. Billions of tax dollars would be saved annually, which, could be repurposed for critical infrastructure repairs and deferred maintenance. We currently have backlogged school projects handled through MSBA, a failing infrastructure by the MBTA, along with countless other important state and local projects throughout the Commonwealth that would benefit from the repeal or modification of this law. A modification for thresholds, which has been adopted by many other states, would cut some operational dollars for smaller repair projects while also helping support local businesses. With the current laws, smaller local businesses are often times choosing not to bid on work to avoid the burden of following all the necessary prevailing wage administration procedures.

#### 5. Establishing funding guidelines for facilities maintenance.

More with less is all the rage for facilities departments throughout the Commonwealth. Unfortunately, there are currently no required percentage value of overall operational budget that earmark realistic funding standards for building maintenance and operations. In order to provide safe and sustainable facilities there needs to be an established baseline to keep facilities optimally running. A percentage of the municipality's operational budget has to provide a certain percentage, as a minimum standard, to ensure to proper care for one of our largest assets located throughout the Commonwealth.

A study establishing this value needs to include best practices, predictive maintenance, along with what other subcategories fall under the value such as employees or utilities. An apples to apples comparison will provide a minimum percentage of annual operations costs that are required by each community to support our mission of providing safe, effective, and sustainable public buildings for both this and future generations.

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<sup>1</sup> Glassman, Sarah; Head, Michael; Tuerck, David G.; Bachman, Paul (2008), *The Federal Davis-Bacon Act: The Prevailing Mismeasure of Wages* (PDF), Beacon Hill Institute

