



# The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, BOSTON 02133

SUZANNE M. BUMP, ESQ.  
AUDITOR

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February 6, 2013

His Excellency Deval L. Patrick, Governor  
Commonwealth of Massachusetts  
Stat House Room 280  
Boston, MA 02133

The Honorable Therese Murray  
President of the Senate  
State House, Room 332  
Boston, MA 02144

The Honorable Robert A. DeLeo  
Speaker of the House of Representatives  
State House, Room 356  
Boston, MA 02133

**RE: Recommendation for Local Mandate Funding for June 25, 2013 Special Election**

Dear Governor Patrick, Senate President Murray, Speaker DeLeo:

I am writing to bring to your attention the issue of local costs of conducting the upcoming special election of a United States Senator required by Chapter 236 of the Acts of 2004 (Chapter 236), which amended Section 140 of Chapter 54 of the General Laws, and to urge you to approve funding for such costs, pursuant to the Local Mandate Law, Section 27C of Chapter 29. As you may recall, on September 8, 2009, the State Auditor's Division of Local Mandates issued an opinion concluding that Chapter 236 is a state mandate subject to the Local Mandate Law. A copy of that determination is attached hereto. In general terms, the Local Mandate Law provides that post-1980 state laws that impose additional costs upon cities and towns must either be subject to local acceptance or fully funded by the Commonwealth.

Chapter 236 repealed prior law that would have avoided the cost of a special election by utilizing the traditional election schedule. Instead, Chapter 236 now requires the Governor, instances like this, to call an election within 145 to 160 days from the date a vacancy occurs in a Massachusetts seat in the United States Senate. Based upon DLM's cost certification, the Governor and the Legislature approved a

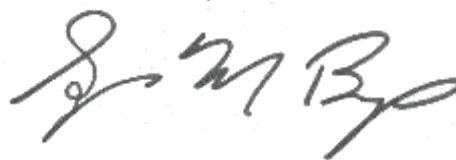
combined total of \$7,913,589 in two separate state appropriations to assume the mandated expenses of conducting the December 8, 2009 primary election and the January 19, 2010 general election to fill the vacancy occasioned by the death of Senator Ted Kennedy. Due to Senator Kerry's resignation from his position as United States Senator, a new vacancy exists in that office. As a result, cities and towns once again face the costs of conducting a Chapter 236 election.

In accordance with my Office's 2009 opinion, I urge you to appropriate sufficient funds to reimburse cities and towns for the added costs necessary to conduct this election. Applying the Bureau of Labor Statistics Consumer Price Index to the cost of the 2009/2010 special U.S. Senate election, I estimate that conducting a similar statewide primary and election in 2013 would amount to \$8,286,186, an increase of approximately 5%. I am prepared to instruct the Division of Local Mandates to undertake the work necessary to certify specific costs for each of the 351 cities and towns.

Additionally, my Division of Local Mandates has received numerous calls from local election officials explaining that their communities have not budgeted funds to support this expense, and cannot raise the revenue to do so. Pursuant to the provisions of the Local Mandate Law, I urge you to authorize up-front state funding to assume the cost of conducting the June 25, 2013 special election and the associated primary election. The State Supreme Judicial Court has ruled that the Local Mandate Law requires that state "funding be provided at the same time the mandate is imposed on cities and towns." *Lexington v. Commissioner of Education*, 393 Mass. 693, 701 (1985). Without up-front funding, communities would be forced to divert monies already dedicated to other purposes to finance this unforeseen event. Given that the Commonwealth's reimbursement to municipalities for the costs of extended polling hours is largely provided in advance of the statewide biennial elections, pursuant to Chapter 503 of the Acts of 1983, this is not an unusual request.

Please contact me with questions or comments you may have. I hope that my work contributes to your efforts to enhance state and local government relations, and the fiscal stability of our cities and towns.

Sincerely,



Suzanne M. Bump  
Auditor of the Commonwealth

cc: The Honorable Stephen Brewer, Chairman, Senate Committee on Ways and Means  
The Honorable Brian Dempsey, Chairman, House Committee on Ways and Means  
The Honorable William F. Galvin, Secretary of the Commonwealth  
Mr. Geoffrey Beckwith, Executive Director, MA Municipal Association  
Ms. Donna Hooper, President, MA Town Clerks' Association  
Ms. Anna Farrell, President, MA City Clerks' Association

Enclosure