



# The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

STATE HOUSE, BOSTON 02133

SUZANNE M. BUMP, ESQ.  
AUDITOR

TEL: 617-727-2075

February 14, 2017

Board of Selectmen  
Town of Oxford  
325 Main Street  
Oxford, MA 01540

**RE: The Financial Impacts of Early Voting Under M.G.L. c. 54, § 25B and 950 C.M.R. 47.00 et. seq. on the Town of Oxford**

Dear Board of Selectmen:

On October 5, 2016, the Town of Oxford petitioned the State Auditor's Division of Local Mandates (DLM) regarding the financial impacts of the newly established early voting requirements under G.L. c. 54, § 25B (Section 25B) and 950 C.M.R. 47.00 *et seq.* (the Early Voting Law). Specifically, you have indicated in your petition that the Early Voting Law would impose and cost obligations on the Town of Oxford, in contravention of the Local Mandate Law, G.L. c. 29, § 27C. In its initial response to your request, DLM asked that the deadline for a mandate response be extended so that our determination could be based on an analysis of the actual early voting costs incurred by your municipality during the November 8, 2016 biennial state election.

In preparation for this determination, DLM staff met with Michelle K. Tassinari, Director and Legal Counsel of the Elections Division; Michael Maresco, Legislative Director; and Rebecca Murray, Assistant Director and Associate Legal Counsel, at the Secretary of State's Office about its implementation of the Early Voting Law. Finally, DLM conducted a cost survey of all municipalities and received cost estimates from 282 municipalities.

After a review of the Early Voting Law and related regulations, DLM determines that certain provisions of the Early Voting Law impose a mandate within the meaning of the Local Mandate Law and the cost imposed by the Early Voting Law has not yet been assumed by the Commonwealth by specific appropriation. The following explains our conclusion.

## **Application of the Local Mandate Law to G.L. c. 54, § 25B and 950 C.M.R. 47.00 *et seq.***

In general terms, the Local Mandate Law, G.L. c. 29, § 27C, provides that any post-1980 state law, rule, or regulation that imposes additional costs upon any city or town must either be fully funded by the Commonwealth or be made conditional to local acceptance. Pursuant to the Local Mandate Law, any community aggrieved by an unfunded state mandate may petition the Superior Court for an exemption from complying with the mandate until the Commonwealth provides sufficient funding. Prior to taking this step, a city or town may request an opinion from DLM as to whether the Local Mandate Law applies in a given case, and, if so, a determination of the cost for complying with the unfunded mandate. Pursuant to the Local Mandate Law, DLM's deficiency determination is *prima facie* evidence of the amount of funding necessary to sustain the local mandate.<sup>1</sup> Alternatively, a community may seek legislative relief.

To determine whether the anticipated local cost impact of a state law, rule, or regulation is subject to the Local Mandate Law, we apply the framework for analysis developed by the Supreme Judicial Court in *City of Worcester v. the Governor*, 416 Mass. 751 (1994). Of particular relevance to this petition, the challenged law must take effect on or after January 1, 1981, it must be a new law changing an existing law, and it must result in a direct service or cost obligation that is imposed by the Commonwealth, not merely an incidental local administration expense.<sup>2</sup> Moreover, the Legislature, in enacting the challenged law, must not have expressly overridden the Local Mandate Law.<sup>3</sup>

When the State Auditor determines that the Local Mandate Law applies in a given case, the analysis then turns to the question of whether the Commonwealth has provided appropriate state funding to assume the mandated costs. The Supreme Judicial Court set the framework for this analysis in *Town of Lexington v. Commissioner of Education*, 393 Mass. 693 (1985). In summary, the *Lexington* case does not sanction state reimbursement after the fact; it requires that state "funding be provided at the same time the mandate is imposed on cities and towns."<sup>4</sup> Moreover, the *Lexington* decision requires a "specific allocation of funds for each mandated service" (for example, increases in unrestricted local aid will not satisfy the standards of the Local Mandate Law).<sup>5</sup> Finally, any state funding for mandated costs may not be subject to appropriation.<sup>6</sup>

Applying this analysis to the issue raised in your petition, DLM has determined that certain provisions of the Early Voting Law are mandates within the meaning of the Local Mandate Law.

The early voting provisions contained in Section 25B of Chapter 54 of the Massachusetts General Laws were added by Chapter 111 of the Acts of 2014.<sup>7</sup> Section 25B requires municipalities to allow any qualified voter, during a biennial state election, and local elections scheduled on the

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<sup>1</sup> See M.G.L. c. 29, § 27C (e).

<sup>2</sup> *Worcester*, 416 Mass. at 754-755.

<sup>3</sup> *Town of Lexington v. Commissioner of Education*, 393 Mass. 693, 698 (1985); *School Committee of Lexington v. Commissioner of Education*, 397 Mass. 593, 595 (1986).

<sup>4</sup> *Lexington*, 393 Mass. at 701; see M.G.L. c. 29, § 27C (a) (law mandating costs for city or town must be accompanied by appropriation "at the same session in which such law is enacted").

<sup>5</sup> *Lexington*, 393 Mass. at 701.

<sup>6</sup> *Id.* at 700.

<sup>7</sup> St. 2014, c. 111, § 12, available at <https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter111>.

same date of a biennial state election, to vote during the early voting period.<sup>8</sup> The early voting period is defined as starting on the eleventh day preceding the general election (in the first instance, October 24, 2016) and ending on the close of business on the day preceding the business day before the election (in the first instance, November 4, 2016, for a total of 12 days) and is to be conducted during the normal business hours of the municipal clerk's office.<sup>9</sup> Municipalities are required to establish an early voting site in the election office of the municipality, unless that location is unavailable or unsuitable during the early voting period.<sup>10</sup> Municipalities are also given the option to open additional early voting sites and offer additional hours and days beyond what is statutorily required.<sup>11</sup> In addition to allowing voters to vote in-person during the early voting period, municipalities are also required to accept early voting by mail.<sup>12</sup> Finally, municipalities must publish the location of early voting sites as well as the days and hours of operation in every newspaper listed for the municipality in the New England Newspaper and Press Association (NENPA) seven days prior to the beginning of the early voting period and at least once during the early voting period.<sup>13</sup> Municipalities must also post the location and days and hours of operation for each early voting site in the clerk's office, other public buildings deemed necessary, the municipality's website, if any, and the Secretary of State's website.<sup>14</sup>

The early voting provisions of Chapter 54 of the Massachusetts General Laws clearly meet the first, second, and third criteria of the *Worcester* framework for a determination of an unfunded mandate. The early voting provisions were enacted in 2014 by Chapter 111 of the Acts of 2014 and took effect for the November 2016 biennial state election.<sup>15</sup> Thus, Section 25B of Chapter 54 is a law taking effect on or after January 1, 1981.

Further, Section 25B of Chapter 54 of the Massachusetts General Laws is more than a mere clarification of an existing law. Prior to the enactment of Section 25B, municipalities could only allow, and were limited to, the provision of absentee voting in advance of Election Day, as required by Article 105 of the Amendments to the Massachusetts Constitution. Under the provisions of Section 25B, municipalities are required to allow any qualified voter to vote during the early voting period,<sup>16</sup> to establish an early voting polling location,<sup>17</sup> to sufficiently staff polling locations,<sup>18</sup> to provide sufficient privacy for persons voting,<sup>19</sup> to mail and pay for postage for persons requesting voting via mail,<sup>20</sup> and to publish the location and days and hours of operation for early voting locations in all newspapers listed for the municipality in NENPA.<sup>21</sup> Consistent with the *Worcester* analysis, the provisions of Section 25B are a substantive change from how the municipal clerks originally conducted elections prior to the enactment of Chapter 111 of the Acts of 2014.

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<sup>8</sup> G.L. c. 54, § 25B (a).

<sup>9</sup> *Id.* § 25B (c)-(d).

<sup>10</sup> *Id.* § 25B (f).

<sup>11</sup> *Id.* § 25B (d) and (f).

<sup>12</sup> *Id.* § 25B (b).

<sup>13</sup> *Id.* § 25B (g).

<sup>14</sup> *Id.* § 25B (g).

<sup>15</sup> St. 2014, c. 111, § 26, available at <https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter111>.

<sup>16</sup> G.L. c. 54, § 25B (a).

<sup>17</sup> *Id.* § 25B (f).

<sup>18</sup> 950 C.M.R. 47.05.

<sup>19</sup> *Id.* § 47.04(5).

<sup>20</sup> G.L. c. 54, § 25B (b); 950 C.M.R. 47.10.

<sup>21</sup> G.L. c. 54, § 25B (g).

Continuing onto the third criterion of the *Worcester* framework, concerning whether the requirements impose a direct service or cost obligation, we find that the provisions of Section 25B of Chapter 54 of the Massachusetts General Laws impose mandatory obligations on municipalities that are not voluntarily assumed. Section 25B is not a local option law that applies only to municipalities that accept its provisions; rather, it is a law that is applied uniformly throughout the Commonwealth. As discussed in detail above, Section 25B mandates municipalities provide for early voting during state biennial elections. The previously enumerated obligations are mandatory, and municipalities are required to comply with those provisions. However, DLM has determined that if a municipality provides voluntary services such as additional hours for early voting beyond those hours statutorily required; weekend hours for early voting; additional early voting locations; and police supervision of early voting locations, then these costs would fall outside the scope of the Local Mandate Law because municipalities are not statutorily obligated to provide said services.<sup>22</sup>

Finally, we look to the fourth criterion of the *Worcester* framework: whether an obligation constitutes an incidental local administration expense. As to whether the costs associated with the Early Voting Law fall into the incidental local administration expense exemption, we note the definition of incidental local administration expense. As defined by the Supreme Judicial Court in *Worcester*, incidental local administration expenses are “relatively minor expenses related to the management of municipal service. . . [that] are the subordinate consequences of a municipality’s fulfilment of primary obligations.”<sup>23</sup> The Supreme Judicial Court provided two examples of incidental local administration expenses. The first example was a regulatory change to the parental notification requirements pertaining to special education evaluations. Before 1986, school principals were required to determine whether a child should be referred for a special education evaluation.<sup>24</sup> If the principal deemed no special education evaluation was necessary, no further action was required; however, if a child was referred for evaluation the principal was required to notify the parents.<sup>25</sup> In 1986, the regulations were amended to require parental notification if the school determines that any conditions set forth in the regulation exist whether or not the school recommended the child for further evaluation.<sup>26</sup> The Court held that the regulatory change related to an incidental local administration expense because “the primary obligation imposed by the regulation both before and after the amendment is to identify children in need of special education. Written parental notification is a subordinate administrative task and therefore need not be funded by the Commonwealth.”<sup>27</sup> The second example of an incidental local administration expense was a regulatory change that required a school committee to include in its annual program plan the manner in which the school committee plans to make all school buildings accessible to students with limited mobility; previously the annual plan only required a school committee to study the accessibility needs of school buildings and consider how the accessibility needs might be addressed.<sup>28</sup> The Court again held that this regulatory change was an incidental administration

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<sup>22</sup> *Norfolk v. Dep’t. of Envtl. Quality Eng’g*, 497 Mass. 233, 239 (1990).

<sup>23</sup> *Worcester*, 416 Mass. at 758.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 757.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 758.

<sup>28</sup> *Worcester*, 416 Mass. at 758.

expense subordinate to the primary obligation, namely to provide access to school buildings and grounds to persons with limited mobility.<sup>29</sup>

Applying the *Worcester* rational to the issue in question, the Early Voting Law provisions that require municipalities to establish a mandated early voting polling location, staff the mandated early voting polling location, and provide privacy for persons early voting, do not fall into the incidental local administration expense exemption. The requirement to conduct elections is a primary obligation, not a subordinate obligation. The Massachusetts Constitution grants Massachusetts citizens the right to elect representatives<sup>30</sup> and requires the election of the governor,<sup>31</sup> the lieutenant governor,<sup>32</sup> the governor's council,<sup>33</sup> representatives to the General Court,<sup>34</sup> the secretary of state,<sup>35</sup> the treasurer,<sup>36</sup> the auditor,<sup>37</sup> and the attorney general.<sup>38</sup> Early voting is a new component of the election process and Section 25B of Chapter 54 sets out the requirements for early voting and how citizens may vote during the early voting period. Unlike the examples of incidental local administration expenses outlined by the Supreme Judicial Court in *Worcester*, nearly all of the early voting requirements cannot be construed as a subordinate obligation. The primary obligation in this instance is the administration of voting, and the state-mandated early voting requirements comprise another important new way in which government fulfills this obligation. The examples of incidental local administration expenses highlighted in *Worcester* are government duties related to a primary obligation. In this instance, early voting is the primary obligation.

The requirement to establish the mandated early voting polling location, staff the mandated early voting polling location, and provide privacy for persons voting are all key components to the primary obligation—voting. In order for a voter to early vote, municipalities must provide a location for early voting to occur and staff the early voting location. A physical location to vote and staff to supervise the voting is not a mere administrative task; this is how a municipality conducts voting. Accordingly, the cost for providing a location and staffing a location are part of the primary obligation. Additionally, voters are guaranteed a right to privacy in voting.<sup>39</sup> The provision of privacy for voting is an integral part of voting; voters are guaranteed a process that is free from undue influence. Thus, the provision of privacy is not a subordinate task and the costs are part of the primary obligation. Consequently, the provisions of the Early Voting Law that require municipalities to establish the mandated early voting polling location, staff the mandated

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<sup>29</sup> *Worcester*, 416 Mass. at 758-759.

<sup>30</sup> Mass. Const. Pt. 1, art. IX.

<sup>31</sup> Mass. Const. Pt. 2, c. 2, § 1, art. III (Article III provides that “the town clerk, in the presence and with the assistance of the selectmen, shall, in open town meeting, sort and count the votes” for governor).

<sup>32</sup> Mass Const. Pt. 2, c. 2, § 2, art. I.

<sup>33</sup> Mass. Const. Pt. 2, c. 2, § 3, art. II.

<sup>34</sup> Mass Const. Pt. 2, c. 1, § 2 art. I. and Mass. Const. Pt. 2, c. 1, § 3, art. II.

<sup>35</sup> Mass. Const. Amend. Art. XVII.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> G.L. c. 56 § 29 (making it unlawful to hinder or interfere with a voter); G.L. c. 54, § 48A (directing the Secretary of State's Office to provide a voters' bill of rights, summarizing the election law of the United States and Massachusetts); Sec. of the Commonwealth, *Massachusetts Voters' Bill of Rights*, available at <https://www.sec.state.ma.us/ele/elerights/rightsidx.htm> (providing that voters have the right to cast a ballot in privacy).

early voting polling location, and provide privacy for persons voting do not constitute the imposition of incidental local administration expenses on municipalities within the meaning of the Local Mandate Law.

However, DLM has determined that the Early Voting Law provisions that require municipalities to mail and pay for postage for persons requesting voting by mail and publish the location, days, and hours of operation for early voting in all newspapers listed for the municipality in NENPA are incidental and subordinate local administration expenses. The primary obligation of the Early Voting Law is to allow persons to vote during the early voting period in biennial state election. Mailing a ballot to a voter who requests a ballot by mail and publishing the location, days, and hours of operation for early voting in all newspapers listed for the municipality in NENPA are subordinate to the primary obligation, conducting an election. Much like the Supreme Judicial Court's reasoning in *Worcester* pertaining to changes to parental notifications for special education evaluations, mailing a ballot to a voter and publishing a notice are subordinate administrative tasks. Mailing requested documents is a routine duty in a municipal clerk's office and even in the election process. Prior to early voting, municipal clerks were required to provide an absentee ballot by mail when requested.<sup>40</sup> While publishing a notice that contains information on early voting locations helps to inform registered voters of the opportunity to vote early, it is a subordinate obligation in the voting process because the publication requirement is not part of the primary obligation—voting. Consequently, DLM determines that the requirement to mail early voting ballots and to publish the location, days, and hours of operation for early voting locations in all newspapers listed for the municipality in NENPA are incidental administration expenses, and not mandates within the meaning of the Local Mandate Law.

### **State Funding Appropriation for Early Voting is Insufficient**

DLM has determined that the state funding method for early voting costs incurred by municipalities does not satisfy the state funding standards of the Local Mandate Law. Neither Section 25B of Chapter 54, nor Chapter 111 of the Acts of 2014 provides a funding mechanism for early voting. Chapter 111 of the Acts of 2014 only provides for the creation of a task force that will study among other things, “(i) the state and local costs of providing early voting under section 25B of chapter 54 of the General Laws; [and] (ii) the administrative requirements of implementing and providing early voting, including their impact on municipal clerks offices during the early voting period[.]”<sup>41</sup> While the Legislature appropriated \$400,000 in the FY 2017 state budget “[f]or [the] implementation of early voting for the November 8, 2016 state election as required by section 25B of chapter 54 of the General Laws[.]”<sup>42</sup> this funding was used for a grant program for municipalities to provide early voting hours on the weekend and to reimburse municipalities for other expenses. It should be noted that this limited funding did not cover other costs incurred by the Secretary's Office for the printing of early voting ballots and envelopes for the municipalities, both of which were required under the law. The Secretary's Office also provided early voting signs to each municipality. In any event, the limited funding was not used for the *mandated expenses* under the Early Voting Law. The Secretary of State's Office used this appropriation to provide

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<sup>40</sup> G.L. c. 54, § 91B.

<sup>41</sup> St. 2014, c. 111, § 16, *available at* <https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter111>.

<sup>42</sup> St. 2016, c. 133, Line-Item 0521-0002, *available at* <https://malegislature.gov/Budget/FY2017/FinalBudget>.

grants for municipalities that provided early voting hours *on the weekend* during the early voting period, and is therefore not a reimbursement for *mandated expenses*.<sup>43</sup> The Secretary of State's Office administered this grant program through an application process in which municipalities could receive grants ranging from \$250 to \$2,000, depending on the amount of registered voters and the early voting hours offered during the weekend.<sup>44</sup> In addition to the grant program, the Secretary of State's Office also provided reimbursements to municipalities for other optional expenses, including the rental of electronic poll books<sup>45</sup> and tabulators for central tabulation facilities.<sup>46,47</sup> Even though the state allocated money in the FY 2017 budget, this funding did not apply to *the mandated costs* of the Early Voting Law and did not even cover the Secretary's expenses. Operating early voting polling locations during the weekend was not mandated by the Early Voting Law.<sup>48</sup> Additionally, municipalities were not required to use electronic poll books nor were municipalities mandated to operate central tabulation facilities.<sup>49</sup> Because the \$400,000 appropriation was used to reimburse municipalities for optional expenses, DLM determines the Commonwealth did not assume the mandated costs imposed by the Early Voting Law by specific appropriation.

### **The Local Financial Effect of Early Voting**

As part of the mandate determination, DLM requested that Oxford provide data regarding the cost of complying with the new law and regulations. While Section 25B mandates that municipalities provide early voting at one location during the early voting period (in most cases the municipal clerk's office), Section 25B allows municipalities to provide early voting beyond its regular business hours and to also offer voters additional polling locations. Even though these costs are not mandated expenses, DLM believed that calculating these optional costs would provide relevant background information to the mandate determination. Consequently, DLM requested that Oxford provide information both about the mandated expenses and the optional expenses it incurred implementing the early voting provisions. DLM determined that mandated costs include the following: personnel costs for staffing the mandated early voting polling location (DLM excluded municipal staff time for staff working during their regular hours); overtime for hourly municipal staff working beyond regular hours to prepare for early voting or to input data into the Secretary of State's Voter Registration Information System (VRIS); and the cost of voting booths to provide privacy. Optional costs, include, but are not limited to personnel for optional early voting locations or extended evening and weekend hours; postage to mail early voting ballots;

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<sup>43</sup> Memorandum from Ramon Trinidad, Elections Specialist, and Michelle K. Tassinari, Direct/Legal Counsel, Secretary of the Commonwealth (Sept. 19, 2016)(on file with the Division of Local Mandates).

<sup>44</sup> *Id.*

<sup>45</sup> An electronic poll book, or e-poll book, is either hardware, software, or a combination of both that allows election officials to review and maintain voter registration information for an election.

<sup>46</sup> A Central Tabulation Facility is an additional, alternative location that municipal clerks can utilize to count early voting ballots on Election Day.

<sup>47</sup> Memorandum from Ramon Trinidad, Elections Specialist, and Michelle K. Tassinari, Direct/Legal Counsel, Secretary of the Commonwealth (Sept. 19, 2016)(on file with the Division of Local Mandates).

<sup>48</sup> G.L. c. 54, § 25B (d) ("Early voting shall be conducted during the usual business hours of each city or town clerk. A city or town may, in its discretion, provide for additional early voting hours beyond the hours required by this subsection, including weekend hours.")(emphasis added).

<sup>49</sup> 950 C.M.R. 47.13 (1) ("A city or town may determine to tally early voting ballots at a central tabulation facility.")(emphasis added).

required newspaper advertisements; office supplies; the costs of police personnel at early voting locations; and costs associated with a central tabulation facility.

### **Town of Oxford**

The Town of Oxford provided data regarding its costs for complying with the early voting provisions of Section 25B of Chapter 54 of the Massachusetts General Laws and 950 C.M.R. 47.00 *et seq.* Oxford reported to DLM on the costs it incurred during the November 2016 state biennial election, the first statewide election in which the early voting requirements were mandated.

Oxford has 9,260 registered voters. Of these registered 2,157 (23.29%) cast ballots during the early voting period, with 2,144 voters early voting in-person and 13 early voting by mail. Oxford reported its costs as follows:

#### *Mandated/Primary Costs*

| Staff                        | Total Hours Worked | Average Rate | Hourly | Total Expense     |
|------------------------------|--------------------|--------------|--------|-------------------|
| Early Voting Checkers        | 75                 | \$ 10.64     |        | \$ 798.00         |
| Early Voter Ballot Processor | 64.75              | \$ 10.64     |        | \$ 688.94         |
|                              |                    |              |        | <b>\$1,486.94</b> |

**TOTAL MANDATED/PRIMARY COSTS: \$ 1,486.94**

#### *Other Optional/Subordinate Costs*

| Expense Description                            | Costs           |
|--|-----------------|
| Newspaper Advertisements <sup>50</sup>         | \$ 50.00        |
| Postage for Early Voting Ballots <sup>51</sup> | \$ 8.78         |
|  | <b>\$ 58.78</b> |

**TOTAL OPTIONAL/SUBORDINATE COSTS: \$ 58.78**

#### *Reimbursements for Optional/Subordinate Costs*

| Type                    | Reimbursement |
|-------------------------|---------------|
| Grant for Weekend Hours | \$500.00      |

**TOTAL REIMBURSEMENTS FOR OPTIONAL/SUBORDINATE COSTS: \$500.00**

<sup>50</sup> The Town of Oxford listed this as a mandated expense. DLM determined that publishing the location, days, and hours of operation for early voting in all newspapers listed for the municipality in NENPA fell into the incidental local administration expense exemption to the Local Mandate Law and moved this item to other optional/subordinate costs.

<sup>51</sup> The Town of Oxford listed this as a mandated expense. DLM determined that postage fell into the incidental local administration expense exemption to the Local Mandate Law and moved this item to other optional/subordinate costs.

In summary, DLM determines that Oxford's cost of compliance for the mandated provisions under the Early Voting Law is \$ 1,486.94. It should be noted that the number of voters that vote during the early voting period may fluctuate during future biennial state elections. Nevertheless, a municipality must have sufficient staff at every early voting location to ensure orderly administration of early voting.<sup>52</sup> Additionally, based on Oxford's experience with early voting in 2016, the Town may decide to modify early voting implementation for the 2018 state biennial election, so that the cost of compliance with the early voting provisions may differ accordingly.

### **Statewide Cost Estimate**

On December 6, 2016, DLM issued an electronic early voting cost survey to all municipalities in the Commonwealth. The purpose of the survey was to capture the mandated and optional expenses for all municipalities in the Commonwealth and capture insights into the municipal clerks' experiences with early voting. DLM received 282 responses (with 80% of municipalities responding) representing 91.33% of Massachusetts registered voters. Based on the data collected with this survey, the estimated statewide cost for the implementation of the mandated provisions of early voting is \$719,708.25.<sup>53</sup> In addition to the mandated expenses municipalities also reported that they incurred optional expenses; the estimated statewide cost for the implementation of optional expense are \$1,190,624.43.<sup>54</sup> The Secretary of State reimbursed municipalities \$444,602.70 for their optional expenses.

### **Conclusion**

Section 25B of Chapter 54 of the Massachusetts General Laws and 950 C.M.R. 47.00 *et seq.* are requirements that took effect after January 1, 1981, they are new provisions that constitute more than a mere clarification of existing laws and regulations, and they result in the imposition of additional costs upon municipalities that have not been assumed by the Commonwealth. In light of these factors, it is DLM's opinion that the Local Mandate Law, G.L. c. 29, § 27C, applies to the cost imposed upon cities and towns by the early voting provisions of G.L. c. 54, § 25B and 950 C.M.R. 47.00 *et seq.*, specifically the costs associated with the mandated early voting polling location; staffing the mandated early voting polling location; and providing privacy for persons voting.

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<sup>52</sup> 950 C.M.R. 47.05.

<sup>53</sup> DLM used a hosted, online survey tool to survey the mandated and optional expenses of early voting on all 351 cities and towns. A total of 282 municipalities submitted completed surveys representing 80% of Massachusetts municipalities and 91.33% of Massachusetts registered voters. To model statewide estimates using the responses obtained in the survey, DLM determined the cost per registered voter (approximately 16 cents per registered voter) and multiplied it by the total registered voters statewide.

<sup>54</sup> DLM used a hosted, online survey tool to survey the mandated and optional expenses of early voting on all 351 cities and towns. A total of 282 municipalities submitted completed surveys representing 80% of Massachusetts municipalities and 91.33% of Massachusetts registered voters. To model statewide estimates using the responses obtained in the survey, DLM determined the cost per registered voter (approximately 26 cents per registered voter) and multiplied it by the total registered voters statewide.

Under the Local Mandate Law the remedy available to cities and towns faced with an unfunded state mandate is to seek a court-ordered exemption from compliance until state funding is provided. The remedy does not include reimbursement of the incurred cost of compliance.<sup>55</sup> The primary issue in this case is the burden that early voting placed on municipal clerk's offices and the lack of state funding for early voting. DLM heard from 282 municipalities, and the clear consensus was that, although there is a benefit to providing early voting to voters, it places new burdens on the municipal clerk's office, requiring many of them to work overtime to comply with the provisions of early voting and impacting their ability to prepare for the biennial state election. In addition, many clerks reported that early voting interfered with their ability to conduct other routine duties of their offices, such as licensing and reporting of vital statistics, thereby generating a backlog of work that had to be completed in the weeks following the election. The clerks also identified additional challenges that arose during the implementation of early voting, such as: folded early voting ballots that jammed vote tabulators; voter distrust in the early voting process; and the duplicative nature of providing both absentee and early voting ballots under a dual set of procedures.

In closing, please be advised that this opinion does not relieve Oxford from the ongoing duty to comply with the early voting provisions of G.L. c. 54, § 25B and 950 C.M.R. 47.00 *et seq.* As explained above, the Local Mandate Law allows an aggrieved community to petition the Superior Court for an exemption from compliance. Alternatively, a municipality may seek a legislative remedy, which may involve state funding or repeal/modification of the mandate.

Thank you for bringing this matter to our attention.

Sincerely,



Suzanne M. Bump  
Auditor of the Commonwealth

cc: Karen A. Crandell, Administrative Assistant, Town of Oxford  
Michelle K. Tassinari, Director and Legal Counsel of the Elections Division, Office of the Secretary of the Commonwealth  
Michael Maresco, Legislative Director, Office of the Secretary of the Commonwealth  
Rebecca Murray, Assistant Director and Associate Legal Counsel, Office of the Secretary of the Commonwealth

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<sup>55</sup> *Worcester*, 416 Mass. at 761.