November 2012

Dear Community College Presidents & Trustees:

The Office of the General Counsel is agency counsel to the Commonwealth’s fifteen Community Colleges. It was established in 1980 following the reorganization of public higher education in the Commonwealth, which resulted in the establishment of a Board of Regents and fifteen individual Boards of Trustees. The Community Colleges’ Boards of Trustees have broad and independent statutory authority over the administration and operation of their institutions. The Office of the General Counsel provides exclusive legal support and representation to the Community Colleges’ Boards, Presidents, and senior administrators in the exercise of their official duties and responsibilities.

The office is staffed by four attorneys and two administrative assistants and is located on the Bedford Campus of Middlesex Community College. We advise the Community Colleges in countless areas including, state and federal law compliance, contract law, student and employee discipline, First Amendment issues, sexual harassment, disability discrimination, policy development, information technology, and labor law. Annually the office hosts numerous legal issues seminars and training programs for system administrators, managers, and staff. We also represent the Colleges before a variety of state and federal commissions and agencies including, the Massachusetts Commission Against Discrimination, the Labor Relations Commission, the American Arbitration Association, the Office for Civil Rights, the Equal Employment Opportunity Commission, and in state court.

Consistent with the office’s mission to provide comprehensive legal support and assistance to the Community Colleges, my staff and I have developed this Resource Manual. This manual is designed to inform and educate Trustees on their varied fiduciary duties and responsibilities as Board members and to introduce Trustees to the various state laws that regulate Board activities. The Boards of Trustees have the opportunity to have a significant and positive impact on the Community Colleges and on the Commonwealth's system of higher education. It is my hope that the resources provided in this manual will assist the Boards in their efforts to support and enhance the educational goals and mission of their respective institution.

Sincerely yours,

Kenneth A. Tashjy
General Counsel
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SECTION A

SUMMARY OF CURRENT STATUTORY AUTHORITIES IN PUBLIC HIGHER EDUCATION
HIGHER EDUCATION GOVERNANCE STRUCTURE BASED ON
CHAPTER 27 OF THE ACTS OF 2008 AND FY13 BUDGET

GOVERNOR
- Appoints 9 of 11 Trustees
- Appoints Board Chairs

BOARDS OF TRUSTEES
(MGL Chapter 15A, Section 21)
- 11 voting members
- 9 appointed by Governor
- 1 Elected Student Trustee
- 1 Elected Alumni Trustee
- 1 member serves as non-voting member of local Vo-Tech school
- Board duties - Chapter 15A, Section 22
- May delegate authority to President
- Fiscal Autonomy (Fees & Trust Funds)
- Personnel Authority
- Governance Authority

EXECUTIVE OFFICE OF EDUCATION
WITH A
SECRETARY OF EDUCATION
(MGL Chapter 6A, Section 14A)
- Secretary is appointed by the Governor
- Serves at pleasure of Governor
- Cabinet-Level position
- Ex Officio member of Board of Higher Education
- Within the Executive Office of Education shall be the Department of Early Education & Care, the Department of Elementary & Secondary Education and the Department of Higher Education

BOARD OF HIGHER EDUCATION
(MGL Chapter 15A, Section 4)
- 13 voting members (increased from 11)
- 9 appointed by Governor
- 3 from Public Higher Education
- Secretary serves as Ex Officio member
- Board duties at Chapter 15A, Section 9
- May delegate authority to Commissioner
- Fix and approve Presidential compensation
- Establish guidelines for the search, selection, appointment, compensation, evaluation and removal of Presidents
- Appoints 1 voting member of Presidential search committee

DEPARTMENT OF HIGHER EDUCATION
WITH A
COMMISSIONER OF HIGHER EDUCATION
(MGL Chapter 15A, Section 6)
- Commissioner’s appointment recommended by BHE
- Appointment approved by Secretary of Education
- Commissioner serves at pleasure of BHE
- Commissioner serves as secretary & CEO of BHE
- Commissioner serves as Chief HE Official
- Former BHE staff now DHE Staff
- Statute is silent on Department’s duties/functions
### EXECUTIVE OFFICE OF EDUCATION

**Chapter 6A, Section 14A**

- EOE under control of a secretary of education
- Secretary appointed by & serves at pleasure of governor
- Secretary’s duties and powers:
  1. Analyze the present and future goals, needs, and requirements of public education
  2. Review and approve mission statements and 5-year master plans encompassing each sector of the public education system
  3. Approve appointment of Commissioner of the Department of Higher Education
  4. Make recommendations to the Secretary of A&F and governor concerning funding of education and assist in preparing budget proposals to be put before the legislature
  5. Serve as governor's educational advisor and on governor's cabinet
  6. Serve as ex officio voting member of the BHE and the board UMASS
- Secretary may appoint staff have adequate offices and may expend sums for other necessary expenses of the executive office
- Nothing in this section shall be construed as conferring any powers upon the secretary with respect to the boards or departments except as set forth in this section or as otherwise expressly provided by law.

### DEPARTMENT OF HIGHER EDUCATION

**Chapter 15A, Section 6**

- Creates within the Executive Office of Education a Department of Higher Education
- BHE recommends candidate for Commissioner of Department of Higher Education
- Commissioner shall serve at the pleasure of the BHE and may be removed by a majority vote
- Commissioner shall have the following duties and powers:
  1. Serves as the executive and administrative head of the department
  2. Serve as secretary & CEO of the BHE
  3. Serve as chief school officer for higher education
  4. Responsible for carrying out BHE policies and the BHE may delegate its authority or any portion thereof to the Commissioner
- Commissioner may appoint personnel she deems necessary to carry out her duties and responsibilities

### Chapter 15A Section 15 - Ordinary Maintenance

- Secretary in consultation with the BHE shall prepare and submit to Budget Director an estimate on ordinary maintenance for public higher education
BOARD OF HIGHER EDUCATION

Section 6 - Commissioner

Recommend a Commissioner to the Secretary and delegate some/all authority to the Commissioner

Section 7 – Mission Statements

Mission Statements & 5 year plans are subject to approval of Secretary in consultation with BHE

Section 7A – Performance Measures

BHE & Colleges shall develop and regularly evaluate and revise performance measure system

Section 21 – CEO Authority

Establish guidelines for the search, selection, appointment, compensation, evaluation & removal of Presidents. Each Board of Trustees shall at their pleasure and with the approval of the BHE appoint and remove the President of its institution.

Section 9 – Authorities & Duties

The BHE shall “develop, foster and advocate a comprehensive system of public higher education of high quality, flexibility, responsiveness and accountability.” Accordingly, the BHE shall have the following duties and powers:

Personnel

- Fix classification, title, and salary (or salary range) within the general salary schedule of all professional staff;
- Approve and fix the compensation of the chief executive officer of each institution; and
- Employ consultants and experts.

BOARDS OF TRUSTEES

Section 6 - Commissioner

No Section 6 authorities.

Section 7 – Mission statements

Develop and submit to the Secretary and the BHE a mission statement and 5 year plan.

Section 21 – CEO Authority

Each Board of Trustees shall at their pleasure and with the approval of the BHE appoint and remove the chief executive officer of its institution. BHE shall appoint 1 voting member to assist the Board in a search for the appointment of the CEO.

Section 22 – Authorities & Duties

The Boards of Trustees are responsible for “the administrative management of personnel, staff services and the general business of the institution under its authority.” Without limitation upon the generality of the foregoing, each Board shall:

Personnel

- Appoint, transfer, dismiss, promote and award tenure to all personnel of said institution.
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<thead>
<tr>
<th>BOARD OF HIGHER EDUCATION</th>
<th>BOARDS OF TRUSTEES</th>
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<td>Fiscal</td>
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<td>• Overall responsibility for real and personal property occupied or owned by the BHE and community colleges;</td>
<td>• Manage and keep in repair all property, real and personal, owned or occupied by said institution;</td>
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<tr>
<td>• Seek, accept and administer grants, gifts and trusts for system-wide purposes from private foundations, corporations, individuals and federal agencies and disburse at the direction of the BHE pursuant to its authority;</td>
<td>• Seek, accept and administer for faculty research, programmatic and institutional purposes grants, gifts and trusts ... which may be disbursed at the direction of the board of trustees pursuant to its authority;</td>
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<tr>
<td>• Submit to budget director estimate for ordinary maintenance for system of higher education;</td>
<td>• Submit to BHE estimates for maintenance, capital outlay budgets and proposed property acquisition;</td>
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<td>• Classify student charges as tuition or as fees, establish guidelines for student charges, said guidelines shall be based on study of tuition &amp; fees conducted by the council, and which shall be authorized by statute, fees as defined by the guidelines shall not exceed 25% of total student charges for the community colleges;</td>
<td>• Establish all fees subject to guidelines established by the BHE. Said fees shall be retained by the Board of Trustees in a revolving fund or funds, and shall be expended as the Board of the institution may direct. Said fund or funds shall be subject to annual audit by the Commonwealth’s auditor;</td>
</tr>
<tr>
<td>• Review fiscal operations of institution consistent with post-audit procedures;</td>
<td>• Submit financial data and annual institutional spending plan to the BHE for review; and</td>
</tr>
<tr>
<td>• Develop a statewide tuition plan and issue regulations governing the implementation of statewide tuition plan;</td>
<td>• Authority to transfer funds within and among subsidiary accounts allocated to institution by the BHE;</td>
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<td>• May approve tuition reduction for residents of bordering states of not less than one-and-one-half times the resident tuition rate;</td>
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<td>• Receive &amp; disburse financial aid program funds;</td>
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<td>• HEFA Funding Authority;</td>
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<td>• Administer a program to provide no-interest loans to undergraduate students domiciled in the Commonwealth; and</td>
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<tr>
<td>• Develop funding formula which incorporates the allocation of appropriation to each college based, in part, on performance.</td>
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</table>
**BOARD OF HIGHER EDUCATION**

**Academic Authority**
- Approve/deny new program request within 6 months or program considered approved;
- Confer power to grant degrees;
- Review Boards of Trustees’ admission and program standards subject to disapproval;
- Develop a transfer compact; and
- Develop a system to track students who transfer out of public higher education.

**General Authority**
- Establish an affirmative action policy and implement program for compliance;
- With Secretary develop and adopt mission statements for 3 segments of higher education;
- With Secretary prepare 5 year plan for the system of public higher education;
- Require each institution to submit a 5-year plan;
- “Employer” under Chapter 150E for CBAs;
- Establish system-wide goals;
- Review enrollment levels for each institution subject to the BHE’s disapproval;
- Establish a system-wide accounting system;
- Authority to collect data from each institution;
- Establish residency standard for in-state tuition;
- Establish coordination between institutions and resolve conflicts of policies or operations;

**BOARDS OF TRUSTEES**

**Academic Authority**
- New program request approved if the BHE fails to act on approval request within 6 months;
- Award degrees in fields approved by the BHE;
- Recommend to the BHE admission standards and instructional programs … ; and
- Establish and operate programs, including summer and evening programs, in accordance with the degree authority conferred *(See Section 26 of Chapter 15A).*

**General Authority**
- Implement and evaluate affirmative action policies and programs;
- Develop/submit mission statement to Secretary and BHE;
- Develop/submit 5-year master plan to Secretary and the BHE - updated annually in December;
- Establish, implement and evaluate student services and policies;
- Submit self-assessment report to BHE, which will include analysis of the collaboration between the community college and vocational technical schools and the training and job development programs. The report shall be made public and available at the institution;
- The Board of Trustees of each institution may delegate to the president of such institution any of the powers and responsibilities herein enumerated; and
- The Commonwealth shall indemnify a trustee of a community college against loss by reason of the liability to pay damages to a party for any claim arising out of any official judgment, decision, or conduct of said trustee.
### BOARD OF HIGHER EDUCATION

- Consolidate, discontinue or transfer existing functions, educational activities/programs; and may, after a public hearing and submission of a written report to the clerks of house & senate, by a two-thirds vote of the full membership of the board, shall recommend to the Secretary to consolidate, discontinue, or transfer divisions, schools, stations, colleges, branches or institutions as it deems advisable;

- Recognize elected student government assn.;

- Develop with Boards a system to measure quality of services (*Chapter 15A, Section 1*); &

- Annual file master plan progress report.

#### Other Authorities & Duties

**Section 9B - Needs-Based Financial Assistance**

Develop needs-based financial assistance program.

**Section 11 – Trust Funds**

Establish and manage trust funds.

**Section 16 - Scholarship Programs**

Develop & administer general scholarship program.

**Section 17 - Teaching Learning Corps**

Establish program for "teaching learning corps."

**Section 19 - Tuition Waiver Program**

Develop/administer single tuition waiver program.

**Section 31 - Administrative Expenses**

Define “administrative expenses” and require Boards of Trustees to indicate annual amount of administrative expenses.

### BOARDS OF TRUSTEES

#### Other Authorities & Duties

**Section 21- Vo-Tech Board**

1 Trustee shall serve as a non-voting member on the Board of the College’s local Vo-Tech School and vice versa.

**Section 23 – Ordinary Maintenance Report**

Each Board of Trustees shall periodically submit to the BHE an estimate, in detail, of the ordinary maintenance of its institution, including salaries of all employees and all revenues . . . .

**Section 24 - Purchasing Authority**

The Boards have authority to make purchases in conformity with this section. The colleges shall follow modern methods of purchasing and shall, wherever practicable, invite competitive bids.

**Section 26 – Summer & Evening Programs**

Institutions may conduct summer and evening sessions at no expense to the Commonwealth.
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<th>BOARD OF HIGHER EDUCATION</th>
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<td><strong>Section 32 - Student Assessment System</strong></td>
<td><strong>Section 29 – Waivable Fee</strong></td>
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<td>Prepare student assessment system to be administered within the public system of higher education.</td>
<td>May establish waivable fee for nonpartisan student organizations that employ legislative agents or attempt to influence legislation.</td>
</tr>
<tr>
<td><strong>Section 33 - Report Assessing Overall Faculty Productivity &amp; Teacher Effectiveness</strong></td>
<td><strong>Section 31 – Administrative Expenses</strong></td>
</tr>
<tr>
<td>Publish a report every four years assessing overall faculty productivity and teacher effectiveness within the public system of higher education.</td>
<td>Board of Trustees shall identify administrative expenses when preparing annual spending plan.</td>
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<td><strong>Section 42 – Office of Coordination</strong></td>
<td><strong>Section 37 - Foundations</strong></td>
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<tr>
<td>The commissioner shall establish in the department of higher education, an office of coordination. The commissioner shall appoint a director to operate and administer the office who shall have experience with workforce development in the public or private sector.</td>
<td>Establish Foundations for public institutions of higher education.</td>
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**Acts of 2012 - Chapter 139**

Establish trustee recruitment, training and accountability initiatives.
ENDNOTES

1 The local Boards’ authority to make personnel decisions has been recognized by the Massachusetts Supreme Judicial Court under the “nondelegability doctrine.” The doctrine establishes and protects the Trustees’ unfettered authority to make “all” personnel decisions—including hiring and firing—in the administration of their duties. In the case of Higher Education Coordinating Council/Roxbury Community College v. Massachusetts Teachers' Association/Massachusetts Community College Council, 666 N.E.2d 479 (Mass. 1996), the Commonwealth’s Supreme Judicial Court recognized that “in the case of higher education the council (Higher Education Coordinating Counsel/Board of Higher Education) is the bargaining agent while the Board of Trustees has the statutory authority for appointments, dismissals, and tenure decisions.” Id. at 484. The local Boards were conveyed this nondelegable authority over all personnel matters by the Legislature upon its dissolution of the Massachusetts Board of Regional Community Colleges. The Legislature did not convey similar authority to the Board of Regents or its successors, including the present Board of Higher Education.

2 The local Boards have historically set fees pursuant to their authority established at Section 22(b). Notwithstanding, Section 9(c) of the law states that the Boards of Trustees shall “establish all fees at said institution subject to guidelines established by the council.” Section 9(i) of the law states that the BHE has the authority to “establish guidelines to be followed by each public institution of higher education relative to student charges and whether said charges should be classified as tuition or as fees. Said guidelines shall be based upon a study of tuition and fees which shall be conducted by the council, and which shall be authorized by statute; provided, that fees as defined by said guidelines, shall not exceed twenty-five percent of total student charges for the ... community colleges.” To date, the BHE has neither conducted a study of tuition and fees, nor issued guidelines “which are authorized by statute” for the setting of fees. Further, even if issued, guidelines, as opposed to regulations, have no force of law.

3 A state agency with statutory authority to “transfer funds among and within subsidiary accounts” is considered to have fiscal autonomy. The Massachusetts Board of Regional Community Colleges possessed this statutory authority and was considered fiscally autonomous pursuant to Chapter 737 of the Acts and Resolves of 1964, Section 32. Following the dissolution of the MBRCC in 1980, the Legislature vested in the local Boards of Trustees the authority to transfer funds among and within subsidiary accounts. The Legislature did not convey similar authority to the Board of Regents or its successors, including the present Board of Higher Education.
SECTION B

MASSACHUSETTS COMMUNITY COLLEGES’ TRUSTEE ASSOCIATION

BY-LAWS

Adopted: January 21, 1982
Amended: September 30, 1983
  Amended: April 10, 1987
Amended: September 23, 1991
Amended: October 28, 2003
  Amended: May 16, 2012
PREAMBLE

In a cooperative effort to further the community college mission and in recognition of the Massachusetts Community Colleges as the major postsecondary educational segment in the Commonwealth’s public system for higher education, the Community Colleges have joined together under the identity of the Massachusetts Community College Trustee Association. The Association provides a forum for Trustees and Presidents in their united effort to represent the interests and advancement of the Commonwealth’s Community College system.

The Association has as one of its major goals the development of an effective, united effort for the expansion of the Community Colleges’ services to all of the people of the Commonwealth of Massachusetts. The Association shall provide for its member institutions a forum for education, communication and exchange of information and suggestions relative to community college needs and resources and serve as a focal point for marshaling support and promotion of the community college movement in Massachusetts.

The determination of task priorities and activities of the Association will be governed by the paramount goals of heightening understanding and common bonds among the member institutions and improving and expanding the initiatives and achievements of the Massachusetts’ Community Colleges.

ARTICLE I – NAME AND PURPOSE

Section 1. Name

The name of the Association is the Massachusetts Community College Trustee Association (hereinafter referred to as the “Association” or the “MCCTA”).

Section 2. Purpose

The purpose of the Association shall be the advancement of the community college mission in Massachusetts by:

a. Advocating for the continued development, advancement and recognition of the Massachusetts Community College system on behalf of the citizens of Massachusetts;

b. Providing educational opportunities for Trustees and Presidents to enhance their knowledge of community college governance;

c. Advising and assisting the Commonwealth’s political leaders and the Board of Higher Education in understanding and advancing the interests of Community Colleges in the Commonwealth;

d. Representing the Community Colleges in all matters in which collective action is necessary or desirable;

e. Exchanging information on legislative and administrative matters of mutual concern; and
f. Working with other public institutions of higher education in the development and support of higher education throughout Massachusetts.

ARTICLE II – MEMBERSHIP

Section 1. **Regular Membership**

All Massachusetts Community College Trustees and Presidents shall be members of the Association. Membership shall be established through the payment of an annual membership fee by each member institution.

Section 2. **Withdrawal from Membership**

Any member college of the Association may withdraw therefrom by notifying the President of the Association of its desire to withdraw.

Section 3. **Suspension of Membership**

Any member college of the Association which is in arrears in its membership dues for more than six months, after July 1 in any year, may be automatically suspended and removed from the membership roll of the Association at the discretion of the Association’s Executive Committee.

**ARTICLE III - DUES**

Section 1. **How Prescribed**

The membership dues shall consist of an annual basic fee as established by the Association’s Executive Committee.

Section 2. **Purpose**

Dues shall be used for the purpose of financing the Association’s annual budget as approved by the Association’s Executive Committee.

**ARTICLE IV – FISCAL YEAR**

Section 1. **Fiscal Year**

The fiscal year of the Association shall be from July 1 to and including June 30.

**ARTICLE V - ASSOCIATION MEETINGS**

Section 1. **Annual Meeting**

The annual meeting of the general membership of the Association shall be held annually each Spring semester at a time and place to be determined by the Association’s Executive Committee.
Section 2.  *Fall Meeting*

There shall be a meeting held each Fall semester of the general membership of the Association at a time and place to be determined by the Association’s Executive Committee.

Section 3.  *Special Meetings*

Special meetings of the general membership of the Association may be called by the Association’s President, by a majority vote of the Association’s Executive Committee or by special request to the President by at least five (5) member colleges. Written notice of the time and place of any special meeting shall be mailed to each member college at least seven (7) days in advance of the date set for the meeting. Such notice shall state the purpose for which the meeting is called and no other business shall be transacted thereat.

Section 4.  *Quorum*

One-half of the total number of member colleges plus one shall constitute a quorum.

Section 5.  *Voting*

All members of the Association present at a meeting may vote on all matters brought before the Association by the Executive Committee.

**ARTICLE VI – EXECUTIVE COMMITTEE**

Section 1.  *Committee Membership*

The Association shall have an Executive Committee, which shall include nine (9) members as follows: four (4) members shall be the Association’s Officers: President, Vice President, Secretary, and Treasurer; two (2) members shall be Trustees (one of which shall include the Trustees’ Board of Higher Education Representative if not already represented on the Committee); one (1) shall be the immediate past President of the Association; and two (2) members shall be member college Presidents (one of which shall include the current Chair of the colleges’ Presidents’ Council if not already represented on the Committee). The President of the Executive Committee shall always be a Trustee and the Vice President shall always be a member college President. One Trustee and one member college President shall hold the remaining two offices. Not more than two members of the Executive Committee may be from the same college.

Section 2.  *Election*

The Association’s Officers shall be elected at the annual meeting of the Association. All Trustees serving on the Executive Committee (other than the Association’s Past President) shall be appointed by the President. All other
member college Presidents serving on the Executive Committee shall be appointed by the Presidents’ Council.

Section 3.  Term of Office

The term of office for all members of the Executive Committee shall be for two (2) years or until a successor is elected or appointed.

Section 4.  Vacancies

In case of a vacancy on the Executive Committee, the President (if the vacancy is to a seat held by a Trustee) or the Presidents’ Council (if the vacancy is to a seat held by a member college President) shall appoint a replacement who shall serve out the remainder of his/her predecessor’s term on the Executive Committee.

Section 5.  Duties

The Committee’s duties shall include, but not be limited to, the following:

1. Responsibility for the accomplishment of the purposes of the Association with primarily responsible for establishing policy of the Association;

2. Prepare an annual budget to be submitted to the general membership for discussion and approval at its annual meeting and conduct an annual audit of all Association revenues and expenditures at the end of each fiscal year;

3. Develop and monitor all agreements and terms of employment for any employees or consultants to the Association and determine levels of compensation for all said employees or consultants;

4. Prepare an agenda for all meetings of the Association;

5. Establish committees of the Association as necessary to conduct Association business; and

6. Represent the Association on all matters of importance to the Community Colleges and carry out the Association’s policies and initiatives.

Section 6.  Meetings

The Committee shall meet at such times and places as determined by the President. A special meeting may be scheduled at the request of at least four (4) members of the Committee.

Section 7.  Voting

Each member of the Executive Committee shall have one vote on all matters brought before the Committee for voting.
Section 8.  **Quorum**

Five members of the Executive Committee shall constitute a quorum.

**ARTICLE VII - COMMITTEES**

Section 1.  **Appointments**

The President shall appoint the members of any committees requested or approved for establishment by the Executive Committee.

Section 2.  **Tenure**

All appointments to committees shall terminate on a date fixed by the President or when the specific assignment of the committee has been completed.

Section 3.  **Expenditures**

No committee shall create any financial liability for the Association unless such expenditure shall have been approved in advance both as to purpose and amount by the Executive Committee.

Section 4.  **Standing Committees**

There shall be two (2) standing committees: Nominating and Board Chairpersons. The Nominating Committee shall consist of four (4) members, two Board Chairpersons and two Presidents of member colleges. The Nominating Committee shall establish a process for identifying nominees to fill the offices of President, Vice President, Secretary and Treasurer of the Association. The Nominating Committee shall present all nominees for said offices to the general membership for consideration and election at the Association’s Annual Meeting.

The Board Chairpersons Committee shall include the Board Chairpersons from all member colleges and shall provide guidance and advice to the Executive Committee on matters presented to it for consideration and comment.

**ARTICLE VIII - AMENDMENTS**

Section 1.  **Initiation**

An amendment to, or revision of, these By-Laws may be proposed by any member of the Executive Committee, or a special committee designated to propose by-law amendments or revisions.

Section 2.  **Adoption**

No amendment or revision shall be adopted by the Executive Committee until it has been considered by the general membership at least ten (10) days prior to the time action is to be taken. A two-thirds vote of the member colleges present and
voting thereon shall be necessary for adoption of an amendment or revision. Unless otherwise provided, all amendments or revisions shall take effect immediately.

**ARTICLE IX - PARLIAMENTARY AUTHORITY**

**Section 1.** The rules contained in *Robert's Rules Of Order Revised* shall guide the Association in all cases to which they are applicable and when a conflict exists between said rules and these By-Laws.

**ARTICLE X - CONDUCT OF PUBLIC EMPLOYEES**

**Section 1.** The conduct and activities of all Association members are governed by the provisions of Massachusetts General Laws, Chapter 268A, the State’s Ethics Law.
SECTION C

PUBLIC HIGHER EDUCATION

MASS. GENERAL LAWS, CHAPTER 15A
The following sections of Chapter 15A are highlighted for your consideration. These sections set out many of the key authorities and duties of the Boards of Trustees. The following information is presented in summary form. Please refer to the entire section of the law when considering a specific issue.

**SECTION 21 - Board of Trustees For Section 5 Institutions; Membership; Qualifications; Tenure; Vacancies.**

- **Membership**

There shall be a board of trustees consisting of eleven members for each of the institutions. The Governor shall appoint the Chairperson of the Board from within the geographic region of the College.

One member of the board shall be a full-time undergraduate student member from said institution. Ten members shall be appointed by the governor, at least one of whom shall be an alumnus of said institution and one of whom shall be elected thereto by the alumni association of said institution. One Trustee shall serve as a non-voting member of its local Vo-Tech School.

- **Appointments and Vacancies**

Each student member shall be elected by the student body for a one year term and shall be eligible for re-election for as long as the student remains a full-time undergraduate student and maintains satisfactory academic progress.

Members shall be appointed to serve for five year terms, but no member shall be appointed for more than two consecutive terms. Any vacancy shall be filled for the duration of the term, in the same manner as the prior appointment.

If a member is absent from four regular meetings in any academic year, excluding July and August, that person's board membership shall terminate and a vacancy shall be deemed to exist.

- **Restrictions**

No member of a board of trustees shall be principally employed within the public higher education system of the Commonwealth.

No more than 1/3 of the members shall be principally employed by the Commonwealth.
• **Compensation**

Members of the board shall serve without compensation but may be reimbursed for all expenses reasonably incurred in the performance of their duties.

• **CEO Appointment and Removal Responsibilities**

The BHE shall establish guidelines for the search, selection, appointment, compensation, evaluation & removal of Presidents. The BHE shall appoint 1 voting member to a Presidential search committee. Each board of trustees shall at their pleasure and with the approval of the BHE appoint and remove the chief executive officer of its institution.

**SECTION 22 - Powers and Duties Of Board Of Trustees**

• **Powers and Duties**

Each board of trustees of a community college shall be responsible for establishing those policies necessary for the administrative management of personnel, staff services and the general business of the institution under its authority. Please refer to the chart provided at *Section A* for a summary of the Boards’ specific authorities and duties.

• **Delegation**

A board of trustees may delegate to the president of the institution any of the authorities and duties established under Section 22.

• **Liability**

The Commonwealth shall indemnify a trustee against loss by reason of the liability to pay damages to a party for any claim against the trustee arising out of any official judgment, decision, or conduct of the trustee. Indemnification is contingent upon the trustee having acted in good faith and without malice and the defense or settlement of such a claim must be made by the Attorney General or his designee for the Commonwealth.

**SECTION 26 – Summer sessions; evening classes**

• **Division of Continuing Education**

Section 26 permits the community colleges to conduct a Division of Continuing Education program. Tuition and fees from this program are fixed and retained by the colleges and held in revolving trust funds to be used at a Board’s discretion.

**SECTION 37 - Foundations Created For Public Institutions Of Higher Education.**

• **What is a Foundation?**

(a) A "Foundation" is defined as: (a) either (i) a corporation within the meaning of clause (c) of section two of chapter one hundred and eighty and subject to the provisions of said
chapter one hundred and eighty, except as herein provided, or (ii) a public charitable trust constituted and operating as such and subject to the requirements of law governing such trusts, except as herein provided; (b) organized and operated exclusively for the benefit of an institution of public higher education; and (c) certified by the board of trustees of the institution which it supports to be operating in a manner consistent with the goals and policies of the institution.

- **Board of Trustee Control**

  A Foundation is organized and operated exclusively for the benefit of an institution of public higher education and is certified by the board of trustees of the institution which it supports to be operating in a manner consistent with the goals and policies of the institution.

- **Lack of Certification**

  A Foundation which is not certified or whose certification has been revoked by the board of trustees of the institution which it supports, shall not use the name of such institution (i) for fundraising without written permission of the board of trustees of such institution, or (ii) in the name of such Foundation.

- **Membership of Governing Board of Foundation**

  A Foundation shall have a governing board to oversee its operation. In no event shall institutional trustees and employees constitute one-half or more of the voting members of a Foundation's governing board. The governing board of such Foundation shall annually file a list of its members and officers with the institution's board of trustees.

- **Trustees' Authorization for Facilities and Personnel Use**

  The board of trustees of an institution which a Foundation supports is authorized to permit the use without compensation of facilities and personnel services of the institution by the Foundation. In no event, however, shall an employee of the institution spend more than twenty-five (25%) percent of his/her work hours engaged in services for a foundation.

- **Accepting Gifts from a Foundation**

  All gifts from a Foundation to an institution shall be approved for acceptance by the board of trustees in accordance with applicable institutional policies.

- **Audits**

  A Foundation’s accounts are subject to audit by the State Auditor.
Chapter 15A:

Section 1 Policy and goals
Section 1. It is hereby declared to be the policy of the commonwealth to provide, foster and support institutions of public higher education that are of the highest quality, responsive to the academic, technical and economic needs of the commonwealth and its citizens, and accountable to its citizens through lay boards, in the form of the board of higher education and the boards of trustees of each of the system’s institutions.

It is hereby further declared that in pursuit of its stated goals, the system of public higher education will strive for excellence in its programming and strengthen the access of every individual in the commonwealth to educational opportunities.

It is hereby further declared that by maintaining a high quality system of public colleges and universities, the commonwealth moves toward achieving the following goals:—

(a) to provide its citizens with the opportunity to participate in academic and educational programs for their personal betterment and growth, as well as that of the entire citizenry;

(b) to contribute to the existing base of research and knowledge in areas of general and special interest, for the benefit of our communities, our commonwealth and beyond; and

(c) to understand the importance of higher education to the future of the economic growth and development of the commonwealth, and, by so doing, prepare its citizens to constitute a capable and innovative workforce to meet the economic needs of the commonwealth at all levels.

The board of higher education, in this chapter called the board or the council, shall be responsible for defining the mission of and coordinating the state’s system of higher education in accordance with the provisions of this chapter. The council shall work with boards of trustees to identify and define institutional missions, taking into account regional needs, as well as to define each institution’s role within the greater system. Said institutional missions shall also relate to the mission the council shall identify for each category of institution within the system, including the University of Massachusetts, the state university, and community college segments. All mission statements shall be subject to review and approval by the secretary of education, in this chapter called the secretary. The council shall be responsible for publishing such mission statements, which shall be used for purposes of accountability, efficiency, and focus.

The board shall work in conjunction with boards of trustees to hold the system accountable for achieving its goals and establishing a comprehensive system to measure quality by defining educational achievement and success with the use of standards and measurements. The council shall encourage an economical and effective use of the resources of the commonwealth with particular emphasis upon the development of regional and local consortia and related cooperative arrangements by and between public and independent institutions of higher education.
The board shall, work to coordinate its activities within a framework of an integrated public education system extending from early childhood programs through the university level, to promote coordination and greater benefits to students. The council shall also encourage collaboration between educational institutions and business and industry in order to promote employment opportunities and educational improvements.

In achieving these ends the council shall foster decision-making close to the actual learning environment. The council shall encourage participation in that process by students, faculty, and the general public in an effort to create and maintain a system of higher education which provides the cultural, economic and personal growth opportunities to enrich and empower the lives of the people of this commonwealth.

**Section 2 Repealed, 2008, 27, Sec. 11**
Repealed, 2008, 27, Sec. 11

**Section 3 Repealed, 1996, 57, Sec. 9**
Repealed, 1996, 57, Sec. 9

**Section 3A Statewide educational technology plan; goals; development and implementation**

Section 3A. A statewide educational technology plan, to be known as Massachusetts education-on-line, shall be developed by the Massachusetts corporation for educational telecommunication, hereinafter referred to as MCET. Said educational technology plan shall incorporate the following goals:

(a) the implementation and integration of technology into teaching and learning in public schools, including, but not limited to, the establishment of a statewide telecommunications and technology link among public college and university campuses and school districts through the use of computer and communications technology;
(b) the facilitation of the implementation of a statewide professional development plan for teachers, principals, and superintendents using distance learning in coordination with the commissioner of education; and,
(c) the increased involvement of parents, guardians, mentors or other volunteers with their students’ education by utilization of distance learning.

For the purposes of this section, said educational technology plan shall be broadly construed to include, but not be limited to, programs, courses, and capital expenditures including computer hardware and software, networks, television, satellite transmissions, fiber optics cable, calculators and video and audio tapes. Subject to appropriation, MCET may provide grants to universities, colleges, schools and school districts for the purposes of purchasing the equipment and other materials necessary for the implementation of said educational technology plan. The MCET executive director, in consultation with the secretary and the board of education and the board of higher education, may establish such advisory groups or committees as he deems necessary for the development and implementation of said educational technology plan.

**Section 4 Board of higher education; membership**

Section 4. (a) The board of higher education, hereinafter referred to in this chapter as the council or the board, shall be composed of 13 voting members, consisting of the secretary of education, ex officio, or her designee, 9 members appointed by the governor reflecting regional geographic representation, and 3 members chosen to represent public institutions of higher education. Of the
appointed members, at least 1 shall be a representative of organized labor, at least 1 shall be a representative of the business community, and 1 shall be a member whom the governor shall choose from among not more than 3 full-time undergraduate students who shall be nominated, and who are currently enrolled in a public institution set forth in section 5. Nominated students shall have maintained satisfactory academic progress as determined by the policy of the institution at which such student is enrolled. Nominations shall be submitted by student members of the board of trustees for each such institution who, for the purpose of this section, shall be referred to as the student advisory committee. Such nominations may include, but not be limited to, students elected as trustees in accordance with the provisions of section 21. Of the 3 members chosen to represent public institutions of higher education, 1 shall be a member of the board of trustees of the University of Massachusetts as voted by the board of trustees for the university, 1 shall be a member of a board of trustees of a state university chosen by vote of the chairs of the boards of trustees of each of the state universities, and 1 shall be a member of a board of trustees of a community college chosen by vote of the chairs of the boards of trustees of each of the community colleges.

(b) Three of the board members appointed by the governor shall be appointed for terms that are coterminous with that of the governor. The secretary shall serve on the board while she holds the position of secretary. The remaining members of the board shall be appointed to serve 5-year terms, except that the undergraduate student members shall be appointed annually to serve terms of 1 year commencing initially upon appointment by the governor and expiring on April 30 and each year thereafter commencing on May 1 and expiring on April 30 as long as the member remains a full-time undergraduate throughout his 1-year term. Within 3 consecutive years, the student appointee shall in the first year be a student attending the state university, in the second year, shall be a student attending a community college and, in the third year, shall be a student attending a state college. This cycle shall repeat. Each of the student government associations at each of the public institutions may submit to the student advisory committee an individual nominated to be the undergraduate student member of the board. All guidelines for procedures and deadlines for the selection process of the undergraduate board members shall be established by the student advisory committee, except as provided in this section. No member shall be appointed for more than 2 consecutive full terms, except that a student member may serve for only 1 term. Service for a term of less than 3 years, resulting from an initial appointment or an appointment for the remainder of an unexpired term, shall not be counted as a full term. Upon expiration of the term of office of a member, a successor shall be appointed in like manner. A vacancy shall be filled by the governor for the remainder of the term, except that if a member chosen to represent the public institutions of higher education ceases to be a member, the resultant vacancy shall be filled for the remainder of the term by the chairs of the boards of trustees of the public institutions in the same manner as in paragraph (a). Vacancies shall be filled consistent with the requirements of section 10 of chapter 30. The chairperson of the board, who shall be appointed by the governor, shall notify the governor whenever a vacancy exists. The board shall have an executive committee and such other committees as the board may from time to time establish.

(c) The members of the board shall serve without compensation but shall be reimbursed for all expenses reasonably incurred in the performance of their duties.

(d) No member of the board shall be principally employed within the public higher education system of the commonwealth. Not more than one third of the members shall be principally employed by the commonwealth. Members of the board who are employed on a full-time basis by the commonwealth shall be ineligible to serve as chairperson. A member of the board shall
cease to be a member if such member ceases to be qualified for appointment or if he is absent from 4 regularly scheduled meetings during an academic year.

(e) A person affiliated with an independent institution of higher education shall be eligible for membership on the board. No member of the board shall be found to be in violation of section 6 of chapter 268A for conduct which involves his participation, as a member of the board, in a particular matter before the board which may affect the financial interest of an independent institution of higher education with which he is affiliated; provided, however, that the member, his immediate family or partner has no personal and direct financial interest in the particular matter; and provided further, that such affiliation is disclosed to the board and recorded in the minutes of the board.

(f) The board shall meet 6 times per year, and at least once every 2 months, omitting meetings in the months of July and August; the chair may call additional meetings at other times.

(g) Seven members of the board shall constitute a quorum and the affirmative vote of 7 members shall be necessary for any action taken by the board.

(h) All members of the board appointed by the governor shall be appointed according to section 18B of chapter 6.

Section 4A Robert H. Goddard council on science, technology, engineering and mathematics education

Section 4A. (a) Within the board of higher education there shall be the Robert H. Goddard council on science, technology, engineering and mathematics education. The council shall consist of: the commissioner of the department of education or his designee; the commissioner of the department of early education or his designee; the director of the office of workforce development or his designee; the president of the Massachusetts Teachers Association or his designee; the chairperson of the board of higher education or his designee; the president of the Technology Education Association of Massachusetts or his designee; the executive director of the Massachusetts Technology Collaborative or his designee; the executive director of the Massachusetts Development Finance Agency or his designee; the president of Associated Industries of Massachusetts or his designee; the president of the Massachusetts Federation of Teachers or his designee; 2 members of the senate appointed by the president of the senate, 1 of whom shall be co-chairperson of the council; 1 member of the senate to be appointed by the minority leader of the senate; 2 members of the house of representatives appointed by the speaker of the house of representatives, 1 of whom shall be co-chairperson of the council; 1 member of the house of representatives to be appointed by the minority leader of the house of representatives; and 11 members to be appointed by the governor, 1 of whom shall be the chief executive officer of a life-science firm, 1 of whom shall be a chief executive officer of a technology firm, 1 of whom shall be a chief executive officer of a health care corporation, 1 of whom shall be a chief executive officer of a consulting engineering firm, 1 of whom shall be a representative of a minority led firm, 1 of whom shall be a representative of a female led firm, 1 of whom shall be a chancellor of a campus of the University of Massachusetts or a designee, 1 of whom shall be a president of a state university or a designee, 1 of whom shall be a president of a community college or his designee, 1 of whom shall be a superintendent of a public school system or his designee, and 1 of whom shall be the president or executive director of the Massachusetts Technology Leadership Council or his designee.

(b) The council shall: (1) annually evaluate and make recommendations to the chancellor of higher education regarding programs supported by the pipeline fund, so-called, as established by section 2MMM of chapter 29; (2) investigate, study and make recommendations to the general court on maintaining a specialized workforce to support and expand the science, technology,
engineering and mathematics sectors in the commonwealth and prepare students for the demands of a knowledge-based economy of the future and attract and retain students entering the science, technology, engineering and mathematics fields of study; (3) investigate and make recommendations to the chancellor of higher education regarding similar programs throughout the state so as to eliminate duplication and provide for one coordinated, consolidated statewide network of science, technology, engineering and mathematics programs for in-state students; and (4) investigate and pursue alternative funding services for the advancement of these disciplines. The council shall also investigate the public college and university system, including community colleges, to determine the feasibility of establishing job training programs specifically geared toward creating science, technology, engineering and mathematics employment opportunities and to identify and establish career ladders within science, technology, engineering and mathematics employment opportunities. The council shall also investigate the impact of changing demographics on the commonwealth and make recommendations on ways to incorporate the changes in order to enhance the state’s capacity to build a strong and competitive workforce. The council shall submit quarterly reports on the fund’s progress and shall, not later than December 31, submit a cumulative annual report, together with any recommendations, to the clerk of the senate, the clerk of the house of representatives, the chair of the house and senate committees on ways and means, the chairpersons of the joint committee on economic development and emerging technologies, the chairpersons of the joint committee on labor and workforce development, the chairpersons of the joint committee on higher education, and the chairpersons of the joint committee on education. The reports shall include: (1) a list of grant recipients from the pipeline fund; (2) the amount of each grant; (3) the amounts of non-state funding credited to the pipeline fund; (4) the purposes of grants from the pipeline fund; (5) an annual statement of cash inflows and outflows detailing the sources and uses of the funds; (6) a forecast of future payments based on current binding obligations; and (7) a detailed breakdown of the purposes and amounts of administrative costs charged to the fund.

Section 5 Public institutions of higher education system

Section 5. There shall be, for the purposes of this chapter, a system of public institutions of higher education, hereinafter called the system, which shall consist of the following segments: (i) the university of Massachusetts segment, which shall consist of the University of Massachusetts at Amherst, Boston, Dartmouth, Lowell and Worcester; (ii) the state university segment, which shall consist of Bridgewater State University, Fitchburg State University, Framingham State University, the Massachusetts College of Art and Design, the Massachusetts Maritime Academy, the Massachusetts College of Liberal Arts, Salem State University, Westfield State University and Worcester State University; and (iii) the community college segment, which shall consist of Berkshire Community College, Bristol Community College, Bunker Hill Community College, Cape Cod Community College, Greenfield Community College, Holyoke Community College, Massachusetts Bay Community College, Massasoit Community College, Middlesex Community College, Mount Wachusett Community College, Northern Essex Community College, North Shore Community College, Quinsigamond Community College, Roxbury Community College and Springfield Technical Community College.

The board shall coordinate activities among the public institutions of higher education and shall engage in advocacy on their behalf, which advocacy shall include a sustained program to inform the public of the needs, importance, and accomplishments of the public institutions of higher education in the commonwealth.
Section 5A Governor Foster Furcolo Community Colleges
Section 5A. For the purposes of this chapter, those community colleges within the system of public institutions of higher education established in section 5 shall collectively be known as the Governor Foster Furcolo Community Colleges.

Section 6 Department of higher education; Commissioner; other employees; appointments; salaries; powers and duties
There shall be within the executive office of education a department of higher education, in this chapter called the department.

The council shall, whenever a vacancy may occur, by a two-thirds vote of all its voting members, submit to the secretary, for the secretary’s approval, a recommended candidate to serve as the commissioner of higher education, in this chapter called the commissioner. The secretary may appoint the recommended candidate as commissioner. If the secretary declines to appoint the candidate, the council shall submit a new candidate for consideration. The secretary may appoint the commissioner only from candidates submitted to the secretary by the council.

The commissioner shall be the executive and administrative head of the department. The commissioner shall serve at the pleasure of the council and may be removed by a majority vote of all its members. The commissioner shall not be subject to chapter 31 or to section 9A of chapter 30.

The commissioner shall be the secretary to the council and its chief executive officer and the chief school officer for higher education. The commissioner shall be responsible for carrying out the policies established by the council. The council may delegate its authority or any portion thereof to the commissioner whenever in its judgment such delegation may be necessary or desirable. The commissioner shall exercise any such powers or duties delegated with the full authority of the council in any matter concerning the system of public institutions of higher education subject to the direction and approval of the council.

The commissioner shall devote her full time during business hours to the duties of her office and shall, subject to appropriation, receive such salary as the council may determine. The commissioner may, subject to appropriation, appoint such other employees as she deems necessary to carry out her duties and responsibilities, shall be provided with adequate offices, and may expend sums for other necessary expenses of the department.

Section 7 Mission statements; development, approval and adoption
Section 7. With regard to the overall system of public higher education, and each of the three segments of the system, as defined in section 5, the council shall develop and submit mission statements for review and approval by the secretary. Said segmental mission statements shall include, but not be limited to, the goals and purpose of each type of institution within the system and how they relate to each other in fulfilling the mission of the entire system.

The board of trustees of the university of Massachusetts, shall develop and submit to the secretary and the council mission statements for the university and each of its campuses. The board of trustees of each state university and community college shall develop and submit to the secretary and the council a mission statement for each such institution. All institutional mission statements, as developed and submitted by boards of trustees, shall be subject to approval by the secretary, in consultation with the council. Said approval shall take into consideration how well the institution’s mission statement correlates with the mission statements as set forth in the preceding paragraph.
The council shall be responsible for making public said mission statements. The secretary, in consultation with the council, may, as she deems necessary, undertake or cause to be undertaken revisions of said statements.

The board of trustees of a state university or community college with the potential to expand its mission, profile, and orientation to a more regional or national focus may submit to the secretary and the board of higher education a five-year plan embracing an entrepreneurial model which leverages that potential in order to achieve higher levels of excellence. Such plans shall include, but not be limited to, budget and enrollment projections for each year, projections for total student charges for each year, projections for in-state and out-of-state enrollments for each year, and plans to insure continuing access to the institution by residents of the commonwealth and affirmative action policies and programs that affirm the need for and a commitment to maintaining and increasing access for economically disadvantaged and minority students. Said proposal, upon its receipt, shall be transmitted to the secretary of administration and finance, the chairs of the house and senate committees on ways and means, and the house and senate chairs of the joint committee on higher education. The secretary, in consultation with the council, shall have the authority to approve, reject, or propose amendments to said plan. Proposed amendments shall be returned to the institutions’ board of trustees. If the board of trustees approves said amendments, the plan shall be considered adopted. If the institution’s board of trustees rejects the proposed changes, it may submit a redrafted plan, which will be treated as a new plan under the provisions of this section.

Section 7A Board of higher education; performance measurement system

Section 7A. (a) In order to promote accountability for effective management and stewardship of public funds and to achieve and demonstrate measurable educational outcomes, the institutions shall certify achievement of public higher education accountability objectives through a performance measurement system. The board of higher education, in this section called the board, in consultation with the institutions and the secretary, shall develop the system, including specific performance measures, with which to evaluate the institutions and with which to compare them with peer institutions with similar missions in other states. The board may conduct regional public hearings on the measures proposed to be incorporated into the system.

(b) The board, in consultation with the presidents of the state universities and community colleges, shall identify peer institutions for the state universities and community colleges. The higher education accountability objectives shall include, but not be limited to, the following: (1) making public higher education more affordable; (2) improving student access and academic achievement; (3) recruiting qualified students; (4) responding to specific needs of the workplace, as defined by business and labor; (5) providing policy research addressing the needs of the commonwealth and local communities; (6) ensuring cost-effective use of resources at each institution and across all institutions, and manage campuses as efficiently as possible; (7) promoting collaboration among the campuses and with the private sector; (8) supporting early childhood to grade 12 education programs; and (9) maximizing fundraising from private sources.

(c) In order to measure the achievements and expected outcomes of the commonwealth’s system of public higher education, the board shall form separate task forces for the state university and community college segments consisting of presidents or their appointees and members of boards of trustees of the institutions.

(d) For each of the accountability objectives, the board, in consultation with each task force, shall establish and annually evaluate intelligible performance measures and identify data items that shall be obtained for each performance measure. Data shall be collected and analyzed on a
campus, segmental and systemwide basis; provided, however, the board in consultation with the campuses shall establish definitions for all data items used in the performance measurement system.

(e) In order to achieve the accountability objectives of cost-effective use of resources and efficient fiscal management of the institutions, each task force shall match or improve upon standards established by National Association of College and University Business Officers. The performance measurement system shall be regularly evaluated and revised by the board in consultation with the institutions and the secretary to ensure that it continues to measure the achievements and expected outcomes of the commonwealth’s public higher education system. Accountability objectives, performance measures and data items shall be submitted to the house and senate committees on ways and means and the joint committee on higher education.

(f) The board shall use accountability objectives, performance measures and each institution’s mission implementation plan to conduct annual evaluations of the performance of each institution. If an institution fails to meet a reasonable number of the accountability objectives, as determined by the performance measures, within a given year, the institution’s board of trustees shall develop and implement a performance improvement plan and timetable to be approved by the board of higher education. Each plan shall be submitted to the house and senate committees on ways and means and the joint committee on higher education. If the institution fails to achieve the agreed to targeted improvements and timeline, funds appropriated for the institution in the following fiscal year shall be disbursed by the board of higher education to the institution’s board of trustees subject to the board’s approval. The board shall not be prevented from amending the institutional allocation of any such institution.

(g) Not later than January 1 of each year, the commissioner of higher education shall submit to the governor and the general court a condition of higher education report which details the condition and performance of each public higher education institution.

(h) The commissioner shall structure her staff and financial resources to provide technical assistance to institutions to help them identify problems and assist them with formulating and implementing plans to meet the accountability measures.

(i) The board of trustees of the University of Massachusetts shall develop a performance measurement system for the university, in consultation with the secretary and the board of higher education. The objectives of the performance measurement system shall be: (1) to promote student access and affordability; (2) to recruit qualified undergraduate and graduate students; (3) to promote student success; (4) to pursue theoretical and applied research, scholarship and creative activity; (5) to contribute to the economic development of the commonwealth; (6) to support early childhood to grade 12 education programs; (7) to provide policy research addressing the needs of the commonwealth and local communities; (8) to ensure cost-effective use of resources; and (9) to maximize fundraising from private sources. The system shall include performance indicators for each of these purposes and identify data to be used in measuring performance. The board of trustees shall compare institutional performance with the performance of peer institutions with similar missions as part of its evaluation process.

(j) The university, in consultation with the secretary, shall adopt an implementation plan and timetable for meeting performance measures established by the system. The board of trustees shall report annually to the secretary, the governor and the general court on the results of the performance measurement system, including recommendations for improvements to the system and for achieving improved levels of performance where necessary.

Section 8 Inoperative. See 1991, 142, Sec. 49
Inoperative. See 1991, 142, Sec. 49
Section 9 Powers and duties of council

Section 9. The council shall have the following duties and powers:— (a) confer upon the boards of trustees the power to offer degree programs after taking into account, among other things, the need, resources and mission of the institution. The council shall confer the authority to award degrees to persons who have satisfactorily completed degree requirements; (b) in addition to the degrees authorized to be awarded under clause (a), the council may approve the awarding of certain other degrees and may define and authorize new functions or new programs, or consolidate, discontinue or transfer existing functions, educational activities and programs. The council shall act in writing on requests for program approval from boards of trustees within six months of said request, or said program shall be considered approved. The council may, after a public hearing and submission of a written report to the clerks of the house of representatives and the senate, by a two-thirds vote of the full membership of the council, recommend to the secretary to consolidate, discontinue, or transfer divisions, schools, stations, branches or institutions as the council deems advisable. If, in the opinion of the council, a college campus should be closed or consolidated, the council shall make that recommendation to the secretary and the secretary, if she approves the closure recommendation, shall submit such proposal to the secretary of administration and finance, the house and senate chairs of the joint committee on higher education, and the chairs of the house and senate ways and means committees. The joint committee on higher education may, within 30 days of the receipt of a proposal, hold a public hearing on its merits. The council shall not close a college without the authorization of the secretary and the general court; (c) analyze the present and future goals, needs and requirements of public higher education in the commonwealth and establish overall goals in order to achieve a well-coordinated quality system of public higher education in the commonwealth. Such analysis shall include, but not be limited to, an analysis of state and local labor market trends and the economic development plans of the commonwealth conducted in cooperation with the secretary of labor and workforce development, the secretary of housing and economic development, and their respective staffs; (d) develop mission statements as defined in section seven; (e) review institutional mission statements, pursuant to section seven; (f) subject to the secretary’s approval prepare a five year master plan for public higher education in the commonwealth, which plan shall take into account the analysis mandated in clause (c) and the five year plans submitted by individual boards of trustees. The master plan shall include, but need not be limited to, enrollment projections, utilization of existing facilities, promotion of research, programmatic excellence, and public service activities, recommendations for closing of facilities or the construction or acquisition of new facilities, program distribution and the need for program revision, including the termination of obsolete or unnecessarily duplicative programs. The master plan shall be filed with the clerk of the house of representatives, the clerk of the senate and the secretary of administration and finance; (g) annually file a detailed progress report on the five year master plan with said clerks and secretaries by the first Wednesday in September; (h) require boards of trustees to submit admission standards and program standards, which shall be subject to the disapproval of the council; provided, however, that said admission standards shall comply with the provisions of section thirty and that the council shall publish all admission and program standards; (i) develop a rational and equitable statewide tuition plan for the state universities and the community colleges in the commonwealth, which plan shall take into account by type of institution, the per student maintenance costs and total mandated costs per student. The total mandated costs per student shall include the state appropriation, retained revenue, fringe benefits and ongoing maintenance. Said tuition plans shall include direct and indirect elements of the per student maintenance costs, including but not limited to, faculty and administrators that support an institution’s primary mission of instruction; student admission
services, and ongoing maintenance for classrooms, administrative buildings, libraries and laboratories. Said tuition plan shall include revised retention expenditure regulations which take into account the needs of said institutions with regard to personnel and utility costs. Said tuition plan shall further take into account the need to maximize student access to higher education regardless of a student’s financial circumstances. The council shall issue regulations governing the implementation of such tuition plans by the state universities and the community colleges. In the case of the university, the council shall review the recommendations of the board of trustees relative to tuition rates at said university and its campuses. Said tuition rates shall be subject to the approval of the council. The council shall establish final tuition rates for the subsequent academic years no later than fifteen days prior to the deadline for submission of state or federal financial aid applications by students attending the institutions of higher education set forth in section five. The council shall establish guidelines to be followed by each public institution of higher education relative to student charges and whether said charges should be classified as tuition or as fees. Said guidelines shall be based upon a study of tuition and fees which shall be conducted by the council, and which shall be authorized by statute; provided, that fees as defined by said guidelines, shall not exceed twenty-five percent of total student charges for the state colleges and the community colleges. (j) receive allotments to the commonwealth under federal programs of aid to public higher education and disburse such funds in accordance with a plan promulgated by the council, not to include grants to individuals or grants received directly by institutions; (k) review enrollment levels for each institution of the system subject to disapproval of the council; (l) require each institution in the system to submit to the council and the secretary a 5-year plan, which plan shall be updated annually and shall be subject to the secretary’s approval, in consultation with the council; (m) have overall responsibility for the property, real and personal, occupied or owned by the council, state universities and community colleges; (n) subject to its direction and approval, authorize the commissioner to seek, accept and administer grants, gifts and trusts for system-wide purposes from private foundations, corporations, individuals and federal agencies, which shall be administered under the provisions of section two C of chapter twenty-nine of the General Laws and disbursed at the direction of the council pursuant to its authority; (o) from time to time, employ consultants and experts to study and report on matters necessary to the operation of the system; (p) maintain a uniform accounting system as required by the state comptroller; (q) approve and fix the compensation of the chief executive officer of each institution within the state university system and community college system; (r) review annually, in accordance with post-audit procedures established by the council, the fiscal operations of constituent institutions. The council shall insure public inspections, through publication, of institutional spending plans; (s) require, collect, analyze, maintain such data from institutions and agencies for public higher education as may be relevant to the careful and responsible discharge of its purposes, functions and duties and such data shall include information available from private institutions of higher education. In the case of public institutions, such data shall include, but not be limited to, analyses of the rates of graduation and the scores received by students on standardized examinations. In order to facilitate the timely use of such data, the board shall, in consultation with the public institutions of higher education, establish a schedule for submission of the data. The council shall publish said analyses, both for the system and for individual institutions. (t) issue regulations defining resident of the commonwealth and proof of the same for the purpose of admission and tuition expenses of public institutions of higher education and prepare uniform proofs of residence to be used by all public institutions; provided, however, that insofar as the Massachusetts Maritime Academy is designated a regional maritime academy by the United States maritime administration, residents of the states comprising the designated region and attending the Massachusetts Maritime
Academy shall be considered Massachusetts residents for the purposes of admission and tuition; (u) establish, where appropriate, coordination between and among post-secondary institutions public or private and resolve conflicts of policies or operations arising in public higher education; (v) develop and implement a transfer compact for the purpose of facilitating and fostering the transfer of students without the loss of academic credit or standing from one public institution to another; (w) establish an affirmative action policy and implement a program necessary to assure conformance with such policy throughout the system; (x) in the case of state universities, fix the classification, title, salary range within the general salary schedule and descriptive job specifications for each position shall be determined by the council for each member of the professional staff and copies thereof shall be placed on file with the governor, budget director, personnel administrator and the joint committee on ways and means, except that any such salary may be fixed at any amount not less than the minimum salary nor more than the maximum salary shown in said schedule; provided, however, the council may establish the salary for the chief executive officer and such other officers and members of the professional staff and for the academic deans and members of the professional teaching staff without reference to the general salary schedule and salary range; and, provided further, that no such salary shall be established for any academic dean or any member of the professional teaching staff unless his classification rating is equal to or higher than that of professor, nor shall the number of academic deans and members of the professional teaching staff whose salaries may be so established exceed one percent of the combined total number of academic deans and members of the professional teaching staff. A notification of each personnel action taken shall be filed by the council with the personnel administrator and with the comptroller; (y) in the case of community colleges, fix the classification, title, salary range of each member of the professional staff within the general salary schedule, except that any such salary may be fixed at any amount not less than the minimum salary nor more than the maximum salary shown in said schedule; provided, however, that the council may fix the salary and salary range for the chief executive officer of each individual community college and other officers and members of the professional staff of the community college system not exceeding in number one percent of the total number of such other officers and members of the professional staff taken together in the community college system, without reference to the general salary schedule; and provided further, that no such salary shall be fixed for any such member classed within the one percent unless he holds a position equivalent to or higher than the rank of professor; (z) recognize the duly elected student government association at each public institution of higher education as the official representative of the student body; (aa) submit a written application of HEFA requesting that said authority undertake a project, as defined in section three of chapter six hundred and fourteen of the acts of nineteen hundred and sixty-eight, on behalf of one or more public institutions for higher education, as so defined; provided, however, that the council shall only make such application for a project on behalf of the public university if such project is approved by the board of trustees of the public university; (bb) transfer or pledge that they will periodically transfer to HEFA any funds available for expenditure by the council, in order to provide for the expenses of HEFA and for the payment of indebtedness incurred by HEFA in connection with any project financed by HEFA on behalf of the council, one or more public institutions of higher education, their affiliated building authorities, or any other organization affiliated therewith, as defined in paragraph (e) of said section three of said chapter six hundred and fourteen; provided, however, that in the case of any funds expected to be available for expenditure by the council or such other entities pursuant to subsequent appropriation or other spending authorization by the legislature, the council may only pledge that they will so transfer such funds subject to such subsequent appropriation or other spending authorization. Any such pledge shall be valid and
binding from the time when the pledge is made; the funds so pledged shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the council or any such public institution of higher education, affiliated building authority, or other organization affiliated therewith, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which such a pledge is created need be filed or recorded except in the records of HEFA; (cc) administer a program, without further appropriation, to provide no-interest loans to undergraduate students domiciled in the commonwealth, enrolled in and pursuing a program of higher education in the commonwealth in any approved public or independent college, scientific or technical institution, or any other approved institution furnishing a program of higher education. Such assistance shall consist of full or partial loans to students in need of assistance. Repayment shall commence within six months of graduation or termination of studies; provided, that no repayment schedule shall exceed a term of ten years. Monies received in repayment shall be retained by the council to provide the no interest loans and to provide for the administration of the programs without further appropriation; provided, however, that not more than $775,000 of the monies shall be expended annually for the administration of the program. The Massachusetts state scholarship office shall establish guidelines to govern said program which shall include, but not be limited to, eligibility requirements for students, eligibility requirements for participating institutions, terms of payment, deferment options, provisions for default, and a maximum loan award as determined by an indexing system; (dd) to develop funding formulas for state and community colleges pursuant to section 15B of this chapter; (ee) to develop a standardized form for reporting institutional expenditures, and for the submission of institutional spending plans pursuant to subparagraph (m) of the first paragraph of section 22 of this chapter; (ff) to approve the expansion of campus missions to embrace specialized missions, expanded regional or national outreach, or a more entrepreneurial model of service delivery pursuant to section 7 and subparagraph (p) of the first paragraph of section 22 of this chapter; (gg) develop a system to track students who transfer out of public institutions of higher education in order to improve data on what degrees, if any, those students earn from other institutions of higher education. Notwithstanding the provisions of any general or special law to the contrary, the board of higher education shall have authority to approve degree programs offered by institutions of higher education; provided, however, that any other licensing body approving specific course offerings required as components of such degree programs under said licensing body’s licensing authority shall not have any other authority over course offerings which are not required for licensure. Whenever a public institution of higher education in the commonwealth requests a tuition rate and charges reduction for residents of bordering states, the board may approve such tuition reduction to not less than one-and-one-half times the resident tuition rate. Prior to the approval of any such tuition adjustment, the board shall promulgate regulations based upon an evaluation that yields the following conclusions: such institution is below enrollment capacity and the projected cost to the commonwealth of such tuition reduction would be minimal when taking into account projected enrollment growth associated with such adjustment. Not less than 30 days prior to the promulgation of such regulations, the board shall report the findings of such evaluation, including a fiscal impact analysis, to the house and senate committees on ways and means and the joint committee on higher education. The board shall seek reciprocal arrangements from bordering states where no such tuition reduction is available for Massachusetts residents.

Section 9A American Sign Language
Section 9A. American Sign Language is hereby recognized as a full and legitimate language, as the language of a unique culture in the United States, and as the equivalent of a spoken language for the purposes of foreign language study and course credit.

Section 9B Needs-based financial assistance program; scholarships; guidelines
Section 9B. There shall be a program, subject to appropriation, of needs-based financial assistance, administered by the board of higher education, to provide full or partial scholarships for residents of the commonwealth enrolled in and pursuing a part-time or full-time program of higher education in any of the public institutions of higher education in the commonwealth. The council shall establish guidelines to govern said program. Said guidelines shall be filed with the house and senate committees on ways and means and the joint committee on education, arts and humanities within thirty days of the approval by the council of said guidelines.

Section 10 Definitions
Section 10. As used in this chapter, the following words shall, unless the context requires otherwise, have the following meanings:

“Community college” shall mean any of the following institutions of higher education: Berkshire Community College, Bristol Community College, Bunker Hill Community College, Cape Cod Community College, Greenfield Community College, Holyoke Community College, Massachusetts Bay Community College, Massasoit Community College, Middlesex Community College, Mount Wachusett Community College, Northern Essex Community College, North Shore Community College, Quinsigamond Community College, Roxbury Community College, and Springfield Technical Community College, and any other community college established after November first, nineteen hundred and eighty-nine; or, if any such community college shall be abolished, any institution succeeding to the principal functions thereof.

“Community college affiliate” any organization or association, in any form, the activities of which are a part of the activities of such community college and are subject to regulation by the trustees of such community college or any research foundation, teaching hospital and associated clinics or other research or educational organization the operation of which in conjunction with such community college is approved by the trustees of such community college as furthering the purposes of the community college.

“HEFA” shall mean the Health and Educational Facilities Authority, established by section four of chapter six hundred and fourteen of the acts of nineteen hundred and sixty-eight, or, if said Health and Educational Facilities Authority shall be abolished, the board, body, or commission succeeding to the principal functions thereof or to which the powers given by said chapter six hundred and fourteen shall be given into law.

“Project” in the case of a participating institution for higher education, a structure or structures suitable for use as a dormitory or other multi-unit housing facility for students, faculty, officers or employees, a dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, maintenance, storage or utility facility and other structures or facilities related to any of the foregoing or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher education, including parking and other facilities or structures essential or convenient for the orderly conduct of such institution for higher education, and shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for
which its use is intended and shall further include any furnishings, equipment, machinery and other similar items necessary or convenient for the operation of an institution of higher education, whether or not such items are related to a particular facility or structure financed by HEFA, but shall not include such items as books, fuel, supplies or other items the cost of which are customarily deemed to result in a current operating charge, and shall not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination. Project may include any combination of one or more of the foregoing undertaken jointly by one or more participating institutions with each other or with other parties.

**Section 11 Council actions permitted to aid and contribute to performances of educational and other purposes of community colleges**

Section 11. The council may, in the name and on behalf of the commonwealth, upon such terms and with or without consideration, do any or all of the following in order to aid and contribute to the performance of the educational and other purposes of any community college:

(a) Sell, convey or lease to HEFA or any community college affiliate real or personal property owned by the commonwealth in a city or town in which a community college is located or grant easements, licenses or any other rights or privileges therein to HEFA to any community college affiliate. Neither HEFA nor any community college affiliate shall be liable to taxation upon any real property, including any building or buildings erected thereon, or personal property sold, conveyed or leased under this section;

(b) Cause private ways, sidewalks, footpaths, ways for vehicular travel, parking areas, water, sewage or drainage facilities and similar improvements and steam service and other utilities and connections for heating and other necessary purposes to be furnished to or in any project carried out by HEFA or any community affiliate;

(c) Make available to HEFA or to any community college affiliate the services of officers and employees of a community college and office space and facilities in a community college for, among other things, billing and collecting rents, fees, rates and other charges for the use and occupancy of property of HEFA or any community college affiliate by one or more community colleges or community college affiliates, students, staff and their dependents; renting and leasing rooms and other accommodations in the buildings and structures of HEFA or a community college affiliate; cleaning, heating, daily operation of and repairs to and maintenance of such buildings and structures and other property of HEFA or any community college affiliate; and keeping all books of account for HEFA or any community college affiliate;

(d) Establish and manage trust funds for self-amortizing projects and self-supporting activities including, but not limited to, the operation of the boarding halls, student health service, research institutes and foundations, dormitories and student and faculty apartment; provided, that all income received from such projects or activities shall be held in trust by the council and expended for the purpose for which the trust fund was established; provided further, that the council may, for the purposes of this section or section twelve, group together several or more projects into one or more funds as is, in its judgement, required to best effectuate the purposes of the projects and activities and the purposes of the community colleges; and provided, further, that any unrestricted balances remaining in a trust fund upon its termination shall be used as directed by the council for the general purposes of the community college;

(e) Do any and all things authorized by law and necessary or convenient to aid and cooperate with HEFA or any community college affiliate in carrying out the purposes of HEFA or such community college and exercising their powers and in complying with the provisions of any trust
agreement into which HEFA may enter in connection with any project financed by HEFA on behalf of any community college or community college affiliate.

In connection with any financing or refinancing provided by HEFA, the provisions of this paragraph shall apply. No lease or other agreement made under this section or section twelve made by HEFA, or the commonwealth acting through the council, or any other community college affiliate to HEFA, the commonwealth acting through the council, or any other community college affiliate shall be subject to any provision of law relating to publication or advertising for bids, and any such lease or agreement may be entered into and shall become effective without any necessity for any order of court or other action or formality other than the regular and formal action of the authorities concerned. No sale, conveyance, lease, or grant made under this section to HEFA or any community college affiliate by the council or by any community college affiliate shall be subject to the provisions of section forty F, section forty F1/2, section forty H or section forty I of chapter seven; provided, however, that the council may elect for any such sale, conveyance, lease, or grant to be subject to the provisions of said sections; provided, further, that in connection with (i) any project upon any real property or right thereto obtained by HEFA or any community college affiliate pursuant to the sale, conveyance, lease, or grant hereby exempted from said sections, or (ii) any disposition to a person or entity other than HEFA, the commonwealth acting through the council or otherwise, or a community college affiliate of any real property or right thereto obtained by HEFA or any community college affiliate pursuant to the sale, conveyance, lease, or grant hereby exempted from said sections, HEFA or such community college affiliate, as the case may be, shall be deemed to be a state agency for the purpose of paragraph (v) of section thirty-nine A of said chapter seven and shall be deemed to be a public agency for the purpose of subsection (1) of section forty-four A of chapter one hundred and forty-nine.

Section 12 Council actions permitted to provide for HEFA expenses and for payments of indebtedness incurred on behalf of community colleges or affiliates

Section 12. To provide for the expenses of HEFA and for the payment of indebtedness incurred by it in connection with any project financed by HEFA on behalf of any community college or any community college affiliate, or in connection with any transfer for such purpose by HEFA, or the commonwealth acting through the council under the provisions of section eleven, or any other community college affiliate to HEFA, or the commonwealth acting through the council, or any other community college affiliate of buildings or other property, the council may, in the name and on behalf of the commonwealth, (i) transfer or pledge that they will periodically transfer to HEFA, or to any community college affiliate under terms permitting further transfer or pledge to HEFA, any part or all of any funds held as trust funds for any community college under the provisions of paragraph (d) of section eleven, administered on behalf of any community college as gifts, grants, or trusts under the provisions of clause (e) of section twenty-two, made available for expenditure on behalf of any community college pursuant to an appropriation or other spending authorization in the commonwealth’s annual operating budget, including supplementary and deficiency budgets, or otherwise available for expenditure by the council, and (ii) may contract with HEFA or any community college affiliate with respect thereto under terms permitting further transfer or pledge by HEFA to a trustee under any trust agreement related to such project and entered into by HEFA pursuant to chapter six hundred and fourteen of the acts of nineteen hundred and sixty-eight; provided, that in the case of any funds expected to be available for expenditure by the council pursuant to subsequent appropriation or other spending authorization by the legislature, the council may only pledge that they will so transfer such funds subject to such subsequent appropriation or other spending authorization. The council
may impose such terms and conditions as to the application of the funds so transferred as it
deems appropriate for the carrying out of the provisions of said chapter six hundred and fourteen
and of this chapter. Any such pledge shall be valid and binding from the time when the pledge is
made; the funds so pledged shall immediately be subject to the lien of such pledge without any
physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding
as against all parties having claims of any kind in tort, contract or otherwise against the council,
any community college, or any other community college affiliate, irrespective of whether such
parties have notice thereof. Neither the resolution nor any trust agreement by which such a
pledge is created need be filed or recorded except in the records of HEFA.

Section 13 HEFA; sale or lease of buildings, lands or other property; proceeds
Section 13. HEFA may sell the buildings or other structures upon any land acquired by it
pursuant to section eleven and which are not included in a project, or may remove the same, and
may sell or lease any lands or rights or interest in lands or other property acquired for the
purposes of this act whenever the same shall, in the opinion of HEFA, cease to be needed for
such purposes. The proceeds of any such sale or lease shall be held and disposed of as revenues
from the project for or with respect to which the property sold or leased shall have been
acquired; provided, however, that except as permitted by section eleven, no property acquired
from the commonwealth shall be sold or leased without prior approval of the governor and
council; and provided further that the proceeds of any sale or lease of any such property shall be
paid to the treasurer and receiver-general of the commonwealth and shall be credited on the
books of the commonwealth to the General Fund.
In the event that the council shall sell, convey or lease to HEFA any dormitory, dining commons
or boarding hall faculty or student apartment building or student union building at any
community college and owned by the commonwealth or any interest of the commonwealth in or
to such a building so located but owned by another, and in the further event that funds for the
rental or maintenance of such building or buildings have been provided by appropriation from
general funds of the commonwealth for any fiscal year ending after the effective date of such
sale, conveyance or lease, such sale, conveyance or lease shall provide that the rentals, fees or
other charges levied for the use of such building or rooms or accommodations therein or services
provided therein in such fiscal years shall be retained by or paid to the treasurer and receiver-
general of the commonwealth, as the case may be.

Section 14 Powers under Secs. 11 and 12 exercised on behalf of University of Massachusetts
and affiliates
Section 14. Upon application by the trustees of the University of Massachusetts, the council may
exercise on behalf of such university and its university affiliates all the powers it has with respect
to community colleges or community college affiliates under sections eleven and twelve.

Section 15 Estimate of ordinary maintenance and revenues; capital outlay requests;
allocation of appropriations
Section 15. In accordance with the funding formulas referenced in section 15B of this chapter,
the secretary, in consultation with the council and with the board of trustees for the university of
Massachusetts, shall periodically prepare and submit to the budget director an estimate, in detail,
for the ordinary maintenance of the entire system of public institutions of higher education, and
revenue therefrom, as provided in section three of chapter twenty-nine. Said statement shall
include the salaries of all officers and employees within said system and all program costs which
are to be borne by any source other than the commonwealth, including such sources as federal
financing or federal research, demonstration, or training grants, community contributions and other grants, endowments or trusts.

The secretary, in consultation with the council and with the board of trustees for the university of Massachusetts, shall also periodically submit requests for capital outlay for the entire system of public institutions of higher education to the secretary of administration and finance as provided by section seven of said chapter twenty-nine and to the house and senate committees on ways and means. The secretary shall use the estimates and requests prepared by each board of trustees for the purposes of this section attaching whatever recommendations she may desire or deem necessary. The general court shall appropriate funds for the system of public institutions of higher education in various line items, including, but not limited to four separate appropriations; one each for the University of Massachusetts, state universities, community colleges, and scholarships.

The board of trustees of the university shall receive its appropriation directly, in one sum. Funds appropriated for the state university system and the community college system shall be disbursed by the council to each board of trustees by the establishment of allocation accounts; provided, however, that the council shall not allocate an amount less than that appropriated by the general court for the expenses of “01, salaries, permanent positions”; “02, salaries, other”; or “03, services, nonemployee” without prior approval of the commissioner of administration; and provided, further, that no such funds allocated for the expenses of “01 salaries, permanent” to a board of trustees shall be transferred without the prior approval of the commissioner of administration.

Except as provided in the preceding paragraph, the council shall not be prevented from amending institutional allocations or reallocating funds among institutions.

Section 15A [There is no 15A:15A.]
[There is no 15A:15A.]

Section 15B. There shall be established a two year budget cycle for the public system of higher education which shall be instituted beginning in fiscal year nineteen hundred and ninety-four and shall be repeated every even numbered fiscal year thereafter.

In preparing for the even numbered fiscal year of said two year budget cycle each board of trustees shall prepare and submit to the secretary and the council a budget request for the ordinary maintenance of its institution; said budget request shall include the salary of all officers and employees of said institution and all revenues therefrom and any other such information as the secretary and the council may require or as provided in section three of chapter twenty-nine.

Each board of trustees shall make requests to the secretary and the council under the provisions of chapter twenty-nine. The boards of trustees shall attach to said even numbered fiscal year budget request a budget request for the following odd numbered fiscal year; said odd numbered fiscal year budget request shall include the salary of all officers and employees of said institution and all revenues therefrom and any other such information as the secretary and the council may require or as provided in section three of chapter twenty-nine.

Boards of trustees in each segment of the higher education system shall prepare their budget request in accordance with funding formulas. The board of higher education shall develop the
formulas for the institutions within the state university and community college segments in consultation with the boards of trustees and the secretary. The university trustees shall develop funding formulas for the university campuses in consultation with the campus administrations and the board of higher education and the secretary. All funding formulas shall be periodically reviewed and revised as needed.

Each board of trustees shall prepare their estimates and requests according to the funding formulas prescribed in section fifteen A of this chapter. The council shall review the institutional budget requests prepared by each board of trustees and shall submit comments and recommendations concerning those requests to the secretary. The secretary shall then prepare a comprehensive budget request for the public higher education system, with comments and recommendations, for use by the secretary of administration and finance, the house and senate committees on ways and means and the joint committee on higher education. In the case of the university, it shall be the responsibility of the trustees to submit comments and recommendations regarding the budget requests of individual campuses within the university system to the secretary and the board of higher education. In the case of any institution, or the university, having failed to submit data according to the schedule established under clause (s) of the first paragraph of section 9, the secretary may withhold transmittal of the budget request from that board of trustees to the secretary of administration and finance and committees. The comments and recommendations attached by the secretary and the board of higher education for each state and community college and by the board of trustees of the university for each university campus, shall be consistent with the funding formulas, statewide needs, performance measurement standards, as well as the mission statements and 5-year plans for individual campuses and the public higher education system as a whole. They shall also reflect analysis by the respective boards for each campus regarding progress made by the campuses in fulfilling strategic plans including, but not limited to, significant achievements and progress in addressing any previously identified deficiencies. The comments and recommendations shall be made available to the individual institutions and campuses before submission to the secretary of administration and finance and legislative committees with sufficient time allowed to provide opportunity for comment and response by those institutions and campuses. In reviewing the various estimates and requests, the secretary and the council may comment on the overall level of funding for the system of public higher education and may comment regarding funding priorities among segments of the system of public higher education and among the various institutions. The secretary shall submit her recommendations and comments to the secretary of administration and finance, the house and senate committees on ways and means and the joint committee on higher education. The secretary shall include in addition to the information provided by the boards of trustees all program costs which are to be borne by any other source other than the commonwealth, including such sources as federal financing or federal research demonstration or training grants, community contributions and other grants, endowments or trusts.

Section 15C Expenditures and revenues; management and accounting reporting system
Section 15C. The public institutions of higher education shall report monthly by subsidiary all expenditures and revenues from all appropriated and non-appropriated funds on the Massachusetts management and accounting reporting system, so-called, by July thirty-first, nineteen hundred and ninety-three.

Section 15D Personnel administrative reporting and information system
Section 15D. The public institutions of higher education shall report all personnel information for those employees compensated from any budgetary, federal, capital or trust fund through the personnel administrative reporting and information system, so-called, by July thirty-first, nineteen hundred and ninety-three.

Section 15E Public higher education endowment incentive and capital outlay contribution program; matching formula; termination of program

Section 15E. It is hereby declared to be the policy of the commonwealth to encourage private fundraising by the public institutions of higher education and to assist fundraising through a matching program to be known as the public higher education endowment incentive and capital outlay contribution program which shall not result in direct or indirect reductions in the commonwealth's appropriations to the institutions for operations or for capital support.

[ Second paragraph effective until July 1, 2011. For text effective July 1, 2011, see below.]

Subject to appropriation, the commonwealth shall contribute funds to each institution's recognized foundation in an amount necessary to match private contributions in the current fiscal year to the institutions or a foundation's endowment or capital outlay program based on the following matching formula: subject to appropriation, the commonwealth's contribution shall be equal to $1 for every $2, or $1 for the greater number of dollars established by the board of higher education, privately contributed to the university's board of trustees or a foundation; provided, that the maximum total contributions from the commonwealth shall be $50,000,000; $1 for every $2, or $1 dollar for such greater number of dollars as may be established by the board of higher education, privately contributed to each state university's board of trustees or foundation; provided further, that the maximum total contributions from the commonwealth shall be $5,000,000 for each institution; $1 for every $2, or $1 for such greater number of dollars as may be established by the board of higher education, privately contributed to each community college's board of trustees or foundation; and, provided further, that the maximum total contributions from the commonwealth shall be $2,000,000 for each institution.

[ Second paragraph as amended by 2011, 68, Sec. 24 effective July 1, 2011. See 2011, 68, Sec. 221. For text effective until July 1, 2011, see above.]

Subject to appropriation, the commonwealth shall contribute funds to each institution's recognized foundation in an amount necessary to match private contributions in the current fiscal year to the institution's or a foundation's endowment or capital outlay program based on the following matching formula: subject to appropriation, the commonwealth's contribution shall be equal to $1 for every $2 privately contributed to the university's board of trustees or a foundation; $1 for every $2, or $1 dollar for such greater number of dollars as may be established by the board of higher education, privately contributed to each state university's board of trustees or foundation; and $1 for every $2, or $1 for such greater number of dollars as may be established by the board of higher education, privately contributed to each community college's board of trustees or foundation.

Private contributions to the endowment or capital outlay program for purposes of these matching grant programs shall be limited to donations to an endowment for academic purposes including, but not limited to, scholarships and endowed chairs or contributions to a capital outlay program in support of academic facility construction and maintenance approved by the appropriate board of trustees.
The program shall terminate for a university when its foundation has received $50,000,000 in appropriated matching funds according to the formula prescribed above, or on July 1, 2010, whichever is sooner. The program shall terminate for a state university when its foundation has received $5,000,000 in appropriated matching funds according to the formula prescribed above or on July 1, 2010, whichever is sooner. The program shall terminate for a community college when its foundation has received $2,000,000 in appropriated matching funds according to the formula prescribed above or on July 1, 2010, whichever is sooner.

For each institution, the program shall be administered by its foundation, as defined in section 37, in accordance with procedures established by the board of trustees and filed with the house and senate committees on ways and means, the joint committee on higher education, and the secretary of administration and finance no later than 30 days from the time of adoption. Any further amendments to the procedures shall also be filed within 30 days of adoption with the house and senate committees on ways and means, the joint committee on higher education, and the secretary of administration and finance. The procedures shall include a method for each board of trustees to certify to the house and senate committees on ways and means, the joint committee on higher education, and the secretary of administration and finance the actual amount received in private contributions to the endowment or capital outlay program in each fiscal year. The procedures shall also include safeguards for protecting the anonymity of donors who indicate their desire not to be identified. For the state university, the procedures shall also provide that the allocation of all matching funds from the commonwealth shall be subject to prior approval by the president of the university.

Section 15F Community college workforce training incentive program
Section 15F. It is hereby declared to be the policy of the commonwealth to encourage public community college training opportunities in order to promote workforce development, minimize the shortage of skilled workers and raise economic opportunity through a matching incentive grant program to be known as the community college workforce training incentive program. Subject to appropriation, the board of higher education shall establish guidelines for the distribution of community college workforce training incentive grants; provided, however, that said guidelines shall provide: (i) allowable incentive grant awards which shall not exceed $200 for every $1,000 in eligible revenues; (ii) minimum requirements for the level of not-for-credit vocationally-oriented instruction which shall be provided by incentive grant recipients in the fiscal year in which such grant is awarded. Each community college which is eligible for grant awards in a fiscal year shall, subject to appropriation, receive not less than $50,000 from the total amount appropriated for the incentive program to fund the salary of a workforce training coordinator at each such campus. For the purposes of this section, eligible revenues shall be defined as revenues received by a community college for one of the following purposes: tuition and fees paid by students enrolled in not-for-credit vocationally-oriented courses; tuition and fees paid by Massachusetts employers on behalf of employees enrolled in not-for-credit vocationally-oriented courses; and revenues from service contracts with Massachusetts employers to provide not for-credit vocationally-oriented training. Revenues from contracts with public agencies, public grants or private gifts shall not be considered eligible revenues for the purposes of this section. Incentive grants shall be expended for the following purposes: to expand not-for-credit vocationally oriented course offerings; to expand not-for-credit vocationally-oriented instruction
provided through contracts with Massachusetts employers; and to otherwise promote not-for-
credit vocationally-oriented instruction. Each community college campus shall report not later
than December 31, annually, to the board of higher education and the house and senate
committees on ways and means on the level of not-for-credit vocationally-oriented instruction
provided in the preceding fiscal year and the anticipated level of such instruction in the current
fiscal year. Said report shall detail enrollment levels, revenues received, sources of revenues, the
number of service contracts established with Massachusetts employers and such other
information as the board of higher education may require.

Section 16 Scholarship programs; guidelines
Section 16. There shall be a general scholarship program administered by the council for the
purpose of providing financial assistance to students domiciled in the commonwealth and
enrolled in and pursuing a program of higher education in any approved public or independent
college, university or school of nursing, or any other approved institution furnishing a program
of higher education. Such aid and assistance shall consist of awarding of full or partial
scholarships to worthy and qualified students in need of financial assistance.

The amount of awards to qualified students shall be determined by using an indexing system
which shall be included in the guidelines established by the council to govern this program. The
council shall file a report of current year general scholarship program expenditures,
appropriations needed to fund full need for all students, and projections of general scholarship
expenditures for the following year by family contribution ranges and independent student
contribution ranges. Said report shall be filed with the clerk of the house and senate no later than
the end of each calendar year.

There shall be a Christian A. Herter Memorial Scholarship Program which authorizes the council
to guarantee the payment of full or partial scholarships to no more than twenty-five students
annually of extraordinary need and ability selected in tenth or eleventh grades by persons or
agencies designated by said council under such regulations as the council shall deem necessary.
These awards shall be guaranteed to the student at the time of the student’s selection; provided
however, that said student successfully completes high school and is enrolled in and pursuing a
program of higher education in any approved public or independent college, scientific or
technical institution, or any other approved institution furnishing a program of higher education,
and shall be payable from the general scholarship funds at the time of the student’s matriculation.
There shall be a program, administered by the council, providing for the matching of scholarship
grants to participating Massachusetts independent regionally accredited colleges, universities and
schools of nursing; provided, that the council shall establish policies and regulations relating to
the program, including an audit procedure to insure that institutions are in compliance with such
policies and regulations; provided, further, that a participating institution shall be eligible to
receive an amount equal to such institution’s expenditure for scholarship aid to needy
Massachusetts undergraduate students enrolled in such institutions as full-time matriculating
students in a course of study leading to an associate or bachelor degree; provided further, that
each participating institution shall agree to expend an amount equal to one hundred percent of
the grant awarded hereunder in direct financial assistance to the needy Massachusetts students;
provided further, that each participating institution shall agree to comply with the information
requests of the council in accordance with this chapter.
There shall be a Christa McAuliffe Teacher Incentive Program for the purpose of providing financial assistance for undergraduate and graduate students in approved institutions of higher education within the commonwealth who agree to teach on a full time basis within a public education system located in the commonwealth. The council shall institute and maintain learning contracts for all students admitted in the teacher incentive program, which shall include provisions for “payback” service for a period commencing after such students have fulfilled all graduation requirements, or for repayment to the commonwealth of the full amount of such grants on terms established by said council. Said council shall establish guidelines governing said program which shall include but not be limited to eligibility requirements, selection criteria, and period of time which must be spent teaching in the commonwealth.

There shall be a part-time student grant program to provide assistance to part-time undergraduate students attending approved institutions of higher education within the commonwealth who have demonstrated financial need. The council shall establish guidelines governing said program.

The council may award full or partial scholarships to worthy and qualified students who have been residents of the commonwealth for a period of four years immediately prior to receiving such award and who are in need of financial assistance in order to pursue graduate studies. The council shall award scholarships and notify all applicants on or before July first in each year. No scholarship may be awarded for more than five years to any one student. The council may expend such sums as may be appropriated to carry out the provisions of this paragraph. The council shall establish guidelines governing said program which shall include but not be limited to eligibility requirements and selection criteria.

There shall be a Council Grant for Campus-based Assistance Program for adult learners and work study opportunities. Participating approved institutions of higher education within Massachusetts shall receive an allocation from the council to provide grant or work study assistance to eligible students with demonstrated financial need. The council shall establish guidelines to govern this program which shall insure that those students receiving assistance include part-time students, graduate students and adult learners.

There shall be a Public Service Scholarship Program to provide scholarships to children and widowed spouses of Massachusetts police officers, firefighters and correction officers, who are killed or die from injuries received while in the performance of duties including authorized training duty; to children of prisoners of war or military or service persons missing in action in Southeast Asia whose wartime service is credited to the commonwealth and whose service was between February first, nineteen hundred and fifty-five, and the termination of the Vietnam campaign; and to the children of veterans whose service was credited to the commonwealth and who were killed in action or otherwise died as a result of such service. Such scholarships shall be awarded by the council pursuant to its guidelines established to govern this program and shall go to those persons referenced above who are admitted to an institution of higher education in the commonwealth to pursue undergraduate studies. The guidelines shall include, but not be limited to, a waiver of mandatory fees.

There shall be a dedicated grant program for undergraduate students enrolled at an approved institution of higher education within the commonwealth. The council shall establish guidelines to govern said program.
There shall be a consortium scholarship program for undergraduate students to pursue programs that are not currently offered by public institutions of higher education within the commonwealth. The council shall establish guidelines to govern said program.

Any student receiving financial assistance under any program listed above shall maintain satisfactory academic progress in order to continue to receive such assistance. Each institution which recipients attend shall maintain documentation of each recipient’s academic standing and provide requested documentation to the council in accordance with guidelines promulgated by the council.

All programs of financial assistance above shall be subject to appropriation.

Any institution of higher education participating in any of the programs set forth above shall annually execute a participating agreement for each such program and place such contracts on file with the council’s scholarship office.

When applicable federal law requires, each applicant for assistance under any program established herein shall provide appropriate documentation to verify his compliance with the Military Selective Service Act in effect at the time of such application.

With the exception of the public service scholarship program grants, all financial assistance provided for in this section shall be based on ability to pay, as provided for in guidelines promulgated by the council.

Upon adoption by the council of guidelines promulgated pursuant to the provisions of this section, said council shall file a copy thereof with the secretary of administration and finance, and with the clerk of the house of representatives, who shall refer such guidelines to the joint committee on education, arts and humanities, and the house and senate ways and means committees.

Section 17 Teaching learning corps program
Section 17. The council, subject to appropriation, shall establish a program entitled the “teaching learning corps”.

The program shall provide school districts choosing to participate, which contain a significant proportion of low-income students or a significant proportion of students deficient in basic skills, as determined by the board of education with college students as instructional aides. Instructional aides shall assist teachers in instructional activities during regular school programs or extended day programs, but shall not replace existing school personnel. Funds provided under this section shall be used first to provide matching funds for work-study college students, and in the case where work-study students are not available, to hire college students not enrolled in work-study programs. The council, in cooperation with the board of education, shall promulgate rules and regulations for said program, including selection criteria for public school sites, cooperative agreements between colleges and public schools, yearly program evaluation procedures, program duration standards, and other rules.

Section 18 Qualifying student health insurance programs; participation; compliance procedures report; penalties for noncompliance
Section 18. Every full-time and part-time student enrolled in a public or independent institution of higher learning located in the commonwealth shall participate in a qualifying student health insurance program. For the purposes of this section, “part-time student” shall mean a student participating in at least seventy-five percent of the full-time curriculum. Such an institution may elect to allow students to waive participation in its student health insurance program or any part thereof; provided, however, that an institution permitting such waivers shall require students waiving participation to certify in writing prior to any academic year in which they will not participate in the institution’s plan that they are participating in a health insurance program having comparable coverages.

Each public and independent institution of higher education shall submit an annual report to the division of health care finance and policy detailing its procedures for complying with the provisions of this section; provided, however, that prior to the implementation of this section the division of health care finance and policy and the council shall submit a report to the house and senate committees on ways and means. Such a report shall include, but not be limited to, an analysis of the number of students lacking health insurance, the costs of the requirements of this section to the students and the public and independent institutions of higher education, and a proposed method for meeting such costs.

Any public or independent institution of higher learning failing to carry out its responsibilities under this section shall pay a penalty per student for every day during which the failure continues, equal to the penalty per employee per day imposed upon noncomplying employers by subsection (i) of section fourteen G of chapter one hundred and fifty-one A. Any penalties collected pursuant to this section shall be deposited in the public responsibility account of the medical security trust fund established by chapter one hundred and eighteen F. Any institution which, in accordance with regulations promulgated pursuant to this section, relies in good faith on statements by students relative to their health insurance status shall not be liable for any penalty or for failure to comply with the provisions of this section caused by misstatements of such students.

The division of health care finance and policy, with the advice and consent of the council, shall issue regulations to define qualifying student health insurance programs, to establish procedures to monitor compliance, and to implement the provisions of this section.

**Section 19 Tuition and fee waiver program; guidelines; annual report**

Section 19. There shall be a single tuition and fee waiver program administered by the council in accordance with guidelines established by the council to govern the program, provided that no tuition waiver be funded by the transfer of funds appropriated pursuant to section sixteen.

Such guidelines (i) shall establish institutional waiver allocation formulas and eligibility requirements, including needs criteria, for designated waiver programs, (ii) shall provide full or partial tuition waivers for specific categories of students designated by the council which may include veterans, armed forces personnel, senior citizens, and graduate students, (iii) may provide full or partial waivers for additional categories of students not included in clause (ii), and (iv) may provide full or partial waivers of tuition or fees for undergraduate programs, summer sessions, evening classes, or any specific courses or set of courses.
Such guidelines shall provide tuition and fee waivers for Massachusetts National Guard members. The commonwealth, not the institutions of public higher education, shall bear the cost of such tuition and fee waivers for Massachusetts National Guard members.

Tuition waivers for graduate students shall be administered by each institution of public higher education. Said institutions shall annually and on a date specified by the council submit a written report to the board detailing graduate student waiver policies and distributions of said waivers.

Upon the adoption of guidelines in accordance with the provisions of this section the council shall file copies of thereof with the clerks of the house and the senate, who shall refer such guidelines to the house and senate committees on ways and means and the joint committee on education, arts and humanities.

The council shall annually on or before March fifteenth report to the house and senate committees on ways and means and to the joint committee on education, arts and humanities regarding any modifications to the guidelines setting forth tuition waiver programs. Said report shall include information relative to tuition waivers for graduate students as administered by the several institutions of public higher education.

Notwithstanding the provisions of any general or special law to the contrary, the board of higher education shall provide full tuition waivers at each community college for students who are clients of and who meet the eligibility requirements of the Massachusetts rehabilitation commission or the Massachusetts commission for the blind.

The program shall provide full tuition and fee waivers for any state-supported course offered by an institution at a public institution of higher education, excluding graduate courses and courses in the MD program at the University of Massachusetts Medical Center, and including courses toward an undergraduate degree program, certificate program, short-term certificate program and noncredit courses at each community college, state university and undergraduate campus of the University of Massachusetts for students who are not over the age of 24 and who, while in the custody of the department of children and families, were adopted by an eligible Massachusetts resident or commonwealth employee as determined by the department of children and families in conjunction with the human resources division. The commonwealth, not the institutions of public higher education, shall bear the cost of these waivers after all reimbursements from the federal government have been exhausted.

The program shall provide tuition and fee waivers for any person who, upon reaching the age of 18, is in the custody of the department of children and families or is the subject of a legal guardianship sponsored by the department. No such person shall be required to remain in the care of the department beyond the age of 18 to qualify for these waivers. Persons who return to the care of the department after the age of 18 may qualify for these waivers. The commonwealth, not the institutions of public higher education, shall bear the cost of these waivers after all reimbursements from the federal government have been exhausted.

The board of higher education shall, subject to appropriation, establish a program to provide grants to residents of the commonwealth who are working as paraprofessionals in public schools of the commonwealth while pursuing a bachelor’s degree at a public institution of higher education in the commonwealth in order to become a certified teacher in the commonwealth. Eligibility shall be limited to persons (a) who have worked as a paraprofessional in the public
schools of the commonwealth for a minimum period of 2 years before receipt of such grant, or who are paraprofessionals who have worked in public schools for a lesser time, and (b) who are enrolled in and pursuing courses of study that will lead to certification as a teacher in bilingual education, special education, math, science or foreign languages, and (c) who commit to teach and actually teach for such period as the board of higher education may determine in the public schools of the commonwealth upon graduation and certification under section 38G of chapter 71. The board of higher education shall establish guidelines governing implementation of the program. Such guidelines shall include, but not be limited to, the following: (i) the level of academic achievement grant recipients must maintain while participating in the grant program; (ii) the financial responsibilities of grant recipients should they fail to complete their teacher certification; and (iii) the duties and obligations of grant recipients upon completion of certification, including the minimum number of years that they shall be required to work as a teacher in a public school of the commonwealth. Such grants shall be used to defray the cost of tuition and fees at a public institution of higher education in the commonwealth.

Section 191/2 Tuition, fees and room and board waiver for surviving child of parent who died as a result of injuries sustained during active and full-time military service while outside the United States

Section 191/2. Each surviving child of a parent who died as result of injuries sustained during active and full-time military service as a member of the armed forces of the United States or national guard, occurring after 1989, while outside the United States in an armed conflict or hostility, or while deployed in direct support of military activity in a zone of armed conflict or hostility, shall be entitled, upon admittance to a degree program of undergraduate studies at a public institution of higher education as provided in the first paragraph of section 5 to a full waiver for charges due for tuition, mandatory fees and room and board during the period of attendance, subject to any restrictions set forth in this section.

A waiver for room and board under this section shall only be allowed for any period that the child is enrolled as a full-time student at a qualifying public institution. No child shall receive a waiver under this section if he has been awarded a degree previously from a public or private college, university or other institution of higher learning or if, during his attendance at a qualifying public institution after receiving a waiver, he fails to maintain satisfactory academic progress or if the deceased parent was not a resident of the commonwealth at the time of entry or continuance into active and full-time military service.

A child who has received a waiver from a qualifying public institution under this section shall not be entitled to a waiver of charges due for more than 1 undergraduate degree program at the institution where the child is enrolled or at another qualifying public institution unless the waiver for such additional degree program has received the prior approval of the board of higher education. Notwithstanding the foregoing, approval by the board shall be not be required for a child who transfers to a different degree program for undergraduate studies at the institution where the child is currently enrolled or transfers to another degree program for undergraduate studies at another qualifying public institution, provided that the child is no longer enrolled in the previously undertaken degree program.

Consistent with the provisions of this section, the board of higher education may establish general guidelines and regulations for the application and administration of waiver benefits at qualifying public institutions of higher learning.
For the purposes of this section, “child” shall be without qualification or limitation as to the person’s age.

Section 19A Student loan repayment program; guidelines; expenses for administration
Section 19A. There shall be a student loan repayment program known as the attracting excellence to teaching program, for the purpose of encouraging outstanding students to teach in the public schools of the commonwealth by providing financial assistance for the repayment of qualified education loans, as defined below. The program shall be administered by the board of education in accordance with guidelines promulgated by the board of higher education. The program shall be subject to appropriation.

The term “qualified education loan” shall mean any indebtedness including interest on such indebtedness incurred to pay tuition or other direct expenses incurred in connection with the pursuit of an undergraduate or graduate degree by an applicant, but shall not include loans made by any person related to the applicant.

The council shall promulgate guidelines governing the attracting excellence to teaching program. These guidelines shall include the following provisions:
(1) eligibility for the program shall be limited to persons who have graduated in the top 15 per cent of their undergraduate classes or who have graduated with honors designations, as certified by the institution attended by any such applicant;
(2) eligibility shall be limited to persons entering the teaching profession after July first, nineteen hundred and ninety-four;
(3) the commonwealth shall repay a participating teacher’s student loan at a rate not to exceed one hundred and fifty dollars per month for a period not to exceed forty-eight months;
(4) repayment shall be made to the participating teacher annually upon the presentation by the participating teacher of satisfactory evidence of payments under the loan;
(5) payments by the commonwealth shall cover only loan payments made by the participating teacher in the months during which the participating teacher teaches in public school in the commonwealth;
(6) the program may or may not be limited to teachers who teach in school districts designated by the board of education;
(7) the program shall set forth an affirmative action policy and specific annual affirmative action goals. The council shall annually publish a report detailing its efforts to publicize the loan repayment program in order to advance the goals of this affirmative action policy and its success in meeting those goals.

Expenses for administration of the program may be retained in an interest bearing trust fund to be established by the board of education and expended for the costs of administering the program without further appropriation, and any funds remaining in the trust fund at the termination of the program shall be returned to the General Fund.

Section 19B Teacher signing bonus program; regulations
Section 19B. There shall be an incoming teacher signing bonus program to be administered by the department of education for the purpose of encouraging the best and brightest candidates to teach in the public schools. The goal of such program shall be to encourage high achieving candidates to enter the profession who would otherwise not consider a career in teaching. Funding for such program shall be subject to the provisions of section 35S of chapter 10.
The board of education shall promulgate regulations, where necessary, for the effective implementation of such program. Such regulations shall include the following provisions:

(1) On an annual basis, the department of education shall select the best and brightest teaching prospects based on objective measures such as test scores, grade point average or class rank and such other criteria as the department may determine. The department shall establish a system for receiving a limited number of recommendations for outstanding candidates for such bonuses from institutions of higher education across the nation. In selecting bonus recipients, the department shall consider such recommendations.

(2) In a given year, the department may target awards to attract teachers for those subject matter areas most needed in the commonwealth; provided, however, that such subject matter areas shall be included in the core subjects as described in section 1D of chapter 69.

(3) In a given year, the department shall award bonuses only to those deserving candidates rather than providing a set number of bonuses.

(4) Recipients shall receive a $20,000 signing bonus over at least three years with at least $8,000 distributed in the first year of the bonus.

(5) Such recipients shall be eligible for each year’s bonus payment only if they are certified to teach in the commonwealth and are employed as a teacher by a public school in the commonwealth.

(6) The department shall select and notify bonus recipients by April 1 of each year. Eligible recipients shall receive their annual bonus payments by the subsequent October 1 of each year.

(7) The name of an individual recipient of such bonus shall remain confidential unless recipient waives such confidentiality in writing.

(8) The department shall aggressively market the existence of the program to encourage the best and brightest candidates in the nation to come to the commonwealth to teach. Such marketing shall focus on candidates who would otherwise not consider a career in teaching.

(9) The program shall set forth an outreach plan to attract underrepresented populations to the teaching profession.

Section 19C Master teacher corps program; regulations

There shall be Massachusetts master teacher corps program for the purpose of building a group of recognized teachers of high achievement in the profession who shall serve to mentor incoming apprentice teachers and further the goals of the education reform act, so-called. The department of education shall administer this program. Funding for said program shall be subject to the provisions of section 35S of chapter 10.

The board of education shall promulgate regulations, where necessary, for the effective implementation of such program. Such regulations shall include the following provisions:

(1) The department may select master teachers who achieve master teacher status through certification from the National Board for Professional Teaching Standards, pass a challenging content test, and agree to mentor apprentice teachers. The department may develop and include alternatives to the NBPTS program provided such alternatives maintain equivalent or higher standards of excellence in teaching.

(2) The department may provide master teachers with partial or full reimbursement for the assessment costs of said NBPTS certification. The department shall provide master teachers with ongoing salary bonuses for such master teachers. Such ongoing salary bonuses shall be limited to $5,000 per year. Within said $5,000 limit, the department may authorize a nominal payment to the school district of such master teachers to facilitate time for the master teacher to engage in mentoring activity.
(3) Teachers with master teacher status shall have full parity in certification and compensation with teachers who earn a master’s degrees from approved higher education institutions, notwithstanding the provisions of section 38G of chapter 71, or chapter 150E.

(4) The program shall set forth an outreach plan to attract underrepresented populations to the teaching profession.

**Section 19D Scholarship program known as tomorrow’s teachers program; guidelines**

Section 19D. There shall be a scholarship program to be administered by the board of higher education, which shall be known as the tomorrow’s teachers program, for the purpose of encouraging outstanding high school students to teach in the public schools by providing qualified high school students with scholarships for tuition and fees for a four-year bachelor’s degree program at a public institution of higher education in the commonwealth. The program shall be subject to appropriation.

The board of higher education shall promulgate guidelines governing the tomorrow’s teachers program. The guidelines shall include the following provisions:

1. Eligibility for the program shall be limited to students who graduated in the top quarter of their high school classes, who agree to complete a four-year bachelor’s degree program in a public institution of higher education in the commonwealth and who commit to and actually teach for four years in a public school in the commonwealth upon successful completion of a bachelor’s degree from the institution of higher education and the appropriate certification in accordance with said section 38G of said chapter 71.

2. The program shall set forth an outreach plan to attract underrepresented populations to the teaching profession.

3. Persons who participate in the program but do not complete their college education within six years of entering college or who fail to complete their four-year teaching commitment within six years following graduation from college shall be obligated to repay the commonwealth the tuition and fees advanced to them, with interest, as determined by the board of higher education.

**Section 19E Principal and superintendent recruitment program**

Section 19E. There shall be a principal and superintendent recruitment program for recruiting and training as principals and superintendents in public schools individuals from other professions who have the skills, experience and talent to be outstanding school principals and superintendents, but who do not meet the existing statutory and regulatory requirements to serve as principals and superintendents. The program shall include the use of financial incentives and other methods for recruiting candidates and innovative methods for providing the necessary training.

The board of education shall promulgate regulations, where necessary, for the effective implementation of the program. The board shall establish standards that individuals who participate in the program shall meet to be authorized to serve as principals or superintendents. If the board determines that existing statutory or regulatory requirements for such service interfere with attracting highly qualified individuals from other professions who meet the standards established by the board, it may exempt such individuals from such requirements.

**Section 20 Educational opportunities information center**

Section 20. There shall be an educational opportunities information center in the office of the council to provide information and assistance to prospective college and university students, and
to public and independent institutions of higher education on matters regarding student admissions, transfers, and enrollments.

Such public institutions shall cooperate with the center by furnishing such non-confidential information as may assist the center in the performance of its duties. The center may request and receive similar information from private or other public educational institutions to the commonwealth.

An applicant for admission to an institution whose application is not accepted may send to the center appropriate non-confidential information concerning his application. The center may, at its discretion and with permission of the applicant, direct the attention of the applicant to other institutions and direct the attention of other institutions to the applicant.

The center may conduct such studies and analyses of admission, transfers and enrollments as may be deemed appropriate.

Section 21 Board of trustees for Sec. 5 institutions; membership; qualifications; tenure; vacancies

Section 21. There shall be a board of trustees consisting of eleven members for each of the institutions named in section five other than the University of Massachusetts. Each board of trustees shall elect a chairman.

One member of such board of trustees shall be a full-time undergraduate student member from said institution, and ten members shall be appointed by the governor pursuant to the provisions of section eighteen B of chapter six, at least one of whom shall be an alumnus of said institution and one of whom shall be elected thereto by the alumni association of said institution. Each elected alumnus member shall be elected every five years. No elected alumnus member shall serve for more than two consecutive terms. A vacancy in the position of elected alumnus member prior to the expiration of a term shall be filled for the remainder of the term in the same manner as elections to full terms. Each student member shall be elected by the student body annually, no later than May fifteenth. The term of office of each elected student member of the board shall be one year and shall commence on July first following their election and terminate on June thirtieth of the following year. The student member shall be eligible for re-election for as long as said student remains a full-time undergraduate student and maintains satisfactory academic progress as determined by the policy of the institution at which the student is enrolled.

If at any time during the elected term of office said student member ceases to be a full-time undergraduate student or fails to maintain satisfactory academic progress, the membership of said student on the board shall be terminated and the office of the elected student member shall be deemed vacant, provided, however, that if the elected student member vacates his position upon graduation from the institution prior to July first, the elected successor may assume the position of student member on the board effective from the date of graduation of his predecessor, provided further that the statutory time limit of one year of the successor student trustee shall commence to run on July first notwithstanding any taking of office prior to the commencement of said term. A vacancy in the office of the elected student member prior to the expiration of a term shall be filled for the remainder of the term in the same manner as student elections to full terms.

No member of a board of trustees shall be a member of the board of higher education. No member of a board of trustees shall be principally employed within the public higher education system of the commonwealth; provided, however, that no more than one-third of the members
shall be principally employed by the commonwealth. Membership on a board of trustees shall terminate if a member ceases to be qualified for appointment.

Members shall be appointed to serve for five year terms, but no member shall be appointed for more than two consecutive terms. Members of the board shall serve without compensation but may be reimbursed for all expenses reasonably incurred in the performance of their duties. Any vacancy on a board of trustees shall be filled for the duration of the term, in the same manner as the prior appointment. If a member is absent from four regular meetings in any academic year, exclusive of July and August, that person’s membership on the board shall terminate and a vacancy shall be deemed to exist. The chairman shall forthwith notify the governor when any vacancy exists.

Each board of trustees shall from time to time advise the council on admissions programs, labor relations and program approval for its institution. Each board of trustees shall at their pleasure and with the approval of the council appoint and remove the chief executive officer of its institution.

Section 22 Board of trustees of community colleges or state universities; powers and duties
Section 22. Each board of trustees of a community college or state university shall be responsible for establishing those policies necessary for the administrative management of personnel, staff services and the general business of the institution under its authority. Without limitation upon the generality of the foregoing, each such board shall: (a) cause to be prepared and submit to the secretary and the council estimates of maintenance and capital outlay budgets for the institution under its authority; (b) establish all fees at said institution subject to guidelines established by the council. Said fees shall include fines and penalties collected pursuant to the enforcement of traffic and parking rules and regulations. Said rules and regulations shall be enforced by persons in the employ of the institution who throughout the property of the institution shall have the powers of police officers, except as to the service of civil process. Said fees established under the provisions of this section shall be retained by the board of trustees in a revolving fund or funds, and shall be expended as the board of the institution may direct; provided that the foregoing shall not authorize any action in contravention of the requirements of Section 1 of Article LXIII of the Amendments to the Constitution. Said fund or funds shall be subject to annual audit by the state auditor; (c) appoint, transfer, dismiss, promote and award tenure to all personnel of said institution; (d) manage and keep in repair all property, real and personal, owned or occupied by said institution; (e) seek, accept and administer for faculty research, programmatic and institutional purposes grants, gifts and trusts from private foundations, corporations, federal agencies, alumnas and other sources, which shall be administered under the provisions of section two C of chapter twenty-nine and may be disbursed at the direction of the board of trustees pursuant to its authority; (f) implement and evaluate affirmative action policies and programs; (g) establish, implement and evaluate student services and policies; (h) recommend to the council admission standards and instructional programs for said institution, including all major and degree programs provided, however, that said admission standards shall comply with the provisions of section thirty; (i) have authority to transfer funds within and among subsidiary accounts allocated to said institution by the council; (j) establish and operate programs, including summer and evening programs, in accordance with the degree authority conferred under the provisions of this chapter; (k) award degrees in fields approved by the council; either independently or in conjunction with other institutions, in accordance with actions of the boards of trustees of said other institutions and the council; (l) submit a 5-year master plan to the
secretary and the council, which plan shall be subject to the secretary’s approval, in consultation with the council, and shall be updated annually according to a schedule determined by the secretary and the board in consultation with the board of trustees; (m) submit financial data and other data as required by the secretary and the board of higher education for the careful and responsible discharge of their purposes, functions, and duties. The data shall be reported annually to the secretary and the board of higher education according to a schedule determined by the secretary and the board of higher education in consultation with the board of trustees. The board of trustees shall also submit an annual institutional spending plan to the secretary and the council for review, comment, and transmittal to the secretary of administration and finance, the house and senate committees on ways and means and the joint committee on higher education. Spending plans shall be reported using a standardized format developed by the secretary, in consultation with the board of higher education and the institutional boards of trustees, in a manner to allow comparison of similar costs between the various institutions of the commonwealth. Said plan shall include an account of spending from all revenue sources including but not limited to, trust funds; (n) develop a mission statement for the institution consistent with identified missions of the system of public higher education as a whole, as well as the identified mission of the category of institution within which the institution operates. Said mission statement shall be forwarded to the secretary and the council for approval. The board of trustees shall, after its approval, make said mission statement available to the public; (o) submit an institutional self-assessment report to the secretary and the council, which the board of trustees shall make public and available at the institution. Said assessment report shall be used to foster improvement at the institution by the board of trustees and shall include information relative to the institution’s progress in fulfilling its approved mission. Said report shall be submitted annually to the secretary and the board of higher education according to a schedule determined by the secretary and said board in consultation with the board of trustees. (p) The board of trustees of an institution with the potential to expand its mission, profile, and orientation to a more regional or national focus may submit to the secretary and the board of higher education, for approval, a 5-year plan embracing an entrepreneurial model which leverages that potential in order to achieve higher levels of excellence pursuant to section 7.

The board of trustees of each institution may delegate to the president of such institution any of the powers and responsibilities herein enumerated.

The commonwealth shall indemnify a trustee of a community college or state university against loss by reason of the liability to pay damages to a party for any claim arising out of any official judgment, decision, or conduct of said trustee; provided, however, that said trustee has acted in good faith and without malice; and provided, further, that the defense or settlement of such claim shall have been made by the attorney general or his designee. If a final judgment or decree is entered in favor of a party other than said trustee, the clerk of the court where such judgment or decree is entered shall, within twenty-one days after the final disposition of the claim, provide said trustee with a certified copy of such judgment or entry of decree, showing the amount due from said trustee, who shall transmit the same to the comptroller who shall forthwith notify the governor; and the governor shall draw his warrant for such amount on the state treasurer, who shall pay the same from appropriations made for the purpose by the general court.

Section 22A Reggie Lewis Track and Athletic Center; establishment; powers and duties of board
Section 22A. (a) For purposes of this section, the following words shall have the following meanings:-

“Board”, the board of trustees of the Roxbury Community College.
“Center”, the Reggie Lewis Track and Athletic Center established in subsection (b).
“College”, the Roxbury Community College.
“Use for nonpublic purposes”, shall include, but not be limited to, the leasing or renting of the building for commercial entertainment activity.
“Use for public purposes”, shall include, but not be limited to, use by public high school track programs, members of the abutting residential community or by members of the community at large and students, faculty, staff and alumni at Roxbury Community College.

(b) There shall be established the Reggie Lewis Track and Athletic Center at Roxbury Community College. The center shall be a building containing a Massachusetts state track facility which shall be maintained at the college for public purposes. In the event the facility is not in use for public purposes, the board may permit use for nonpublic purposes for a rental amount to be determined by said board.

(c) The board shall be responsible for the management and operation of the center including, but not limited to, the following:-

(i) establishing user fees;
(ii) entering into agreements with the Massachusetts State Track Coaches Association, with other public groups and, pursuant to this section, with nonpublic groups for nonpublic purposes;
(iii) establishing rules and regulations for the use of the center by Massachusetts public high school track programs, by members of the abutting residential neighborhoods and members of the community at large, by students, faculty and staff and alumni of Roxbury Community College, and, by nonpublic groups for nonpublic purposes in accordance with this section;
(iv) deciding the priority of uses and schedule for the center, with input from an advisory committee; and
(v) entering into agreements with vendors to provide concession stand services and other agreements as deemed necessary by the board for the maintenance and operation of the center.

(d) The center shall be made available without charge for use by public high school track programs and Roxbury Community College. The center shall be made available on a user fee basis for members of the public. The center shall be made available at market rate, as determined by the board, for use for nonpublic purposes so long as the center is not being used for public purposes.

(e) The annual operating expenses of the center shall be separate and distinct from appropriations within the general appropriations act for the college, shall use a separate item of appropriation and shall be audited biennially by the state auditor.

Section 23 Board of trustees; estimate for institution’s ordinary maintenance and revenues
Section 23. Each board of trustees shall periodically prepare and submit to the secretary and the council an estimate, in detail, for the ordinary maintenance of its institution, including the salaries of all officers and employees of said institution and all revenues therefrom and any other such information as the secretary and the council may require or as provided in section three of chapter twenty-nine. Each board of trustees shall make requests to the council under the provisions of section seven of chapter twenty-nine.

Section 24 Board of trustees; authorized purchases
Section 24. Notwithstanding any other provision of law to the contrary, each board of trustees shall have the authority to make any purchase or purchases in the amount of two thousand dollars
or less, and to purchase without limitation of amount library books and periodicals, educational and scientific supplies and equipment, printing and binding, emergency repairs and replacement parts, and perishable items, without recourse to any other state board, bureau, department or commission; provided, however, that in so doing the college shall follow modern methods of purchasing and shall, wherever practicable, invite competitive bids. Except as herein provided, the state purchasing agent shall on the certification of availability of funds purchase all items specified on requisitions submitted to him by any such board of trustees; provided, that the board of trustees shall have the right to review all bids received on any said board’s requisitions and to make binding recommendations on the award of the contract based on the judgment of the board as to which of the bids best meet said board’s specification on which the bids were received. Products assembled, manufactured or otherwise produced by the Massachusetts commission for the blind shall be purchased from the commission pursuant to the provisions of section one hundred and thirty-four of chapter six.

Section 24A Cooperative purchasing; Massachusetts higher education consortium
Section 24A. With respect to purchases by a board of trustees authorized by section 24, including a purchase by the board of trustees of the University of Massachusetts as authorized by section 13 of chapter 75, a board of trustees and the board of higher education may join together for its purchases with one or more public or private educational institutions for the purpose of forming or joining a cooperative purchasing consortium to be known as the Massachusetts Higher Education Consortium; provided, however, that each such educational institution shall accept sole responsibility for all payments, debts and liabilities due the vendor for its share of such purchases. Said consortium shall be governed by a board of directors elected by its member institutions. Any paid staff of the consortium shall be located on the campus of a public member. Compensation of such staff shall be paid by dues or other consortium income and not by appropriation by the commonwealth; provided, however, that such staff may only enter into purchase agreements that have been procured through public bidding. Said consortium shall publish an annual report of its activities, which report shall include an audited financial statement which shall have been independently audited by a certified public accountant.

Section 25 Refusal to elect and contract with blind teaching candidates
Section 25. The council or a board of trustees shall not refuse to elect and contract with a candidate for a teaching position in any public institution of higher education because of the blindness of such candidate.

Section 26 Summer sessions; evening classes
Section 26. Each public institution of higher education may conduct summer sessions, provided such sessions are operated at no expense to the commonwealth. Each public institution of higher education may conduct evening classes, provided such classes are operated at no expense to the commonwealth.

Section 27 Dormitories; nonsmoking rooms; rules and regulations
Section 27. Each public institution of higher education which provides housing for students in dormitories shall establish rules and regulations providing that a certain number of dormitory rooms shall be reserved for nonsmokers. Each such public institution shall provide a space on the application for admission or student housing for the applicant to indicate whether he would prefer to reside in a room where smoking was prohibited or whether he would prefer to reside in a room where smoking was allowed.
Section 28 Establishment and maintenance of bank branch on grounds of public higher education institutions

Section 28. Notwithstanding any contrary provisions of law, the board of bank incorporation or the commissioner of banks is hereby authorized to allow a bank, as defined in section one of chapter one hundred and sixty-seven, to establish and maintain a branch on the grounds of any public institution of higher education in the commonwealth, provided that the council shall determine the method and terms of the lease if applicable or rental thereof.

Section 29 Definitions; use of student fee funds for legislative agents’ costs

Section 29. (a) As used in this chapter and in chapters seventy-three, seventy-five, seventy-five A, and seventy-five B, the following words shall have the following meanings:—

“Waivable fee”, any amount payable on a student tuition bill, but not a mandatory charge, appearing as a separately assessed item, accompanied by a statement as to the nature of said item and that said item is not a charge required to be paid by the student. Preceding each waivable fee shall be a statement in bold print stating that if the student does not want to contribute to the following nonpartisan organization, a mark must be placed in the respective box for said nonpartisan organization. If the student does want to contribute, said box should not be marked. The student tuition bill will also provide the student with the total amount due including the waivable fee and the total amount due excluding the waivable fee, and that said item appears on the bill at the request of the student body and does not necessarily reflect the endorsement of the board of trustees.

“Student organization”, any organization of students at public post-secondary educational institutions which is open to membership of all students who pay the waivable fee and is controlled by its student members.

“Nonpartisan”, as applied to student organizations not endorsing or adhering to particular ideological or religious positions in the articles of incorporation, charter, constitution, or by-laws.

“Official student referendum”, a referendum vote of the student body which is sanctioned by the college-recognized student governmental association and certified by said student governmental association as valid.

“Optional fee”, any amount payable on a student tuition bill, but not a mandatory charge or waivable fee, appearing as a separately assessed item, accompanied by a statement as to the nature of said item and that said item is not a charge required to be paid by the student but rather the student may add said charge to the total amount due, and that said item appears on the bill at the request of the student body and does not necessarily reflect the endorsement of the board of trustees.

(b) Nonmandatory student fees to nonpartisan student organizations which employ legislative agents as defined in section thirty-nine of chapter three, or to nonpartisan student organizations attempting to influence legislation as defined in section forty-four of said chapter three, shall be paid on student tuition bills by a waivable fee whenever students have authorized said fee by a majority vote of those students voting in an official student referendum. The continuation of said waivable fee on the student tuition bill may be subject to reauthorization by an official student referendum every two years. Necessary administrative costs arising in connection with the collection of said fee may be billed by the board of trustees to the student organization at the time of the transfer of funds collected to said student organizations.
(c) The boards of trustees shall not allow any funds for legislative agents as defined in section thirty-nine of said chapter three or organizations attempting to influence legislation as defined in section forty-four of said chapter three to be assessed on student tuition bills; provided, however, that waivable fees for nonpartisan student organizations which employ said legislative agents or attempt to influence legislation shall be collected by the boards of trustees whenever students have authorized a waivable fee by a majority vote of those students voting in an official student referendum. Said waivable fees shall be collected as provided in paragraph (b).

(d) No funds collected as a mandatory student activities fee shall be paid to legislative agents as defined in section thirty-nine of said chapter three or organizations attempting to influence legislation as defined in section forty-four of said chapter three.

(e) As used in this section, the term “legislative agent” or “organization attempting to influence legislation” shall not include any student government association or associations, individually or collectively, or any organization comprised of representatives of such associations, which are selected by students through referendum to be an official representative of the student body.

Section 30 Developmentally disabled residents; waiver of standardized college entrance aptitude tests
Section 30. No resident of the commonwealth who has been diagnosed as being developmentally disabled, including but not limited to, having dyslexia or other specific language disabilities, by any evaluation procedure prescribed by chapter seventy-one B, or equivalent testing, shall be required to take any standardized college entrance aptitude test to gain admittance to any public institution of higher education in the commonwealth. Admission shall be determined by all other relevant factors excluding standardized achievement testing. The provisions of this section shall not apply to any person solely because of blindness or visual impairment, regardless of age at which such individual became blind or visually-impaired.

Section 31 Administrative expenses; determination of qualifying expenditures
Section 31. The council shall define which of those expenses at the institutional level are to be considered administrative expenses. In preparing their annual spending plans, each board of trustees shall indicate the amount of spending which falls under said definition. The council shall make public the amount of administrative spending at each institution and may, as a result, make recommendations relative to reducing such spending to provide for more efficient administration of the system of public higher education.

Section 32 Student assessment system
Section 32. The council shall prepare a system of student assessment, to be administered within the public system of higher education, to measure student improvement, between the first and fourth years of attendance at public higher education institutions, on various tasks, including, but not limited to, ability to reason, communication and language skills, and other factors the council deems appropriate to evaluate, in order to assess the general performance of higher education institutions in fostering learning and academic growth. The council shall determine the method of assessment and shall publish the results of such assessment.

Section 33 Report assessing overall faculty productivity and teacher effectiveness
Section 33. The council shall publish a report, on or before January first, nineteen hundred and ninety-five, and every four years thereafter, assessing overall faculty productivity and overall teacher effectiveness within the public system of higher education. Said report may include narrative research and statistical data which the council deems appropriate. Any data or
information gathered for said report is not intended to be and shall not be used for the evaluation of the performance of any individual faculty member and the identity of individual faculty members shall be confidential. Said report shall also include information gained from students, both present and former, and shall further include information obtained from the commonwealth’s business community relative to work force preparation. The report shall draw comparisons between institutions and types of institution, as well as between the commonwealth’s public higher education system and those in other states, to the extent feasible.

**Section 34 Benchmark study of public higher education system**

Section 34. It is hereby declared the policy of the commonwealth to provide and ensure an accurate and objective study of the public system of higher education in order to fulfill the goals and purposes of this chapter. Subject to appropriation a benchmark study of the public system of higher education shall be undertaken to determine the strengths and weaknesses of said system and to propose strategies and directions for the board of higher education and the system as a whole to take in order to fulfill its mission more effectively. Said benchmark study shall be conducted by a panel of nationally recognized objective experts in the field of higher education whose members shall be selected by the council, through the consultation with the joint committee on education, the arts and humanities, and the ways and means committees of the house and senate. Said benchmark study shall be filed with the clerks of the senate and the house of representatives no later than December first, nineteen hundred and ninety-nine, and shall be made available to the public.

The aforementioned study shall be conducted at least every seven years, subject to appropriation.

**Section 35 Professional development schools grant program**

Section 35. There is hereby established a professional development schools grant program. The board of education shall award grants to exemplary public schools and to cooperating public or private institutions of higher education in the commonwealth to establish collaborative programs for the purpose of fostering improved teacher training and professional development. In order to be eligible for a professional development school grant a school in cooperation with one or more public or private institutions of higher education shall jointly submit a program application which shall include, but not be limited to, a statement of program objectives covering a three year period, a program plan with specific timelines for implementation, and a plan for program evaluation. The program designated in the application must be approved by the faculty of the institution of higher education, the teachers, administrators and other professional staff of the public school, the superintendent of schools and by majority vote of the school committee and school improvement council. The board of education shall give priority to those programs in which the teacher training and professional development activities will take place in the public school.

Grants awarded under this section, to the extent that said funds are allocated to the public school, shall be deposited with the town, city, or regional district treasurer in a separate account to be expended, without further appropriation, by the school committee for the purposes of the professional development schools grant.

The board of education may contract with any public institution of higher education or nonprofit corporation, which has the requisite knowledge and experience in teacher training for the purpose of administering the professional development schools grant program.
Section 36 Public schools’ eligibility for funds through professional development schools grant program

Section 36. No public school shall receive funds through the professional development schools grant program if, (1) said school is within a city, town, or regional school district in which the share of local expenditures allocated to the support of the public schools has declined in any fiscal year commencing on July first, nineteen hundred and eighty-five, or (2) any schools receiving professional development school grants have received average per pupil support less than that received on average by all other schools of the same classification and grade level in the district, or (3) the absolute level of financial support for the public schools in the city, town or regional school district has decreased in any year since fiscal year nineteen hundred and eighty-six. In the case of a school district which fails to meet the aforementioned criteria, the board of education shall consider as eligible those schools in which the per pupil educational portion of local expenditures, adjusted for inflation and other factors, has not declined in any year since fiscal year nineteen hundred and eighty-six.

Section 37 Foundations created for public institutions of higher education; governing boards; annual reports; audits

Section 37. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

“Foundation”, an organization which is (a) either (i) a corporation within the meaning of clause (c) of section two of chapter one hundred and eighty and subject to the provisions of said chapter one hundred and eighty, except as herein provided, or (ii) a public charitable trust constituted and operating as such and subject to the requirements of law governing such trusts, except as herein provided; (b) organized and operated exclusively for the benefit of an institution of public higher education; and (c) certified by the board of trustees of the institution which it supports to be operating in a manner consistent with the goals and policies of the institution.

“Institution”, a public institution of higher education in the commonwealth.

(b) A corporation or trust which is not certified as provided herein or whose certification has been revoked by the board of trustees of the institution which it supports, shall not use the name of such institution (i) for fundraising without written permission of the board of trustees of such institution, or (ii) in the name of such corporation or trust.

(c) Each foundation shall have a governing board to oversee its operation. In no event shall institutional trustees and employees constitute one-half or more of the voting members of such foundation’s governing board. The governing board of such foundation shall annually file a list of the members and officers of such board with the institution’s board of trustees.

(d) The board of trustees of an institution which a foundation supports is authorized to permit the use without compensation of facilities and personnel services of the institution by the foundation; provided, however, that in no event shall an employee of the institution spend more than twenty-five percent of his work hours engaged in services for a foundation.

(e) All gifts from a foundation to an institution shall be approved for acceptance by the board of trustees in accordance with applicable institutional policies. A person soliciting funds or any other thing of value on behalf of a foundation from a person, firm, corporation or other entity shall, at the time of the solicitation, clearly and conspicuously disclose to the potential donor that the donations are to be provided to the foundation and not to an institution and that the donor may request in writing that the donor’s identity not be publicly disclosed.

(f) Each foundation shall provide an annual report of its financial accounts prepared in accordance with generally accepted accounting principles to the board of trustees of the
institution which it supports. The board of trustees may require any supplemental data relative to
the operations of the foundation. The identity of donors who wish to remain anonymous shall be
protected and anonymity of such donors shall be maintained in all audit reports. The annual
financial report when received by a board of trustees shall be considered a public record as
defined in clause twenty-sixth of section seven of chapter four.
(g) The state auditor shall have the authority, upon request by the institution or upon his own
initiative, to audit transfers to or expenditures from foundation accounts of public funds, use of
employees paid with public funds to staff the foundation and the existence of contracts or
agreements between a foundation and an institution.
(h) A foundation certified by an institution’s board of trustees under the provisions of this section
shall not be deemed to be an agency, board, bureau, department, division, commission, authority
or other subdivision of the commonwealth. Members of the governing boards of a foundation
who are not already state employees shall not be considered to be state employees for the
purposes of chapters two hundred and sixty-eight A and two hundred and sixty-eight B.

Section 38 Military recruiters; on-campus recruiting
Section 38. Notwithstanding any other provision of law to the contrary, all public institutions of
higher education shall offer the same student information and on-campus recruiting opportunities
to representatives of the state or United States armed services as is offered to non-military
recruiters.

Section 39 Secondary education students qualified to enroll in higher education institutions
Section 39. A qualified student enrolled in a public secondary school may enroll as a student in
Massachusetts public institutions of higher education. The student shall earn both secondary
school and college credits. Students may enroll either full time or for individual courses. The
board of education in consultation with the board of higher education, shall define which
students may qualify for this program, establish criteria for admission, and otherwise administer
this program. For the purpose of encouraging the enrollment of nonpublic secondary school
students in the system of public institutions of higher education, such students shall be eligible to
participate in the program established by this section; provided, however, that the crediting of
such attendance for the purpose of receiving a high school diploma shall be in the sole discretion
of the nonpublic school.

Section 40 Optional retirement system; providers; regulations; participation; funds
Section 40. (1)(a) Notwithstanding the provisions of chapter thirty-two of the General Laws, or
of any general or special law to the contrary the board of higher education shall establish an
optional retirement program under which custodial accounts described in section 403(b)(7) of the
Internal Revenue Code, as it may be amended from time to time, or contracts providing
retirement and death benefits may be purchased for eligible members who elect to participate in
the program. The benefits to be provided for participants in such optional retirement program
shall be provided through such custodial accounts or individual or group annuity contracts,
which may be fixed or variable in nature, or a combination thereof; provided that, at all times,
those annuity contracts issued by licensed insurers under the optional retirement program shall
provide the minimum values and guarantees required by the laws governing such contracts in the
commonwealth; and provided, further, that the benefits shall be payable only to participants in
the program or their beneficiaries, and such benefits shall be paid only by the selected providers
in accordance with the terms of the custodial accounts, annuity contracts or certificates providing
coverage to the participant; provided that such optional retirement program shall not allow a
participant to withdraw contributions while an active participant in the commonwealth's optional retirement program.

(b) Said council shall select at least two but no more than four providers for the optional retirement program and enter into contracts with them in accordance with the laws governing the procurement of services for executive agencies of the commonwealth, provided that such procurements shall not be subject to the approval of the commissioner of administration; provided, further, that the selected providers shall be authorized to conduct business within the commonwealth, and each and every provider or issuer of annuity contracts under the optional retirement program which is a life insurance company shall hold a certificate of authority to do a life insurance business in the commonwealth, maintain the minimum required capital and surplus required for life insurance companies under the laws of the commonwealth, be a member of the commonwealth's life and health insurance guaranty association and be a member of the life and health insurance guaranty associations in any and all jurisdictions where required by law with similar retirement programs funded in whole or in part through the provider's annuities in which participants in the optional retirement program might participate upon transfer of employment; and provided, further, that said council shall coordinate the transfer of funds and information between payroll centers, the selected providers and plan participants.

(c) The council shall promulgate regulations governing the administration of and participation in the plan. Such regulations shall be subject to the provisions of chapter thirty A, and a copy of such regulations, and any amendments thereto, shall be filed in advance of their taking effect with the general court. The council shall file the proposed regulation, amendment or repeal with the clerk of the house of representatives, who shall refer such regulations to the joint committee on public service. Within thirty days after such referral, the committee on public service may hold a public hearing on the regulations and shall issue a report to the council. Said report shall contain any proposed changes to the regulations voted upon by the public service committee. The council shall review said report and shall adopt final regulations as deemed appropriate in view of said report and shall file with the chairmen of the public service committee its final regulations. If the final regulations do not contain the changes proposed by the public service committee, the council shall send a letter to the public service committee accompanying the final regulations stating the reasons why such proposed changes were not adopted. Not earlier than forty-five days after the filing of such letter and final regulations with the public service committee, the council shall file the final regulations with the state secretary as provided in section five of said chapter thirty A and said regulations shall thereupon take effect. If no such proposed changes to the regulations are made to the council within sixty days of the initial filing of the proposed regulation or any amendment or a repeal of such regulation with the clerk of the house of representatives, the council may file the final regulations with the state secretary as provided in section five of said chapter thirty A and said regulations shall thereupon take effect.

(2)(a) Participation in the optional retirement program provided by this section shall be limited to persons who are otherwise eligible for membership in the state employees' retirement system as established under the provisions of chapter 32; provided, however, that they are faculty members, chancellors, vice chancellors, presidents, vice presidents, deans, or holding a position classified as a senior administrator IV, senior administrator III, senior administrator II, senior administrator I of the board of higher education or public institutions of higher education, as defined in section 5.

(b) Elections to participate in the optional retirement program shall be made as follows:
[ Subparagraph (i) of paragraph (b) of subsection (2) effective until July 1, 2011. For text effective July 1, 2011, see below.]

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(i) Any eligible employee who is initially appointed on or after the effective date of the optional retirement program may elect in writing to participate in the optional retirement program within ninety days of the effective date of the appointment. Any such election shall be effective as of the effective date of appointment. If an eligible employee fails to make an election as provided in this paragraph, such employee shall become a member of the state employees' retirement system established under the provisions of said chapter thirty-two.

[ Subparagraph (i) of paragraph (b) of subsection (2) as amended by 2011, 68, Sec. 26 effective July 1, 2011 until February 16, 2012. See 2011, 68, Sec. 221. For text effective until July 1, 2011, see above. For text effective February 16, 2012, see below.]

(i) Any eligible employee who is initially appointed on or after the effective date of the optional retirement program may elect in writing, or in another form acceptable to the council, to participate in the optional retirement program within ninety days of the effective date of the appointment. Any such election shall be effective as of the effective date of appointment. If an eligible employee fails to make an election as provided in this paragraph, such employee shall become a member of the state employees' retirement system established under the provisions of said chapter thirty-two.

[ Subparagraph (i) of paragraph (b) of subsection (2) as amended by 2011, 176, Sec. 3 effective February 16, 2012. For text effective until February 16, 2012, see above.]

(i) Any eligible employee who is initially appointed on or after the effective date of the optional retirement program may elect in writing, or in another form acceptable to the council, to participate in the optional retirement program within 180 days of the effective date of the appointment. Any such election shall be effective as of the effective date of appointment. If an eligible employee fails to make an election as provided in this paragraph, such employee shall become a member of the state employees' retirement system established under the provisions of said chapter thirty-two.

[ Subparagraphs (ii) to (iii) of paragraph (b) of subsection (2) effective until July 1, 2011. For text effective July 1, 2011, see below.]

(ii) Any eligible employee who is a member of any retirement system established under the provisions of said chapter thirty-two on the effective date of the optional retirement program but who has less than ten years of creditable service on the effective date of the optional retirement program may elect in writing to participate in the optional retirement program within ninety days after the effective date of the optional retirement program. Any such election shall become effective on the first day of the pay period next following such election, and shall constitute a waiver of all retirement benefits to which the individual may be entitled as an employee under any retirement system established under the provisions of said chapter thirty-two.

(iii) Any employee who is a member of any retirement system established under the provisions of said chapter thirty-two but who has less than ten years of creditable service on the date such employee becomes eligible to participate in the optional retirement program may elect in writing to participate in such optional retirement program within ninety days of the date said employee becomes eligible. Any such election shall become effective on the first day of the pay period next following such election, and shall constitute a waiver of all retirement benefits to which the individual may be entitled as an employee under any retirement system established under the provisions of said chapter thirty-two.

[ Subparagraphs (ii) to (iii) of paragraph (b) of subsection (2) as amended by 2011, 68, Sec. 26 effective July 1, 2011. See 2011, 68, Sec. 221. For text effective until July 1, 2011, see above.]

(ii) Any eligible employee who is a member of any retirement system established under the provisions of said chapter thirty-two on the effective date of the optional retirement program but who has less than ten years of creditable service on the effective date of the optional retirement program
program may elect in writing, or in another form acceptable to the council, to participate in the optional retirement program within ninety days after the effective date of the optional retirement program. Any such election shall become effective on the first day of the pay period next following such election, and shall constitute a waiver of all retirement benefits to which the individual may be entitled as an employee under any retirement system established under the provisions of said chapter thirty-two.

(iii) Any employee who is a member of any retirement system established under the provisions of said chapter thirty-two but who has less than ten years of creditable service on the date such employee becomes eligible to participate in the optional retirement program may elect in writing, or in another form acceptable to the council, to participate in such optional retirement program within ninety days of the date said employee becomes eligible. Any such election shall become effective on the first day of the pay period next following such election, and shall constitute a waiver of all retirement benefits to which the individual may be entitled as an employee under any retirement system established under the provisions of said chapter thirty-two.

(iv) Any eligible employee electing to participate in the optional retirement program shall be ineligible for membership in the state employees' retirement system as long as he remains continuously employed in any eligible position within a public institution of higher education, as defined in section five; provided, that the election by an eligible employee to participate in the optional retirement program shall be irrevocable for so long as the employee continues to meet the eligibility requirements; provided further, however, if an employee becomes ineligible to continue in the optional retirement program, the employee shall thereafter participate in the state employees' retirement system established in accordance with the provisions of said chapter thirty-two.

(3)(a) Any eligible employee electing to participate in the optional retirement program shall not be required to make contributions to the state employee's retirement system but shall contribute to the optional retirement program an amount equal to the contribution which would have been required had such employee been a member of the state employees' retirement system.

(b) For each eligible employee electing to participate in the optional retirement program, the state employees retirement system shall contribute an amount equal to five percent of each employee's regular compensation, as defined in section one of chapter thirty-two, to the optional retirement program and a plan established to provide life and disability benefits to all participants in the program; provided, however, that not more than one percent of said contribution shall be made to the plan established to provide said life and disability benefits; and provided, further, that the balance of said contribution shall be remitted to the appropriate provider for application to the participating employee's contract or custodial account, less any monthly fees established by the council and approved in advance by the state comptroller in order to cover the reasonably necessary direct costs incurred by the council in establishing and administering the plan; and provided, further, that no funds shall be invested in any bank or financial institution which directly or through any subsidiary has outstanding loans to any individual or corporation engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland, and no assets shall be invested in the stocks, securities or other obligations of any such company so engaged.

(c) If any eligible employee is a member of any retirement system established under the provisions of said chapter thirty-two at the time such employee elects to participate in the optional retirement program, the employee may direct that the amount of the accumulated total deductions, and any interest to which the employee would be entitled under said chapter thirty-two if the employee withdrew from the system, credited to such employee's account in such
retirement system be transferred directly to such employee's account in the optional retirement program. Any such transfer shall be made in the form of a direct trustee-to-trustee transfer in compliance with the requirements of subchapter D of chapter one of the federal Internal Revenue Code.

(d) The funds accumulated under the optional retirement program shall be exempt from taxation. The rights of a participant to a custodial account, an annuity, the annuity contracts or certificates providing coverage to participants, and all right in and to the funds accumulated under the custodial accounts, annuity contracts or certificates shall be exempt from taxation, including income taxes levied under the provisions of said chapter sixty-two. No assignment of any right in or to any funds or annuities under the optional retirement program shall be valid except such assignment as may be made for the purpose of making restitution in the case of dereliction from duty by any participant as set forth in section fifteen of said chapter thirty-two as long as such assignment does not violate the restrictions of the Internal Revenue Code; provided that nothing in this section shall prevent a participant's custodial account or annuity from being attached, taken on execution, assigned, or subject to other process to satisfy a support order under chapter two hundred and eight, two hundred and nine, or two hundred and seventy-three as long as such order constitutes a qualified domestic relations order under the terms of the Internal Revenue Code.

(e) Any eligible employee enrolled in the optional retirement program who retires and wishes to retain his group insurance coverage as provided in chapter 32A, or retires and wishes to enroll in group insurance coverage pursuant to said chapter 32A, may do so in the same manner, and subject to the same limitations and requirements as an active employee member of the state retirement system. Any eligible employee enrolled in the optional retirement program who retains or enrolls in the group insurance coverage upon retirement shall be deemed to have authorized his optional retirement program plan provider to deduct from the retired employees account, on a monthly basis, and forward to the group insurance commission, an amount equal to the retired employee's share of the premium as set by said chapter 32A and each annual appropriation act. Each optional retirement program plan provider shall be required to deduct and forward said premium amounts, as determined by the group insurance commission, to the group insurance commission in advance of the month for which the premium is due and in a manner as may be prescribed by the group insurance commission. For group insurance commission purposes employees who were members of the state retirement system when they became eligible to participate in the optional retirement program, and who then enrolled in the optional retirement program, may add their time in the state retirement system to their time in the optional retirement program in determining years of creditable service.

(f) After December 31, 1995, no contribution shall be made under any provision of this section in excess of, or on the basis of compensation in excess of, any limitation that may be imposed pursuant to federal law, including, but not limited to, the limitations in 26 U.S.C. sections 401(a)(17), 402(g), 403(b) and 415, to the extent such limitations apply. The board of higher education may adopt rules and regulations as it deems necessary from time to time to effectuate the purposes of this section, including, but not limited to, rules or regulations establishing such limitations only when it determines that such limitations are necessary to comply with applicable provisions of the United States Internal Revenue Code. For these purposes section 13212(d)(3) of the Revenue Reconciliation Act of 1993, Public Law 103-66, which provides for a special governmental limit under 26 U.S.C. section 401(a)(17), and section 1.401(a)(17)-1(d)(4) of the United States Treasury Regulations, which provides rules implementing said section 13212(d)(3), shall apply to all members in service who were members in service on or before December 31, 1995.
Section 41 Fees for approval of articles or certificates; revenue

Section 41. The board of higher education may establish fees to be charged to independent institutions of higher education which seek approval of articles of organization, articles of amendment, or foreign corporation certificates pursuant to sections 30, 30A, 31, and 31A of chapter 69 and which transfer records to the board of higher education pursuant to section 31B of said chapter 69. The revenue received from the collection of the fees shall be retained by the board of higher education in a revolving trust fund and shall be expended solely for carrying out said sections. Fees shall not be greater than the costs incurred by the board of higher education in implementing said sections. The board of higher education shall report annually to the house and senate committee on ways and means the amount of funds collected and any expenditures made from the funds.
IMPORTANT DEFINITIONS (Section 18)

**Deliberation** - an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that “deliberation” shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

**Emergency** - a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

**Executive Session** - any part of a meeting of a public body closed to the public for deliberation of certain matters.

**Intentional Violation** - means an act or omission by a public body or a member thereof, in knowing violation of M.G.L. c. 30A, sec. 18-25. Evidence of an intentional violation of M.G.L. c. 30A, sec. 18-25 shall include, but not be limited to, that the public body or public body member (a) acted with specific intent to violate the law; (b) acted with deliberate ignorance of the law’s requirements; or (c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General, pursuant to 940 CMR 29.07 or 940 CMR 29.08, that the conduct violates M.G.L. c. 30A, sec. 18-25. Where a public body or public body member has made a good faith attempt at compliance with the law, but was reasonably mistaken about its requirements or, after full disclosure, acted in good faith compliance with the advice of the public body’s legal counsel, such conduct will not be considered an intentional violation of M.G.L. c. 30A, sec. 18-25.

**Meeting** - a deliberation by a public body with respect to any matter within the body’s jurisdiction; provided, however, “meeting” shall not include: (1) an on-site inspection of a project or program; however, members cannot deliberate at such gatherings; (2) Members of a public body may attend a conference, training program or event; however, they cannot deliberate at such gatherings; (3) Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they cannot deliberate at such gatherings; (4) Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and, (5) Town Meetings are not subject to the Open Meeting Law. See G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting) (modified 8-29-12)

**Minutes** - the written report of a meeting created by a public body required by subsection (a) of section 22 and section 5A of chapter 66.
**Open Meeting Law** - sections 18 to 25, inclusive.

**Post Notice** - to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

**Preliminary Screening** - the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

**Public Body** - a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that “public body” shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

**Quorum** - a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

**POSTING NOTICE REQUIREMENTS (Section 20)**

- Notify the Attorney General of the location of the website where meeting notices will be posted. Website locations, along with contact information for the public body, should be sent to openmeeting@state.ma.us. State public bodies are not required to send meeting notices to the Attorney General.

- Post meeting notices on the website 48 hours in advance of the meeting excluding Saturdays, Sundays and holidays. Notices must include the date, time and place of the meeting and a list of topics that the chair reasonably anticipates will be discussed at the meeting.

- Send a copy of the meeting notice to the regulations division of the Secretary of State’s office.

- Send a copy of the meeting notice to the Office of Administration and Finance who will, for the time being, maintain a copy of the meeting notice available for public inspection.

**ACCESS TO AND RECORDING OF MEETINGS (Section 20)**

- All meetings of a public body shall be open to the public.
No person shall address a meeting without permission of the chair. No person shall disrupt a meeting. If, after clear warning from the chair, a person continues to disrupt a meeting, the chair may order the person to leave. If the person refuses to leave, the chair may authorize a constable or other officer to remove the person from the meeting.

After notifying the chair, any person may make a video or audio recording of an open session of a meeting, or may transmit the meeting through any medium. The chair has the right to reasonably regulate the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall inform other attendees of any such recordings.

REMOTE PARTICIPATION IN BOARD MEETINGS (Section 20)

Remote participation may be permitted, however, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. Remote participation requires a simple majority vote by a Board to allow remote participation in accordance with the requirements of 940 CMR 29.10, with that vote applying to all subsequent meetings of that public body and its committees. Nothing in the regulations prohibit any person or entity with the authority to adopt remote participation from enacting policies or rules that prohibit or further restrict the use of remote participation by public bodies within that person or entity’s jurisdiction, provided those policies or rules do not violate state or federal law.

Minimum Requirements for Remote Participation include: (a) Members of a public body who participate remotely and all persons present at the meeting location shall be clearly audible to each other; (b) A quorum of the body, including the chair or, in the chair’s absence, the person authorized to chair the meeting, shall be physically present at the meeting location, as required by M.G.L. c. 30A, sec 20(d); and (c) Members of public bodies who participate remotely may vote and shall not be deemed absent for the purposes of M.G.L. c. 39, sec. 23D.

Permissible Reasons for Remote Participation: If remote participation has been adopted by a Board, a member shall be permitted to participate remotely in a meeting if the chair or his/her designee determines that one or more of the following factors makes the member’s physical attendance unreasonably difficult:(a) Personal illness; (b) Personal disability; (c) Emergency; (d) Military service; or (e) Geographic distance.

Procedures for Remote Participation: (a) Any member of a public body who wishes to participate remotely shall, as soon as reasonably possible prior to a meeting, notify the chair or his/her designee of his or her desire to do so and the reason for and facts supporting his or her request; (b) At the start of the meeting, the chair shall announce the name of any member who will be participating remotely and the reason for his or her remote participation. This information shall also be recorded in the meeting minutes; (c) All votes taken during any meeting in which a member participates remotely shall be by roll call vote; and (d) A member participating remotely may participate in an executive session, but shall state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless presence of that person is approved by a simple majority vote of the public body.
PROCEDURE FOR ENTERING AN EXECUTIVE SESSION (Section 21)

A public body may meet in closed session for 1 or more of the grounds stated below provided:

1. the body has first convened in an open session pursuant to section 21;
2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and
5. accurate records of the executive session shall be maintained pursuant to section 23.

GROUNDS FOR AN EXECUTIVE SESSION (Section 21)

A Board may meet in executive session only for the following purposes:

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;

5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;

8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;
9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that: (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or

10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

MEETING MINUTES (Section 22)

- A Board shall create and maintain accurate minutes of all meetings, including executive sessions.

- Minutes shall include the meeting’s date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

- No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

- The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

- Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

- The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety as long as publication may defeat the lawful purposes of the executive session, but no longer.

- The Board chair or his/her designee, shall routinely review the minutes of executive sessions to determine if such minutes warrant continued non-disclosure. Such determination shall be announced at the body’s next meeting and such announcement shall be included in the minutes of that meeting.
ENFORCEMENT OF OPEN MEETING LAW (Section 23)

- The attorney general shall interpret and enforce the Open Meeting Law. If a violation of the law is found, the attorney general may issue an order to:
  
  (1) compel immediate and future compliance with the open meeting law;
  (2) compel attendance at a training session authorized by the attorney general;
  (3) nullify in whole or in part any action taken at the meeting;
  (4) impose a civil penalty of not more than $1,000 for each intentional violation;
  (5) reinstate an employee without loss of pay, seniority, tenure or other benefits;
  (6) compel that minutes, records or other materials be made public; or
  (7) prescribe other appropriate action.

- It shall be a defense to the imposition of a penalty that the Board, after full disclosure, acted in good faith compliance with the advice of its legal counsel.
Open Meeting Law Guide

Commonwealth of Massachusetts
Office of Attorney General
Martha Coakley

February 10, 2012
Dear Massachusetts Residents:

On July 1, 2010, the Attorney General’s Office assumed responsibility for the enforcement of the Open Meeting Law (OML) from the state’s District Attorneys. We believe that transferring all enforcement to one central statewide office will allow for greater consistency and will ensure that local officials have access to the information they need to comply with the law.

Our office is committed to ensuring that the changes to the Open Meeting Law will provide for greater transparency and clarity – both of which are hallmarks of good government. We are focused on providing educational materials, outreach and training sessions to ensure that all members of the public understand the law.

Whether you are a town clerk or town manager, a member of a public body, or an involved resident, I want to thank you for taking the time to understand the Open Meeting Law. We strive to be a resource to you, and encourage you to contact the Division of Open Government at (617) 963-2540 or visit our website at www.mass.gov/ago/openmeeting for more information.

Cordially,
Martha Coakley
Massachusetts Attorney General
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Overview

- **Purpose of the Law**
The purpose of the Open Meeting Law is to ensure transparency in the deliberations on which public policy is based. Because the democratic process depends on the public having knowledge about the considerations underlying governmental action, the Open Meeting Law requires, with some exceptions, that meetings of public bodies be open to the public. It also seeks to balance the public’s interest in witnessing the deliberations of public officials with the government’s need to manage its operations efficiently.

- **AGO Authority**
The Open Meeting Law was revised as part of the 2009 Ethics Reform Bill, and now centralizes responsibility for statewide enforcement of the law in the Attorney General’s Office (AGO). G.L. c. 30A, § 19 (a). To help public bodies understand and comply with the revised law, the Attorney General has created the Division of Open Government. The Division of Open Government provides training, responds to inquiries, investigates complaints, and when necessary, makes findings and takes remedial action to address violations of the law. The purpose of this Guide is to inform elected and appointed members of public bodies, as well as the interested public, of the basic requirements of the law.

- **Certification**
Within two weeks of a member’s election or appointment or the taking of the oath of office, whichever occurs later, all members of public bodies must complete the attached Certificate of Receipt of Open Meeting Law Materials certifying that they have received these materials, and that they understand the requirements of the Open Meeting Law and the consequences for violating it. The certification must be retained where the body maintains its official records. All public body members should familiarize themselves with the Open Meeting Law, the Attorney General’s regulations, and this Guide.

Where no term of office for a member of a public body is specified, the member must complete the Certificate of Receipt on a biannual basis by January 14 of a calendar year, beginning on January 14, 2011. Where a member’s term of office began prior to July 1, 2010, and will not expire until after July 1, 2011, the member should have completed the Certificate of Receipt by January 14, 2011. In the event a Certificate has not yet been completed by a member of a public body, the member should complete and submit the Certificate at the earliest opportunity to be considered in compliance with the law.

- **Open Meeting Website**
This Guide is intended to be a clear and concise explanation of the Open Meeting Law’s requirements. The complete law, as well as the Attorney General’s regulations, training materials, advisory opinions and orders can be found on the Attorney General’s Open Meeting website, http://www.mass.gov/ago/openmeeting. Local and state government officials, members of public bodies and the public are encouraged to visit the website regularly for updates, as well as to view additional Open Meeting Law materials.
What meetings are covered by the Open Meeting Law?

With certain exceptions, all meetings of a public body must be open to the public. A meeting is generally defined as “a deliberation by a public body with respect to any matter within the body’s jurisdiction.” As explained more fully below, a deliberation is a communication between or among members of a public body.

These four questions will help determine whether a communication constitutes a meeting subject to the law:

1) is the communication between members of a public body;
2) does the communication constitute a deliberation;
3) does the communication involve a matter within the body’s jurisdiction; and
4) does the communication fall within an exception listed in the law?

- What constitutes a public body?
While there is no comprehensive list of public bodies, any multi-member board, commission, committee or subcommittee within the executive or legislative branches (although the Legislature itself is not a public body subject to the Open Meeting Law, certain legislative commissions are required to follow the Law’s requirements) of state government, or within any county, district, city, region or town, if established to serve a public purpose, is subject to the law. The law includes any multi-member body created to advise or make recommendations to a public body, and also includes the governing board of any local housing or redevelopment authority, and the governing board or body of any authority established by the Legislature to serve a public purpose. The law excludes the Legislature and its committees, bodies of the judicial branch, and bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer.

Boards of selectmen and school committees are certainly subject to the Open Meeting Law, as are subcommittees of public bodies, regardless of whether their role is decision-making or advisory. Neither individual government officials, such as a mayor or police chief, nor members of their staff, are “public bodies” subject to the law, and so they may meet with one another to discuss public business without needing to comply with Open Meeting Law requirements.

Bodies appointed by a public official solely for the purpose of advising on a decision that the individual could make himself or herself are not public bodies subject to the Open Meeting Law. For example, a school superintendent appoints a four member advisory body to assist her in nominating candidates for school principal, a task the superintendent could perform herself. That advisory body would not be subject to the Open Meeting Law.

- What constitutes a deliberation?
The Open Meeting Law defines deliberation as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” Distribution of a meeting agenda, scheduling or procedural information, or reports or documents that may be discussed at a meeting is often helpful to public body members when preparing for upcoming meetings, and will generally not constitute deliberation, provided that when these materials are distributed no member of the public body
expresses an opinion on matters within the body’s jurisdiction. E-mail exchanges between or among a quorum of the members of a public body discussing matters within that body’s jurisdiction may constitute deliberation, even if the sender of the email does not ask for a response from the recipients.

To be a deliberation, the communication must involve a quorum of the public body. A quorum is usually a simple majority of the members of a public body. Thus, a communication among fewer than a quorum of the members of a public body will not be a deliberation, unless there are multiple communications among the members of the public body that together constitute communication among a quorum of members. Courts have held that the Open Meeting Law applies when members of a public body communicate in a manner that seeks to evade the application of the law. Thus, in some circumstances, communications between two members of a public body, when taken together with other communications, may be a deliberation.

- **What matters are within the jurisdiction of the public body?**
  The Open Meeting Law applies only to the discussion of any “matter within the body’s jurisdiction.” The law does not specifically define “jurisdiction.” As a general rule, any matter of public business on which a quorum of the public body may make a decision or recommendation is considered a matter within the jurisdiction of the public body.

- **What are the exceptions to the definition of a meeting?**
  There are five exceptions to the definition of a meeting under the Open Meeting Law.

  1. Members of a public body may conduct an on-site inspection of a project or program; however, they cannot deliberate at such gatherings;
  2. Members of a public body may attend a conference, training program or event; however, they cannot deliberate at such gatherings;
  3. Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they cannot deliberate at such gatherings;
  4. Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and,
  5. Town Meetings are not subject to the Open Meeting Law. See G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting).

For “quasi-judicial boards or commissions,” the AGO interprets this exemption to apply only to certain *state* “quasi-judicial” bodies, and a very limited number of public bodies at other levels of government whose proceedings are specifically defined as “agencies” for purposes of G.L. c. 30A.

**What are the requirements for posting notice of meetings?**
Except in cases of emergency, a public body must provide the public with notice of its meeting 48 hours in advance, excluding Saturdays, Sundays and legal holidays. Notice of emergency meetings must be posted as soon as reasonably possible prior to the meeting. Also note that other laws, such as those governing procedures for public hearings, may require additional notice.

- **What are the requirements for filing and posting meeting notices for local public bodies?**
For local public bodies, meeting notices must be filed with the municipal clerk sufficiently in advance of a public meeting to permit posting of the notice at least 48 hours in advance of the public meeting. Notices may be posted on a bulletin board, in a loose-leaf binder or on an electronic display (e.g., television, computer monitor, or an electronic bulletin board), provided that the notice is conspicuously visible to the public at all hours in or on the municipal building in which the clerk’s office is located. In the event that the meeting notices posted in the municipal building are not visible to the public at all hours, then the municipality must either post notices on the outside of the building or follow one of the alternative posting methods approved by the Attorney General in 940 CMR 29.03(2)(b):

- public bodies may post notice of meetings on the municipal website;
- public bodies may post notice of meetings on cable television, AND post notice or provide cable television access in an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- public bodies may post notice of meetings in a newspaper of general circulation in the municipality, AND post notice or a copy of the newspaper containing the meeting notice at an alternate municipal building (e.g., police or fire station) where the notice is accessible at all hours;
- public bodies may place a computer monitor or electronic or physical bulletin board displaying meeting notices on or in a door, window, or near the entrance of the municipal building in which the clerk’s office is located in such a manner as to be visible to the public from outside the building; or
- public bodies may provide an audio recording of meeting notices, available to the public by telephone at all hours.

If one of these alternative posting methods is used, the clerk of the municipality must inform the Division of Open Government of its notice posting method, and update the Division of any future change. All public bodies shall consistently use the most current notice posting method on file with the Division.

- What are the requirements for posting notices for regional, district, county and state public bodies?

For regional or district public bodies and regional school districts, meeting notices must be filed and posted in the same manner required of local public bodies, in each of the communities within the region or district. As an alternative method of notice, a regional or district public body may post a meeting notice on the regional or district public body’s website. A copy of the notice shall be filed and kept by the chair of the public body or the chair’s designee.

County public bodies must file meeting notices in the office of the county commissioners and post notice of the meeting in a manner conspicuously visible to the public at all hours at a place or places designated by the county commissioners for notice postings. As an alternative method of notice, a county public body may post a meeting on the county public body’s website. A copy of the notice shall be filed and kept by the chair of the county public body or the chair’s designee.

State public bodies must file meeting notices by posting the notice on the website of the public body or its parent agency. The chair of a state public body must notify the Attorney General in writing of the website address where notices will be posted, and of any subsequent changes to
that posting location. A copy of the notice must also be sent to the Secretary of State’s Regulations Division, and should be forwarded to the Executive Office of Administration and Finance, which maintains a listing of state public body meetings.

- **A note about accessibility**
  Public bodies are subject to all applicable state and federal laws that govern accessibility for persons with disabilities. These laws include the Americans with Disabilities Act, the federal Rehabilitation Act of 1973, and state constitutional provisions. For instance, public bodies that adopt website posting as an alternative method of notice must ensure that the website utilizes technology that is readily accessible to people with disabilities, including individuals who use screen readers. All open meetings of public bodies must be accessible to persons with disabilities. Meeting locations must be accessible by wheelchair, without the need for special assistance. Also sign language interpreters for deaf or hearing-impaired persons must be provided, subject to reasonable advance notice. The Massachusetts Commission for the Deaf and Hard of Hearing will assist with arrangements for a sign language interpreter. The Commission may be reached at 617-740-1600 VOICE and 617-740-1700 TTY.

**What information must meeting notices contain?**
Meeting notices must be posted in a legible, easily understandable format; contain the date, time and place of the meeting; and list the topics that, as of the time the notice is filed, the chair reasonably anticipates will be discussed at the meeting. The list of topics must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting. While not required under the Open Meeting Law, public bodies are encouraged to make a revised list of topics to be discussed available to the public in advance of the meeting if the body intends to discuss topics that come up after posting but before the meeting convenes.

**When can a public body meet in executive session?**
While all meetings of public bodies must be open to the public, certain topics may be discussed in executive, or closed, session. Before going into an executive session, the chair of the public body must first:

- Convene in open session;
- State the reason for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;
- State whether the public body will reconvene in open session at the end of the executive session; and
- Take a roll call vote of the body to enter executive session.

Where a public body member is participating in an executive session remotely, he or she must state at the start of the executive session that no other person is present and/or able to hear the discussion at the remote location. The public body may authorize, by a simple majority vote, the presence and participation of other individuals at the remote participant’s location.

While in executive session, the public body must keep accurate records and must take a roll call vote of all votes taken and may only discuss matters for which the executive session was called.

- **The Ten Purposes for Executive Session**
The law states ten specific Purposes for which an executive session may be held, and emphasizes that these are the only reasons for which a public body may enter executive session. The ten Purposes for which a public body may vote to hold an executive session are:

1. **To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual.** The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties.

   This Purpose is designed to protect the rights and reputation of individuals. Nevertheless, it appears that where a public body is discussing an employee evaluation, considering applicants for a position, or discussing the qualifications of any individual, these discussions should be held in open session to the extent that the discussion deals with issues other than the reputation, character, health, or any complaints or charges against the individual. An executive session called for this Purpose triggers certain rights on the part of an individual who is the subject of the discussion. The individual’s right to choose to have this discussion in an open meeting takes precedence over the right of the public body to go into executive session.

   While the imposition of disciplinary sanctions by a public body on an individual fits within this Purpose, this Purpose does not apply if, for example, the public body is deciding whether to lay off a large number of employees because of budgetary constraints.

2. **To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;**

   **Collective Bargaining Sessions:** These include not only the bargaining sessions, but also include grievance hearings that are required by a collective bargaining agreement.

   While a public body may negotiate with nonunion personnel or conduct a collective bargaining session with a union in executive session, and may even agree on final contract terms in executive session, the public body must vote to approve or ratify any contract or collective bargaining agreement in open session before it can take effect.

3. **To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;**

   **Collective Bargaining Strategy:** Discussions with respect to collective bargaining strategy include discussion of proposals for wage and benefit packages or working conditions for union employees. The public body, if challenged, has the burden of proving that an open meeting might have a detrimental effect on its bargaining position. The showing that must be made is that an open discussion may have a detrimental effect on the collective bargaining process; the body is not required to demonstrate or specify a definite harm that would have arisen. At the time the executive session is proposed and voted on, the chair must state on the record that having the
discussion in an open session may be detrimental to the public body’s bargaining or litigating position.

**Litigation Strategy:** Discussions concerning strategy with respect to ongoing litigation obviously fit within this Purpose, but only if an open meeting may have a detrimental effect on the litigating position of the public body. Discussions relating to potential litigation are not covered by this exemption unless that litigation is clearly and imminently threatened or otherwise demonstrably likely. That a person is represented by counsel and supports a position adverse to the public body’s does not by itself mean that litigation is imminently threatened or likely. Nor does the fact that a newspaper reports a party has threatened to sue necessarily mean imminent litigation.

**Note:** A public body’s discussions with its counsel do not automatically fall under this or any other Purpose for holding an executive session.

4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;

5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

This Purpose permits an executive session to investigate charges of criminal misconduct and to consider the filing of criminal complaints. Thus, it primarily involves discussions that would precede the formal criminal process in court. Purpose 1 is related, in that it permits an executive session to discuss certain complaints or charges, which may include criminal complaints or charges, but only those that have already been brought. Also, unlike Purpose 5, Purpose 1 confers certain rights of participation on the individual involved, as well as the right for the individual to insist that the discussion occur in open session. To the limited extent that there is overlap between Purposes 1 and 5, a public body has discretion to choose which Purpose to invoke when going into executive session.

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

Under this Purpose, as with the collective bargaining and litigation Purpose, an executive session may only be held where an open meeting may have a detrimental impact on the body’s negotiating position with a third party. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session may be detrimental to the public body’s negotiating position.

7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements

There may be provisions in state statutes or federal grants that require or specifically allow a public body to consider a particular issue in a closed session. Before entering executive session under this purpose, the public body must cite the specific law or federal grant-in-aid requirement that necessitates confidentiality.
8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening.

This Purpose permits a hiring subcommittee of a public body or a preliminary screening committee to conduct the initial screening process in executive session. This Purpose does not apply to any stage in the hiring process after the screening committee or subcommittee votes to recommend candidates to its parent body, however it may include multiple rounds of interviews by the screening committee aimed at narrowing the group of applicants down to finalists. At the time that the executive session is proposed and voted on, the chair must state on the record that having the discussion in an open session will be detrimental to the public body’s ability to attract qualified applicants for the position. If the public body opts to convene a preliminary screening committee, the committee must contain fewer than a quorum of the members of the parent public body. The committee may also contain members who are not members of the parent public body.

Note that a public body is not required to create a preliminary screening committee to consider or interview applicants. However, if the body chooses to conduct the review of applicants itself, it may not do so in executive session.

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

   i. any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
   ii. no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session.

10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided:

   a. in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164;
   b. in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164; or
   c. in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164;
   d. when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.
May a member of a public body participate remotely?
The Attorney General’s Regulations, 940 CMR 29.10, permit remote participation in certain circumstances. However, the Attorney General strongly encourages members of public bodies to physically attend meetings whenever possible. Members of public bodies have a responsibility to ensure that remote participation in meetings is not used in a way that would defeat the purposes of the Open Meeting Law, namely promoting transparency with regard to deliberations and decisions on which public policy is based.

- **How can the practice of remote participation be adopted?**
  Remote participation may be used during a meeting of a public body if it has first been adopted by the chief executive officer of the municipality for local public bodies, the county commissioners for county public bodies, or by a majority vote of the public body for retirement boards, district, regional and state public bodies. The chief executive officer may be the board of selectmen, the city council, or the mayor, depending on the municipality. See G.L. c. 4, § 7. If the chief executive officer in a municipality authorizes remote participation, that authorization must apply to all public bodies in the municipality. 940 CMR 29.10(2)(a). However, the chief executive officer determines the amount and source of payment for any costs associated with remote participation, and may decide to fund the practice only for certain public bodies. See 940 CMR 29.10(6)(e). In addition, the chief executive officer can authorize public bodies in that municipality to "opt out" of the practice altogether. See 940 CMR 29.10(8).

- **What are the permissible reasons for remote participation?**
  Once remote participation is adopted, any member of a public body may participate remotely if the chair or, in the chair’s absence, the person chairing the meeting, determines that one of the following factors makes the member’s physical attendance unreasonably difficult:

  1. Personal illness;
  2. Personal disability;
  3. Emergency;
  4. Military service; or
  5. Geographic distance.

- **What are the acceptable means of remote participation?**
  Acceptable means of remote participation include telephone, internet, or satellite enabled audio or video conferencing, or any other technology that enables the remote participant and all persons present at the meeting location to be clearly audible to one another. Accommodations must be made for any public body member who requires TTY service, video relay service, or other form of adaptive telecommunications. Text messaging, instant messaging, email and web chat without audio are not acceptable methods of remote participation.

- **What are the minimum requirements for remote participation?**
  Any public body using remote participation during a meeting must ensure that the following minimum requirements are met:

  1. A quorum of the body, including the chair or, in the chair’s absence, the person chairing the meeting, must be physically present at the meeting location;
2. Members of a public body who participate remotely and all persons present at the meeting location must be clearly audible to each other; and
3. All votes taken during a meeting in which a member participates remotely must be by roll call vote.

- **What procedures must be followed if remote participation is used at a meeting?**

At the start of any meeting during which a member of a public body will participate remotely, the chair must announce the name of any member who is participating remotely and which of the five reasons listed above requires that member’s remote participation. The chair’s statement does not need to contain any detail about the reason for the member’s remote participation other than the section of the regulation that justifies it. This information must also be recorded in the meeting minutes.

Members of public bodies who participate remotely may vote, and shall not be deemed absent for purposes of G.L. c. 39, § 23D. In addition, members who participate remotely may participate in executive sessions, but must state at the start of any such session that no other person is present and/or able to hear the discussion at the remote location, unless the public body has approved the presence of that individual.

If technical difficulties arise as a result of utilizing remote participation, the chair or, in the chair’s absence, person chairing the meeting may decide how to address the situation. Public bodies are encouraged, whenever possible, to suspend discussion while reasonable efforts are made to correct any problem that interferes with a remote participant’s ability to hear or be heard clearly by all persons present at the meeting location. If a remote participant is disconnected from the meeting, the minutes must note that fact and the time at which the disconnection occurred.

- **What public participation in meetings must be allowed?**

Under the Open Meeting Law, the public is permitted to attend meetings of public bodies but is excluded from an executive session that is called for a valid purpose listed in the law. Any member of the public also has a right to make an audio or video recording of an open session of a public meeting. A member of the public who wishes to record a meeting must first notify the chair and must comply with reasonable requirements regarding audio or video equipment established by the chair so as not to interfere with the meeting. The chair is required to inform other attendees of any such recording at the beginning of the meeting.

While the public is permitted to attend an open meeting, an individual may not address the public body without permission of the chair. An individual is not permitted to disrupt a meeting of a public body, and at the request of the chair, all members of the public shall be silent. If, after clear warning, a person continues to be disruptive, the chair may order the person to leave the meeting and, if the person does not leave, the chair may authorize a constable or other officer to remove the person.

- **What records of public meetings must be kept?**

Public bodies are required to create and maintain accurate minutes of all meetings, including executive sessions. The minutes, which must be created and approved in a timely manner, must state the date, time and place of the meeting, a list of the members present or absent, and the decisions made and actions taken including a record of all votes. Minutes must also include the
name of any member who participated in the meeting remotely and the reason under 940 CMR 29.10(5) for his or her remote participation. While the minutes must include a summary of the discussions on each subject, a transcript is not required. No vote taken by a public body, either in an open or in an executive session, shall be by secret ballot. All votes taken in executive session must be by roll call and the results recorded in the minutes. In addition, the minutes must include a list of the documents and other exhibits used at the meeting. While public bodies are required to retain these records in accordance with records retention laws, the documents and exhibits listed in the minutes need not be attached to or physically stored with the minutes.

The minutes, documents and exhibits are public records and a part of the official record of the meeting. Records may be subject to disclosure under either the Open Meeting Law or Public Records Law and must be retained in accordance with the Secretary of State’s record retention schedule. The State and Municipal Record Retention Schedules are available through the Secretary of State’s website at: http://www.sec.state.ma.us/arc/arcrmu/rmuidx.htm.

- **Open Session Meeting Records**
The Open Meeting Law requires public bodies to create and approve minutes in a timely manner. The law requires that existing minutes be made available to the public within 10 days upon request, whether they have been approved or remain in draft form. Materials or other exhibits used by the public body in an open meeting must also be made available to the public within 10 days upon request.

There are two exemptions to the open session records disclosure requirement: (1) materials (other than those that were created by members of the public body for the purpose of the evaluation) used in a performance evaluation of an individual bearing on his professional competence, and (2) materials (other than any resume submitted by an applicant, which is subject to disclosure) used in deliberations about employment or appointment of individuals, including applications and supporting materials. Documents created by members of the public body for the purpose of performing an evaluation are subject to disclosure. This applies to both individual evaluations and evaluation compilations, provided the documents were created by members of the public body for the purpose of the evaluation.

- **Executive Session Meeting Records**
Public bodies are not required to disclose the minutes, notes or other materials used in an executive session where the disclosure of these records may defeat the lawful purposes of the executive session. Once disclosure would no longer defeat the purposes of the executive session, however, minutes and other records from that executive session must be disclosed unless they are within an exemption to the Public Records Law, G.L. c. 4, § 7, cl. 26, or the attorney-client privilege applies. Public bodies are also required to periodically review their executive session minutes to determine whether continued non-disclosure is warranted, and such determination must be included in the minutes of the body’s next meeting. A public body must respond to a request to inspect or copy executive session minutes within 10 days of request and promptly release the records if they are subject to disclosure. If the body has not performed a review to determine whether they are subject to disclosure, it must do so prior to its next meeting or within 30 days, whichever is sooner.

**What is the Attorney General’s role in enforcing the Open Meeting Law?**
The Attorney General’s Division of Open Government is responsible for enforcing the Open Meeting Law. The Attorney General has the authority to take and investigate complaints, bring enforcement actions, issue advisory opinions, and issue regulations.

The Division of Open Government regularly seeks feedback from the public on ways in which it can better support public bodies to help them comply with the law’s requirements, and will provide online and in-person trainings on the Open Meeting Law. The Division of Open Government will also respond to information requests from public bodies and the public.

The Division of Open Government will take complaints from members of the public and will work with public bodies to resolve problems. While any member of the public may file a complaint with a public body alleging a violation of the Open Meeting Law, a public body need not, and the Division of Open Government will not, investigate anonymous complaints.

What is the Open Meeting Law complaint procedure?

**Step 1.** Filing a Complaint with the Public Body: Individuals who allege a violation of the Open Meeting Law must first file a complaint with the public body alleged to have violated the OML. The complaint must be filed within 30 days of the date of the violation, or the date the complainant could reasonably have known of the violation. The complaint must be filed on a Complaint Form available on the AGO website. When filing a complaint with a local public body, the complainant must also file a copy of the complaint with the municipal clerk.

**Step 2.** The Public Body’s Response: Upon receipt, the chair of the public body should distribute copies of the complaint to the members of the public body for their review. The public body has 14 business days from the date of receipt to review the complainant’s allegations; take remedial action if appropriate; notify the complainant of the remedial action; and forward a copy of the complaint and description of the remedial action taken to the AGO. The public body may request additional information from the complainant. The public body may also request an extension of time to respond to the complaint. A request for an extension should be made within 14 business days of receipt of the complaint by the public body. The request for an extension should be made in writing to the Division of Open Government, and should state the reason for the requested extension.

**Step 3.** Filing a Complaint with the Attorney General’s Office: A complaint is ripe for review by the AGO 30 days after the complaint is filed with the public body. This 30-day period is intended to provide a reasonable opportunity for the complainant and the public body to resolve the initial complaint. It is important to note that complaints are not automatically treated as filed for review by the AGO upon filing with the public body. A complainant who has filed a complaint with a public body, and seeks further review by the Division of Open Government, must file the complaint with the AGO after the 30-day local review period has elapsed but before 90 days have passed since the date of the violation. When filing the complaint with the AGO, the complainant must include a copy of the original complaint and may include any other materials the complainant feels are relevant, including an explanation of why the complainant is not satisfied with the remedial action taken by the public body. Complaints filed with the AGO are public records.
The AGO will review the complaint and any remedial action taken by the public body. The AGO may request additional information from both the complainant and the public body. The AGO will seek to resolve complaints in a reasonable period of time, generally within 90 days of the complaint becoming ripe for review by our office. The AGO may decline to investigate a complaint where more than 90 days have passed since the date of the alleged violation.

Will the Attorney General’s Office provide training on the Open Meeting Law?
The Open Meeting Law directs the AGO to create educational materials and provide training to public bodies to foster awareness of and compliance with the Open Meeting Law. The AGO has established an Open Meeting Law website, www.mass.gov/ago/openmeeting, on which government officials and members of public bodies can find the statute, regulations, FAQs, training materials, the Attorney General’s determination letters resolving complaints, and other resources. The AGO will provide regional trainings for members of public bodies and will hold periodic online webinars.

Contacting the Attorney General
If you have any questions about the Open Meeting Law or anything contained in this guide, please contact the AGO’s Division of Open Government. The AGO also welcomes any comments, feedback, or suggestions you may have about the Open Meeting Law or this guide.

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THE COMMONWEALTH OF MASSACHUSETTS
OPEN MEETING LAW, G.L. c. 30A, §§18-25

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THE COMMONWEALTH OF MASSACHUSETTS
OPEN MEETING LAW, G.L. c. 30A, §§ 18-25

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Section 18: [DEFINITIONS]
As used in this section and sections 19 to 25, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Deliberation”, an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that “deliberation” shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.

“Emergency”, a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

“Executive session”, any part of a meeting of a public body closed to the public for deliberation of certain matters.

“Intentional violation”, an act or omission by a public body or a member thereof, in knowing violation of the open meeting law.

“Meeting”, a deliberation by a public body with respect to any matter within the body’s jurisdiction; provided, however, “meeting” shall not include: (1) an on-site inspection of a project or program; however, members cannot deliberate at such gatherings; (2) Members of a public body may attend a conference, training program or event; however, they cannot deliberate at such gatherings; (3) Members of a public body may attend a meeting of another public body provided that they communicate only by open participation; however, they cannot deliberate at such gatherings; (4) Meetings of quasi-judicial boards or commissions held solely to make decisions in an adjudicatory proceeding are not subject to the Open Meeting Law; and, (5) Town Meetings are not subject to the Open Meeting Law. See G.L. c. 39, §§ 9, 10 (establishing procedures for Town Meeting) (modified 8-29-12)

“Minutes”, the written report of a meeting created by a public body required by subsection (a) of section 22 and section 5A of chapter 66.

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“Open meeting law”, sections 18 to 25, inclusive.

“Post notice”, to display conspicuously the written announcement of a meeting either in hard copy or electronic format.

“Preliminary screening”, the initial stage of screening applicants conducted by a committee or subcommittee of a public body solely for the purpose of providing to the public body a list of those applicants qualified for further consideration or interview.

“Public body”, a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose; provided, however, that the governing board of a local housing, redevelopment or other similar authority shall be deemed a local public body; provided, further, that the governing board or body of any other authority established by the general court to serve a public purpose in the commonwealth or any part thereof shall be deemed a state public body; provided, further, that “public body” shall not include the general court or the committees or recess commissions thereof, bodies of the judicial branch or bodies appointed by a constitutional officer solely for the purpose of advising a constitutional officer and shall not include the board of bank incorporation or the policyholders protective board; and provided further, that a subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

“Quorum”, a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision.

Section 19. [Division of Open Government; Open Meeting Law Training; Open Meeting Law Advisory Commission; Annual Report]

(a) There shall be in the department of the attorney general a division of open government under the direction of a director of open government. The attorney general shall designate an assistant attorney general as the director of the open government division. The director may appoint and remove, subject to the approval of the attorney general, such expert, clerical and other assistants as the work of the division may require. The division shall perform the duties imposed upon the attorney general by the open meeting law, which may include participating, appearing and intervening in any administrative and judicial proceedings pertaining to the enforcement of the open meeting law. For the purpose of such participation, appearance, intervention and training authorized by this chapter the attorney general may expend such funds as may be appropriated therefor.

(b) The attorney general shall create and distribute educational materials and provide training to public bodies in order to foster awareness and compliance with the open meeting law. Open meeting law training may include, but shall not be limited to, instruction in:
   (1) the general background of the legal requirements for the open meeting law;
   (2) applicability of sections 18 to 25, inclusive, to governmental bodies;
   (3) the role of the attorney general in enforcing the open meeting law; and
   (4) penalties and other consequences for failure to comply with this chapter.

(c) There shall be an open meeting law advisory commission. The commission shall consist of 5 members, 2 of whom shall be the chairmen of the joint committee on state administration and regulatory oversight; 1 of whom shall be the president of the Massachusetts Municipal Association or his designee; 1 of whom shall be the president of the Massachusetts Newspaper Publishers Association or his designee; and 1 of whom shall be the attorney general or his designee. The commission shall review issues relative to the open meeting law and shall submit
to the attorney general recommendations for changes to the regulations, trainings, and educational initiatives relative to the open meeting law as it deems necessary and appropriate.

(d) The attorney general shall, not later than January 31, file annually with the commission a report providing information on the enforcement of the open meeting law during the preceding calendar year. The report shall include, but not be limited to:

1. the number of open meeting law complaints received by the attorney general;
2. the number of hearings convened as the result of open meeting law complaints by the attorney general;
3. a summary of the determinations of violations made by the attorney general;
4. a summary of the orders issued as the result of the determination of an open meeting law violation by the attorney general;
5. an accounting of the fines obtained by the attorney general as the result of open meeting law enforcement actions;
6. the number of actions filed in superior court seeking relief from an order of the attorney general; and
7. any additional information relevant to the administration and enforcement of the open meeting law that the attorney general deems appropriate.

Section 20. [Meetings of a Public Body to be Open to the Public; Notice of Meeting; Remote Participation; Recording and Transmission of Meeting; Removal of Persons for Disruption of Proceedings]

(a) Except as provided in section 21, all meetings of a public body shall be open to the public.

(b) Except in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays. In an emergency, a public body shall post notice as soon as reasonably possible prior to such meeting. Notice shall be printed in a legible, easily understandable format and shall contain the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.

(c) For meetings of a local public body, notice shall be filed with the municipal clerk and posted in a manner conspicuously visible to the public at all hours in or on the municipal building in which the clerk’s office is located. For meetings of a regional or district public body, notice shall be filed and posted in each city or town within the region or district in the manner prescribed for local public bodies.

For meetings of a regional school district, the secretary of the regional school district committee shall be considered to be its clerk and shall file notice with the clerk of each city or town within such district and shall post the notice in the manner prescribed for local public bodies. For meetings of a county public body, notice shall be filed in the office of the county commissioners and a copy of the notice shall be publicly posted in a manner conspicuously visible to the public at all hours in such place or places as the county commissioners shall designate for the purpose.

For meetings of a state public body, notice shall be filed with the attorney general by posting on a website in accordance with procedures established for this purpose and a duplicate copy of the notice shall be filed with the regulations division of the state secretary’s office. The attorney general shall have the authority to prescribe or approve alternative methods of notice where the attorney general determines such alternative will afford more effective notice to the public.
(d) The attorney general may by regulation or letter ruling, authorize remote participation by members of a public body not present at the meeting location; provided, however, that the absent members and all persons present at the meeting location are clearly audible to each other; and provided, further, that a quorum of the body, including the chair, are present at the meeting location. Such authorized members may vote and shall not be deemed absent for the purposes of section 23D of chapter 39.

(e) After notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium, subject to reasonable requirements of the chair as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting. At the beginning of the meeting the chair shall inform other attendees of any such recordings.

(f) No person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent. No person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.

(g) Within 2 weeks of qualification for office, all persons serving on a public body shall certify, on a form prescribed by the attorney general, the receipt of a copy of the open meeting law, regulations promulgated pursuant to section 25 and a copy of the educational materials prepared by the attorney general explaining the open meeting law and its application pursuant to section 19. Unless otherwise directed or approved by the attorney general, the appointing authority, city or town clerk or the executive director or other appropriate administrator of a state or regional body, or their designees, shall obtain such certification from each person upon entering service and shall retain it subject to the applicable records retention schedule where the body maintains its official records. The certification shall be evidence that the member of a public body has read and understands the requirements of the open meeting law and the consequences of violating it.

**Section 21. [EXECUTIVE SESSIONS]**

(a) A public body may meet in executive session only for the following purposes:

1. To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual. The individual to be discussed in such executive session shall be notified in writing by the public body at least 48 hours prior to the proposed executive session; provided, however, that notification may be waived upon written agreement of the parties. A public body shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights:
   i. to be present at such executive session during deliberations which involve that individual;
   ii. to have counsel or a representative of his own choosing present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session;
   iii. to speak on his own behalf; and iv. to cause an independent record to be created of said executive session by audio-recording or transcription, at the individual’s expense.

The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including, but not limited to, rights under any laws or collective
bargaining agreements and the exercise or non-exercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

2. To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel;

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares;

4. To discuss the deployment of security personnel or devices, or strategies with respect thereto;

5. To investigate charges of criminal misconduct or to consider the filing of criminal complaints;

6. To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body;

7. To comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements;

8. To consider or interview applicants for employment or appointment by a preliminary screening committee if the chair declares that an open meeting will have a detrimental effect in obtaining qualified applicants; provided, however, that this clause shall not apply to any meeting, including meetings of a preliminary screening committee, to consider and interview applicants who have passed a prior preliminary screening;

9. To meet or confer with a mediator, as defined in section 23C of chapter 233, with respect to any litigation or decision on any public business within its jurisdiction involving another party, group or entity, provided that:

   (i) any decision to participate in mediation shall be made in an open session and the parties, issues involved and purpose of the mediation shall be disclosed; and
   (ii) no action shall be taken by any public body with respect to those issues which are the subject of the mediation without deliberation and approval for such action at an open session; or

10. To discuss trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy.

(b) A public body may meet in closed session for 1 or more of the purposes enumerated in subsection (a) provided that:

1. the body has first convened in an open session pursuant to section 21;
2. a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes;
3. before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called;

4. the chair shall publicly announce whether the open session will reconvene at the conclusion of the executive session; and

5. accurate records of the executive session shall be maintained pursuant to section 23.

Section 22. [Meeting Minutes; Records]

(a) A public body shall create and maintain accurate minutes of all meetings, including executive sessions, setting forth the date, time and place, the members present or absent, a summary of the discussions on each subject, a list of documents and other exhibits used at the meeting, the decisions made and the actions taken at each meeting, including the record of all votes.

(b) No vote taken at an open session shall be by secret ballot. Any vote taken at an executive session shall be recorded by roll call and entered into the minutes.

(c) Minutes of all open sessions shall be created and approved in a timely manner. The minutes of an open session, if they exist and whether approved or in draft form, shall be made available upon request by any person within 10 days.

(d) Documents and other exhibits, such as photographs, recordings or maps, used by the body at an open or executive session shall, along with the minutes, be part of the official record of the session.

(e) The minutes of any open session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, shall be public records in their entirety and not exempt from disclosure pursuant to any of the exemptions under clause Twenty-sixth of section 7 of chapter 4. Notwithstanding this paragraph, the following materials shall be exempt from disclosure to the public as personnel information: (1) materials used in a performance evaluation of an individual bearing on his professional competence, provided they were not created by the members of the body for the purposes of the evaluation; and (2) materials used in deliberations about employment or appointment of individuals, including applications and supporting materials; provided, however, that any resume submitted by an applicant shall not be exempt.

(f) The minutes of any executive session, the notes, recordings or other materials used in the preparation of such minutes and all documents and exhibits used at the session, may be withheld from disclosure to the public in their entirety under subclause (a) of clause Twenty-sixth of section 7 of chapter 4, as long as publication may defeat the lawful purposes of the executive session, but no longer; provided, however, that the executive session was held in compliance with section 21.

When the purpose for which a valid executive session was held has been served, the minutes, preparatory materials and documents and exhibits of the session shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

For purposes of this subsection, if an executive session is held pursuant to clause (2) or (3) of subsections (a) of section 21, then the minutes, preparatory materials and documents and exhibits used at the session may be withheld from disclosure to the public in their entirety, unless and until such time as a litigating, negotiating or bargaining position is no longer
jeopardized by such disclosure, at which time they shall be disclosed unless the attorney-client privilege or 1 or more of the exemptions under said clause Twenty-sixth of said section 7 of said chapter 4 apply to withhold these records, or any portion thereof, from disclosure.

(g)(1) The public body, or its chair or designee, shall, at reasonable intervals, review the minutes of executive sessions to determine if the provisions of this subsection warrant continued non-disclosure. Such determination shall be announced at the body’s next meeting and such announcement shall be included in the minutes of that meeting. (2) Upon request by any person to inspect or copy the minutes of an executive session or any portion thereof, the body shall respond to the request within 10 days following receipt and shall release any such minutes not covered by an exemption under subsection (f); provided, however, that if the body has not performed a review pursuant to paragraph (1), the public body shall perform the review and release the non-exempt minutes, or any portion thereof, not later than the body’s next meeting or 30 days, whichever first occurs. A public body shall not assess a fee for the time spent in its review.

Section 23. [Enforcement of Open Meeting Law; Complaints; Hearings; Civil Actions]

(a) Subject to appropriation, the attorney general shall interpret and enforce the open meeting law.

(b) At least 30 days prior to the filing of a complaint with the attorney general, the complainant shall file a written complaint with the public body, setting forth the circumstances which constitute the alleged violation and giving the body an opportunity to remedy the alleged violation; provided, however, that such complaint shall be filed within 30 days of the date of the alleged violation. The public body shall, within 14 business days of receipt of a complaint, send a copy of the complaint to the attorney general and notify the attorney general of any remedial action taken. Any remedial action taken by the public body in response to a complaint under this subsection shall not be admissible as evidence against the public body that a violation occurred in any later administrative or judicial proceeding relating to such alleged violation. The attorney general may authorize an extension of time to the public body for the purpose of taking remedial action upon the written request of the public body and a showing of good cause to grant the extension.

(c) Upon the receipt of a complaint by any person, the attorney general shall determine, in a timely manner, whether there has been a violation of the open meeting law. The attorney general may, and before imposing any civil penalty on a public body shall, hold a hearing on any such complaint. Following a determination that a violation has occurred, the attorney general shall determine whether the public body, 1 or more of the members, or both, are responsible and whether the violation was intentional or unintentional. Upon the finding of a violation, the attorney general may issue an order to:

(1) compel immediate and future compliance with the open meeting law;
(2) compel attendance at a training session authorized by the attorney general;
(3) nullify in whole or in part any action taken at the meeting;
(4) impose a civil penalty upon the public body of not more than $1,000 for each intentional violation;
(5) reinstate an employee without loss of compensation, seniority, tenure or other benefits;
(6) compel that minutes, records or other materials be made public; or
(7) prescribe other appropriate action.

(d) A public body or any member of a body aggrieved by any order issued pursuant to this section may, notwithstanding any general or special law to the contrary, obtain judicial review of
the order only through an action in superior court seeking relief in the nature of certiorari; provided, however, that notwithstanding section 4 of chapter 249, any such action shall be commenced in superior court within 21 days of receipt of the order. Any order issued under this section shall be stayed pending judicial review; provided, however, that if the order nullifies an action of the public body, the body shall not implement such action pending judicial review.

(e) If any public body or member thereof shall fail to comply with the requirements set forth in any order issued by the attorney general, or shall fail to pay any civil penalty imposed within 21 days of the date of issuance of such order or within 30 days following the decision of the superior court if judicial review of such order has been timely sought, the attorney general may file an action to compel compliance. Such action shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets. If such body or member has not timely sought judicial review of the order, such order shall not be open to review in an action to compel compliance.

(f) As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law.

Any action under this subsection shall be filed in Suffolk superior court with respect to state public bodies and, with respect to all other public bodies, in the superior court in any county in which the public body acts or meets.

In any action filed pursuant to this subsection, in addition to all other remedies available to the superior court, in law or in equity, the court shall have all of the remedies set forth in subsection (c).

In any action filed under this subsection, the order of notice on the complaint shall be returnable not later than 10 days after the filing and the complaint shall be heard and determined on the return day or on such day as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of the open meeting law. In the hearing of any action under this subsection, the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by the open meeting law; provided, however, that no civil penalty may be imposed on an individual absent proof that the action complained of violated the open meeting law.

(g) It shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body’s legal counsel.

(h) Payment of civil penalties under this section paid to or received by the attorney general shall be paid into the general fund of the commonwealth.

**Section 24. [Investigation by Attorney General of Violations of Open Meeting Law]**

(a) Whenever the attorney general has reasonable cause to believe that a person, including any public body and any other state, regional, county, municipal or other governmental official or entity, has violated the open meeting law, the attorney general may conduct an investigation to ascertain whether in fact such person has violated the open meeting law. Upon notification of an investigation, any person, public body or any other state, regional, county, municipal or other governmental official or entity who is the subject of an investigation, shall make all information necessary to conduct such investigation available to the attorney general. In the event that the
person, public body or any other state, regional, county, municipal or other governmental official
or entity being investigated does not voluntarily provide relevant information to the attorney
general within 30 days of receiving notice of the investigation, the attorney general may:

(1) take testimony under oath concerning such alleged violation of the open meeting law;
(2) examine or cause to be examined any documentary material of whatever nature relevant
to such alleged violation of the open meeting law; and
(3) require attendance during such examination of documentary material of any person
having knowledge of the documentary material and take testimony under oath or
acknowledgment in respect of any such documentary material. Such testimony and
examination shall take place in the county where such person resides or has a place of
business or, if the parties consent or such person is a nonresident or has no place of
business within the commonwealth, in Suffolk county.

(b) Notice of the time, place and cause of such taking of testimony, examination or attendance
shall be given by the attorney general at least 10 days prior to the date of such taking of
testimonial or examination.

(c) Service of any such notice may be made by: (1) delivering a duly-executed copy to the
person to be served or to a partner or to any officer or agent authorized by appointment or by
law to receive service of process on behalf of such person; (2) delivering a duly-executed copy
to the principal place of business in the commonwealth of the person to be served; or (3) mailing
by registered or certified mail a duly-executed copy addressed to the person to be served at the
principal place of business in the commonwealth or, if said person has no place of business in
the commonwealth, to his principal office or place of business.

(d) Each such notice shall:

(1) state the time and place for the taking of testimony or the examination and the name and
address of each person to be examined, if known and, if the name is not known, a general
description sufficient to identify him or the particular class or group to which he belongs;
(2) state the statute and section thereof, the alleged violation of which is under investigation
and the general subject matter of the investigation;
(3) describe the class or classes of documentary material to be produced thereunder with
reasonable specificity, so as fairly to indicate the material demanded;
(4) prescribe a return date within which the documentary material is to be produced; and
(5) identify the members of the attorney general’s staff to whom such documentary material
is to be made available for inspection and copying.

(e) No such notice shall contain any requirement which would be unreasonable or improper if
contained in a subpoena duces tecum issued by a court of the commonwealth or require the
disclosure of any documentary material which would be privileged, or which for any other
reason would not be required by a subpoena duces tecum issued by a court of the
commonwealth.

(f) Any documentary material or other information produced by any person pursuant to this
section shall not, unless otherwise ordered by a court of the commonwealth for good cause
shown, be disclosed to any person other than the authorized agent or representative of the
attorney general, unless with the consent of the person producing the same; provided, however,
that such material or information may be disclosed by the attorney general in court pleadings or
other papers filed in court.
(g) At any time prior to the date specified in the notice, or within 21 days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand or grant a protective order in accordance with the standards set forth in Rule 26(c) of the Massachusetts Rules of Civil Procedure. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

Section 25. [REGULATIONS, LETTER RULINGS, ADVISORY OPINIONS]

(a) The attorney general shall have the authority to promulgate rules and regulations to carry out enforcement of the open meeting law.

(b) The attorney general shall have the authority to interpret the open meeting law and to issue written letter rulings or advisory opinions according to rules established under this section.
CERTIFICATE OF RECEIPT OF OPEN MEETING LAW MATERIALS

I, ________________________________, who qualified for the office of
(Name)
____________________________________, on ________________, certify pursuant
(Office) (Date)
to G.L. c. 30A, § 20(g), that I have received copies of the following Open Meeting Law
materials:

1) the Open Meeting Law, G.L. c. 30A, §§ 18-25;

2) regulations promulgated by the Attorney General under G.L. c. 30A, § 25; and

3) educational materials promulgated by the Attorney General under G.L. c. 30A, § 19(b), explaining the
Open Meeting Law and its application.

I have read and understand the requirements of the Open Meeting Law and the consequences for
violating it. I further understand that the materials I have received may be revised or updated from time
to time, and that I have a continuing obligation to implement any changes in the Open Meeting Law
during my term of office.

____________________________________
(Name)
____________________________________
(Name of Public Body)
____________________________________
(Date)

Pursuant to G.L. c. 30A, § 20(g), an executed copy of this certificate shall be retained, according
to the relevant records retention schedule, by the appointing authority, city or town clerk, or the
executive director or other appropriate administrator of a state or regional body, or their
desigee.
SECTION E

PUBLIC RECORDS LAW

MASS. GENERAL LAWS, CHAPTER 66 & CHAPTER 4, SECTIONS 7(26)
There is a presumption in the Commonwealth that all documents created or maintained by a state agency are Public Records. Public records shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the Commonwealth, or of any political subdivision thereof, unless such materials or data fall with the exemptions listed below. Every government record is presumed to be public unless it is subject to an exemption.

Records must generally be produced within ten (10) days of receiving a request.

The definition of Public Records does not distinguish between traditional paper records and computer stored records. The Public Records Law applies to government records generated, received, or maintained electronically, including electronic mail, computer cards, tapes or diskettes.

The eighteen (18) exemptions to the Public Records Law are as follows:

a. **Statutory Exemption** - Documents which are specifically or by necessary implication exempted from disclosure by statute.

   The statute must expressly state that the information sought "shall not be a public record" or similar phrasing, or the statute must expressly limit the dissemination of the record to a defined group of individuals or entities.

b. **Internal Personnel Rules** - Those records which are related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding.

c. **Privacy Exemption** - Personnel or medical files or information; also any other material or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy.

   This is the most frequently invoked exception. Public employees have a diminished expectation of privacy in matters relating to their public employment. Consequently, the public will have greater access to personnel information which relates to an individual's public employment, such as salary, dates of employment, and benefits received.
Records that do not involve personnel or medical records may be exempt if they contain "intimate details of a highly personal nature." Information that has been classified as "intimate details of a highly personal nature" include martial status, paternity, substance abuse, government assistance, family disputes, and reputation.

d. Deliberative Process Exemption - Inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or be based.

This exemption is intended to avoid release of materials which could taint the deliberative process if prematurely disclosed. Therefore, it is limited to recommendations on legal and policy matters found within an ongoing deliberative process.

Purely factual matters used in the development of policy are always subject to disclosure.

e. Personal Notes - Notebooks and other materials prepared by an employee of the Commonwealth which are personal to him and not maintained as part of the files of the governmental unit.

Examples include personal reflections on work-related activities and notes created by an employee to assist him in preparing reports for other employees or the files of the governmental entity.

Notes which have been shared with someone else CANNOT be "personal" to their creator. Therefore, the exemption does not apply to materials which are shared with others.

f. Investigatory Exemption - Investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.

This exemption allows investigative officials to withhold materials which could compromise investigative efforts if disclosed. It is also designed to allow investigative officials to provide an assurance of confidentiality to private citizens so that they will speak openly about matters under investigation.

g. Proprietary Information - Trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit.

To be exempt, trade secrets and commercial or financial information must be provided voluntarily, upon an assurance of confidentiality and solely to assist the government in the development of policy.
h. **Contract Proposals** - Proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or toward a contract to a particular person.

This exemption is designed to ensure the integrity of processes used by government to procure goods and services by allowing a custodian to withhold the proposals of early bidders from other interested parties.

i. **Real Property Appraisals** - Appraisals of real property acquired or to be acquired until:
   (1) a final agreement is entered into; or
   (2) any litigation relative to such appraisal has been terminated; or
   (3) the time within which to commence such litigation has expired.

This exemption allows state agencies to be in the same position in a land deal as any private party.

j. **Firearm Licensee Data** - The names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to Chapter 140 or any firearms identification cards issued pursuant to said chapter and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefore, as defined in Chapter 140 and the names and addresses on said licenses or cards. This exemption prevents individuals with devious motives from ascertaining who possesses firearms.

There is no subclause "k"

l. **Test Information** - Questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided however, that such materials are intended to be used for another test, examination or assessment instrument.

This exemption ensures that no one who takes an examination can gain an advantage by using the Public Records Law to access the questions and answers of upcoming tests.

m. **Hospital Contracts** - Contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (ii) a health maintenance organization arrangement approved under chapter 176 I, a non-profit hospital service corporation or medical service corporation organized pursuant to chapter 176A and chapter 176B, respectively, a health insurance corporation licensed under chapter 175 or any legal entity that is self insured and provides health care benefits to its employees.

n. **9/11 Exemption** - In response to the horrific events of September 11th, this exemption is intended to secure the safety of persons and public places by restricting access to records that may have been previously open to public inspection. The nature of the exemption requires a records custodian to make some value judgment regarding the requester in order to decide whether to release the information sought. The exemption applies to
records including, but not limited to, blue prints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons, buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the custodian is likely to jeopardize public safety.

o. State Employee Home Addresses and Phone Numbers – This exemption applies to the home address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, department, board, commission, division or authority of the commonwealth, or of a political subdivision thereof.

p. Home Addressed and Phone Numbers of Family Members – This exemption applies to the name, home address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency.

q. Adoption Information – This exemption allows for the withholding of adoption contact information.

r. Child Advocate Exemption - Information and records acquired under chapter 18C by the office of the child advocate are exempt from public disclosure.

s. Energy Supplier Exemption - This exemption applies to trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities.
A Guide to the Massachusetts Public Records Law

Published by
William Francis Galvin
Secretary of the Commonwealth
Division of Public Records
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www.sec.state.ma.us/pre/prepdf/guide.pdf
The founding fathers of our nation strove to develop an open government formed on the principles of democracy and public participation. An informed citizen is better equipped to participate in that process. Laws mandating the disclosure of public records have existed in the Commonwealth of Massachusetts since 1851. The federal Freedom of Information Act was signed into law in 1966 by President Lyndon B. Johnson. In 1974, Congress amended the federal Freedom of Information Act in order to make government records more accessible to the public. The Massachusetts Public Records Law parallels federal law, with some variation. Every government record in Massachusetts is presumed to be public unless it may be withheld under one of nineteen exemptions.

As Secretary of the Commonwealth and chief public information officer for the Commonwealth, I am pleased to publish this guide explaining the Public Records Law. The full text of the law is provided, as well as a brief description of each of the exemptions to the law. Also included is a section of frequently asked questions about a requester’s right to access public records, as well as a government records custodian’s duty to respond to those requests. Any additional questions regarding the Public Records Law should be directed to the Division of Public Records at (617) 727-2832 during regular business hours. You may also access Division of Public Records publications and other information at www.sec.state.ma.us/pre/preidx.htm.

William Francis Galvin
Secretary of the Commonwealth
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www.sec.state.ma.us/pre/preidx.htm
Frequently Asked Questions

What is the difference between the federal Freedom of Information Act (FOIA) and the Massachusetts Public Records Law?

The federal FOIA is a statute that applies to federal records. The Massachusetts Public Records Law applies to records created by or in the custody of a state or local agency, board or other government entity.

What records are public?

Every document, paper, record, map, photograph, etc., as defined by law, that is made or received by a government entity or employee is presumed to be a public record.

Specific statutory exemptions to this rule have been created by the Legislature. These exemptions, which are discretionary to the records custodian, allow the records custodian to withhold a record from the general public.

The exemptions to the Public Records Law are described in this guide. If a records custodian claims an exemption and withholds a record, the records custodian has the burden of showing how the exemption applies to the record and why it should be withheld.

How do I obtain copies of public records? What do I do if my request is denied?

The Division of Public Records (Division) is not a warehouse for government records. The only records kept in the Division are those that are essential to the business operations of the Division. The Division, and specifically, the Supervisor of Records (Supervisor), is empowered to determine the public status of government records. The Supervisor does not have jurisdiction over records held by federal agencies, the Legislature or the courts of the Commonwealth.

To obtain a copy of a record, you must make a request to the state or local records custodian of the record. For example, if you wish to obtain a copy of the minutes of an open meeting, you should direct your request to the records custodian of that board. Similarly, a request for a copy of a police daily log should be made to the police department that created the log.

A records custodian must respond to your request within ten calendar days. If the records custodian fails to respond within the allotted time or denies the request, you may appeal the matter to the Supervisor within ninety (90) days of the date of your original request. The appeal must include a copy of your original request and any response by the records custodian. Appeals will be opened on a case-by-case basis at the discretion of the Supervisor. In most cases, the Supervisor will provide an opinion on the appropriateness of the records custodian’s response and a determination as to whether the requested record is public.

How must a records custodian respond to my request?

A records custodian’s response must be in writing and must include a good faith estimate of the cost of providing the record or a denial of access to the record by claiming a specific exemption to the public records law.

Must my request be in writing and do I need to use a specific form?
A written request is not required but it is recommended. An oral request, made in person (not by telephone), is valid under the Public Records Law. To appeal the records custodian’s response, however, a request must be in writing.

There is no specific form that must be used to request records, nor is there any language that must be included in such a request. A records custodian may provide a specific form for your use, but cannot demand that the form be used.

I asked a local official a question about his office, but he did not answer. May I appeal his refusal under the Public Records Law?

No. The Public Records Law only applies to records that are in existence and created or maintained in the usual course of business. A records custodian is not required to answer questions or to create a record in response to a request, but may do so at his or her discretion.

How much may a records custodian charge for copies of public records?

Unless specifically addressed by statute, a custodian may charge twenty cents ($0.20) per page for photocopies, twenty-five cents ($0.25) per page for microfilm copies and fifty cents ($0.50) per page for computer printouts. Examples of statutes establishing special fees for specific public records include G. L. c. 66, § 10(a) (copies of police records) and G. L. c. 262, § 38 (copies of records at the Registry of Deeds).

A records custodian may charge the actual cost of reproducing a copy of a record that is not susceptible to ordinary means of reproduction, such as large computer records or over-sized plans.

Is a records custodian required to provide an estimate for copies of public records?

The Public Records Access Regulations require that a records custodian provide a detailed, written, good faith estimate for the cost of complying with a public record request when the cost of compliance is expected to exceed ten ($10.00) dollars.

The estimate should contain a statement advising the requester that the actual cost of producing the record might vary once the custodian begins preparing the record. A records custodian may require payment of the estimated fee before commencing work.

In the interest of open government, all records custodians are strongly urged to waive the fees associated with access to public records, but are not required to do so under the law.

Public records that are of great interest to a large number of people must be readily available within the office of the records custodian and should be provided at a minimum cost, if any. These records include minutes of local board meetings, town meeting documents, warrants, street lists, municipal financial documents, etc.

May the records custodian charge a fee for search and segregation of records?

A records custodian may charge and recover a fee for the time he or she spends searching, redacting, photocopying and refiling a record. The per hour charge for this process may not be greater than the prorated hourly wage of the lowest paid employee who is capable of performing the task. Since a
records custodian must maintain all records in an orderly fashion, a records custodian may not recover fees associated with record organization.

If a requestor wishes to review records in the records custodian’s office but does not require copies of the records, a records custodian may charge and recover a fee for his or her time spent searching for and redacting the records. Access to records viewed in this manner should not be denied and only minor fees associated with securing the record should be charged.

**When must minutes of an open meeting be made available to the public?**

Minutes of open meetings, regardless of form, are public and must be made available in a timely fashion.

There is no requirement that the minutes be transcribed or approved before they are made public. A records custodian should clearly mark all such minutes “unofficial.”

Minutes of prior open meetings, regardless of form, should be reviewed and accepted promptly. Copies of the minutes of all open meetings should be readily available. Records custodians are strongly encouraged to waive all fees associated with the minutes of open meetings. Minutes of executive session meetings must be reviewed and released regularly and promptly. Executive session minutes must be released to the public as soon as the stated purpose for the executive session protection has ceased.

The Open Meeting Law is enforced by the Office of the Attorney General, Division of Open Government. Any questions regarding the content of minutes, requirements to keep minutes or any procedural aspects of the Open Meeting Law should be addressed to the Division of Open Government.

**Does the Public Records Law apply to computer records?**

Yes. The Public Records Law applies to all government records generated, received or maintained electronically, including computer records, electronic mail, video and audiotapes.

**Does a requester have greater access to public records if he is the subject of a record?**

No. Under the Public Records Law, every requester is treated equally; therefore, even a person who is the subject of the record is not granted any greater access right than any other person. Some statutes and regulations allow requesters to obtain records in a manner that does not require a request under the Public Records Law. It should be noted that once a record is deemed public it may be obtained by anyone upon request.

**Is a requester required to disclose the intended use of the public record requested?**

With the possible exception of situations where the records custodian is anticipating the withholding of records pursuant to Exemption (n), a records custodian may not ask a requester the reason for the request or the intended use of the requested records.

**How should a records custodian respond to an unclear request for public records? What if the request is overly broad?**
Records custodians must use their superior knowledge to determine the precise record or records responsive to a request. However, a requester must provide a reasonable description of the requested records.

What if the records custodian claims that it is not subject to the Public Records Law?

The Public Records Law only applies to governmental entities. The Massachusetts Supreme Judicial Court provides a standard to determine whether an entity is public or private. The burden lies with the entity to show that the Public Records Law does not apply.4

Are records custodians required to forward a request for records not in their possession?

Generally, yes. Records custodians should use their superior knowledge to ensure that the request is delivered to the appropriate party. A large public records request may include items for which the custodian is not responsible. It is in the public interest for the custodian to forward such requests to the appropriate parties in responding to a public records request.

Where can I go for more information?

Records custodians and requesters seeking more information may telephone the Division and speak with the Attorney of the Day. The Attorney of the Day is a staff member of the Division, reporting to the Supervisor, and is available to answer general questions concerning the Public Records Law between the hours of 9:00 a.m. and 5:00 p.m. Oral and written legal advisories are not generally provided by the Division. The phone number for the Division is (617) 727-2832.

Overview

The Massachusetts Public Records Law provides that every person has a right of access to public information.5 This right of access includes the right to inspect, copy or have copies of records provided upon the payment of a reasonable fee.6

The Massachusetts General Laws broadly define “public records” to include “all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee” of any Massachusetts governmental entity.7 A “custodian” is defined as “the governmental officer or employee who in the normal course of his or her duties has access to or control of public records.”8 There are nineteen strictly and narrowly construed exemptions to this broad definition of “public records.”9 This guide will briefly review the application of these exemptions as well as explore some of the other issues that arise when a request is made for access to government records.

The Request

There are no strict rules that govern the manner in which requests for public information should be made. Requests may be made in person or in writing. Written requests may be made by mail, facsimile or email.10 A requester must provide the records custodian with a reasonable description of the desired information.11 A records custodian is expected to use his or her superior knowledge of the records in his or her custody to assist the requester in obtaining the desired information.12
The Response

The records custodian must respond to requests as soon as practicable, without unreasonable delay and within ten calendar days. The response must be either an offer to provide the requested materials or a written denial. A denial must detail the specific basis for withholding the requested materials. The denial must include a citation to one of the statutory exemptions upon which the records custodian relies, and must explain why the exemption applies. A denial must also advise the requester of his right to seek redress through the administrative process provided by the Supervisor. Appeals are opened at the discretion of the Supervisor.

The mandatory disclosure provision of the Public Records Law only applies to information that is in the custody of the governmental entity at the time the request is received. Consequently, there is no obligation to create a record for a requester or to honor prospective requests. It should be noted, however, that the Public Records Access Regulations (Regulations) do not prohibit a records custodian from responding to such requests. The records custodian has discretion to produce a record in the manner in which it was requested, and may charge a reasonable fee for creation of such a record. In creating a new record, the records custodian may charge a fee for the creation of this record on a one-time basis. Any costs due to subsequent requests for this record can be assessed only for production of copies.

With the exception of situations in which a records custodian is withholding records pursuant to Exemption (n), inquiries into a requester’s status or motivation for seeking information are expressly prohibited. Consequently, all requests for public records, even if made for a commercial purpose or to assist the requester in a lawsuit against the holder of the records, must be honored in accordance with the Public Records Law.

Fees

A records custodian may charge a reasonable fee to recover the costs of complying with a public records request. A records custodian is encouraged, but not required, to waive fees where disclosure is in the public interest. Please be advised that the Supervisor does not have the authority to order a waiver of fees. Records custodians assessing a fee must do so in accordance with any applicable statutory provisions, the Regulations or an enabling provision.

Fees for Search and Segregation Time

The Regulations provide that a records custodian may charge a pro-rated fee for search and segregation of records based on the hourly rate of the lowest paid employee capable of performing the task. “Search time” means the time used to locate a requested record, pull it from the files, copy it and return it to the files. “Segregation time” means the time used to delete exempt data from a requested public record.

The Supervisor will presume that the lowest paid employee in an agency is capable of search and segregation of records, and, except where exceptional circumstances are present, it is expected that the lowest hourly rate will be used to calculate search and segregation time. In some circumstances, the lowest paid office employee may not have the knowledge or experience required to segregate the exempt information from the non-exempt information contained in a requested record. Guidance on the application of the relevant exemptions may usually be provided to the lowest paid employee. In very complex or difficult cases, however, the hourly rate of the lowest paid employee who has the necessary knowledge or experience may be used to determine the fee for search and segregation time.
Fee for Copies

In addition to the search and segregation fees, records custodians may charge twenty cents ($0.20) per page for photocopies of public records. Records custodians may charge a fee of fifty cents ($0.50) per page for computer printout copies of public records. When the request is for materials that are not susceptible to ordinary means of reproduction, such as photographs or computer tapes and diskettes, the actual cost of reproduction may be assessed to the requester. There are also specific statutes that establish fees for copies of public records. The records custodian may assess a reasonable fee, using the hourly rate of the lowest paid employee within that department, for the time spent in reproduction of the responsive record.

Exemptions to the Public Records Law

The statutory definition of “public records” contains exemptions providing the basis for withholding records completely or in part. The exemptions are strictly and narrowly construed. Where exempt information is intertwined with non-exempt information, the non-exempt portions are subject to disclosure once the exempt portions are deleted. A review of the appropriate applications of the exemptions follows.

Exemption (a) – The Statutory Exemption

Exemption (a) applies to those records that are:

specifically or by necessary implication exempted from disclosure by statute.

A government entity may use the statutory exemption as a basis for withholding requested materials where the exempting statute expressly states or necessarily implies that the public’s right to inspect records under the Public Records Law is restricted.

This exemption creates two categories of exempt records. The first category includes records that are specifically exempt from disclosure by statute. Such statutes expressly state that such a record either “shall not be a public record,” “shall be kept confidential” or “shall not be subject to the disclosure provision of the Public Records Law.”

The second category under the exemption includes records deemed exempt under statute by necessary implication. Such statutes expressly limit the dissemination of particular records to a defined group of individuals or entities. A statute is not a basis for exemption if it merely lists individuals or entities to whom the records are to be provided; the statute must expressly limit access to the listed individuals or entities.

For example: I want a copy of an arrest report. May this report be withheld by the records custodian pursuant to Exemption (a) as Criminal Offender Record Information (C.O.R.I.)? It depends. A record that is recorded as a result of the initiation of criminal proceedings or other consequent proceeding may be withheld under the C.O.R.I. statute. The Department of Criminal Justice Information Services, the agency conferred with the authority to promulgate and interpret statutes and regulations regarding C.O.R.I., interprets the “initiation of criminal proceedings” to be “the point when a criminal investigation is sufficiently complete that the investigating officers take actions toward bringing a specific suspect to court.”
Please reference the Appendix of this Guide for other examples of statutes that specifically exempt records from disclosure.

**Exemption (b)**

Exemption (b) applies to those records that are:

> related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding.

There are no authoritative Massachusetts decisions interpreting Exemption (b). The general purpose of the cognate federal exemption, however, is to relieve agencies of the burden of assembling and maintaining for public inspection matters in which the public cannot reasonably be expected to have a legitimate interest.

The language of the federal provision is duplicated in the first clause of Exemption (b). The addition of the qualifying second clause of Exemption (b) evidences a legislative intent to create an exemption that is narrower in scope than the previously enacted, parallel federal exemption.

For Exemption (b) to apply in Massachusetts, a records custodian must demonstrate not only that the records relate solely to the internal personnel practices of the government entity, but also that proper performance of necessary government functions will be inhibited by disclosure.

*For example:* Are all Department of Correction security policies and procedures public? No. One of the Department’s primary functions is to maintain secure penal institutions. Information regarding the procedures used by correctional officers during law enforcement efforts relates solely to the internal workings of the Department. Moreover, disclosure of this information could prove detrimental to the Department’s law enforcement efforts, as knowledge of the Department’s security response procedures could enable an inmate to circumvent such procedures. Accordingly, Exemption (b) will allow the Department to withhold portions of the requested policies.

**Exemption (c) – The Privacy Exemption**

Exemption (c), the privacy exemption, is the most frequently invoked exemption. The language of the exemption limits its application to:

> 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.

The privacy exemption is made up of two separate clauses, the first of which exempts personnel and medical files. As a general rule, medical information will always be of a sufficiently personal nature to warrant exemption.

The Massachusetts Supreme Judicial Court determined that exempting personnel information from disclosure serves to protect the government’s ability to function effectively as an employer. The release of certain personnel information could disrupt the government’s capability to conduct sensitive and careful investigations regarding employees. While statutorily exempting personnel information from the expansive definition of public records, the Legislature did not explicitly define personnel information. However, judicial decisions acknowledge that the term is neither rigid, nor
exact, and that the determination is case-specific. The custodian’s classification of materials as “personnel information” is not conclusive. Instead, the nature or character of the documents, as opposed to the documents’ label, is crucial to the analysis.

Historically, this office has broadly interpreted the personnel exemption; however, based on recent judicial decisions, a more narrow interpretation is necessary. The nature of some materials and the context in which they arise take them beyond what the Legislature contemplated when exempting personnel information.

Generally, personnel information that is useful in making employment decisions regarding an employee is sufficiently personal to be exempt pursuant to the first clause. Such information may include employment applications, employee work evaluations, disciplinary documentation, and promotion, demotion, or termination information.

The Appeals Court of Massachusetts distinguished “personnel records” from “internal affairs” records. The Appeals Court held that materials in a police internal affairs investigation are different in kind from the ordinary evaluations, performance assessments and disciplinary determinations encompassed in the public records exemption for personnel files or information. The Appeals Court held that officers’ reports, witness interview summaries, and the internal affairs report itself do not fall within the personnel information exemption, as these documents relate to the workings and determinations of the internal affairs process whose quintessential purpose is to inspire public confidence.

Public employees have a diminished expectation of privacy in matters relating to their public employment. Consequently, the public will have greater access to information that relates to an individual’s public employment than to the same individual’s private activities. For example, an individual’s public employment salary is a public record, but the source or amount of private income generally is not public information.

The second clause of the privacy exemption applies to requests for records that implicate privacy interests. Its application is limited to “intimate details of a highly personal nature.” Examples of “intimate details of a highly personal nature” include marital status, paternity, substance abuse, government assistance, family disputes and reputation. Portions of records containing such information are exempt unless there is a paramount public interest in disclosure. Therefore, when applying the second clause of the exemption to requested records it is necessary to perform a two-step analysis: first, determine whether the information constitutes an “intimate detail of a highly personal nature”; and second, determine whether the public interest in disclosure outweighs the privacy interest associated with disclosure of the highly personal information. Consequently, the application of the second clause of the exemption can only be determined on a case-by-case basis.

For example: Can a public employee’s employment application and work evaluation be disclosed? It depends. Under the first clause of Exemption (c), certain personnel records may be withheld, therefore, the records custodian may properly withhold certain employment applications and work evaluations under Exemption (c).

Candidates for state employment must provide prospective employers with written disclosure of any relative who is also a state employee. The content of this disclosure is considered public under the Public Records Law.

For example: Does this exemption allow all resumes of public officials to be withheld from disclosure? No. Some of the information contained in a resume may be exempt from disclosure.
because it relates to a specifically identifiable individual and is the type of information that is useful in making employment decisions. Exemption (c) does not, however, automatically render all resumes exempt in their entirety. The statutory exemptions are narrowly construed and are not blanket in nature. The Public Records Law requires a case-by-case analysis of the applicability of its exemptions. Specifically, any relevant degrees and certifications listed on an employee’s resume may be subject to disclosure upon request. Public employees have a diminished expectation of privacy in matters relating to their public employment and the public has a legitimate interest in knowing whether public employees possess the qualifications necessary to perform their jobs.

For example: Are settlement agreements exempt under the Public Records Law? No. The public interest in the financial information of a public employee outweighs the privacy interest where the financial compensation in question is drawn on an account held by a government entity and comprised of taxpayer funds. Additionally, the disclosure of the settlement amount would assist the public in monitoring government operations. Therefore, exemptions to the Public Records Law will not operate to allow for the withholding of settlement agreements as a whole. However, portions of the agreements, and related responsive records, may be redacted pursuant to exemptions to the Public Records Law.

For example: Are the names and addresses of customers of a municipally owned utility public? Yes. Only the second clause of Exemption (c) is relevant in this case. The analysis is subjective in nature and requires a balancing of the public’s right to know against the relevant privacy interests at stake. The second clause only applies to “intimate details of a highly personal nature.” First, the names and addresses of residents of Massachusetts over seventeen (17) years of age are not intimate details of a highly personal nature, because they are available in other venues, such as street lists. Second, the fact that the information may be derived elsewhere reduces the expectation of privacy. Names and addresses of individuals are generally available through telephone directories. Since neither the names nor the addresses of the customers are intimate details of a highly personal nature, the balancing test between individual’s privacy interests and the public interest in disclosure does not apply. The records cannot be withheld under Exemption (c).

Exemption (d) – The Deliberative Process Exemption

Exemption (d) provides a limited executive privilege for policy development. It applies to:

inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this sub-clause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based.64

The exemption is intended to avoid release of materials that could taint the deliberative process if prematurely disclosed. Its application is limited to recommendations on legal and policy matters found within an ongoing deliberative process.65 Purely factual matters used in the development of government policy are always subject to disclosure.66 Factual reports which are reasonably complete and inferences which can be drawn from factual investigations, even if labeled as opinions or conclusions, are not exempt as deliberative or policy making materials.67 Therefore, only those portions of materials that possess a deliberative or policymaking character and relate to an ongoing deliberative process are exempt from mandatory disclosure.

For example: Is a town’s appraisal report, which was prepared for the purpose of litigation before the Appellate Tax Board, a public record? No. The report may be characterized as a proposal that
presents recommendations as to a certain course of action or position to be taken by the town. As long as the town is still negotiating a settlement, the deliberative process has not been concluded and the report may be withheld under Exemption (d).

**Exemption (e)**

Exemption (e) allows the withholding of:

> notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit.

The application of Exemption (e) is limited to records that are work-related but can be characterized as personal to an employee. Materials covered by the exemption include personal reflections on work-related activities and notes created by an employee to assist him in preparing reports for other employees or for the files of the governmental entity. The exemption may not be used to withheld any materials that are shared with other employees or are being maintained as part of the files of a governmental unit.

**For example:** A requester sought all documents from a government entity related to a particular issue. The responsive records included personal notes of the government entity’s employee. Are these notes public? No. The notes are not public if they were personal in nature, kept by the employee merely to assist him in preparing reports, were not shared with anyone in the department and were not maintained as part of the department’s files.

**For example:** Are handwritten shorthand notes taken by the secretary of a board of selectman at a public/open meeting a public record? Yes. The notes are not personal in nature simply because they contain the secretary’s subjective impressions of the board meeting. The notes cannot be considered merely a reference to assist the secretary in fulfilling his duties, but rather the notes comprise a government file itself. Where longhand notes of open meetings have been taken by secretaries, it has been held that the notes are public at the time that they are created. In a sense, the notes are minutes even though not yet approved. Accordingly, Exemption (e) does not provide a basis for withholding the shorthand notes.

**Exemption (f) - The Investigatory Exemption**

Exemption (f), the investigatory exemption, provides custodians a basis for withholding:

> investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest.

The exemption allows investigative officials to withhold materials that could compromise investigative efforts if disclosed. Exemption (f) does not, however, create a blanket exemption for all records that investigative officials create or maintain. A records custodian must demonstrate a prejudice to investigative efforts in order to withhold requested materials. Accordingly, a records custodian may withhold any information relating to an ongoing investigation that could potentially alert suspects to the activities of investigative officials. Similarly, records custodians may withhold
confidential investigative techniques indefinitely since their disclosure would prejudice future law
enforcement efforts.72

The Legislature also designed the exemption to allow investigative officials to provide an assurance
of confidentiality to private citizens so that they will speak openly about matters under
investigation.73 Accordingly, any details in witness statements, which if released create a grave risk
of directly or indirectly identifying a private citizen who volunteers as a witness are indefinitely
exempt.74

*For example:* If a requested incident report contains witness statements, can a police department use
Exemption (f) to withhold the requested report in its entirety? No. Generally, a police incident report
may be released to a requester after the records custodian has redacted the exempt portions from the
record, such as, medical information (Exemption (c) and witness statements (Exemption (f). If,
however, the requester is familiar with the individuals who were involved in the incident(s) noted in
the report, then the department may withhold the entire record because it would not be possible for
the records custodian to redact the report in a manner as to avoid indirect identification of the
voluntary witness and complainant.

**Exemption (g)**

Exemption (g) applies to:

*trade secrets or commercial or financial information voluntarily provided to an agency for use in
developing governmental policy and upon a promise of confidentiality; but this subclause shall not
apply to information submitted as required by law or as a condition of receiving a governmental
contract or other benefit.*75

To properly claim Exemption (g), a custodian must meet all six criteria contained in the exemption:
(1) trade secrets or commercial or financial information; (2) voluntarily provided to a government
entity; (3) for use in developing government policy; (4) upon an assurance of confidentiality; (5)
information not submitted by law; and (6) information not submitted as a condition of receiving a
governmental benefit. Consequently, this exemption does not apply to information that companies
provide to the government in connection with a contract bid or in compliance with a filing
requirement.76

*For example:* Is a Memorandum submitted as an exhibit in a hearing before the Securities Division
of the Secretary of the Commonwealth Office a public record? Yes. In this case, the entity did not
satisfy all six criteria of Exemption (g). The first criterion was met as the Memorandum contained
commercial information. All of the remaining criteria, however, were not met because the
Memorandum was not voluntarily submitted, was not provided for use in developing government
policy, and was not submitted upon a promise of confidentiality. The Memorandum does not satisfy
all of the requisite criteria, thus, Exemption (g) does not apply.

**Exemption (h)**

Exemption (h) serves to protect the integrity of the bidding processes used by the government to
procure goods and services by allowing a records custodian to withhold the proposals of early
bidders from other interested parties.77 Competitive bidding ensures full publicity of the contract
and encourages the guarding of the public welfare.78 Although the competitive bidding process does
not have the advantages of more flexible purchasing policies, the Legislature has mandated the
process to foster honesty and accountability in government. Specifically, Exemption (h) allows records custodians to withhold from disclosure:

proposals and bids to enter into any contract or agreement until the time for the opening bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or toward a contract to, a particular person.

The exemption addresses two types of records held by an awarding authority (records custodian), each with its own time frame. Proposals may be withheld until the time for the receipt of proposals has expired. Bids may be withheld until such time as the bids are publicly opened and read by the awarding authority. This allows the proposals of early bidders to be kept in confidence so that subsequent bidders do not gain an unfair advantage, thus, keeping all on equal footing. The limitation on the duration of the exemption provides the public with an opportunity to review the rejected proposals to ensure that taxpayer dollars are wisely spent.

The second clause of the exemption is similar to Exemption (d) in its application. It allows government officials to withhold any inter-agency or intra-agency communications regarding the evaluations of the bids or proposals until the records custodian renders a decision to enter into negotiations with the successful bidder or awards the contract. Exemption (h) allows government officials to review bids and proposals in an insulated environment, but also provides for public review of all evaluative materials once a decision is reached. Clearly, enactment of Exemption (h) indicates the determination of the Legislature to protect the integrity of the bidding process.

For example: May the records custodian withhold proposal and bid documents until the records custodian has finalized a contract with the construction company or developer? No. Exemption (h) addresses two types of records, each with its own time frame for disclosure. Proposals and bids are exempt from disclosure only until the time for the opening bids or until the time for receipt of proposals has expired. Once that occurs, the proposals and bids no longer fall under the protection of Exemption (h) and can no longer be withheld.

For example: May the records custodian withhold any records concerning the evaluations of the bidders and the awarding process, and at what point do the records become public? The second clause of Exemption (h) allows the records custodian to withhold any inter-agency or intra-agency communications that are made in the process of reviewing the bids and proposals, prior to entering into negotiations with or to award the contract to a particular person.

The records custodian may withhold the records pursuant to Exemption (h) only until the contract has been awarded. Once a contract has been finalized, the records custodian can no longer withhold the records of the bidding process.

Exemption (i)

The purpose of Exemption (i) is to provide governmental entities engaged in the acquisition of real property, either through a purchase or an eminent domain proceeding, the same degree of confidentiality that is afforded to private parties. The exemption ensures that the government will not be at a bargaining disadvantage by allowing the other party to use the Public Records Law to gain access to an appraisal prior to completion of negotiations or litigation. Exemption (i) allows the custodian to withhold from disclosure:
appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired.82

Application of Exemption (i) is limited to situations in which a governmental entity is concerned that disclosure of the subject appraisal will compromise its ability to effectively negotiate a fair purchase or sale price for the property. The Legislature has defined “appraisal” as any written analysis, opinion, or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or aspects of, identified real estate.83

The language of the statute is clear that the three provisions are alternative rather than requisite conditions. Therefore, once one of the three alternatives has occurred, Exemption (i) will no longer serve as a means to withhold the subject appraisal.

For example: May a records custodian (housing authority) continue to withhold the requested appraisals pursuant to Exemption (i), where the records custodian has entered into a final agreement with the property owner and the property owner has agreed to forgo all possible eminent domain claims against the housing authority? No. Once one of the three provisions of the exemption has occurred, Exemption (i) cannot be used to withhold the subject appraisal. In this case, the parties reached a final agreement regarding the property, therefore, the exemption no longer applied and the records custodian could not continue to withhold the appraisals.

For example: Where a requester seeks appraisal documents on a parcel for which a negotiated final settlement has been reached, may the records custodian withhold the appraisals on all the parcels of land being acquired for the project until it reaches final agreement on all the parcels and the litigation on the parcels is finalized? No. Exemption (i) is parcel specific and the records custodian is only allowed to retain an appraisal until an agreement has been reached, any litigation relative to the appraisal has been terminated, or the time within which to commence such litigation has expired. In this situation, the appraisal sought by the requester pertained to a parcel that had already been acquired, and the records custodian was ordered to produce the appraisal documents for that specific parcel.84

Exemption (j)

Exemption (j) allows records custodians of firearm records to withhold from disclosure:

the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefore, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards.85

The purpose of Exemption (j) is to prevent individuals with devious motives from ascertaining the identities of those who possess firearms. The scope of the exemption is limited to restricting the public disclosure of the name and address of the individual.86

Clearly, on its face the exemption does not permit the records custodian to withhold the firearm application or identification card in its entirety. Exemption (j) allows the identifying data, in particular, the name and address of the licensee to be deleted from the record prior to disclosure. It is
exceptional that there are both an exemption prohibiting the release of the identity and a separate statute mandating confidentiality of records. This lends credibility to the supposition that the Legislature was especially concerned about release of this type of information.

**For example:** What if the records custodian receives a request for firearm records of a specifically named individual, such as, “I request all gun permits issued to John Smith”? Here, the records custodian should withhold the entire record, because even if the name and address are redacted, the requester knows with certainty that this particular record pertains to John Smith. It is impossible for the records custodian to protect Mr. Smith’s identity.

**For example:** Is the records custodian permitted to withhold identifying information, other than name and address, such as a criminal offender record information (C.O.R.I.) or social security numbers? Yes. The records custodian should review all the exemptions in the Public Records Law to see whether one or more of them are applicable, redact the information and claim the proper exemptions. For instance, C.O.R.I. must be redacted before disclosing the gun application pursuant to Exemption (a), and social security numbers contained in the application may be withheld pursuant to Exemption (c). Please reference the Appendix of this Guide for other examples of statutes that specifically exempt records from disclosure.

**Exemption (k). Repealed, 1988 Mass Acts 180, § 2.**

Although Exemption (k) was repealed, the Legislature retained the substance of the exemption, incorporating the language into another section of the General Laws. It reads:

“[T]hat part of the records of a public library which reveals the identity and intellectual pursuits of a person using such library shall not be a public record as defined by clause Twenty-sixth of section seven of chapter four.89

G. L. c. 78, § 7 operates through Exemption (a) of the Public Records Law to provide a basis for denying access to library circulation records.90

**Exemption (l)**

Exemption (l) provides a basis for withholding from disclosure:

questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument.91

The exemption was previously restricted to licensing examinations; however, in 1996 it was amended in order to protect the integrity of all testing materials.92 The purpose of Exemption (l) is to prevent individuals from gaining an unfair advantage by using the Public Records Law to access test questions and answers prior to the administration of an examination.

As long as the same materials are used to administer subsequent examinations, the custodian of records may continue to withhold the materials pursuant to Exemption (l). The action to withhold the testing materials ensures that the integrity of future testing is not jeopardized.
For example: May a records custodian withhold a copy of a middle school mid-term examination, when the request is made by a parent of one of the school’s students? Yes. Where the school has proven that the test questions administered to this student on this mid-term examination will be used for future examinations, the school may properly withhold the testing materials pursuant to Exemption (l).

For example: May a records custodian withhold testing materials, when a request is made for all documents related to the issue of discrimination in the Massachusetts Comprehensive Assessment System (MCAS)? Yes. Pursuant to Exemption (l), the records custodian may properly withhold the test questions and answers, and any other testing materials that are currently used or may be used to administer subsequent MCAS examinations.

Exemption (m)

Exemption (m) applies to:

contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (ii) a health maintenance organization arrangement approved under chapter one hundred and seventy-six I, a non-profit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy-six A and chapter one hundred and seventy-six B, respectively, a health insurance corporation licensed under chapter one hundred and seventy-five or any legal entity that is self insured and provides health care benefits to its employees.

Although Exemption (m) has yet to be interpreted by any Massachusetts court, the language of the exemption is clear. It pertains to contracts for hospital or healthcare services between a government-operated healthcare facility and a health maintenance organization or health insurance corporation.

To properly claim Exemption (m), the records custodian must meet all four criteria contained in the exemption: (1) the record must be a contract; (2) the contract must be for hospital or related health care services; (3) one of the contracting parties must be a government-operated medical facility; and (4) the party providing services must be one of the entities described by the exemption. If the requested record satisfies all of the criteria, the records custodian may withhold the record pursuant to Exemption (m).

For example: May a city or town withhold records pertaining to the health insurance plans and the costs of providing these health insurance benefits to employees of the city or town pursuant to Exemption (m)? No. Exemption (m) specifically applies only to records that are contracts for hospital or related health care services. Additionally, one of the contracting parties must be a government operated medical facility, such as a hospital or clinic, and the party providing the services must be one of the entities described by the exemption. The requested records do not satisfy the criteria of the exemption; therefore, the list of health insurance plans and the costs of providing these as employee benefits may not be withheld pursuant to Exemption (m).

Exemption (n)

Exemption (n) applies to:
records including, but not limited to, blue prints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons, buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.

This exemption is intended to secure the safety of persons and public places by restricting access to records that may have been previously open to public inspection. The nature of the exemption requires a records custodian to make some value judgment regarding the requester in order to decide whether to release the information sought. Making such a value judgment is specifically antithetic to the previously expounded presumptions that all records are public records and all requesters shall be treated uniformly. The Legislature was informed in writing of this radical and disparate change in the Public Records Law but chose to retain the language thereby clearly indicating its intent to provide records custodians with the discretion to withhold applicable records. Therefore, a records custodian should review the request promptly and completely in order to gather all of the facts surrounding the request. The records custodian is not prevented from engaging the requestor in conversation by asking the requester to voluntarily provide additional information in order to reach a “reasonable judgment,” but a records custodian may not “require” the requester to provide personal information.

For example: If a records custodian discloses a set of blueprints under Exemption (n) to one requestor, must the same blueprints be made available to all subsequent requestors? No. This exemption is unique in its application in that the disclosure of records to one requestor does not render the records public to all. If a records custodian determines that disclosure of the records to a specific requestor would not compromise public safety, the records custodian may then withhold the same records to later requestors if, in the reasonable judgment of the records custodian, release of the records to those subsequent requestors would jeopardize public safety.

Exemption (o)

Exemption (o) applies to:

the home address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6.

For example: Would the address of a government employee found in payroll records be public? No. Exemption (o) applies to records that contain the home address or telephone number of an employee while identifying the individual as a government employee. Given that payroll records identify an individual as being a government employee while providing the employee's home address, and possibly telephone number in the same record, the home address and telephone number would be subject to redaction under this exemption.
Exemption (p)

Exemption (p) applies to:

the name, home address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o).

The record must contain an individual’s home address and/or telephone number and identify the individual as being the family member of a Commonwealth employee to be subject to redaction pursuant to Exemption (p).

Exemption (q)

Exemption (q) allows for the withholding of:

adoption contact information and indices therefore of the adoption contact registry established by section 31 of chapter 46.

The registry of vital records and statistics maintains a voluntary adoption contact information registry for the purpose of connecting parents listed on the initial birth certificate to any of their children who were adopted by others. The adoption contact registry contains the addresses and other information supplied by parents and adoptees necessary for one to contact the other. Any contact information contained in the adoption contact registry, as well as indices created from this registry, may be withheld under Exemption (q).

Exemption (r)

Exemption (r) applies to:

information and records acquired under chapter 18C by the office of the child advocate.

The records created and received by the Office of the Child Advocate pursuant to Chapter 18C may be withheld under this exemption.

Exemption (s)

This exemption pertains to:

trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy; provided, however, that this subclause shall not exempt a public entity from disclosure required of a private entity so licensed.
Exemption (s) relates to certain records of public utility providers.

**Exemption (t)**

This Exemption applies to:

*statements filed under section 20C of chapter 32.103*

Members of public retirement boards are required by statute to file a statement of financial interest with the Public Employee Retirement Administration Commission. The statement of financial interest document is exempt from disclosure under Exemption (t).

**Attorney-Client Communications and Attorney Work Product**

Historically, this office has not recognized the claim of common law privilege as a means for public entities to withhold records. However, in a 2007 ruling, the Supreme Judicial Court (Court) held that confidential communications between governmental entities and their legal counsel undertaken for the purpose of obtaining legal advice or assistance are protected under the normal rules of the attorney-client privilege.

The Legislature conferred to the Supervisor of Records (Supervisor) the authority to render determinations on the public status of records. Additionally, the Court has interpreted the Supervisor’s authority to include issuing decisions on whether records are privileged. As a result, the Supervisor has the authority to determine whether records may be withheld as privileged documents. Until further judicial or legislative clarification is provided concerning the claim of attorney-client privilege as a means to withhold records from public disclosure, this office will issue determinations regarding this privilege on a case-by-case basis.

The Suffolk holding did not define work product materials as records exempt from public disclosure. While recognizing that certain confidential communications between public officials and their legal counsel may be withheld from the public, the Court made clear its holding in this case did not extend to work product materials. Accordingly, the Suffolk decision will not alter this office’s long-standing determination that work product documents are subject to public release.

**Computer Records**

The Legislature did not envision the impact computers would have on the government’s ability to collect, store, compile and disseminate information when drafting the Public Records Law. The legal principles embodied in the Public Records Law, however, may be readily transposed into legal principles governing access to information maintained in an automated system.

The statutory definition of “public records” does not distinguish between traditional paper records and records stored in the computer medium. Rather, it provides that all information made or received by a public entity, regardless of the manner in which it exists, constitutes “public records.” Computer cards, tapes or diskettes are all independent public records that are subject to the same requirements of the Public Records Law as are paper records. Therefore, a records custodian is obliged to furnish copies of non-exempt portions of computerized information at the cost of reproduction, unless otherwise provided by law.
It should be noted, however, that as with paper records a records custodian is not required to create a computer record in response to a request for information. A records custodian is only obliged to provide access to existing files. A records custodian is not required to create a new computer program to provide a requester with computerized information in a desired format. There is, however, an exception to this general rule when the reprogramming is needed to comply with the segregation provision of the law.

For example: A request is made for a spreadsheet summarizing expenses for various goods purchased by a government entity. The records custodian is not obligated to create a new record if such a record does not currently exist. In this situation, the records custodian is only obliged to notify the requester that there is no record responsive to the request. The records custodian should also advise the requester of other available documents or files that could be responsive to the request. The creation of records, including the honoring of prospective requests, is not governed by the Public Records Law; therefore, the records custodian is free to negotiate all terms of the arrangement. Consequently, if a requester is willing to pay for the work, the records custodian may create a digital record to respond to the request.

Geographic Information Systems (GIS)

A GIS is a computer system designed to store, capture, analyze and display geographically referenced information. Often, the information that comprises Commonwealth or municipal GIS databases is submitted by private surveyors and engineers who exercise intellectual property rights over nonfactual portions of the materials. While there are no Massachusetts court cases interpreting this issue, it is clear that the Legislature did not carve out specific exemptions from the Massachusetts Public Records Law allowing protected intellectual property in the custody of a governmental entity to be withheld from public dissemination. The Public Records Law does not serve to preempt federal intellectual property law, nor does the Public Records Law exonerate those who violate intellectual property rights validly held by private individuals or governmental entities once the public GIS records have been released. As a precaution, records custodians of GIS records are encouraged to indicate on released GIS records that the information contained in the records may be subject to intellectual property protections.

Given that GIS records are public, the fees a municipal records custodian may assess for access to these records have been statutorily set. GIS records fall under the category of public records that are not susceptible to ordinary means of reproduction, thus, the Public Records Access Regulations provide that the records custodian may assess the actual cost incurred in copying the requested records. Fees assessed for these records cannot serve as a deterrent for access or as a means of generating revenue.

The Supervisor of Records

A requester who is denied access to any requested information may petition the Supervisor of Records (Supervisor) for a review of the request. The Supervisor will then instruct a staff attorney or another staff member, to contact the records custodian and requester as needed to ascertain the relevant facts and applicable law. The findings are then reported to the Supervisor to assist in making a decision. The records custodian will receive an administrative order if the Supervisor determines that records are being improperly withheld or the proposed fee is excessive. If the records
custodian does not comply with an order issued by the Supervisor, the case may be referred to the Office of the Attorney General or appropriate district attorney for enforcement.117

Records Management

As the chief information officer for the Commonwealth, Secretary of the Commonwealth William F. Galvin recognizes the importance of maintaining records properly. With this understanding, the Secretary strongly encourages the creation, adoption and implementation of a formal, written Records Management Program that includes specific standards for both paper and electronic records.

In accordance with regulations promulgated by the Records Conservation Board (RCB), each agency of the Commonwealth is required to submit Form RCB-4 on an annual basis. Similarly, municipal agencies must submit Form RMU-4. This Form states the name and title of each agency’s designated records management officer or Records Liaison Officer (RLO). These forms are available on the web at www.sec.state.ma.us/arc/arcrmu/rmuidx.htm.

If you need assistance filing out this form, or need additional information or assistance in creating a Records Management Program, please contact the Records Management Unit (RMU) at 617-727-2816 or the Public Records Division at 617-727-2832.

Electronic Records Storage

The Supervisor of Records (Supervisor) and the Division of Public Records are working diligently to develop and implement electronic storage standards. The Records Conservation Board (RCB) recently implemented Electronic Records Management Guidelines to assist records custodians in maintaining electronic records. Statewide Records Retention Schedule Municipal Records Retention Manual118 Records custodians are encouraged to review the Municipal Records Retention Manual or the Statewide Records Retention Manual119 for more information on retention periods for records.

Records with a retention period of less than ten (10) years may be stored exclusively electronically once the agency’s computer storage system has been approved and the proper Application for Destruction Permission forms have been submitted and approved. State agencies must submit forms RCB-1E and RCB-2E to the RCB. Municipalities must submit forms RMU-1E and RMU-2E to the Supervisor for approval. If you have any questions regarding electronic records and storage, please do not hesitate to contact the RMU at 617-727-2816.

Records Retention

It is the responsibility of government employees who create, receive and maintain public records to ensure their safekeeping and availability to the public. The governmental officer or employee who in the normal course of his duties has access to or control of public records is defined as the records custodian.121 A records custodian’s responsibility extends to all records that are within his routine access or control.

A records custodian’s obligations include not only responding to public records requests but also ensuring that records will be available for review when requested. Therefore, a records custodian may not dispose of records until the retention period for the specific records series has expired, and disposal of records has been approved by the Supervisor of Public Records or the Records Conservation Board (RCB).
Retention schedules for state agencies, municipal agencies, as well as information on records management, including permission forms for disposal of records, may be accessed through the Secretary of the Commonwealth’s website, at www.sec.state.ma.us/arc/arcrmu/rmuidx.htm.

The RCB is empowered “to require all departments of the Commonwealth to report to it what series of records they hold, to set standards for the management and preservation of such records, and to establish schedules for the destruction, in whole, or in part, and transfer to the archives or another appropriate division within the office of the state secretary, in whole, or in part, of records no longer needed for current business.”

The Records Management Unit (RMU) was created to provide records management services and outreach to all state agencies and municipalities to help them meet state record-keeping standards and requirements. The RMU can provide agencies with retention schedules for specific records, as well as information on proper disposal and destruction of records.

**Records Disposal Schedules**

There are records disposal schedules for state agencies and municipal agencies. Schedules describe records created as a result of a particular activity; identify the content of the record; describe how the record is used; and specify the lifecycle of the record.

**Municipal Government**

Municipal agencies must obtain the written permission of the Supervisor of Records prior to destroying records. Please see the Municipal Records Retention Manual for more information and instructions.

The following is a list of forms (all of which are available on the Records Management Unit homepage, www.sec.state.ma.us/arc/arcrmu/rmuidx.htm) via the link to Municipal Agency Forms:

**RMU-1E**
*Application for Systems Information Management Plan*
Use this form to obtain approval for a retention plan for electronic record keeping systems and databases.

**RMU-2E**
*Application for Scanning and Destruction Permission*
Use this form in conjunction with a previously approved RMU-1E form.

**RMU-2**
*Application for Destruction Permission*

**RMU-2M**
*Application for Scanning and Destruction Permission*
Use this form for records required to be microfilmed before they are destroyed.

**RMU-4**
*Records Liaison Officer Designation*
Use this form to appoint an authorized agent for Records Management Unit business.
State Government

State agencies must obtain the written permission of the Records Conservation Board (RCB) prior to destroying records. State records custodians must be aware of the retention requirements for their records. The RCB has combined what were once many separate retention schedules into one Statewide Records Retention Schedule (Schedule). The Schedule may be used by state agencies in filing requests for destruction of records, as well as scanning, transferring and microfilming records. The current Statewide Records Retention Schedule is available on the Records Management Division homepage.

The following is a list of RCB forms (all of which are available on the Records Management Unit homepage, www.sec.state.ma.us/arc/arcmu/rmuidx.htm) via the link to State Agency Forms:

RCB-1E
Application for Systems Information Management Plan
Use this form to obtain approval for a retention plan for electronic record keeping systems and databases.

RCB-2E
Application for Scanning and Destruction Permission
Use this form in conjunction with a previously approved RCB-1E form.

RCB-2
Application for Destruction Permission

RCB-2M
Application for Scanning and Destruction Permission
Use this form for records required to be microfilmed before they are destroyed.

RCB-2T
Application for Transfer Permission
Use this form to request permission to implement the transfer provisions. This form can be used for both transfer to the State Records Center and the Massachusetts Archives.

RCB-4
Records Liaison Officer Designation
Use this form to appoint an authorized agent for Records Conservation Board business.

Maintenance and Storage of Public Records

Public records must be maintained and kept in a manner that allows access by the general public, as they are subject to mandatory disclosure upon request.123

The Supervisor of Records is responsible for ensuring that the records of the Commonwealth and municipalities are maintained and stored as required by law.124 In accordance with this duty, the following procedures have been established to ensure security of and access to public records.

1. Records Custodian
   Each municipal or governmental entity or agency shall have a designated “records custodian.” The town clerk shall serve as records custodian unless a particular board or
committee appoints an individual who shall be in charge of maintaining, storing and keeping the public records of such agency or entity by local by-law or ordinance.

2. Original Records Removed from Municipal Offices
   a. Whenever original public records are removed from municipal offices by a records custodian for use in the regular course of business to a private office or home, they shall be stored in fire-resistant devices and safes provided by the municipality.
   b. If a records custodian cannot ensure fire-resistant storage outside of the municipal building then no original records may be removed. However, the records custodian may create copies of records for use in a private office or home.

3. Original Records Created Outside of Municipal Offices
   a. Whenever original public records are created outside the municipal offices, they shall be transferred on a regular and frequent basis to secure storage in the municipal building.
   b. If secure storage is available in the records custodian’s private office or home, then copies of the records shall be maintained in the municipal building, with the originals stored in secure storage at the records custodian’s private office or home.

4. Availability of Records Custodian
   Whenever a records custodian finds it necessary to work, or to keep original public records, in a location other than the municipal building, he shall make himself, and the public records, available during regular posted office hours, at a location convenient to the general public, for inspection and copying of the public records. Please note that in such situations, copies of the public records must also be maintained in the municipal building, in accordance with paragraph 2(b), above. In those instances in which the governmental entity does not have regular business hours, a written notice shall be posted in a conspicuous location, listing the name, position, address and telephone number of the person to be contacted to obtain access to public records.

5. Transfer of Public Records upon Termination of Duties as Records Custodian
   a. Whenever a records custodian relinquishes his office or terminates his duties as records custodian, he shall deliver over to his successor all such public records that he is not authorized by law to retain.

These procedures are designed to ensure the safekeeping of public records so that compliance with the Massachusetts Public Records Law by governmental entities is best accomplished.

Appendix

The following provisions are not the official versions of the Massachusetts General Laws (MGL) or Code of Massachusetts Regulations (CMR). Reasonable efforts have been undertaken to assure the validity of the information provided at the time of publishing; however, do not depend on this information without first consulting an official edition of the MGL or CMR.

Public Records Law (G. L. c. 4, § 7(26))

“Public records” shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form.
or characteristics, made or received by any officer or employee of any agency, executive office,
department, board, commission, bureau, division or authority of the commonwealth, or of any
political subdivision thereof, or of any authority established by the general court to serve a public
purpose, unless such materials or data fall within the following exemptions in that they are:

(a) specifically or by necessary implication exempted from disclosure by statute;

(b) related solely to internal personnel rules and practices of the government unit, provided however,
that such records shall be withheld only to the extent that proper performance of necessary
governmental functions requires such withholding;

(c) 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;

(d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by
the agency; but this subclause shall not apply to reasonably completed factual studies or reports on
which the development of such policy positions has been or may be based;

(e) notebooks and other materials prepared by an employee of the commonwealth which are personal
to him and not maintained as part of the files of the governmental unit;

(f) investigatory materials necessarily compiled out of the public view by law enforcement or other
investigatory officials the disclosure of which materials would probably so prejudice the possibility
of effective law enforcement that such disclosure would not be in the public interest;

(g) trade secrets or commercial or financial information voluntarily provided to an agency for use in
developing governmental policy and upon a promise of confidentiality; but this subclause shall not
apply to information submitted as required by law or as a condition of receiving a governmental
contract or other benefit;

(h) proposals and bids to enter into any contract or agreement until the time for the opening of bids in
the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or
proposals has expired in all other cases; and inter-agency or intra-agency communications made in
connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter
into negotiations with or to award a contract to, a particular person;

(i) appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or
(2) any litigation relative to such appraisal has been terminated; or (3) the time within which to
commence such litigation has expired;

(j) the names and addresses of any persons contained in, or referred to in, any applications for any
licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms
identification cards issued pursuant to said chapter one hundred and forty and the names and
addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition
therefore, as defined in said chapter one hundred and forty and the names and addresses on said
licenses or cards;

(l) questions and answers, scoring keys and sheets and other materials used to develop, administer or
score a test, examination or assessment instrument; provided, however, that such materials are
intended to be used for another test, examination or assessment instrument;
(m) contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (ii) a health maintenance organization arrangement approved under chapter one hundred and seventy-six I, a non-profit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy-six A and chapter one hundred and seventy-six B, respectively, a health insurance corporation licensed under chapter one hundred and seventy-five or any legal entity that is self insured and provides health care benefits to its employees.

(n) records including, but not limited to, blue prints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons, buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.

(o) the home address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6.

(p) the name, home address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o).

(q) adoption contact information and indices therefore of the adoption contact registry established by section 31 of chapter 46.

(r) information and records acquired under chapter 18C by the office of the child advocate.

(s) trade secrets or confidential, competitively-sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other entities making, selling or distributing electric power and energy; provided, however, that this subclause shall not exempt a public entity from disclosure required of a private entity so licensed.

(t) statements filed under section 20C of chapter 32.

Any person denied access to public records may pursue the remedy provided for in section ten of chapter sixty-six.
Public inspection and copies of records (G. L. c. 66, § 10)

(a) Every person having custody of any public record, as defined in clause twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expenses of such search. The following fees shall apply to any public record in the custody of the state police, the Massachusetts Bay Transportation Authority Police or any municipal police department or fire department: for preparing and mailing a motor vehicle accident report, five dollars for not more than six pages and fifty cents for each additional page; for preparing and mailing a fire insurance report, five dollars for not more than six pages, plus fifty cents for each additional page; for preparing and mailing crime, incident or miscellaneous reports, one dollar per page; for furnishing any public record, in hand, to a person requesting such records, fifty cents per page. A page shall be defined as one side of an eight and one-half inch by eleven inch sheet of paper.

(b) A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail. If the custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person’s request. If the custodian refuses or fails to comply with any such order, the supervisor of records may notify the attorney general or the appropriate district attorney thereof who may take whatever measures he deems necessary to insure compliance with the provisions of this section. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have jurisdiction to order compliance.

(c) In any court proceeding pursuant to paragraph (b) there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(d) The clerk of every city or town shall post, in a conspicuous place in the city or town hall in the vicinity of the clerk’s office, a brief printed statement that any citizen may, at his discretion, obtain copies of certain public records from local officials for a fee as provided for in this chapter.

The commissioner of the department of criminal justice information services, the department of criminal justice information services and its agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined by chapter one hundred and forty shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said chapter one hundred and forty and names and addresses of persons licensed to carry and/or possess the same to any person, firm, corporation, entity or agency.
except criminal justice agencies as defined in chapter six and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

The home address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, department of social services, department of correction and any other public safety and criminal justice system personnel, and of unelected general court personnel, shall not be public records in the custody of the employers of such personnel or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed, but such information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180 or to a criminal justice agency as defined in section 167 of chapter 6. The name and home address and telephone number of a family member of any such personnel shall not be public records in the custody of the employers of the foregoing persons or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed. The home address and telephone number or place of employment or education of victims of adjudicated crimes, of victim s family members and of persons providing or training in family planning services and the name and home address and telephone number, or place of employment or education of a family member of any of the foregoing shall not be public records in the custody of a government agency which maintains records identifying such persons as falling within such categories and shall not be disclosed.

1973 Mass Acts c. 1050, § 6

The provisions of clause twenty-sixth of section seven of chapter four of the General Laws, as amended by section one of this act, shall not be construed to exempt any record which was a public record on the effective date of this act from said clause twenty-sixth.

Public Records Access Regulations

950 C.M.R. 32.00; G. L. c. 66, § 1

The Supervisor of Records shall adopt regulations pursuant to the provisions of chapter thirty A to implement the provisions of this chapter.

Section
32.01: Authority
32.02: Scope and Purpose
32.03: Definitions
32.04: General Provisions
32.05: Rights to Access
32.06: Fees for Copies of Public Records
32.07: Advisory Opinions
32.08: Appeals
32.09: Enforcement of Orders
(950 CMR 32.10 through 32.90: RESERVED)

32.01: Authority

950 CMR 32.00 is hereby issued by the Supervisor of Public Records under the authority of G. L. c. 66, § 1.
32.02: Scope and Purpose

950 CMR 32.00 shall be construed to ensure the public prompt access to all public records in the custody of state governmental entities and in the custody of governmental entities of political subdivisions of the Commonwealth, and to ensure that disputes regarding access to particular records are resolved expeditiously and fairly. 950 CMR 32.00 shall not limit the availability of other remedies provided by law.

32.03: Definitions

As used in 950 CMR 32.00:

Custodian means the governmental officer or employee who in the normal course of his or her duties has access to or control of public records.

Division means the Division of Public Records, Office of the State Secretary.

Governmental Entity means any authority established by the General Court to serve a public purpose, any department, office, commission, committee, council, board, division, bureau, or other agency within the Executive Branch of the Commonwealth, or within a political subdivision of the Commonwealth. It shall not include the legislature and the judiciary.

Public Records means all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the Commonwealth, or of any political subdivision thereof or of any authority established by the General Court to serve a public purpose, unless such materials or data fall within one or more of the exemptions found within G. L. c. 4, § 7(26).

Search Time means the time needed to locate, pull from the files, copy, and reshelve or refile a public record. However, it shall not include the time expended to create the original record.

Segregation Time means the time used to delete or expurgate data which is exempt under G. L. c. 4, § 7(26) from non-exempt material which is contained in a paper public record.

Supervisor means Supervisor of Public Records.

32.04: General Provisions

(1) Office Address. All communications shall be addressed or delivered to:

Supervisor of Records
Office of the State Secretary
One Ashburton Place, Room 1719
Boston, Massachusetts 02108

(2) Office Hours. The offices of the Division shall be open from 8:45 a.m. to 5:00 p.m. each weekday, Monday-Friday, excluding legal holidays.

(3) Computation of Time. Computation of any period of time referred to in 950 CMR 32.00 shall begin with the first day following the action which initiates such period of time. When the last day of
the period so computed is a day on which the offices of the Division are closed, the period shall run until the end of the following business day.

32.05: Rights to Access

(1) Access to Public Records. A custodian of a public record shall permit all public records within his or her custody to be inspected or copied by any person during regular business hours. In governmental entities which do not have daily business hours, a written notice shall be posted in a conspicuous location listing the name, position, address and telephone number of the person to be contacted to obtain access to public records.

(2) Promptness of Access. Every governmental entity shall maintain procedures that will allow at reasonable times and without unreasonable delay access to public records in its custody to all persons requesting public records. Each custodian shall comply with a request as soon as practicable and within ten days.

(3) Requests for Public Records. Requests for public records may be oral or written. Written requests may be submitted in person or by mail. It is recommended that a record requester make a written request where there is substantial doubt as to whether the records requested are public, or if an appeal pursuant to 950 CMR 32.08(2) is contemplated. A custodian shall not require written requests merely to delay production.

(4) Description of Requested Records. Any person seeking access to a public record or any portion thereof shall provide a reasonable description of the requested record to the custodian so that he or she can identify and locate it promptly. A person shall not be required to make a personal inspection of the record prior to receiving a copy of it. A custodian’s superior knowledge of the contents of a governmental entity’s files shall be used to assist in promptly complying with the request.

(5) Prohibition of Custodial Requests for Background Information. Except when the requested records concern information which may be exempt from disclosure pursuant to G. L. c. 4, §7(26)(n), a custodian may not require the disclosure of the reasons for which a requester seeks access to or a copy of a public record. A custodian shall not require proof of the requester’s identity prior to complying with requests for copies of public records.

(6) Copies. Upon request, a person at his or her election, shall be entitled to receive in hand or by mail one copy of a public record or any desired portion of a public record upon payment of a reasonable fee as determined by 950 CMR 32.06.

32.06: Fees for Copies of Public Records

(1) Except where fees for copies of public records are prescribed by statute, a governmental entity shall charge no more than the following fees for copies of public records:

   (a) for photocopies of a public record no more than twenty cents ($0.20) per page;
   (b) for copies of public records maintained on microfilm or microfiche no more than twenty-five cents ($0.25) per page;
   (c) for requests for non-computerized public records a prorated fee based on the hourly rate of the lowest paid employee capable of performing the task may be assessed for search time.
and segregation time expenses, as defined by 950 CMR 32.03. In addition, a per page copying fee under 950 CMR 32.06(1)(a) and 950 CMR 32.06(1)(b) may be assessed; (d) for computer printout copies of public records no more than fifty cents ($0.50) per page; (e) for a search of computerized records the actual cost incurred from the use of the computer time may be assessed; (f) for copies of public records not susceptible to ordinary means of reproduction, the actual cost incurred in providing a copy may be assessed.

(2) Estimates. A custodian shall provide a written, good faith estimate of the applicable copying, search time and segregation time fees to be incurred prior to complying with a public records request where the total costs are estimated to exceed ten dollars ($10.00).

(3) Postage. A custodian may assess the actual cost of postage.

(4) Inspection of Public Records. A custodian may not assess a fee for the mere inspection of public records, unless compliance with such request for inspection involves “search time” in which case a fee under 950 CMR 32.06(1)(c) may be assessed.

(5) Waiver of Fees. Every custodian, unless otherwise required by law, is encouraged to waive fees where disclosure would benefit the public interest.

(6) Street Census Computer Tapes and Mailing Labels - Reproduction Fees for City and Town Committee Chairman.

Where “street list” data collected under G. L. c. 51, §§ 6-7, is compiled on computer tapes:
(a) City or town registrars of voters shall provide, or cause their agents to provide, copies of said computer tapes to the chairman of each city or town committee for a fee of no more than one cent ($0.01) per name, provided that a minimum fee of no more than ninety dollars ($90.00) may be assessed. No fee assessed under 950 CMR 32.06(6)(a) shall exceed seven hundred fifty dollars ($750.00).
(b) City or town registrars of voters shall provide, or cause their agents to provide, sets of mailing labels made from said computer tapes to the chairman of each city or town committee for a fee of no more than two cents ($0.02) per label, provided that a minimum fee of no more than fifty dollars ($50.00) may be assessed.

32.07: Advisory Opinions

Advisory opinions will only be issued upon the Supervisor’s initiative.

32.08: Appeals

(1) Denial by Custodian. Where a custodian’s response to a record request made pursuant to 950 CMR 32.05(3) is that any record or portion of it is not public, the custodian, within ten (10) days of the request for access, shall in writing set forth the reasons for such denial. The denial shall specifically include the exemption or exemptions in the definition of public records upon which the denial is based. When Exemption (a) of G. L. c. 4, § 7(26) is relied upon the custodian shall cite the operational statute(s). Failure to make a written response within ten (10) days to any request for access shall be deemed a denial of the request. The custodian shall advise the person denied access of his or her remedies under 950 CMR 32.00 and G. L. c. 66, § 10(b).
(2) **Appeal to the Supervisor.** In the event that a person requesting any record in the custody of a governmental entity is denied access, or in the event that there has not been compliance with any provision of 950 CMR 32.00, the requester may appeal to the Supervisor within ninety (90) days. Such appeal shall be in writing, and shall include a copy of the letter by which the request was made and, if available, a copy of the letter by which the custodian responded. The Supervisor shall accept an appeal only from a person who had made his or her record request in writing. An oral request, while valid as a public record request pursuant to 950 CMR 32.05(3), may not be the basis of an appeal under 950 CMR 32.08.

It shall be within the discretion of the Supervisor whether to open an appeal concerning a request for public records.

The Supervisor may decline to accept an appeal from a requester where the public records in question are the subjects of disputes in active litigation, administrative hearings or mediation.

The Supervisor may decline to accept an appeal from a requester if, in the opinion of the Supervisor, the request is designed or intended to harass, intimidate or assist in the commission of a crime.

The Supervisor may decline to accept an appeal from a requester if, in the opinion of the Supervisor, the public records request is made solely for a commercial purpose.

Appeals in which there has been no communication from the requester for six months may be closed at the discretion of the Supervisor.

(3) **Disposition of Appeals.** The Supervisor shall, within a reasonable time, investigate the circumstances giving rise to an appeal and render a written decision to the parties stating therein the reason or reasons for such decision.

(4) **Presumption.** In all proceedings pursuant to 950 CMR 32.00, there shall be a presumption that the record sought is public.

(5) **Hearings.** The Supervisor may conduct a hearing pursuant to the provisions of 801 CMR 1.00. Said rules shall govern the conduct and procedure of all hearings conducted pursuant to 950 CMR 32.08. Nothing in 950 CMR 32.08 shall limit the Supervisor from employing any administrative means available to resolve summarily any appeal arising under 950 CMR 32.00.

(6) **In-Camera Inspections and Submissions of Data.** The Supervisor may require an inspection of the requested record(s) in-camera during any investigation or any proceeding initiated pursuant to 950 CMR 32.08. The Supervisor may require the custodian to produce other records and information necessary to reach a determination pursuant to 950 CMR 32.08.

The Supervisor does not maintain custody of documents received from a custodian pursuant to an order by this office to submit records for an in-camera review. The documents submitted for an in-camera review do not fall within the definition of public records. See M.G.L. c. 66, § 10(a) (2002 ed.).

Any public record request made to this office for records being reviewed in-camera would necessarily be denied as the office would not be the custodian of those records. See 950 CMR 32.03 (defining “custodian” as the government employee who in the normal course of his duties has access to or control over records). Upon a determination of the public record status of the documents, they are promptly returned to the custodian.
(7) **Custodial Indexing of Records.** The Supervisor may require a custodian to compile an index of the requested records where numerous records or a lengthy record have been requested. Said index shall meet the following requirements:

(a) the index shall be contained in one document, complete in itself;
(b) the index must adequately describe each withheld record or deletion from a released record;
(c) the index must state the exemption or exemptions claimed for each withheld record or each deletion of a record; and,
(d) the descriptions of the withheld material and the exemption or exemptions claimed for the withheld material must be sufficiently specific to permit the Supervisor to make a reasoned judgment as to whether the material is exempt. Nothing in 950 CMR 32.08 shall preclude the Supervisor from employing alternative or supplemental procedures to meet the particular circumstances of each appeal.

(8) **Conferences.** At any time during the course of any investigation or any proceeding, to the extent practicable, where time, the nature of the investigation or proceeding and the public interest permit, the Supervisor, may order conferences for the purpose of clarifying and simplifying issues and otherwise facilitating or expediting the investigation or proceeding.

**32.09: Enforcement of Orders**

A custodian shall promptly take such steps as may be necessary to put an order of the Supervisor into effect. The Supervisor may notify the Attorney General or appropriate District Attorney of any failure by a custodian to comply with any order of the Supervisor.

**Examples of Exemption (a) Statutes**

Abatement Applications: G. L. c. 59, § 60.
Affordable Housing Applicant Information: G. L. c. 40T, § 3.
Air Pollution Control (Trade Secrets): G. L. c. 111, § 142B.
Alcohol Treatment Records: G. L. c. 111B, § 11.
Birth Reports: G. L. c. 46, § 4A.
Blind Persons, Commission for the Blind Register: G. L. c. 6, § 149.
Business Schools (Private), Financial Statements: G. L. c. 75D, § 3.
Capital Facility Construction Project Records: G. L. c. 30, § 39R.
Central Registry of Voters: G. L. c. 51, § 47C.
Conflict of Interest, Request for an Opinion: G. L. c. 268A, § 22.
Councils on Aging, Names, Addresses and Telephone Numbers of Elderly: G. L. c. 40, § 8B.
Criminal Offender Record Information: G. L. c. 6, § 167.
Delinquency, Sealing by Commissioner of Probation: G. L. c. 276, § 100B.
Department of Social Services, Central Registry: G. L. c. 119, § 51F.
Department of Youth Services Records: G. L. c. 120, § 21.
Employment Agencies, Data: G. L. c. 140, § 46R
Evaluations of Special Needs Children: G. L. c. 71B, § 3.
Firearms Bureau Records: G. L. c. 66, § 10(d).
Genetically Linked Diseases, Testing Records: G. L. c. 76, § 15B.
Historical and Archaeological Sites and Specimen Inventory: G. L. c. 9, § 26A (1).
Hospital Records: G. L. c. 111, § 70.
Hospitals, Reports of Staff Privilege Revocation: G. L. c. 111, § 53B.
Impounded Birth Records: G. L. c. 46, § 2A.
Juvenile Delinquency Case Records: G. L. c. 119, § 60A.
Malignant Disease Reports: G. L. c. 111, § 111B.
Mental Health Facilities Records: G. L. c. 123, § 36.
Native American Burial Site Records: G. L. c. 9, § 26A (5).
Natural Heritage Programs, Data Base: G. L. c. 66, § 17D.
Patient Abuse Information; Intermediate Care Facilities for Mentally Retarded Citizens, Convalescent, Nursing or Rest Homes: G. L. c. 111, § 72I.
Patient’s Rights to Confidentiality of Records; Medical & Mental Health Facilities: G. L. c. 111, § 70E.
Public Assistance Records, Aged Person, Dependent Children, Handicapped Person: G.L.c. 66,§ 17A.
Rape Reports: G. L. c. 41, § 97D.
Reyes Syndrome Report: G. L. c. 111, § 110B.
Sex Offender Registry, Requests for Registry Information: G. L. c. 6, § 178I.
Street Lists, Children Aged 3-17, Court Order Granting Protection: G. L. c. 51, § 4(a), (d).
Vocational Rehabilitation Records: G. L. c. 6, § 84.

FOOTNOTES
1 G. L. c. 30A, §§ 18-25.
3 G. L. c. 4, § 7(26)(n).
5 G. L. c. 66, § 10(a).
6 Id.
7 G. L. c. 4, § 7(26).
8 950 CMR 32.03.
9 G. L. c. 4, § 7(26)(a-t); see also Attorney General v. Assistant Commissioner of the Real Property Department of Boston, 380 Mass. 623, 625 (1980) (the statutory exemptions are to be strictly and narrowly construed).
10 G. L. c. 66, § 10(b); 950 CMR 32.05(3).
11 950 CMR 32.05(4).
12 950 CMR 32.05(4).
13 G. L. c. 66, § 10(a-b); 950 CMR 32.05(4).
14 950 CMR 32.08(1).
15 Id.
16 Id.
17 950 CMR 32.08(2).
18 G. L. c. 4, § 7(26) (defining “public records” as materials which have already been “made or received” by a public entity); see also 32 Op. Att’y Gen. 157, 165 (May 18, 1977) (custodian is not obliged to create a record in response to a request for information).
19 See G. L. c. 66, § 10(a) (public records are to be provided to “any person”); see also 950 CMR 32.05(5) (custodian prohibited from inquiring into a requester’s status or motivation); but see G. L. c. 4, § 7(26)(n) (a records custodian may ask the requester to voluntarily provide additional information in order to reach a “reasonable judgment” regarding disclosure of responsive records).
20 G. L. c. 66, § 10(a); see also 950 CMR 32.06.
21 950 CMR 32.06(5).
22 See e.g., G. L. c. 66, § 10(a) (fees for police records); see also 950 CMR 32.06.
23 950 CMR 32.06(1)(c).
24 950 CMR 32.03.
25 Id.
26 950 CMR 32.06(1)(a).
27 950 CMR 32.06(1)(d).
28 950 CMR 32.06(1)(f); see also SPR Bulletin 4-96, June 7, 1996 (Fees for Access and Copying of Electronic Public Records).
29 See e.g., G. L. c. 66, § 10(a) (fees for police records); G. L. c. 262, § 38 (copies of records at the Registry of Deeds).
30 G. L. c. 4, § 7(26)(a-t).
32 G. L. c. 66, § 10(a); Feinstein v. Police Commissioner of Boston, 378 Mass. 281, 289-90 (1979) (the statutory exemptions are not blanket in nature).
33 G. L. c. 4, § 7(26)(a).
35 See, e.g., G. L. c. 41, § 97D (all reports of rape or sexual assault “shall not be public reports”).
36 G. L. c. 4, § 7(26)(a).
37 See, e.g., G. L. c. 6, § 172 (“Criminal offender record information ... shall only be disseminated to: criminal justice agencies...”).
38 See 803 C.M.R. 7 (C.O.R.I. may be released at the discretion of law enforcement if disclosure aids investigative efforts).
39 G. L. c. 6, § 168.
40 G. L. c. 4, § 7(26)(b).
42 See Globe Newspaper Company v. Boston Retirement Board, 388 Mass. 427, 432-33 (1983) (where the language of a parallel state statute differs in material respects from a previously enacted federal statute, a rejection or expansion of the legal principles embodied in the federal statute may be inferred).
43 G. L. c. 4, § 7(26)(c).
46 Id.
47 G. L. c. 4, § 7(26)(c).
49 Wakefield Teacher's Association, 431 Mass. at 798.
50 See Worcester Telegram & Gazette Corp., 436 Mass. at 386.
60 Id. at 626 n. 2.
61 Collector of Lynn, 377 Mass. at 156.
62 Id.
63 See G. L. c. 268A, § 6B.
64 G. L. c. 4, § 7(26)(d).
68 G. L. c. 4, § 7(26)(e).
69 G. L. c. 4, § 7(26)(e).
70 G. L. c. 4, § 7(26)(f).
73 Bougas, 371 Mass at 62.
75 G. L. c. 4, § 7(26)(g).
76 Id.
79 Id. at 701.
80 G. L. c. 4, § 7(26)(h).
81 G. L. c. 4, § 7(26)(d); See also discussion of the application of Exemption (d) in the Massachusetts Guide to the Public Records Law.
82 G. L. c. 4, § 7(26)(i).
83 G. L. c. 112, § 173 (definition of appraisal).
85 G. L. c. 4, § 7(26)(j).
86 G. L. c. 4, § 7(26)(j).
87 G. L. c. 140, §§ 121-131P. (discussing sale of firearms).
88 G. L. c. 4, § 7(26)(a-t) (exemptions to the Public Records Law).
89 G. L. c. 78, § 7 (discussing Public Libraries).
90 G. L. c. 4, § 7(26)(a).
91 G. L. c. 4, § 7(26)(l).
93 G. L. c. 4, § 7(26)(m).
94 G. L. c. 4, § 7(26)(n).
95 See SPR Bulletin No. 04-03 (April 1, 2003).
96 G. L. c. 4, § 7(26)(o).
97 G. L. c. 4, § 7(26)(p).
98 G. L. c. 4, § 7(26)(q).
99 G. L. c. 46, § 31.
100 G. L. c. 4, § 7(26)(r).
101 G. L. c. 18(c).
102 G. L. c. 4, § 7(26)(s).
103 G. L. c. 4, § 7(26)(t).
104 See G. L. c. 32, § 20C.
107 See Id. at 610 (Supervisor may delineate whether documents are privileged or exempted from the Public Records Law).
109 Id.
111 See 1973 Mass. Acts. 1050 (legislation providing for the current statutory definition of “public records”)
112 G. L. c. 4, § 7(26).
113 See 950 CMR 32.05(4) (a custodian shall use his superior knowledge of his files to assist a requester in obtaining the desired information).
114 G. L. c. 4, § 7(26) (defining “public records” as materials which have already been “made or received” by a public entity); see also 32 Op. Att’y Gen. 157, 165 (May 18, 1977) (custodian is not obliged to create a record in response to a request for information) (the Public Records Law and Regulations only apply to existing records; consequently, a custodian is free to set any fee for creating a record).
115 950 C.M.R. 32.06(f).
116 G. L. c. 66, § 10(b).
117 G. L. c. 66, § 10(b); 950 CMR 32.09.
119 www.sec.state.ma.us/arc/arcpdf/0111.pdf.
121 950 CMR 32.03.
122 G. L. c. 30, § 42 (defining the composition and duties of the Records Conservation Board).
124 See G. L. c. 66, § 1 (the Supervisor shall oversee preservation of the records of the Commonwealth, counties, cities, and towns).
125 G. L. c. 66, § 7.
126 G. L. c. 66, § 11.
127 950 CMR 32.05(1).
128 See G. L. c. 66, § 14.
Section 1. Supervision of public records; powers and duties.
Section 1. The supervisor of public records, in this chapter called the supervisor of records, shall take necessary measures to put the records of the commonwealth, counties, cities or towns in the custody and condition required by law and to secure their preservation. He shall see that the records of churches, parishes or religious societies are kept in the custody and condition contemplated by the various laws relating to churches, parishes or religious societies, and for these purposes he may expend from the amount appropriated for expenses such amount as he considers necessary. The supervisor of records shall adopt regulations pursuant to the provisions of chapter thirty A to implement the provisions of this chapter.

Section 2. Repealed, 1977, 80, Sec. 1.

Section 3. "Record", defined; quality of paper and film; microfilm records.
Section 3. The word "record" in this chapter shall mean any written or printed book or paper, or any photograph, microphotograph, map or plan. All written or printed public records shall be entered or recorded on paper made of linen rags and new cotton clippings, well sized with animal sizing and well finished, or on one hundred per cent bond paper sized with animal glue or gelatin and preference shall be given to paper of American manufacture marked in water line with the name of the manufacturer. All photographs, microphotographs, maps and plans which are public records shall be made of materials approved by the supervisor of records. Public records may be made by handwriting, or by typewriting, or in print, or by the photographic process, or by the microphotographic process, or by any combination of the same. When the photographic or microphotographic process is used, the recording officer, in all instances where the photographic print or microphotographic film is illegible or indistinct, may make, in addition to said photographic or microphotographic record, a typewritten copy of the instrument, which copy shall be filed in a book kept for the purpose. In every such instance the recording officer shall cause cross references to be made between said photographic or microphotographic record and said typewritten record. If in the judgment of the recording officer an instrument offered for record is so illegible that a photographic or microphotographic record thereof would not be sufficiently legible, he may, in addition to the making of such record, retain the original in his custody, in which case a photographic or other attested copy thereof shall be given to the person offering the same for record, or to such person as he may designate.

Subject to the provisions of sections one and nine, a recording officer adopting a system which includes the photographic process or the microphotographic process shall thereafter cause all records made by either of said processes to be inspected at least once in every three years, correct any fading or otherwise faulty records and make report of such inspection and correction to the supervisor of records.

Section 3A.Recommendations for employment submitted in support of candidates hired by the commonwealth; use of recommendation by hiring authority
Recommendations for employment submitted in support of candidates who are hired by the commonwealth, or any political subdivision of the commonwealth, in the position to which the recommendations were applicable, shall be considered public records under section 7 of chapter 4 and this chapter; provided, however that this shall not apply to internal communications. Recommendations for employment submitted in support of candidates applying for employment by the commonwealth, or any political subdivision of the commonwealth, shall not be considered by a hiring authority until the applicant has met all other qualifications and requirements for the position to be filled; provided, however, that a hiring authority may, in accordance with said agency's regular practice for conducting reference checks, contact and speak with a reference provided to it by a candidate for employment, or contact and speak with any person who has submitted a written recommendation on behalf of a candidate for employment with said agency.

Section 4. Regulation of recording materials and devices; mandamus.
Section 4. No ink shall be used upon any permanent public record except ink of such a standard as established and approved by the supervisor of records, and no ribbon, pad or other device used for printing by typewriting machines, or stamping pad, or any ink contained in such ribbon, pad, device, stamping pad or carbon paper, shall be used upon any permanent public record, nor shall any photographic machine or device or chemical used in connection therewith be used in making any permanent public record, except such as has been approved by the supervisor of records, who may cancel his approval if he finds that any article so approved is inferior to the standard established by him. The supreme judicial or superior court shall have jurisdiction in mandamus, on petition of the supervisor of records and pursuant to section five of chapter two hundred and forty-nine, to order compliance with the provisions of this section.

Section 5. Municipal records; copies.
Section 5. County commissioners, city councils and selectmen may cause copies of records of counties, cities or towns, of town proprietaries, or proprietors of plantations, townships or common lands, relative to land situated in their county, city or town or of easements relating thereto, to be made for their county, city or town, whether such records are within or without the commonwealth, and such records within the commonwealth may be delivered by their custodians to any county, city or town for such copying. City councils and selectmen may also cause copies to be made of the records of births, baptisms, marriages and deaths kept by a church or parish in their city or town.

Section 5A. Records of meetings of boards and commissions; contents.
Section 5A. The records, required to be kept by sections eleven A of chapter thirty A, nine F of chapter thirty-four and twenty-three B of chapter thirty-nine, shall report the names of all members of such boards and commissions present, the subjects acted upon, and shall record exactly the votes and other official actions taken by such boards and commissions; but unless otherwise required by the governor in the case of state boards, commissions and districts, or by the county commissioners in the case of county boards and commissions, or the governing body thereof in the case of a district, or by ordinance or by-law of the city or town, in the case of municipal boards, such records need not include a verbatim record of discussions at such meetings.
Section 6. Records of public proceedings; preparation; custody.
Section 6. Every department, board, commission or office of the commonwealth or of a county, city or town, for which no clerk is otherwise provided by law, shall designate some person as clerk, who shall enter all its votes, orders and proceedings in books and shall have the custody of such books, and the department, board, commission or office shall designate an employee or employees to have the custody of its other public records. Every sole officer in charge of a department or office of the commonwealth or of a county, city or town having public records in such department or office shall have the custody thereof.

Section 7. Custody of old and other records.
Section 7. Every town clerk shall have the custody of all records of proprietors of towns, townships, plantations or common lands, if the towns, townships, plantations or common lands to which such records relate, or the larger part thereof, are within his town and the proprietors have ceased to be a body politic. The state secretary, clerks of the county commissioners and city or town clerks shall respectively have the custody of all other public records of the commonwealth or of their respective counties, cities or towns, if no other disposition of such records is made by law or ordinance, and shall certify copies thereof.

Section 8. Preservation and destruction of records, books and papers.
Section 8. Every original paper belonging to the files of the commonwealth or of any county, city or town, bearing date earlier than the year eighteen hundred and seventy, every book of registry or record, except books which the supervisor of public records determines may be destroyed, every town warrant, every deed to the commonwealth or to any county, city or town, every report of an agent, officer or committee relative to bridges, public ways, sewers or other state, county or municipal interests not required to be recorded in a book and not so recorded, shall be preserved and safely kept; and every other paper belonging to such files shall be kept for seven years after the latest original entry therein or thereon, unless otherwise provided by law or unless such records are included in disposal schedules approved by the records conservation board for state records or by the supervisor of public records for county, city, or town records; and no such paper shall be destroyed without the written approval of the supervisor of records. Notwithstanding the foregoing, the register of deeds in any county may, without such written approval, destroy any papers pertaining to attachments or to the dissolution or discharge thereof in the files of his office following the expiration of twenty years after the latest original entry therein or thereon, unless otherwise specifically provided by law, and he may destroy all original instruments left for record and not called for within five years after the recording thereof.

Section 8A. Destruction of certain records by city and town clerks if micro-photographed.
Section 8A. Any provision of general or special law to the contrary notwithstanding, the clerk of any city or town, with the written approval of the supervisor of records, may destroy any index of instruments made by any clerk of such city or town under the provision of law now embodied in section fifteen of chapter forty-one or any original record made by any such clerk under any of the provisions of law now embodied in section eleven of chapter two hundred and nine, section three of chapter two hundred and fifty-five, or any similar statute; provided, that such index or record, as the case may be, has been, or shall have been, micro-photographed, and that twenty years has, or shall have expired after the making of such index or record. The micro-photograph of any index or record so destroyed shall have the same force and effect as the original index or record from which such micro-photograph was made.
Section 8B. Destruction or disposal of records in accordance with chapter 93I
[Text of section added by 2007, 82, Sec. 1 effective October 31, 2007.]
Section 8B. Records or documents required to be destroyed or disposed of in this chapter shall be destroyed or disposed of in the manner set forth in chapter 93I.

Section 9. Preservation and copying of worn, etc., records.
Section 9. Every person having custody of any public record books of the commonwealth, or of a county, city or town shall, at its expense, cause them to be properly and substantially bound. He shall have any such books, which may have been left incomplete, made up and completed from the files and usual memoranda, so far as practicable. He shall cause fair and legible copies to be seasonably made of any books which are worn, mutilated or are becoming illegible, and cause them to be repaired, rebound or renovated. He may cause any such books to be placed in the custody of the supervisor of records, who may have them repaired, renovated or rebound at the expense of the commonwealth, county, city or town to which they belong. Whoever causes such books to be so completed or copied shall attest them, and shall certify, on oath, that they have been made from such files and memoranda or are copies of the original books. Such books shall then have the force of the original records.

Section 10. Public inspection and copies of records; presumption; exceptions.
Section 10. (a) Every person having custody of any public record, as defined in clause Twenty sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expense of such search. The following fees shall apply to any public record in the custody of the state police, the Massachusetts bay transportation authority police or any municipal police department or fire department: for preparing and mailing a motor vehicle accident report, five dollars for not more than six pages and fifty cents for each additional page; for preparing and mailing a fire insurance report, five dollars for not more than six pages plus fifty cents for each additional page; for preparing and mailing crime, incident or miscellaneous reports, one dollar per page; for furnishing any public record, in hand, to a person requesting such records, fifty cents per page. A page shall be defined as one side of an eight and one half inch by eleven inch sheet of paper. (b) A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail. If the custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order, the supervisor of records may notify the attorney general or the appropriate district attorney thereof who may take whatever measures he deems necessary to insure compliance with the provisions of this section. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any
person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have jurisdiction to order compliance.

(c) In any court proceeding pursuant to paragraph (b) there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(d) The clerk of every city or town shall post, in a conspicuous place in the city or town hall in the vicinity of the clerk's office, a brief printed statement that any citizen may, at his discretion, obtain copies of certain public records from local officials for a fee as provided for in this chapter.

[Second paragraph of paragraph (d) effective until November 4, 2010. For text effective November 4, 2010, see below.]

The executive director of the criminal history systems board, the criminal history systems board and its agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined by chapter one hundred and forty shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said chapter one hundred and forty and names and addresses of persons licensed to carry and/or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in chapter six and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

[Second paragraph of paragraph (d) as amended by 2010, 256, Secs. 58 and 59 effective November 4, 2010. For text effective until November 4, 2010, see above.]

The commissioner of the department of criminal justice information services, the department of criminal justice information services and its agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined by chapter one hundred and forty shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said chapter one hundred and forty and names and addresses of persons licensed to carry and/or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in chapter six and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

The home address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, department of children and families, department of correction and any other public safety and criminal justice system personnel, and of unelected general court personnel, shall not be public records in the custody of the employers of such personnel or the public employee retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed, but such information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180 or to a criminal justice agency as defined in section 167 of chapter 6. The name and home address and telephone number of a family member of any such personnel shall not be public records in the custody of the employers of the foregoing persons or the public employee
retirement administration commission or any retirement board established under chapter 32 and shall not be disclosed. The home address and telephone number or place of employment or education of victims of adjudicated crimes, of victims of domestic violence and of persons providing or training in family planning services and the name and home address and telephone number, or place of employment or education of a family member of any of the foregoing shall not be public records in the custody of a government agency which maintains records identifying such persons as falling within such categories and shall not be disclosed.

Section 11. Fireproof vaults and safes.
Section 11. Officers in charge of a state department, county commissioners, city councils and selectmen shall, at the expense of the commonwealth, county, city or town, respectively, provide and maintain fireproof rooms, safes or vaults for the safe keeping of the public records of their department, county, city or town, other than the records in the custody of teachers of the public schools, and shall furnish such rooms with fittings of non-combustible materials only.

Section 12. Arrangement of records.
Section 12. All such records shall be kept in the rooms where they are ordinarily used, and so arranged that they may be conveniently examined and referred to. When not in use, they shall be kept in the fireproof rooms, vaults or safes provided for them.

Section 13. Custodian to demand records; compelling compliance.
Section 13. Whoever is entitled to the custody of public records shall demand the same from any person having possession of them, who shall forthwith deliver the same to him. Upon complaint of any public officer entitled to the custody of a public record, the superior court shall have jurisdiction in equity to compel any person unlawfully having such record in his possession to deliver the same to the complainant.

Section 14. Surrender of records by retiring officer.
Section 14. Whoever has custody of any public records shall, upon the expiration of his term of office, employment or authority, deliver over to his successor all such records which he is not authorized by law to retain, and shall make oath that he has so delivered them, accordingly as they are the records of the commonwealth or of a county, city or town, before the state secretary, the clerk of the county commissioners or the city or town clerk, who shall, respectively, make a record of such oath.

Section 15. Penalties.
Section 15. Whoever unlawfully keeps in his possession any public record or removes it from the room where it is usually kept, or alters, defaces, mutilates or destroys any public record or violates any provision of this chapter shall be punished by a fine of not less than ten nor more than five hundred dollars, or by imprisonment for not more than one year, or both. Any public officer who refuses or neglects to perform any duty required of him by this chapter shall for each month of such neglect or refusal be punished by a fine of not more than twenty dollars.

Section 16. Surrender of church records; jurisdiction of superior court.
Section 16. If a church, parish, religious society, monthly meeting of the people called Friends or Quakers, or any similar body of persons who have associated themselves together for holding religious meetings, shall cease for the term of two years to hold such meetings, the persons
having the care of any records or registries of such body, or of any officers thereof, shall deliver all such records, except records essential to the control of any property or trust funds belonging to such body, to the custodian of a depository provided by the state organization of the particular denomination or to the clerk of the city or town where such body is situated and such clerk may certify copies thereof upon the payment of the fee as provided by clause (25) of section thirty-four of chapter two hundred and sixty-two. If any such body, the records or registries of which, or of any officers of which, have been so delivered, shall resume meetings under its former name or shall be legally incorporated, either alone or with a similar body, the clerk of such city or town or the custodian of said depository shall, upon written demand by a person duly authorized, deliver such records or registries to him if he shall in writing certify that to the best of his knowledge and belief said meetings are to be continued or such incorporation has been legally completed. The superior court shall have jurisdiction in equity to enforce this section.

Section 17. Municipality in which records to be kept; penalty.
Section 17. Except as otherwise provided by law, all public records shall be kept in the custody of the person having the custody of similar records in the county, city or town to which they originally belonged, and if not in his custody shall be demanded by him of the person having possession thereof, and shall forthwith be delivered by such person to him. Whoever refuses or neglects to perform any duty required of him by this section shall be punished by a fine of not more than twenty dollars.

Section 17A. Public assistance records: public inspection; destruction.
[Text as amended by 2000, 166, Sec. 8 effective November 2, 2000. For text effective until November 2, 2000, see 1998 Edition.]
Section 17A. The records of the department of transitional assistance, relative to all public assistance, and the records of the commission for the blind relative to aid to the blind, shall be public records; provided that they shall be open to inspection only by public officials of the commonwealth, which term shall include members of the general court, representatives of the federal government and those responsible for the preparation of annual budgets for such public assistance, the making of recommendations relative to such budgets, or the approval or authorization of payments for such assistance, or for any purposes directly connected with the administration, of such public assistance or with the administration of chapter 118G or with the administration of child support enforcement under chapter one hundred and nineteen A, including the use of said records in set-off debt collections under chapter sixty-two D, and including the use of said records by the department of transitional assistance, in concert with related wage reports to ascertain or confirm any fraud, abuse or improper payments to an applicant or recipient of public assistance; and provided, further, that data from said records may be made available to representatives of the department of education and local school committees solely for the purpose of targeting school attendance areas with the largest concentrations of low income children pursuant to 20 USC 2701 et seq. and that such access shall be supervised by the department of transitional assistance and the department of education in accordance with an interagency agreement between said departments that safeguards confidentiality; and provided, further, that information relative to the record of an applicant for public assistance or a recipient thereof may be disclosed to him or his duly authorized agent; provided, however, that nothing in this section shall be construed to prohibit disclosure to or access by the bureau, of special investigations to the department's records or files for the purposes of fraud detection and control. The state police, including the state police violent fugitive arrest squad, and local police departments, shall also be provided with identifying and locating
information upon request from the department's records or files for the sole purpose of identifying and locating individuals wanted on default or arrest warrants. Only identifying information including, but not limited to, the name, date of birth, all pertinent addresses, telephone number and social security number of such individuals shall be made available to the state police and local police departments pursuant to this section. The commonwealth shall destroy public assistance records ten years after the discontinuance of aid granted under the provisions of chapter sixty-nine, one hundred and seventeen, one hundred and eighteen, one hundred and eighteen A, one hundred and eighteen D and one hundred and nineteen, in such manner as the commissioner or director may prescribe.

Section 17B. Repealed, 1973, 1050, Sec. 4.

Section 17C. Failure to maintain public records of meetings; orders to maintain.

Section 17C. Upon proof of failure of a governmental body as defined in section eleven A of chapter thirty A, section nine F of chapter thirty-four and section twenty-three A of chapter thirty-nine, or by any member or officer thereof to carry out any of the provisions prescribed by this chapter for maintaining public records, a justice of the supreme judicial or the superior court sitting within and for the county in which such governmental body acts or, in the case of a governmental body of the commonwealth, sitting within and for any county, shall issue an appropriate order requiring such governmental body or member or officer thereof to carry out the provisions of this chapter. Such order may be sought by complaint of three or more registered voters, by the attorney general, or by the district attorney for the county in which the governmental body acts. The order of notice on the complaint shall be returnable no later than ten days after the filing thereof and the complaint shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders with respect to any of the matters referred to in this section may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of this section. In the hearing of any such complaint the burden shall be on the respondent to show by a preponderance of the evidence that the actions complained of in such complaint were in accordance with and authorized by section eleven B of chapter thirty A, by section nine G of chapter thirty-four or by section twenty-three B of chapter thirty-nine. All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Any such order may also, when appropriate, require the records of any such meeting of a governmental body to be made a public record unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized by section eleven B of chapter thirty A, by section nine G of chapter thirty-four or by section twenty-three B of chapter thirty-nine. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy.

Section 17D. Massachusetts natural heritage and endangered species program data base; division records; site-specific rare species information

[Text of section effective until July 1, 2003. For text effective July 1, 2003, see below.]

Section 17D. Records of the division of fisheries and wildlife in the department of fisheries, wildlife and recreational vehicles known as the Massachusetts natural heritage and endangered species program data base shall not be public records; provided, however, that they shall be open
for inspection by agents of the commonwealth and the federal government for the purposes of
protecting and preserving species and subspecies of nongame wildlife and indigenous plants.
Except as otherwise determined by the administrator of the said data base, site-specific rare
species information shall be released only upon the receipt of a statement, in writing, by the
recipient that he shall keep such information confidential.

[Text of section as amended by 2003, 26, Sec. 207 effective July 1, 2003. See 2003, 26, Sec. 715.
For text effective until July 1, 2003, see above.]

Section 17D. Records of the division of fisheries and wildlife in the department of fish and game
known as the Massachusetts natural heritage and endangered species program data base shall not
be public records; provided, however, that they shall be open for inspection by agents of the
commonwealth and the federal government for the purposes of protecting and preserving species
and subspecies of nongame wildlife and indigenous plants. Except as otherwise determined by
the administrator of the said data base, site-specific rare species information shall be released
only upon the receipt of a statement, in writing, by the recipient that he shall keep such
information confidential.

Section 17E. Local filing offices; former Article 9 Uniform Commercial Code records;
revised Article 9 records
[Text of section added by 2001, 26, Sec. 6 effective July 1, 2001 applicable as provided by 2001,
26, Sec. 53.]

Section 17E. s. 17E. (a) In this section the following words shall have the following meanings:
(1) "Former Article 9", Article 9 of chapter 106 as in effect on June 30, 2001.
(2) "Revised Article 9", Article 9 of said chapter 106 as in effect on or after July 1, 2001.
(3) "Local filing office", a filing office, other than the office of the state secretary, that is
designated as the proper place to file a financing statement under Section 9-401(1) of former
Article 9. The term applies only with respect to a record that covers a type of collateral as to
which the filing office is designated in that section as the proper place to file.
(4) "Former Article 9 records":
(A) financing statements and other records that have been filed in a local filing office before
July 1, 2001, and that are, upon processing and indexing will be, reflected in the index
maintained, as of June 30, 2001, by the local filing office for financing statements and other
records filed in the local filing
office before July 1, 2001, and
(B) the index as of June 30, 2001. The term shall not include records presented to a local
filing office for filing after June 30, 2001, whether or not the records relate to financing
statements filed in the local filing office before July 1, 2001.
(5) "Mortgage", "as-extracted collateral", "fixture filing .... goods" and "fixtures" have the
meanings set forth in revised Article 9 for those terms.
(b) A local filing office shall not accept for filing a record presented after June 30, 2001,
whether or not the record relates to a financing statement filed in the local filing office before
July 1, 2001.
(c) Until July 1, 2008, each local filing office shall maintain all former Article 9 records in
accordance with former Article 9. A former Article 9 record that is not reflected on the index
maintained at June 30, 2001, by the local filing office shall be processed and indexed, and
reflected on the index as of June 30, 2001, as soon as practicable but in any event no later than

    (d) Until at least June 30, 2008, each local filing office shall respond to requests for information with respect to former Article 9 records relating to a debtor and issue certificates, in accordance with former Article 9. The fees charged for responding to requests for information relating to a debtor and issuing certificates with respect to former Article 9 records shall be the fees in effect under former Article 9 on June 30, 2001, unless a different fee is later set by the local filing office, but the different fee shall not exceed $20 for responding to a request for information relating to a debtor or $20 for issuing a certificate.

    (e) After June 30, 2008, each local filing office may remove and destroy, in accordance with any then applicable record retention law of the commonwealth, all former Article 9 records, including the related index.

    (f) This section shall not apply, with respect to financing statements and other records, to a filing office in which mortgages or records of mortgages on real property are required to be filed or recorded, if:

        (1) the collateral is timber to be cut or as-extracted collateral, or

        (2) the record is or relates to a financing statement filed as a fixture filing and the collateral is goods that are or are to become fixtures.

Section 18. Application of chapter.
Section 18. This chapter shall not apply to the records of the general court, nor shall declarations, affidavits and other papers filed by claimants in the office of the commissioner of veterans' services, or records kept by him for reference by the officials of his office, be public records.
"Public records" shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions in that they are:

(a) specifically or by necessary implication exempted from disclosure by statute;

(b) related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding;

(c) personnel and medical files or information; also any other materials of data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;

(d) inter agency or intra agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;

(e) notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit;

(f) investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest;

(g) trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality; but this subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;

(h) proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter agency or intra agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person;

(i) appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired;
(j) the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards;

[There is no subclause (k).]

(l) questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument;

(m) contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (ii) a health maintenance organization arrangement approved under chapter one hundred and seventy six 1, a nonprofit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy six A and chapter one hundred and seventy six B, respectively, a health insurance corporation licensed under chapter one hundred and seventy five or any legal entity that is self insured and provides health care benefits to its employees.

(n) records, including, but not limited to, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the record custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.

(o) the home address and home telephone number of an employee of the judicial branch, an unelected employee of the general court, an agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of a political subdivision thereof or of an authority established by the general court to serve a public purpose, in the custody of a government agency which maintains records identifying persons as falling within those categories; provided that the information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180, or a criminal justice agency as defined in section 167 of chapter 6.

(p) the name, home address and home telephone number of a family member of a commonwealth employee, contained in a record in the custody of a government agency which maintains records identifying persons as falling within the categories listed in subclause (o).

(q) Adoption contact information and indices therefore of the adoption contact registry established by section 31 of chapter 46.

(r) Information and records acquired under chapter 18C by the office of the child advocate.
(s) trade secrets or confidential, competitively sensitive or other proprietary information provided in the course of activities conducted by a governmental body as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164, in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164 or in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164, when such governmental body, municipal aggregator or cooperative determines that such disclosure will adversely affect its ability to conduct business in relation to other, entities making, selling or distributing electric power and energy; provided, however, that this subclause shall not, exempt a public entity from disclosure required of a private entity so licensed.

[Subclause (t) of clause Twenty-sixth added by 2011, 176, Sec. 1 effective February 16, 2012.]

(t) statements filed under section 20C of chapter 32.

Any person denied access to public records may pursue the remedy provided for in section ten of chapter sixty six.
SECTION F

CONDUCT OF PUBLIC OFFICIALS AND EMPLOYEES

MASS. GENERAL LAWS, CHAPTER 268A
Community College Trustees qualify as “Special State Employees” under the Commonwealth’s Ethics Laws. A Special State Employee is defined as a state employee:

(l) who is performing services or holding an office, position, employment or membership for which no compensation is provided, or

(2) who is not an elected official and (a) occupies a position which, by its classification in the state agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, provided that disclosure of such classification or permission is filed in writing with the state ethics commission prior to the commencement of any personal or private employment, or (b) in fact does not earn compensation as a state employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special state employee shall be in such a status on days for which he is not compensated as well as on days on which he earns compensation.

As a Special State Employee, a Trustee must comply with the law. Of particular importance for Trustees are the following sections of Chapter 268A:

- 268A:3. Gifts, offers or promises for acts performed or to be performed; corruption of witnesses; solicitation of gifts.
- 268A:4. Other compensation; offer, gift, receipt or request; acting as agent or attorney for other than state; legislators; special state employees.
- 268A:6. Financial interest of state employee, relative or associates; disclosure.
- 268A:7. Financial interest in contracts of state agency; application of section.
- 268A:23A. Trustees of public institutions of higher learning; prohibited positions.
Chapter 268A of the General Laws governs your conduct as a public official or employee. Below are some of the general rules that you must follow. You could face civil and criminal penalties if you take a prohibited action. Many aspects of the law are complicated and there are often exemptions to the general rules. We encourage you to seek legal advice from the Commission or your agency's legal counsel regarding how the law would apply to you in a particular situation.

In general:

- You may not ask for or accept anything (regardless of its value), if it is offered in exchange for your agreeing to perform or not perform an official act.

- You may not ask for or accept anything worth $50 or more from anyone with whom you have official dealings. Examples of prohibited "gifts" include: sports tickets, costs of drinks and meals, travel expenses, conference fees, gifts of appreciation, entertainment expenses, free use of vacation homes and complimentary tickets to charitable events. If a prohibited gift is offered: you may refuse or return it; you may donate it to a non-profit organization, provided you do not take the tax write-off; you may pay the giver the full value of the gift; or, in the case of certain types of gifts, it may be considered "a gift to your public employer", provided it remains in the office and does not ever go home with you. You may not accept honoraria for a speech that is in any way related to your official duties, unless you are a state legislator.

- You may not hire, promote, supervise, or otherwise participate in the employment of your immediate family or your spouse's immediate family.

- You may not take any type of official action that will affect the financial interests of your immediate family or your spouse's immediate family. For instance, you may not participate in a licensing or inspection process involving a family member's business.

- You may not take any official action affecting your own financial interest, or the financial interest of a business partner, private employer, or any organization for which you serve as an officer, director or trustee. For instance: you may not take any official action regarding an "after hours" employer, or its geographic competitors; you may not participate in licensing, inspection, zoning or other issues that affect a company you own, or its competitors; if you serve on the Board of a non-profit organization (that is
substantially engaged in business activities), you may not take any official action which would impact that organization, or its competitors.

- Unless you qualify for an exemption, you may *not* have more than one job with the same municipality or county, or more than one job with the state.

- Except under special circumstances, you may *not* have a financial interest in a contract with your public employer. For example, if you are a full time town employee, a company you own may not be a vendor to that town unless you meet specific criteria, the contract is awarded by a bid process, and you publicly disclose your financial interest.

- You may *not* represent anyone but your public employer in any matter in which your public employer has an interest. For instance, you may not contact other government agencies on behalf of a company, an association, a friend, or even a charitable organization.

- You may not *ever* disclose confidential information, data or material which you gained or learned as a public employee.

- Unless you make a proper, public disclosure in writing -- including all the relevant facts -- you may *not* take any action that could create an appearance of impropriety, or could cause an impartial observer to believe your official actions are tainted with bias or favoritism.

- You may *not* use your official position to obtain unwarranted privileges, or any type of special treatment, for yourself or anyone else. For instance: you may not approach your subordinates, vendors whose contracts you oversee, or people who are subject to your official authority to propose private business dealings.

- You may *not* use public resources for political or private purposes. Examples of "public resources" include: office computers, phones, fax machines, postage machines, copiers, official cars, staff time, sick time, uniforms, and official seals.

- You may *not*, after leaving public service, take a job involving public contracts or any other particular matter in which you participated as a public employee.

If you have a question, call before you act.
The state’s conflict of interest law, G. L. c. 268A, and the financial disclosure law, G. L. c. 268B, restrict gifts and gratuities that public employees may receive. The phrase "public employee" includes all Massachusetts state, county and municipal officials and employees, whether part-time or full-time, paid or unpaid, elected or appointed.

Depending on the amount and source of a gift, issues may be raised under G.L. c. 268A, § 3, § 23 and G.L. c. 268B, § 6. Section 3(b) prohibits a public employee from requesting or receiving anything of substantial value which is given for or because of an official act or act within the public employee’s official responsibility. (Similarly, under § 3(a), no one may give or offer such gifts to public employees.)

In addition, G.L. c. 268B, § 6 specifically prohibits public employees or members of their immediate family from soliciting or accepting gifts with an aggregate value of $100 or more in a calendar year from any legislative agent. (Legislative agents are likewise prohibited from offering or giving such gifts.) Next, under G.L. c. 268A, § 23(b)(2), public employees are prohibited from using or attempting to use their position to obtain for themselves or others unwarranted privileges of substantial value that are not properly available to similarly situated individuals. Finally, even if a gift or gratuity is not of substantial value or does not fall within the prohibitions discussed above, G.L. c. 268A, § 23(b)(3) will, in many situations, require public employees to disclose to their appointing authority, the gift and their relationship with the giver.

- **What are gifts and gratuities?**

G.L. c. 268A does not define the terms gift and gratuity; instead, the law prohibits "anything of substantial value." Gifts may include honoraria and any free or discounted items or services, such as meals, entertainment event tickets, golf and travel expenses, for which payment is normally required.

Anything a public employee accepts is an unlawful gift or gratuity if it is: (a) of substantial value and (b) offered for or because of an official act or an act under the employee’s official responsibility.

- **What is substantial value?**

Anything worth $50 or more is considered to be "of substantial value" for purposes of the conflict of interest law. To determine substantial value, the Commission may consider, for example, the cost per person of entertainment hosted by the giver, what it would cost the public
to purchase an item or the actual cost incurred by the giver in acquiring the gift given to the public employee. In some situations, the value of a gift will not be its retail price. The giver may have paid more, for example, than the face price of a ticket. In such instances, the receipt of such tickets may be an unwarranted privilege. See the discussion below of G.L. c. 268A, § 23(b)(2). Similarly, the value of a two-year-old computer is likely to be significantly less than its cost while the value of an item purchased many years ago that has become a collector’s item may be significantly greater than its cost. Finally, some items, e.g., ordinary and customary plaques or similar items honoring a public employee’s dedication or outstanding service, may, due to the inscription honoring the employee, have little value once so inscribed.

There are also other special cases that public employees should keep in mind. For example, where the gift is a meal, the value of the meal will include the tax and gratuity paid as well as the retail (menu) price of the meal itself. In addition, where a public employee is accompanied by a spouse, family member or guest, the value of the meal of the companion of the public employee is included as part of the $50 "substantial value" threshold. Under some circumstances, the Commission will consider a group or series of gifts from the same source, that are individually less than $50 in value but add up to $50 or more, to be in the aggregate a gift of substantial value for G.L. c. 268A purposes. For example, a meal and an entertainment event ticket from the same giver, each valued at less than $50, together could be valued at more than $50.

- **What is an "official act?"**

The term "official act" is defined in the conflict of interest law as "any decision or action in a particular matter or in the enactment of legislation." Official acts would include, for example, voting on a matter before a governmental body, preparing a Request For Proposals or RFP for a public agency, serving on a hiring committee or making a policy recommendation to one’s supervisor.

- **What is "official responsibility?"**

The term "official responsibility" is defined in the conflict of interest law as "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action. Official responsibility turns on the authority to act, not on whether that authority is, in fact, exercised. Even if a public employee abstains from all participation, he or she cannot shed his or her "official responsibility" for those matters if such responsibility exists.

- **What makes the gift unlawful?**

The Supreme Judicial Court has stated that there must be a "link" between a gift and a particular official act. Gifts offered and accepted solely as a gesture of goodwill would not violate § 3 (although the acceptance of such gifts raises issues under § 23 for the public employee). In general, therefore, a gift received as a reward or a thank you for an official act that a public employee has taken or will take, or to influence or induce any such official act or act under the public employee’s official responsibility will be considered to be for or because of the official act.
Whether a gift is unlawful depends on the circumstances surrounding the gift. Such circumstances could include the identities and relationship of the giver and the recipient, the intent of the giver and the recipient, the timing of the gift, whether the recipient has acted or will act on matters affecting the giver, and the effect, if any, of the gift on the employee’s official acts. Other factors may include whether the gift is "repeated, planned and targeted," whether it is a business expense, whether a personal friendship or reciprocity exists, the nature, amount and quality of the gift or the location of the entertainment and the sophistication of the parties. In summary, the Commission will look at all of the circumstances surrounding the gift.

- **Gifts from Legislative Agents**

In addition to the restriction of § 3, legislative agents may not offer or give gifts to public employees if the gifts have an aggregate value of $100 or more in a calendar year. In G.L. c. 268B, a gift is defined as a "payment, entertainment, subscription, advance, services or anything of value, unless consideration of equal or greater value is received." The definition excludes a reported political contribution, a commercially reasonable loan made in the ordinary course of business, an inheritance, or gifts from certain family members.

It does not matter why the gifts are given. For example, a gift worth $100 from a legislative agent violates § 6 even if the agent and the public employee are personal friends and the gift is given solely out of personal friendship. (Note: Most gifts to public employees that violate § 6 are also prohibited by G.L. c. 3, § 43, which applies to executive agents as well as legislative agents and is even more restrictive.

- **Unwarranted Privileges**

Whenever a public employee accepts a gift of substantial value given not for or because of a specific official act but because of his position, the conflict of interest law’s provision prohibiting the use of position to secure unwarranted privileges is implicated. Under the conflict of interest law, a public employee may not "knowingly, or with reason to know . . . use or attempt to use his official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals." Such gifts are unwarranted because there is no reasonable justification or officially authorized basis for the gifts such as a law, regulation, ordinance or by-law permitting the gifts to be made.

- **Appearances and Disclosures**

Whenever a public employee is offered or receives anything of value, even if not of substantial value, the conflict of interest law is still implicated. Section 23(b)(3), the so-called "appearance" of conflicts of interest section, prohibits a public employee from acting "in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person." If a "reasonable person" could conclude that the public employee would be "improperly influenced" by the giver, or that the giver would "unduly enjoy [the public employee’s] favor," or that the public employee would "act or fail to act" as a result
of such undue influence, the public employee must disclose in writing "the facts which would otherwise lead to such a conclusion" prior to acting on the matter of interest to the giver. The intent of this restriction is to let the public employee’s appointing authority and/or the public know the relevant circumstances in advance, and, that by "giving it the light of day treatment," cause the public employee and his appointing authority, if any, to recognize the issue and deal with it appropriately. (For more information on making disclosures, see Ethics Commission Primer: The Code of Conduct.)

- **Conclusion**

Gifts to any public employee - whether paid or unpaid, elected or appointed - are not expected or required in order to do business with the government. For additional information, see Advisories 04-01: Free Tickets and Special Access to Event Tickets and 04-02: Gifts and Gratuities.
Massachusetts General Laws c. 268A, the state’s conflict of interest law, governs the conduct of state officials. In general, § 4 of the conflict law prohibits a state official from acting as an agent for anyone other than the state in connection with any matter in which the state is a party or has a direct and substantial interest even if the state official abstains from taking any official action on this matter. It also prohibits a state official from requesting or receiving compensation in relation to any particular matter in which the state is a party or has a direct and substantial interest. A state agency includes any board, commission, authority, other state body or instrumentality of the state.

These provisions are intended to prevent divided loyalties. As discussed below, they apply less restrictively to “special state employees.”

- **Can a volunteer board member appear before the board on which he or she serves on behalf of private clients?**

No. A state official, even one who serves as an unpaid volunteer on an appointed board is prohibited from acting as an agent for those clients for whom he or she provides consulting services before the board on which he or she serves. For example, an Ethics Commissioner who is an attorney may not represent a client before the Ethics Commission.

A state official always may, however, represent him or herself before his or her own board. For example, the insurance commissioner may appeal an insurance surcharge. She may not, however, participate as commissioner in any determination or decision regarding her appeal.

- **Can a volunteer board member appear before state boards other than the one on which he serves?**

Yes, if the board member is designated a “special state employee.” A special state employee may act as an agent before state boards other than his own, provided that he has not officially participated in the matter, the matter is not now (and was not within the past year) within his official responsibility or the matter is pending in the state agency in which he is serving. For example, an unpaid member of an advisory board to the Department of Environmental Protection, which meets twice a week, may appear on behalf of a client of his private law practice before the division of industrial accidents. He may not appear, however, before the Department of Environmental Protection regarding a matter involving a client.
A state official who is not a special state employee may not appear before any state boards or agencies.

- **What is a “special state employee”?**

Some state positions are automatically designated as “special state employees” under the law. State employees are “special state employees” if:

- they do not receive compensation; or
- they are not an elected official; and
- they hold a position which allows you to work at another job during normal working hours; or
- they were not paid for more than 800 working hours (approximately 20 weeks full-time or 15 hours or less per week part-time) during the preceding 365 days. Compensation by the day is equivalent to seven hours per day.

- **What activities are considered “acting as agent”?**

An agent is anyone who represents another person or organization in dealings with the state. Almost any instance where you are acting on behalf of someone else can be considered “acting as an agent.” For example, contacting or communicating with the state on another person’s or group’s behalf, acting as a liaison with the state on another person’s or group’s behalf; providing documents to the state on another person’s or group’s behalf; or serving as a spokesperson before the state on another person’s or group’s behalf have been considered “acting as an agent.”

- **When does the state have a direct and substantial interest in a matter?**

The state has a direct and substantial interest in any matter pending before, under the official jurisdiction of, or involving action by a state agency, board, commission, authority or other state body; in any effort to change state regulations, policies or procedures; any contract, court case or other legal matter in which the state is a party, or any ruling or other action by a federal, regional or state agency involving matters which are subject to regulation by the state.

- **Are there any exceptions to these rules for state officials who are full-time employees and thus cannot be “special state employees”?**

There are a number of exemptions available to state officials including one that allows a state official to give testimony under oath, one that allows a state official to represent immediate family members and others with whom he has a fiduciary relationship in certain circumstances and one that allows a state official to hold elective or appointive office in a city, town or district with certain restrictions. For additional information, see Advisory 94-01: State Employees Acting as Agent.
The conflict of interest law, G. L. c. 268A, is intended to prevent, among other things, self-dealing. Section 6 of the conflict of interest law generally prohibits a state employee (paid or unpaid, appointed or elected, full-time or part-time) from participating in any particular matter in which the state employee, an immediate family member, partner, or a business organization in which he or she has certain affiliations, has a financial interest.

- **Immediate Family**

A state employee generally may not act on matters affecting the financial interest of the state employee him or herself, his or her spouse and/or the parents, siblings and children of both the state employee and the spouse. In-laws who marry into the "immediate family" are not considered to be members of the immediate family.

Example: A sister-in-law, who is married to a state employee's brother, is not an immediate family member while the state employee's sister-in-law, who is his spouse's sister, is an immediate family member. Similarly, nieces, nephews, cousins and grandchildren are not immediate family members. (They are, however, kin and acting on matters involving kin may create the appearance of a conflict of interest. Section 23 of G.L. c. 268A addresses this.)

In determining if a state employee may act in matters involving a family member, the family member's financial interest must be considered.

Example: A particular matter before a state agency might affect the financial interest of the business organization that employs the mother of the state employee. That financial interest alone won't disqualify the employee from acting, however, unless the particular matter also affect's the mother's financial interests.

- **Business Organization**

A state employee who is an officer, partner, director, trustee or employee of an organization or who is negotiating for prospective employment with a person or organization, in general, may not participate in matters affecting the financial interest of that person or organization. It does not matter if the business organization is a private, for-profit business or a non-profit organization. The phrase business organization also includes a county or municipality as well as
their agencies. For instance, a state employee may not participate in a decision that affects a municipality's financial interest if he holds an elected or appointed position in the municipality.

Example: An employee of a state environmental agency who is interviewing for a position with a private firm whose contract he oversees must disclose in writing to his appointing authority the fact that he is involved in such negotiations and may not continue to oversee the contract.

- **Financial Interest**

Although the conflict of interest law does not define the term financial interest, the Commission has a long-standing interpretation of that phrase. The restrictions of the conflict of interest law apply in any instance when the private financial interests are directly and immediately affected or when it is reasonably foreseeable that the financial interests would be affected.

Example: A state employee who owns property abutting a state building project may have a financial interest in the project. The Commission presumes a financial interest in matters affecting abutting property.

The conflict of interest law generally prohibits any type of official action regardless of whether the financial interest is large or small and regardless of whether the proposed action would positively or negatively affect the private financial interest.

Example: A state engineer owns property abutting a proposed landfill. If the landfill is approved, it will negatively affect the value of the state engineer's property. The state engineer may not participate in the reviewing of proposals or discussions concerning the landfill.

- **Participating and Voting**

Participation includes not only voting or deciding on a matter but also formal and informal lobbying of colleagues, reviewing, discussing, giving advice and/or making recommendations on particular matters. Therefore, a state employee will be deemed to have participated in the particular matter if he discusses the matter but abstains from the final vote or decision. Often, discussing, providing advice or making recommendations about a particular matter may have more of an effect than the employee's single vote or final decision. It does not follow, however, that if a state employee votes or makes a final decision without participating in any discussion or otherwise acting regarding the matter in question, that vote or decision will not amount to participation. Regardless of whether the vote tally is unanimous or split, voting constitutes participation. The decision to delegate a matter to a co-worker or to a subordinate also constitutes participation in the particular matter.

Example: A state board member who discusses the license application of the private corporation in which she holds a majority of shares but abstains from the final vote will nevertheless have participated through her discussing the license application, even though she abstained from voting.

The law includes an exemption from the general prohibition for appointed state employees. This exemption is not available to elected state employees.
An appointed state employee, whose duties would otherwise require him or her to participate in a particular matter, must make a written disclosure of the particular matter and the financial interest to his or her appointing authority. A copy must also be filed with the Ethics Commission. A state employee's appointing authority is not necessarily his or her immediate supervisor; the appointing authority is the official or board responsible for the state employee's appointment to his or her position.

Making an oral disclosure or making a written disclosure to an immediate supervisor who is not an appointing authority, a co-worker or a subordinate who is also involved in a matter is not sufficient disclosure.

After receipt of the written disclosure, the appointing authority then has the opportunity to take one of three steps:

- Assign the particular matter to another employee;
- Assume responsibility for the particular matter; or
- Make a written determination that "the interest is not so substantial as to be deemed likely to affect the integrity of the services which the commonwealth may expect from the employee."

Whether the state official receives the written determination rests solely in the discretion of the appointing authority. The Ethics Commission has no role in making the determination.

Like the disclosure, the determination must be in writing and must also be filed with the Ethics Commission where they are maintained as public records.
Section 7 of G.L. c. 268A, the conflict of interest law, generally prohibits a state employee (paid or unpaid, appointed or elected, full-time or part-time) from having a financial interest, directly or indirectly, in a contract made by the state or a state agency. There are, however, several exceptions and exemptions from this prohibition. All state employees must comply with an exception or exemption to § 7 in order to lawfully have a financial interest in a state contract.

Any current state employee who wants to add another state position that is appointed and compensated must qualify for an exception or exemption. Similarly, if the state employee wishes to have a financial interest in a state contract that does not involve another state position, she must also qualify for an exception or exemption.

Second, if a prospective state employee already has a financial interest in a contract with the state, he must qualify for an exception or exemption when he begins to serve as a state employee.

Third, if a current appointed and compensated state employee wants to add an unpaid state position or an elected state position (whether paid or unpaid), she will need to qualify for an exception or exemption. However, unlike the first two types of state employees described above, she needs to qualify for an exception or exemption that will allow her to continue to be paid in her current state position while also serving in her appointed/unpaid or elected position.

- **Exceptions**

Section 7 does not apply if the state employee’s financial interest is the ownership of less than one percent of the stock of a corporation. It also does not apply to a state employee who in good faith and within 30 days after he learns of an actual or prospective violation of the section makes a full disclosure of his financial interest to the contracting agency and terminates or disposes of his interest.

Section 7 does not apply to a state employee who provides services or furnishes goods to a recipient of public assistance, provided that such services or such supplies, goods and materials are provided in accordance with a schedule of charges promulgated by the department of transitional assistance or the division of health care policy and finance and provided, further, that such recipient has the right under law to choose and in fact does choose the person or firm that will provide such services or furnish such supplies, goods and materials.
The section does not prohibit a state employee from teaching or performing other related duties on a part-time basis in an educational institution of the Commonwealth, provided he does not participate in or have official responsibility for the financial management of the institution.

A MassPort employee who is eligible for any residential sound insulation program administered by MassPort is not prohibited from participating in the program provided she has no responsibility for the administration of the program.

• **Exemptions**

A state employee, other than a member of the general court may have a financial interest in a contract with the state if:

- the state employee is not employed by and does not participate in or have responsibility for the activities of the contracting agency or an agency which regulates the activities of that agency;
- the contract is made after public notice or competitive bidding; and
- the state employee files with the ethics commission a disclosure of his and/or his family’s interest.

In addition, if the contract is for personal services, additional requirements must be met; a state employee seeking a contract for personal services should seek advice from the Ethics Commission.

A member of the general court may have a financial interest in a contract with an agency other than the general court if:

- the member’s direct and indirect interests and those of his immediate family in the corporation or other commercial entity with which the contract is made do not in the aggregate amount to ten percent of the total interests; and
- the contract is made after public notice or competitive bidding; and
- the member files with the ethics commission a disclosure of his and/or his family’s interest.

Finally, a state employee is not prohibited from being employed part-time at any 24-hour facility of the state, provided that he does not participate in or have responsibility for the financial management of the facility. Such facilities include mental health, public health and correctional facilities that operate on an uninterrupted and continuous basis. The state employee may not work more than four hours at the facility on any day in which he is otherwise compensated by the Commonwealth and faces restrictions on the amount of compensation he can earn and the head of the facility must file a written certification that there is a critical need for the services of the employee.

• **Special State Employees**

The Legislature created "special state employee" status to allow the state to engage individuals who, otherwise, might not be able to serve because of their private activities or because they already are state, or special state, employees in another capacity.
A special state employee is a state employee who is:

- serving in a position that is not compensated, or
- not elected and occupies a position which permits personal or private employment during normal working hours, provided that disclosure of such classification or permission is filed in writing with the state ethics commission prior to the commencement of any personal or private employment, or does not earn compensation for more than eight hundred hours during the preceding three hundred and sixty-five days.

For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special state employee shall be in such a status on days for which he is not compensated as well as on days on which he earns compensation.

Special state employee status narrows, but does not eliminate, the scope of the restrictions on a special state employee’s conduct.

- **Additional Exemptions for Special State Employees**

A special state employee may have a financial interest in a state contract if she "does not participate in or have official responsibility for any of the activities of the contracting agency" and she files with the State Ethics Commission a disclosure of her interest and her immediate family’s interest.

A special state employee who either participates in or has official responsibility for any of the activities of the contracting agency must not only file the same disclosure as described in §7(d) but also obtain the approval of the governor for an exemption.
The state’s conflict of interest law, M.G.L. c. 268A imposes "standards of conduct" on all state, county and municipal employees that are "in addition to the other provisions" in G. L c. 268A. Although § 23 does not impose criminal penalties, as do the other sections of the conflict of interest law, the Commission may impose civil penalties for violations of any of the § 23 restrictions of standards of conduct.

- **Incompatible Employment**

First, § 23 (b)(1) prohibits public employees from accepting other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of his public office.

Example: a police officer would be prohibited from serving as a private security guard in his town because his duties as a law enforcement official are incompatible with the demands of his private employer.

- **Unwarranted Privileges**

Section 23(b)(2) prohibits a public employee from using or attempting to use his or her official position to secure for himself or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals;

Example: A governmental official may not use his governmental time or resources, such as office space, word processors, telephones, photo copiers or fax machines, to conduct a private business. Section 23(b)(2) dictates that the use of public time and resources must be limited to serving public rather than private purposes.

The Commission has also emphasized that the use of one’s public position to solicit or coerce special benefits, of substantial value, for oneself or others will constitute a use of one’s official position to secure unwarranted privileges or exemptions not properly available to similarly situated individuals. In addition, the Commission has advised municipal officials that they must apply objective criteria to their official duties and that if, for example, a board member cannot be objective about a matter, he should abstain.

- **Appearance of Conflict**
Section 23(b)(3) prohibits a public employee from acting in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy the public employee’s favor in the performance of his or her official duties, or that he or she is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his or her appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion.

Section 23(b)(3) has often been described as the section that covers "appearances" of conflicts of interest. The statute as it currently reads, however, does not use the term "appearance." It is worth emphasizing that § 23(b)(3) prohibits acting "in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude" that the official might be unduly influenced or unduly favor any party or person.

Example: A reasonable person could conclude that a board of health member might favor or disfavor his cousin’s application. Although the cousin is not a member of his immediate family under §19, the family link would implicate § 23(b)(3). To dispel such a reasonable conclusion, the board of health member should make a written disclosure to his appointing authority, describing the relevant facts of the family relationship and the official action, prior to his acting as a board member. If the board member were popularly elected, she must make a disclosure that is "public in nature." The Commission has advised that elected municipal officials should make such disclosures in writing and file them as public records with their municipal clerk. In some circumstances, it may also be prudent to reiterate the disclosure as part of the meeting minutes.

- Confidential Information

Section 23(c)(1) prohibits a current or former municipal employee from accepting "employment or engag[ing] in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position." Section 23(c)(2) prohibits him from "improperly disclos[ing] material or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest."

- Adequate Disclosure

Section 23(d) provides that "any activity specifically exempted from any of the prohibitions in any other section of this chapter shall also be exempt from the provision of this section. The state ethics commission . . . shall not enforce the provisions of this section with respect to any such exempted activity."

Example: Because adequate disclosure may be part of complying with §§ 19 or 20 (which were discussed in previous Ethics Primers), a municipal employee may comply with the disclosure requirements of § 23(b)(3) by complying with the former. For further guidance regarding whether more than one disclosure is required, you should review the matter with municipal counsel or contact the Ethics Commission.
• **Additional Standards**

Finally, § 23(e) states that "nothing in this section shall preclude any . . . head of [a municipal] agency from establishing and enforcing additional standards of conduct." This section allows agencies to impose conditions that are more restrictive than § 23 and all other sections of the conflict law.

Note: Although § 23(e) does not prohibit an agency head from establishing and enforcing such additional conditions/restrictions, nothing in the conflict law affirmatively grants an agency head the legal authority to do so. Such authority is an issue of municipal law.
No trustee of any public institution of higher education operated by the commonwealth shall be eligible to be appointed to or hold any other office or position with said institution for a period of three years next after the termination of his services as such trustee, or in the case of an elected student trustee at said institution, for a period of one year next after the termination of his services as such trustee; provided, however, that any such elected student trustee may accept and hold part-time employment at said institution while a student thereat, and provided further, that a trustee may be appointed to or hold an unpaid office or position with said institution after his services as such trustee.
• **Introduction**

The purpose of this Advisory is to explain to public employees (i.e., all current officers and employees of Massachusetts state, county, and municipal government agencies, elected and appointed, full-time and part-time, paid and unpaid) how the conflict of interest law applies to their political activities. The term “political activity” includes, but is not necessarily limited to, any activity that is in support of or opposition to a federal, state or local candidate or political party or a state or local ballot question.

In most cases, public employees are free to engage in political activities on their own time as individuals, subject to the limitations discussed in this Advisory (including the campaign finance law's, G.L. c. 55, prohibition against political fundraising in public buildings and by appointed, compensated public employees). Nothing in the conflict of interest law prohibits a public employee from running for any public office, including seeking re-election. The conflict of interest law does not require a candidate to take a leave of absence from his or her public job, but the employee’s own agency may require such a leave or establish other limitations stricter than those of the conflict of interest law. If a public employee is elected to another public office, certain restrictions (not discussed in this Advisory) may apply to holding both jobs at the same time; the Commission’s Legal Division can provide advice about multiple office holding.

Conversely, public employees may not engage in political activities on public time. Public resources and the tax dollars that fund such resources are to be used for governmental purposes; not for political activity. Public resources include paid staff time, facilities, supplies and equipment.

For the first three subjects discussed in this Advisory (campaign use of public resources, campaigning on the job, and solicitation and fundraising), the campaign finance law often, but not always, establishes stricter requirements than the conflict of interest law. The state Office of Campaign and Political Finance (OCPF) administers and enforces the state campaign finance law, and can provide complete advice about its interpretation. At times, these two laws have overlapping jurisdiction. In such cases, public employees must comply with both laws.

Section 23 of the conflict of interest law contains prohibitions that apply to all public employees in the Commonwealth. Two of those prohibitions provide that public employees may not, knowingly or with reason to know:

- use or attempt to use their official position to secure unwarranted privileges or exemptions of substantial value for themselves or others (section 23(b)(2)); or
act in a manner that would cause a reasonable person to conclude that any person can improperly influence or unduly enjoy their favor in the performance of their official duties, or that they are likely to act or fail to act as a result of kinship, rank, position or influence of any party or person. Importantly the law also provides that it is unreasonable to so conclude if the public employee has disclosed in writing to his or her appointing authority or, if no appointing authority exists, as is the case for elected officials, discloses in a manner that is public in nature, the facts that would otherwise lead to such a conclusion. (section 23(b)(3))

• **Summary**

As explained in detail below, the Massachusetts conflict of interest law (3) prohibits all public employees, whether compensated or not, from:

- using any public resources including staff, facilities, or the state seal or coat of arms, for campaign purposes;
- engaging in any political activities during their normal public working hours;
- using their authority to solicit campaign contributions or services, or anything else of substantial value from subordinate employees, vendors they oversee, or anyone within their regulatory jurisdiction; or
- representing a campaign (or anyone else) in connection with some matter in which the employee’s own level of government (state or local) has a direct and substantial interest (unless they are "special" employees).

In considering whether an activity is an appropriate governmental activity or an activity that is a predominantly political activity, answers to the following questions may be helpful:

- Is the activity reasonably related to or in support of the official’s statutory duties?
- Is the political activity incidental to the governmental activity in a way that involves minimal or inadvertent overlap?
- Is the expense to the government created by the political activity de minimus? (4)

Determining whether an activity is predominantly political or governmental depends on the particular facts of each case. The Commission recognizes that this determination can be difficult. Whenever there is a question whether an activity is political or governmental in nature, public employees should seek prospective advice from the Commission regarding such an activity.

• **Campaign Use of Public Resources**

The use of public resources of substantial value ($50 or more), available by virtue of one’s public employment, for the purpose of conducting, supporting or opposing a candidate or otherwise engaging in a political activity is the use of one’s official position to secure an unwarranted privilege for oneself or another. (5) These resources include staff time, publicly provided stationery, office supplies, utilities, telephones, office equipment (e.g. copying machines, typewriters, word processors, fax machines, e-mail), office space or other facilities. (6) These are intended for the conduct of public business, not for conducting political activity or otherwise advancing the political interests of public employees. Thus, political activity that is not
in furtherance of the purpose for which government funds were appropriated is prohibited. Elected officials should take appropriate steps to keep separate official and political activities and to ensure that political and campaign activities take place outside of their public offices.

The Commission recognizes that, in some cases, the use of public resources may be incidental to the officially related duties of a public official, for example, when the public official’s staff needs to coordinate with the official’s campaign scheduler. In such instances, staff time should be limited as much as is practicable. In circumstances where the use of public resources becomes more than incidental, the matter should be referred to the campaign. For example, if a series of questions to or an interview of a public press officer by a member of the media becomes predominantly focused on a political campaign, the press officer should conclude the interview by referring the media representative to the campaign for further discussion. A public employee or his/her staff should not engage in proactive political activity using public resources. For example, state employees who are required to be with elected officials at a political event, e.g., for security purposes, may not perform political activities such as distributing campaign materials at a political event. In addition, public resources may not be utilized to:

- write political or campaign speeches;
- set up or hold a press conference or press availability the predominant purpose of which is to endorse, promote or oppose a federal, state, county or municipal candidate;
- conduct campaign polls or to answer campaign questions;
- create databases of potential campaign supporters;
- conduct campaign research or photocopying for such purposes;
- create or maintain a campaign website or even create a link from a governmental website to a campaign website.\(^{(7)}\)

Moreover, the Commission has ruled that candidates who are public officials or employees may not use the state seal (or state "coat of arms") even on privately purchased stationery, for fundraising or other campaign purposes. The seal may be used solely for official state purposes, not for the private purpose of a campaign.

Finally, if a policy, rule or regulation prohibits the use of a public facility or public resources, such a use would be an unwarranted privilege. For example, the Bureau of State Office Buildings manages the state office buildings located at the Government Center Complex in Boston including the State House, John W. McCormack, Charles F. Hurley and Erich Lindemann Buildings. The Bureau’s policy manual states, "Activities in support of political candidates or ballot questions are not permitted on Bureau grounds."

- **Campaigning on the Job**

Public employees may not engage in political activities during their normal working hours. While employed by the taxpayers, they are to be doing the taxpayers’ work, and not politicking for themselves or individual candidates, or in support of or opposition to election ballot questions. For appointed public employees, normal working hours are those set by the employer through regulations or otherwise, or as designated in the applicable collective bargaining agreement. Where such hours have not been clearly defined, the employee is responsible for resolving any ambiguity with his or her appointing official before engaging in political work.
• **Solicitation and Fundraising**

The conflict of interest law forbids public employees from soliciting anything of substantial value from those they oversee, because of the "inherently coercive" nature of such solicitations. The Commission has applied this principle to political campaigns. Thus, public employees may not solicit campaign assistance from persons they regulate or who are under their supervision. For example, they may not use their official title or authority, or their presence at a meeting under coercive circumstances, to solicit non-monetary campaign assistance. They may also not solicit private, paid business relationships with such persons they oversee (including, for example, the provision of paid political consulting services).

If persons under the public employee’s jurisdiction wish to enter into such a private business relationship with the public employee, the public employee must publicly disclose in writing the existence of the private business relationship, and the facts that the person under his jurisdiction initiated it and entered into it entirely voluntarily.

The same principle applies to campaign fundraising. Thus, appointed public employees (whether compensated or not) may not solicit political contributions from other public employees whom they supervise, vendors that they oversee, or anyone over whom they may have regulatory power. The Commission has not addressed whether this prohibition applies to elected officials except in situations where there has been an express or implied link between the making of a contribution and a subordinate’s appointment or employment. In re Nolan, 1989 SEC 415. See Commonwealth v. Borans, 379 Mass. 117, 142 (1979). See also G.L. c. 55, sections 16-17; c. 56, sections 33-36 (criminal statutes not enforced by Commission).

It should be noted again that the most significant restrictions on campaign fundraising by Massachusetts public employees are not enforced by the State Ethics Commission; they are found in the state campaign finance law which is administered by OCPF. Among other things, these restrictions prohibit public employees who are both appointed and compensated from directly or indirectly soliciting or receiving any political funds from anyone; prohibit anyone from giving, soliciting, or receiving political funds in any public building; and forbid requiring any public employee to contribute any political funds or to render any political service. For complete details, contact OCPF.

**ENDNOTES**

1. The Commission issues Advisories periodically to interpret various provision of the conflict of interest law. Advisories respond to issues that may arise in the context of a particular advisory opinion or enforcement action but which have the potential for broad application. It is important to keep in mind that this advisory is general in nature and is not an exhaustive review of the conflict law.

2. The federal Hatch Act applies to state and local employees who are principally employed in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency. In some instances, the Hatch Act may prohibit such employees from becoming candidates for public office in a partisan election; using official authority or influence to interfere with or affect the results of an election or nomination or directly or indirectly coercing contributions from subordinates in support of a political party or candidate (see Appendix B).
3. In addition, as explained below, the state campaign finance law sometimes establishes stricter requirements. Among other things, it prohibits public employees who are both appointed and compensated from directly or indirectly soliciting or receiving any political funds from anyone; prohibits anyone from giving, soliciting, or receiving political funds in any public building; and forbids requiring any public employee to contribute any political funds or to render any political service. For complete details, contact OCPF (see Appendix B).

4. The Commission has ruled that anything with a monetary value of less than $50 is not of substantial value.

5. Although the State Ethics Commission has reached the conclusions in parts I and II under the state conflict of interest law, G.L. c. 268A, section 23(b)(2), OCPF has reached similar conclusions under the state campaign finance law as interpreted by a state Supreme Judicial Court decision, Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979). For complete details, contact OCPF. Note that the campaign finance law and Anderson prohibit campaign use of public resources even if they are not of "substantial value."

6. Public facilities that are in fact available to the general public for use may be available for conducting certain political activities in accordance with the terms and conditions of the facility and on an equitable basis.

7. In Interpretive Bulletin 95-03, the Office of Campaign and Political Finance concluded, "An elected official or the official’s staff may use public resources to produce and distribute information to constituents regarding the official’s position on issues if the activity is consistent with the official’s responsibilities. Elected officials and their staff may also use public resources to respond to criticism of the official’s record, even from opponents, provided such use is reasonable and proportionate in scope. Public resources may not be used to attack the candidacy of an opponent."

8. See advisory opinion EC-COI-92-12, footnote 10, Public Enforcement Letter 95-2 (sheriff violated G.L. c. 268A, section 23(b)(2) by combining official swearing-in ceremonies for deputy sheriffs with political campaign fundraising events) and In the Matter of Michael Bencal, 2006 SEC ___, (city councilor violated the same section by soliciting a contribution from municipal employee to assure his continued employment).

Section 1. In this chapter the following words, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings:

(a) "Compensation ", any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(b) "Competitive bidding ", all bidding, where the same may be prescribed by applicable sections of the General Laws or otherwise, given and tendered to a state, county or municipal agency in response to an open solicitation of bids from the general public by public announcement or public advertising, where the contract is awarded to the lowest responsible bidder.

(c) "County agency ", any department or office of county government and any division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.

(d) "County employee ", a person performing services for or holding an office, position, employment, or membership in a county agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis.

(e) "Immediate family ", the employee and his spouse, and their parents, children, brothers and sisters.

(f) "Municipal agency ", any department or office of a city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.

(g) "Municipal employee ", a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.

(h) "Official act ", any decision or action in a particular matter or in the enactment of legislation.

(i) "Official responsibility ", the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action.
(j) "Participate ", participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.

(k) " Particular matter ", any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property.

(l) " Person who has been selected ", any person who has been nominated or appointed to be a state, county or municipal employee or has been officially informed that he will be so nominated or appointed.

(m) " Special county employee ", a county employee who is performing services or holding an office, position, employment or membership for which no compensation is provided; or who is not an elected official and (l) occupies a position which, by its classification in the county agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, provided that disclosure of such classification or permission is filed in writing with the State Ethics Commission and the office of the county commissioners prior to the commencement of any personal or private employment, or (2) in fact does not earn compensation as a county employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special county employee shall be in such a status on days for which he is not compensated as well as on days on which he earns compensation.

(n) " Special municipal employee ", a municipal employee who is not a mayor, a member of the board of aldermen, a member of a city council, or a selectman in a town with a population in excess of ten thousand persons and whose position has been expressly classified by the city council, or board of aldermen if there is no city council, or board of selectmen, as that of a special employee under the terms and provisions of this chapter; provided, however, that a selectman in a town with a population of ten thousand or fewer persons shall be a special municipal employee without being expressly so classified. All employees who hold equivalent offices, positions, employment or membership in the same municipal agency shall have the same classification; provided, however, no municipal employee shall be classified as a "special municipal employee" unless he occupies a position for which no compensation is provided or which, by its classification in the municipal agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, or unless he in fact does not earn compensation as a municipal employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special municipal employee shall be in such status on days for which he is not compensated as well as on days on which he earns compensation. All employees of any city or town wherein no such classification has been made shall be deemed to be "municipal employees" and shall be subject to all the provisions of this chapter with respect thereto without exception.

(o) " Special state employee ", a state employee:

(1) who is performing services or holding an office, position, employment or membership for which no compensation is provided, or
(2) who is not an elected official and

(a) occupies a position which, by its classification in the state agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, provided that disclosure of such classification or permission is filed in writing with the state ethics commission prior to the commencement of any personal or private employment, or

(b) in fact does not earn compensation as a state employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special state employee shall be in such a status on days for which he is not compensated as well as on days on which he earns compensation.

(p) "State agency ", any department of a state government including the executive, legislative or judicial, and all councils thereof and thereunder, and any division, board, bureau, commission, institution, tribunal or other instrumentality within such department, and any independent state authority, district, commission, instrumentality or agency, but not an agency of a county, city or town.

(q) "State employee ", a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis, including members of the general court and executive council. No construction contractor nor any of their personnel shall be deemed to be a state employee or special state employee under the provisions of paragraph (o) or this paragraph as a result of participation in the engineering and environmental analysis for major construction projects either as a consultant or part of a consultant group for the commonwealth. Such contractors or personnel may be awarded construction contracts by the commonwealth and may continue with outstanding construction contracts with the commonwealth during the period of such participation; provided, that no such contractor or personnel shall directly or indirectly bid on or be awarded a contract for any construction project if they have participated in the engineering or environmental analysis thereof.

268A:2. Corrupt gifts, offers or promises to influence official acts; corruption of witnesses.

Section 2.(a) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any state, county or municipal employee, or to any person who has been selected to be such an employee, or to any member of the judiciary, or who offers or promises any such employee or any member of the judiciary, or any person who has been selected to be such an employee or member of the judiciary, to give anything of value to any other person or entity, with intent:

(1) to influence any official act or any act within the official responsibility of such employee or member of the judiciary or person who has been selected to be such employee or member of the judiciary, or

(2) to influence such an employee or member of the judiciary or person who has been selected to be such an employee or member of the judiciary, to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud on the commonwealth or a state, county or municipal agency, or
(3) to induce such an employee or member of the judiciary or person who has been selected to be such an employee or member of the judiciary to do or omit to do any act in violation of his lawful duty; or

(b) Whoever, being a state, county or municipal employee or a member of the judiciary or a person selected to be such an employee or member of the judiciary, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of value for himself or for any other person or entity, in return for

(1) being influenced in his performance of any official act or any act within his official responsibility, or

(2) being influenced to commit or aid in committing, or to collude in, or allow any fraud, or make opportunity for the commission of any fraud, on the commonwealth or on a state, county or municipal agency, or

(3) being induced to do or omit to do any acts in violation of his official duty; or

(c) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person or any other person as a witness upon a trial, or other proceeding, before any court, any committee of either house or both houses of the general court, or any agency, commission or officer authorized by the laws of the commonwealth to hear evidence or take testimony, or with intent to influence such witness to absent himself therefrom; or

(d) Whoever, directly, or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of value for himself or for any other person or entity in return for influence upon the testimony under oath or affirmation of himself or any other person as a witness upon any such trial, hearing or other proceeding or in return for the absence of himself or any other person there from; shall be punished by a fine of not more than $100,000, or by imprisonment in the state prison for not more than 10 years, or in a jail or house of correction for not more than 2 ½ years, or both; and in the event of final conviction shall be incapable of holding any office of honor, trust or profit under the commonwealth or under any state, county or municipal agency.

Clauses (c) and (d) shall not be construed to prohibit the payment or receipt of witness fees provided by law or the payment by the party upon whose behalf a witness is called and receipt by a witness of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing or proceeding, or, in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, in appearing or testifying.

268A:3. Gifts, offers or promises for acts performed or to be performed; corruption of witnesses; solicitation of gifts.

Section 3. (a) Whoever knowingly, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, gives, offers or promises anything of substantial value to any present or former state, county or municipal employee or to any member of the judiciary, or to any person selected to be such an employee or member of the judiciary: (i) for or because of any official act performed or to be performed by such an employee or member of the judiciary or person selected
to be such an employee or member of the judiciary; or (ii) to influence, or attempt to influence, an official action of the state, county or municipal employee or to any member of the judiciary; or

(b) Whoever knowingly, being a present or former state, county or municipal employee or member of the judiciary, or person selected to be such an employee or member of the judiciary, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of substantial value: (i) for himself for or because of any official act or act within his official responsibility performed or to be performed by him; or (ii) to influence, or attempt to influence, him in an official act taken; or

(c) Whoever knowingly, directly or indirectly, gives, offers or promises anything of substantial value to any person, for or because of testimony under oath or affirmation given or to be given by such person or any other person as a witness upon a trial, hearing or other proceeding, before any court, any committee of either house or both houses of the general court, or any agency, commission or officer authorized by the laws of the commonwealth to hear evidence or take testimony or for or because of his absence therefrom; or

(d) Whoever knowingly, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of substantial value for himself for or because of the testimony under oath or affirmation given or to be given by him or any other person as a witness upon any such trial, hearing or other proceeding, or for or because of his absence therefrom; shall be punished by a fine of not more than $50,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

(e) Clauses (c) and (d) shall not prohibit the payment or receipt of witness fees provided by law or the payment by the party upon whose behalf a witness is called and receipt by a witness of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing or proceeding, or, in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, in appearing or testifying.

(f) The state ethics commission shall adopt regulations: (i) defining "substantial value,"; provided, however, that "substantial value" shall not be less than $50; (ii) establishing exclusions for ceremonial gifts; (iii) establishing exclusions for gifts given solely because of family or friendship; and (iv) establishing additional exclusions for other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

268A:4. Other compensation; offer, gift, receipt or request; acting as agent or attorney for other than state; legislators; special state employees.

Section 4. (a) No state employee shall otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the commonwealth or a state agency, in relation to any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest.

(b) No person shall knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(c) No state employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the commonwealth or a state agency for prosecuting any claim
against the commonwealth or a state agency, or as agent or attorney for anyone in connection with any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest.

Whoever violates any provision of this section shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

A member of the general court shall not be subject to paragraphs (a) or (c). However, no member of the general court shall personally appear for any compensation other than his legislative salary before any state agency, unless:

1. The particular matter before the state agency is ministerial in nature; or
2. The appearance is before a court of the commonwealth; or
3. The appearance is in a quasi-judicial proceeding.

For the purposes of this paragraph, ministerial functions include, but are not limited to, the filing or amendment of: tax returns, applications for permits or licenses, incorporation papers, or other documents. For the purposes of this paragraph, a proceeding shall be considered quasi-judicial if:

1. The action of the state agency is adjudicatory in nature; and
2. The action of the state agency is appealable to the courts; and
3. Both sides are entitled to representation by counsel and such counsel is neither the attorney general nor the counsel for the state agency conducting the proceeding.

A special state employee shall be subject to paragraphs (a) and (c) only in relation to a particular matter (a) in which he has at any time participated as a state employee, or (b) which is or within one year has been a subject of his official responsibility, or (c) which is pending in the state agency in which he is serving. Clause (c) of the preceding sentence shall not apply in the case of a special state employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.

This section shall not prevent a state employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings.

This section shall not prevent a state employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility; provided, that the state official responsible for appointment to his position approves.

This section shall not prevent a present or former special state employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the commonwealth; provided, that the head of the special state employee's department or agency
has certified in writing that the interest of the commonwealth requires such aid or assistance and the certification has been filed with the state ethics commission.

This section shall not prevent a state employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

This section shall not prohibit a state employee from holding an elective or appointive office in a city, town or district, nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office. No such elected or appointed official may vote or act on any matter which is within the purview of the agency by which he is employed or over which such employee has official responsibility.

This section shall not prevent a state employee, other than an employee in the department of revenue, from requesting or receiving compensation from anyone other than the commonwealth in relation to the filing or amending of state tax returns.

268A:5. Former state employees; acting as attorney or receiving compensation; partners of state employees or legislators.

Section 5. (a) A former state employee who knowingly acts as agent or attorney for, or receives compensation directly or indirectly from anyone other than the commonwealth or a state agency, in connection with any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest and in which he participated as a state employee while so employed, or

(b) a former state employee who, within one year after his last employment has ceased, appears personally before any court or agency of the commonwealth as agent or attorney for anyone other than the commonwealth in connection with any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest and which was under his official responsibility as a state employee at any time within a period of two years prior to the termination of his employment, or

(b½) a former state, county or municipal employee who participated as such in general legislation on expanded gaming in the commonwealth or in the implementation, administration or enforcement of chapter 23K, and who becomes an officer or employee of, or who acquires a financial interest in, an applicant for a gaming license or a gaming licensee under said chapter 23K within one year after his last state, county or municipal employment has ceased, or

(c) a partner of a former state employee who knowingly engages, during a period of one year following the termination of the latter's employment by the commonwealth, in any activity in which the former state employee is himself prohibited from engaging in by clause (a), or

(d) a partner of a state employee who knowingly acts as agent or attorney for anyone other than the commonwealth in connection with any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest and in which the state employee participates or has participated as a state employee or which is the subject of his official responsibility, or

(e) a former state employee or elected official, including a former member of the general court, who acts as legislative or executive agent, as defined in section thirty-nine of chapter three, for anyone other than the commonwealth or a state agency before the governmental body as determined by the
state ethics commission with which he has been associated, within one year after he leaves that body, or

(f) a former state employee whose salary was not less than that in step one of job group M-VII in the management salary schedule in section forty-six C of chapter thirty, and who becomes an officer or employee of a business organization which is or was a party to any privatization contract as defined in section fifty-three of chapter seven in which contract he participated as such state employee, if he becomes such officer or employee while the business organization is such a party or within one year after he terminates his state employment, unless before the termination of his state employment the governor determines, in a writing filed with the state ethics commission, that such participation did not significantly affect the terms or implementation of such contract, shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

If a partner of a member of the general court or of a special state employee or of a former state employee is also a member of another partnership in which the member of the general court or special or former employee has no interest, the activities of the latter partnership in which the member of the general court or special or former employee takes no part shall not thereby be subject to clause (c) or (d).

This section shall not prevent a present or former special state employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the commonwealth; provided, that the head of the special state employee's department or agency has certified in writing that the interest of the commonwealth requires such aid or assistance and the certification has been filed with the state ethics commission.

268A:6. Financial interest of state employee, relative or associates; disclosure.

Section 6. (a) Except as permitted by this section, any state employee who participates as such employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 1/2 years, or both.

Any state employee whose duties would otherwise require him to participate in such a particular matter shall advise the official responsible for appointment to his position and the state ethics commission of the nature and circumstances of the particular matter and make full disclosure of such financial interest, and the appointing official shall thereupon either

(1) assign the particular matter to another employee; or

(2) assume responsibility for the particular matter; or

(3) make a written determination that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the commonwealth may expect from the employee, in which case it shall not be a violation for the employee to participate in the particular matter. Copies of such written determination shall be forwarded to the state employee and filed with the
state ethics commission by the person who made the determination. Such copy shall be retained by the commission for a period of six years.

268A:6A. Conflict of interest of public official; reporting requirement.

Section 6A. Any public official, as defined by section 1 of chapter two hundred and sixty-eight B, who in the discharge of his official duties would be required knowingly to take an action which would substantially affect such official's financial interests, unless the effect on such an official is no greater than the effect on the general public, shall file a written description of the required action and the potential conflict of interest with the state ethics commission established by said chapter two hundred and sixty-eight B.

268A:6B. State employment applicants; reporting requirement.

Section 6B. Each candidate for employment as a state employee shall be required by the hiring authority as part of the application process to disclose, in writing, the names of any state employee who is related to the candidate as: spouse, parent, child or sibling or the spouse of the candidate's parent, child or sibling. The contents of a disclosure received under this section from an employee when such employee was a candidate shall be considered public records under section 7 of chapter 4 and chapter 66. All disclosures made by applicants hired by a state agency shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

268A:7. Financial interest in contracts of state agency; application of section.

Section 7. A state employee who has a financial interest, directly or indirectly, in a contract made by a state agency, in which the commonwealth or a state agency is an interested party, of which interest he has knowledge or has reason to know, shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

This section shall not apply if such financial interest consists of the ownership of less than one percent of the stock of a corporation.

This section shall not apply:

(a) to a state employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interests to the contracting agency and terminates or disposes of the interest, or

(b) to a state employee other than a member of the general court who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the state employee files with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate family in the contract, and if in the case of a contract for personal services (i) the services will be provided outside the normal working hours of the state employee, (2) the services are not required as part of the state employee's regular duties, the employee is compensated for not more than five hundred hours during a calendar year, and (3) the head of the contracting agency makes and files with the state ethics commission a written
certification that no employee of that agency is available to perform those services as a part of their regular duties,

(c) to the interest of a member of the general court in a contract made by an agency other than the general court or either branch thereof, if his direct and indirect interests and those of his immediate family in the corporation or other commercial entity with which the contract is made do not in the aggregate amount to ten percent of the total proprietary interests therein, and the contract is made through competitive bidding and he files with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate family,

(d) to a special state employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the state ethics commission a statement making full disclosure of his interest and the interest of his immediate family in the contract, or

(e) to a special state employee who files with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the governor with the advice and consent of the executive council exempts him.

This section shall not apply to a state employee who provides services or furnishes supplies, goods and materials to a recipient of public assistance, provided that such services or such supplies, goods and materials are provided in accordance with a schedule of charges promulgated by the department of transitional assistance or the division of health care policy and finance and provided, further, that such recipient has the right under law to choose and in fact does choose the person or firm that will provide such services or furnish such supplies, goods and materials.

This section shall not prohibit a state employee from teaching or performing other related duties in an educational institution of the commonwealth; provided, that such employee does not participate in, or have official responsibility for, the financial management of such educational institution; and provided, further, that such employee is so employed on a part-time basis. Such employee may be compensated for such services, notwithstanding the provisions of section twenty-one of chapter thirty.

This section shall not prohibit a state employee from being employed on a part-time basis by a facility operated or designed for the care of mentally ill or mentally retarded persons, public health, correctional facility or any other facility principally funded by the state which provides similar services and which operates on an uninterrupted and continuous basis; provided that such employee does not participate in, or have official responsibility for, the financial management of such facility, that he is compensated for such part-time employment for not more than four hours in any day in which he is otherwise compensated by the commonwealth, and at a rate which does not exceed that of a state employee classified in step one of job group XX of the general salary schedule contained in section forty-six of chapter thirty, and that the head of the facility makes and files with the state ethics commission a written certification that there is a critical need for the services of the employee. Such employee may be compensated for such services, notwithstanding the provisions of section twenty-one of chapter thirty.

This section shall not preclude an officer or employee of the Massachusetts Port Authority from eligibility for any residential sound insulation program administered by said Authority, provided that any such officer or employee has no responsibility for the administration of said program.
Pursuant to Chapter 264 of the Acts of 2010, section 7 of chapter 268A of the General Laws is hereby amended by striking out, in lines 78 and 79, as appearing in the 2008 Official Edition, the words "administered by said Authority, provided that any such officer has no financial responsibility for the administration of said program" and inserting in place thereof the following words:- or the bayswater environmental program provided that the officer or employee has no responsibility for the administration for that program from which he is to receive the benefit. (Effective November 7, 2010).

268A:8. Public building or construction contracts.

Section 8. No state, county or municipal employee and no person acting or purporting to act on behalf of such employee, or any state, county or municipal agency, shall with respect to any public building or construction contract which is about to be or which has been competitively bid, require the bidder to make application to or furnish financial data to, or to obtain, or procure, any of the surety bonds or insurance specified in connection with such contract or specified by any law from any particular insurance or surety company, agent, or broker. This section shall not prevent the exercise by such employee on behalf of a state, county, or municipal agency of its right to approve the form, sufficiency, or manner of execution of the surety bonds and insurance furnished by the insurance or surety company selected by the bidder to underwrite said insurance and bonds. Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are hereby declared to be contrary to the public policy of this commonwealth. Whoever violates any provision of this section shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

268A:8A. Members of state commissions or boards; prohibited appointments to other positions.

Section 8A. No member of a state commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.

268A:8B. Members of department of telecommunications and energy commission; prohibited lobbying activities.

Section 8B. No member of the department of telecommunications and energy commission, appointed pursuant to section 2 of chapter 25, shall, within one year after his service has ceased or terminated on said commission, be employed by, or lobby said commission on behalf of, any company or regulated industry over which said commission had jurisdiction during the tenure of such member of the commission.

268A:9. Violation of sections 2-8; additional remedies; civil action for damages.

Section 9. (a) In addition to any other remedies provided by law, any violation of sections 2 to 8, inclusive, or section 23 which has substantially influenced the action taken by any state agency in any particular matter, shall be grounds for avoiding, rescinding or canceling the action on such terms as the interests of the commonwealth and innocent third persons shall require.
(b) In addition to the remedies set forth in subsection (a), the state ethics commission upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of sections 2 to 8, inclusive, or section 23, may issue an order: (1) requiring the violator to pay the commission on behalf of the commonwealth damages in the amount of the economic advantage or $500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the attorney general, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or $500, and payment of such additional damages shall bar any criminal prosecution for the same violation.

The maximum damages that the commission may order a violator to pay under this section shall be $25,000. If the commission determines that the damages authorized by this section exceed $25,000, it may bring a civil action against the violator to recover such damages.

(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the state ethics commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.


Section 10. The state ethics commission shall issue opinions interpreting the requirements of this chapter in accordance with clause (g) of section three of chapter two hundred and sixty-eight B.

268A:11. County employees; receiving or requesting compensation from, or acting as agent or attorney for other than county agency.

Section 11. (a) No county employee shall, otherwise than as provided for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than a county or a county agency in relation to any particular matter in which a county agency is a party or has a direct and substantial interest.

(b) No person shall knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(c) No county employee shall, otherwise than as provided by law for the proper discharge of official duties, act as agent or attorney for anyone other than a county or a county agency in prosecuting any claim against a county or county agency, or as agent or attorney for anyone in connection with any particular matter in which a county or county agency is a party or has a direct and substantial interest.

Whoever violates any provision of this section shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

A county employee shall be subject to paragraphs (a) and (c) only in relation to the county of which he is an employee. A special county employee shall be subject to said paragraphs (a) and (c) only in relation to a particular matter (a) in which he has at any time participated as a county employee, or (b) which is or within one year has been a subject of his official responsibility, or (c) which is pending in the county agency in which he is serving. Clause (c) of the preceding sentence shall not apply in the case of a county employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.
This section shall not prevent a county employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings.

This section shall not prevent a county employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility; provided, that the state or county official responsible for appointment to his position approves.

This section shall not prevent a county employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility; provided, that the state or county official responsible for appointment to his position approves.

This section shall not prevent a county employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

This section shall not prohibit a county employee from holding an elective or appointive office in a city, town or district nor in any way prohibit such an employee from performing the duties or receiving the compensation provided for such office. No such elected or appointed official may vote or act on any matter which is within the purview of the agency by which he is employed or over which such employee has official responsibility.

268A:12. Former county employees; acting as attorney or receiving compensation from other than county; partners of employees or former employees or legislators.

Section 12. (a) A former county employee who knowingly acts as agent or attorney for or receives compensation directly or indirectly from anyone other than a county or a county agency in connection with any particular matter in which the county or a county agency of the same county is a party or has a direct and substantial interest and in which he participated as a county employee while so employed, or

(b) a former county employee who, within one year after his last employment has ceased, appears personally before any agency of the county as agent or attorney for anyone other than the county in connection with any particular matter in which the county or a county agency of the same county is a party or has a direct and substantial interest and which was under his official responsibility as a county employee at any time within a period of two years prior to the termination of his employment, or

(c) a partner of a former county employee who knowingly engages, during a period of one year following the termination of the latter's employment by the county, in any activity in which the former county employee is himself prohibited from engaging by clause (a), or

(d) a partner of a county employee who knowingly acts as agent or attorney for anyone other than the county in connection with any particular matter in which the county or a county agency of the same county is a party or has a direct and substantial interest and in which the county employee participates or has participated as a county employee or which is the subject of his official
responsibility, shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

If a partner of a special county employee or of a former county employee is also a member of another partnership in which the special or former employee has no interest, activities of the latter partnership in which the special or former employee takes no part shall not thereby be subject to clause (c) or (d).

This section shall not prevent a present or former special county employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the county; provided, that the head of the special county employee's department or agency has certified in writing that the interest of the county requires such aid or assistance and the certification has been filed with the state ethics commission. The certification shall be open to public inspection.

**268A:13. Financial interest of county employee, relatives or associates; disclosure.**

Section 13. (a) Except as permitted by paragraph (b), a county employee who participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

(b) Any county employee whose duties would otherwise require him to participate in such a particular matter shall advise the official responsible for appointment to his position and the state ethics commission of the nature and circumstances of the particular matter and make full disclosure of such financial interest, and the appointing official shall thereupon either

(1) assign the particular matter to another employee; or

(2) assume responsibility for the particular matter; or

(3) make a written determination that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the county may expect from the employee, in which case it shall not be a violation for the employee to participate in the particular matter. Copies of such written determination shall be forwarded to the county employee and filed with the state ethics commission by the person who made the determination. Such copy shall be retained by the commission for a period of six years.

**268A:14. County employees; financial interest in contracts of county agency.**

Section 14. A county employee who has a financial interest, directly or indirectly, in a contract made by a county agency of the same county, in which the county or a county agency is an interested party of which financial interest he has knowledge or has reason to know, shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.
This section shall not apply if such financial interest consists of the ownership of less than one percent of the stock of a corporation.

This section shall not apply

(a) to a county employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest, or

(b) to a county employee who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made through competitive bidding and his direct and indirect interests and those of his immediate family in the corporation or other commercial entity with which the contract is made do not in the aggregate amount to ten percent of the total proprietary interests therein, or

(c) to a special county employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the state ethics commission a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the county commissioners approve the exemption of his interest from this section.

268A:15. County agency; unfair advantage in relation to particular matter; additional remedies; civil action for damages.

Section 15. (a) In addition to any other remedies provided by law, any violation of section 2, 3, 8, or sections 11 to 14, inclusive, or section 23 which has substantially influenced the action taken by any county agency in any particular matter, shall be grounds for avoiding, rescinding or canceling the action on such terms as the interests of the county and innocent third persons shall require.

(b) In addition to the remedies set forth in subsection (a), the commission may, upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of section 2, 3, 8, sections 11 to 14, inclusive, or section 23, issue an order (1) requiring the violator to pay the commission on behalf of the county damages in the amount of the economic advantage or $500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the attorney general and the district attorney, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or $500, and payment of such additional damages shall bar any criminal prosecution for the same violation.

The maximum damages that the commission may order a violator to pay under this section shall be $25,000. If the commission determines that the damages authorized by this section exceed $25,000, it may bring a civil action against the violator to recover such damages.

(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.
268A:15A. Members of county commission or board; restrictions on appointments to certain positions.

Section 15A. No member of a county commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.


268A:17. Municipal employees; gift or receipt of compensation from other than municipality; acting as agent or attorney.

Section 17. (a) No municipal employee shall, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest.

(b) No person shall knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(c) No municipal employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the city or town or municipal agency in prosecuting any claim against the same city or town, or as agent or attorney for anyone in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest.

Whoever violates any provision of this section shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

A special municipal employee shall be subject to paragraphs (a) and (c) only in relation to a particular matter (a) in which he has at any time participated as a municipal employee, or (b) which is or within one year has been a subject of his official responsibility, or (c) which is pending in the municipal agency in which he is serving. Clause (c) of the preceding sentence shall not apply in the case of a special municipal employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.

This section shall not prevent a municipal employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility; provided, that the official responsible for appointment to his position approves.
This section shall not prevent a present or former special municipal employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the city or town; provided, that the head of the special municipal employee’s department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the clerk of the city or town. The certification shall be open to public inspection.

This section shall not prevent a municipal employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

This section shall not prevent a municipal employee from applying on behalf of anyone for a building, electrical, wiring, plumbing, gas fitting or septic system permit, nor from receiving compensation in relation to any such permit, unless such employee is employed by or provides services to the permit-granting agency or an agency that regulates the activities of the permit-granting agency.

268A:18. Former municipal employee; acting as attorney or receiving compensation; from other than municipality; partners.

Section 18. (a) A former municipal employee who knowingly acts as agent or attorney for or receives compensation, directly or indirectly from anyone other than the same city or town in connection with any particular matter in which the city or town is a party or has a direct and substantial interest and in which he participated as a municipal employee while so employed, or

(b) a former municipal employee who, within one year after his last employment has ceased, appears personally before any agency of the city or town as agent or attorney for anyone other than the city or town in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and which was under his official responsibility as a municipal employee at any time within a period of two years prior to the termination of his employment, or

(c) a partner of a former municipal employee who knowingly engages, during a period of one year following the termination of the latter's employment by the city or town, in any activity in which the former municipal employee is himself prohibited from engaging by clause (a), or

(d) a partner of a municipal employee who knowingly acts as agent or attorney for anyone other than the city or town in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and in which the municipal employee participates or has participated as a municipal employee or which is the subject of his official responsibility, shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

If a partner of a former municipal employee or of a special municipal employee is also a member of another partnership in which the former or special employee has no interest, the activities of the latter partnership in which the former or special employee takes no part shall not thereby be subject to clause (c) or (d).

Notwithstanding the provisions of clause (b), a former town counsel who acted in such capacity on a salary or retainer of less than two thousand dollars per year shall be prohibited from appearing personally before any agency of the city or town as agent or attorney for anyone other than the city or town.
town only in connection with any particular matter in which the same city or town is a party or has a
direct and substantial interest and in which he participated while so employed.

This section shall not prevent a present or former special municipal employee from aiding or
assisting another person for compensation in the performance of work under a contract with or for
the benefit of the city or town; provided that the head of the special municipal employee's department
or agency has certified in writing that the interest of the city or town requires such aid or assistance
and the certification has been filed with the clerk of the city or town. The certification shall be open
to public inspection.

268A:19. Municipal employees, relatives or associates; financial interest in particular matter.

Section 19. (a) Except as permitted by paragraph (b), a municipal employee who participates as such
an employee in a particular matter in which to his knowledge he, his immediate family or partner, a
business organization in which he is serving as officer, director, trustee, partner or employee, or any
person or organization with whom he is negotiating or has any arrangement concerning prospective
employment, has a financial interest, shall be punished by a fine of not more than $10,000, or by
imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not
more than 2 ½ years, or both.

(b) It shall not be a violation of this section:

(1) if the municipal employee first advises the official responsible for appointment to his position
of the nature and circumstances of the particular matter and makes full disclosure of such
financial interest, and receives in advance a written determination made by that official that the
interest is not so substantial as to be deemed likely to affect the integrity of the services which the
municipality may expect from the employee, or

(2) if, in the case of an elected municipal official making demand bank deposits of municipal
funds, said official first files with the clerk of the city or town, a statement making full disclosure
of such financial interest, or

(3) if the particular matter involves a determination of general policy and the interest of the
municipal employee or members of his immediate family is shared with a substantial segment of
the population of the municipality.

268A:20. Municipal employees; financial interest in contracts; holding one or more elected
positions.

Section 20. (a) A municipal employee who has a financial interest, directly or indirectly, in a contract
made by a municipal agency of the same city or town, in which the city or town is an interested party
of which financial interest he has knowledge or has reason to know, shall be punished by a fine of
not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail
or house of correction for not more than 2 ½ years, or both.

This section shall not apply if such financial interest consists of the ownership of less than one
percent of the stock of a corporation.

This section shall not apply:
(a) to a municipal employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest, or

(b) to a municipal employee who is not employed by the contracting agency or an agency which regulates the activities of the contracting agency and who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made after public notice or where applicable, through competitive bidding, and if the municipal employee files with the clerk of the city or town a statement making full disclosure of his interest and the interest of his immediate family, and if in the case of a contract for personal services

   (1) the services will be provided outside the normal working hours of the municipal employee,

   (2) the services are not required as part of the municipal employee's regular duties, the employee is compensated for not more than five hundred hours during a calendar year,

   (3) the head of the contracting agency makes and files with the clerk of the city or town a written certification that no employee of that agency is available to perform those services as part of their regular duties, and

   (4) the city council, board of selectmen or board of aldermen approve the exemption of his interest from this section, or

(c) to a special municipal employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the clerk of the city or town a statement making full disclosure of his interest and the interests of his immediate family in the contract, or

(d) to a special municipal employee who files with the clerk of the city, town or district a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the city council or board of aldermen, if there is no city council, board of selectmen or the district prudential committee, approve the exemption of his interest from this section, or

(e) to a municipal employee who receives benefits from programs funded by the United States or any other source in connection with the rental, improvement, or rehabilitation of his residence to the extent permitted by the funding agency, or

(f) to a municipal employee if the contract is for personal services in a part time, call or volunteer capacity with the police, fire, rescue or ambulance department of a fire district, town or any city with a population of less than thirty-five thousand inhabitants; provided, however, that the head of the contracting agency makes and files with the clerk of the city, district or town a written certification that no employee of said agency is available to perform such services as part of his regular duties, and the city council, board of selectmen, board of aldermen or district prudential committee approve the exemption of his interest from this section or

(g) to a municipal employee who has applied in the usual course and is otherwise eligible for a housing subsidy program administered by a local housing authority, unless the employee is employed by the local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs, or
(h) to a municipal employee who is the owner of residential rental property and rents such property to a tenant receiving a rental subsidy administered by a local housing authority, unless such employee is employed by such local housing authority in a capacity in which he has responsibility for the administration of such subsidy programs.

This section shall not prohibit an employee or an official of a town from holding the position of selectman in such town nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office; provided, however, that such selectman shall not, except as hereinafter provided, receive compensation for more than one office or position held in a town, but shall have the right to choose which compensation he shall receive; provided, further, that no such selectman may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and, provided further, that no such selectman shall be eligible for appointment to any such additional position while he is still a member of the board of selectmen or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by any municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interest of the municipality and innocent third parties may require.

This section shall not prohibit any elected official in a town, whether compensated or uncompensated for such elected position, from holding one or more additional elected positions, in such town, whether such additional elected positions are compensated or uncompensated.

This section shall not prohibit an employee of a municipality with a city or town council form of government from holding the elected office of councillor in such municipality, nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office; provided, however, that no such councillor may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and provided, further, that no councillor shall be eligible for appointment to such additional position while a member of said council or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by a municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling such action on such terms as the interest of the municipality and innocent third parties require. No such elected councillor shall receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive.

This section shall not prohibit an employee of a housing authority in a municipality from holding any elective office, other than the office of mayor, in such municipality nor in any way prohibit such employee from performing the duties of or receiving the compensation provided for such office; provided, however, that such elected officer shall not, except as otherwise expressly provided, receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive; provided further that no such elected official may vote or act on any matter which is within the purview of the housing authority by which he is employed; and provided further that no such elected official shall be eligible for appointment to any such additional position while he is still serving in such elective office or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by the housing authority in any matter shall be grounds for avoiding, rescinding, or cancelling the action on such terms as the interest of the municipality and innocent third parties may require.

This section shall not prohibit an employee in a town having a population of less than three thousand
five hundred persons from holding more than one appointed position with said town, provided that the board of selectmen approves the exemption of his interest from this section.

268A:21. Municipal agency; unfair advantage in relation to particular matter; additional remedies; civil action for damages.

Section 21. (a) In addition to any other remedies provided by law, a finding by the commission pursuant to an adjudicatory proceeding that there has been any violation of sections 2, 3, 8, 17 to 20, inclusive, or section 23, which has substantially influenced the action taken by any municipal agency in any particular matter, shall be grounds for avoiding, rescinding or canceling the action of said municipal agency upon request by said municipal agency on such terms as the interests of the municipality and innocent third persons shall require.

(b) In addition to the remedies set forth in subsection (a), the commission may, upon a finding pursuant to an adjudicatory proceeding that a person has acted to his economic advantage in violation of sections 2, 3, 8, 17 to 20, inclusive, or section 23, may issue an order (1) requiring the violator to pay the commission on behalf of the municipality damages in the amount of the economic advantage or $500, whichever is greater; and (2) requiring the violator to make restitution to an injured third party. If there has been no final criminal judgment of conviction or acquittal of the same violation, upon receipt of the written approval of the district attorney, the commission may order payment of additional damages in an amount not exceeding twice the amount of the economic advantage or $500, and payment of such additional damages shall bar any criminal prosecution for the same violation. The maximum damages that the commission may order a violator to pay under this section shall be $25,000. If the commission determines that the damages authorized by this section exceed $25,000, it may bring a civil action against the violator to recover such damages.

(c) The remedies authorized by this section shall be in addition to any civil penalty imposed by the commission in accordance with clause (3) of subsection (j) of section 4 of chapter 268B.

268A:21A. Members of municipal commission or board; restrictions on appointments to certain positions.

Section 21A. Except as hereinafter provided, no member of a municipal commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.

The provisions of this section shall not apply to a member of a town commission or board, if such appointment or election has first been approved at an annual town meeting of the town.

268A:21B. Prospective municipal appointees; demanding undated resignations prohibited.

Section 21B. No mayor, city manager, or town manager shall require a prospective appointee to a board, commission or position under his jurisdiction to submit as a condition precedent to said appointment an undated resignation from said board, commission or position. Whoever violates the provisions of this section shall be punished by a fine of not more than five hundred dollars.

Section 22. Any municipal employee shall be entitled to the opinion of the corporation counsel, city solicitor or town counsel upon any question arising under this chapter relating to the duties, responsibilities and interests of such employee. All requests for such opinions by a subordinate municipal employee shall be made in confidence directly to the chief officer of the municipal agency in which he is employed, who shall in turn request in confidence such opinion of the corporation counsel, city solicitor or town counsel on behalf of such subordinate municipal employee, and all constitutional officers and chief officers or heads of municipal agencies may make direct confidential requests for such opinions on their own account. The town counsel or city solicitor shall file such opinion in writing with the city or town clerk and such opinion shall be a matter of public record; however, no opinion will be rendered by the town counsel or city solicitor except upon the submission of detailed existing facts which raise a question of actual or prospective violation of any provision of this chapter.


Section 23. (a) In addition to the other provisions of this chapter, and in supplement thereto, standards of conduct, as hereinafter set forth, are hereby established for all state, county and municipal employees.

(b) No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

   (1) accept other employment involving compensation of substantial value, the responsibilities of which are inherently incompatible with the responsibilities of his public office;

   (2) (i) solicit or receive anything of substantial value for such officer or employee, which is not otherwise authorized by statute or regulation, for or because of the officer or employee's official position; or (ii) use or attempt to use such official position to secure for such officer, employee or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals;

   (3) act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person. It shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion; or

   (4) present a false or fraudulent claim to his employer for any payment or benefit of substantial value.

(c) No current or former officer or employee of a state, county or municipal agency shall knowingly, or with reason to know:

   (1) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority;
(2) improperly disclose material or data within the exemptions to the definition of public records as defined by section seven of chapter four, and were acquired by him in the course of his official duties nor use such information to further his personal interest.

(d) Any activity specifically exempted from any of the prohibitions in any other section of this chapter shall also be exempt from the provisions of this section. The state ethics commission, established by chapter two hundred and sixty-eight B, shall not enforce the provisions of this section with respect to any such exempted activity.

(e) Where a current employee is found to have violated the provisions of this section, appropriate administrative action as is warranted may also be taken by the appropriate constitutional officer, by the head of a state, county or municipal agency. Nothing in this section shall preclude any such constitutional officer or head of such agency from establishing and enforcing additional standards of conduct.

(f) The state ethics commission shall adopt regulations: (i) defining substantial value; provided, however, that substantial value shall not be less than $50; (ii) establishing exclusions for ceremonial privileges and exemptions; (iii) establishing exclusions for privileges and exemptions given solely because of family or friendship; and (iv) establishing additional exclusions for other situations that do not present a genuine risk of a conflict or the appearance of a conflict of interest.

268A:23A. Trustees of public institutions of higher learning; prohibited positions.

Section 23A. No trustee of any public institution of higher education operated by the commonwealth shall be eligible to be appointed to or hold any other office or position with said institution for a period of three years next after the termination of his services as such trustee, or in the case of an elected student trustee at said institution, for a period of one year next after the termination of his services as such trustee; provided, however, that any such elected student trustee may accept and hold part-time employment at said institution while a student thereat, and provided further, that a trustee may be appointed to or hold an unpaid office or position with said institution after his services as such trustee.

268A:24. Disclosure and certifications; form; public inspection.

Section 24. All disclosures and certifications provided for in this chapter and made in accordance with its provisions shall be made in writing and, unless otherwise specifically provided in this chapter, shall be kept open to inspection by the public by the official with whom such disclosure has been filed.

268A:25. Suspension of persons under indictment for misconduct in office; notice; compensation and fringe benefits; temporary replacements; reinstatement.

Section 25. An officer or employee of a county, city, town or district, howsoever formed, including, but not limited to, regional school districts and regional planning districts, or of any department, board, commission or agency thereof may, during any period such officer or employee is under indictment for misconduct in such office or employment or for misconduct in any elective or appointive public office, trust or employment at any time held by him, be suspended by the appointing authority, whether or not such appointment was subject to approval in any manner. Notice
of said suspension shall be given in writing and delivered in hand to said person or his attorney, or sent by registered mail to said person at his residence, his place of business, or the office or place of employment from which he is being suspended. Such notice so given and delivered or sent shall automatically suspend the authority of such person to perform the duties of his office or employment until he is notified in like manner that his suspension is removed. A copy of any such notice together with an affidavit of service shall be filed as follows: in the case of a county, with the clerk of the Superior Court of the county in which the officer or employee is employed; in the case of a city, with the city clerk; in the case of a town, with the town clerk; in the case of a regional school district, with the secretary of the regional school district; and in the case of all other districts, with the clerk of the district.

Any person so suspended shall not receive any compensation or salary during the period of suspension, nor shall the period of his suspension be counted in computing his sick leave or vacation benefits or seniority rights, nor shall any person who retires from service while under such suspension be entitled to any pension or retirement benefits, notwithstanding any contrary provisions of law, but all contributions paid by him into a retirement fund, if any, shall be returned to him.

A suspension under this section shall not, in any way, be used to prejudice the rights of the suspended person either civilly or criminally. During the period of any such suspension, the appointing authority may fill the position of the suspended officer or employee on a temporary basis, and the temporary officer or employee shall have all the powers and duties of the officer or employee suspended.

Any such temporary officer or employee who is appointed as a member of a board, commission or agency may be designated as chairman.

If the criminal proceedings against the persons suspended are terminated without a finding or verdict of guilty on any of the charges on which he was indicted, this suspension shall be forthwith removed, and he shall receive all compensation or salary due him for the period of his suspension, and the time of his suspension shall count in determining sick leave, vacation, seniority and other rights, and shall be counted as creditable service for purposes of retirement.


Section 26. (a) Any person who, directly or through another, with fraudulent intent, violates clause (2) or (4) of subsection (b) of section 23, or any person who, with fraudulent intent, causes any other person to violate said clauses (2) or (4) of said subsection (b) of said section 23 or with fraudulent intent offers or gives any privileges or exemptions of substantial value in violation of said clause (2) or (4) of said subsection (b) of said section 23, shall be punished by a fine of not more than $10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both, if the unwarranted privileges or exemptions have a fair market value in the aggregate of more than $1,000 in any 12 month period.

268A:27.

Section 27. The commission shall prepare, and update as necessary, summaries of this chapter for state, county, and municipal employees, respectively, which the commission shall publish on its official website. Every state, county and municipal employee shall, within 30 days of becoming such an employee, and on an annual basis thereafter, be furnished with a summary of this chapter prepared by the commission and sign a written acknowledgment that he has been provided with such a
summary. Municipal employees shall be furnished with the summary by, and file an acknowledgment with, the city or town clerk. Appointed state and county employees shall be furnished with the summary by, and file an acknowledgment with, the employee's appointing authority or his designee. Elected state and county employees shall be furnished with the summary by, and file an acknowledgment with, the commission. The commission shall establish procedures for implementing this section and ensuring compliance.


Section 28. The state ethics commission shall prepare and update from time to time the following online training programs, which the commission shall publish on its official website: (1) a program which shall provide a general introduction to the requirements of this chapter; and (2) a program which shall provide information on the requirements of this chapter applicable to former state, county, and municipal employees. Every state, county and municipal employee shall, within 30 days after becoming such an employee, and every 2 years thereafter, complete the online training program. Upon completion of the online training program, the employee shall provide notice of such completion to be retained for 6 years by the appropriate employer.

The commission shall establish procedures for implementing this section and ensuring compliance.

268A:29.

Section 29. Each municipality, acting through its city council, board of selectmen, or board of aldermen, shall designate a senior level employee of the municipality as its liaison to the state ethics commission. The municipality shall notify the commission in writing of any change to such designation within 30 days of such change. The commission shall disseminate information to the designated liaisons and conduct educational seminars for designated liaisons on a regular basis on a schedule to be determined by the commission in consultation with the municipalities.
SECTION G

CAMPAIGN FINANCE

MASS. GENERAL LAWS, CHAPTER 55
A. Prohibition on Solicitation of Contributions in Public Buildings

Section 14 of the law specifically prohibits anyone from soliciting political contributions in a building occupied for state, county, or municipal purposes. The prohibition applies to all public employees, elected and appointed officials, members of the general public and anyone else who enters a public building. Fundraising activity for any candidate or political committee, whether at the federal, state, county or local level, is similarly prohibited.

The following activities are examples of activities that may not take place in a public building:

1. Asking for or receiving contributions to any political committee or candidate;
2. Using a public building as a return address for contributions or using a phone number in the building as a contact for buying tickets to a fundraiser; or
3. Posting an advertisement or circular selling tickets to a fundraiser or otherwise seeking contributions.

B. Prohibition on Use of Public Resources for Political Purposes

State law further prohibits the use of public resources for political purposes. Specifically, public resources may not be used for any political purpose whatsoever, including support or opposition of ballot questions, political campaign purposes, including the promotion of a candidate or any political committee or party.

"Public resources" is defined as anything that is paid for with public money, whether raised through taxes or fees. This includes:

1. Staff time;
2. Office and other equipment (copy machines, faxes, telephones, and computers);
3. Public buildings; or
4. State, county or municipal seals. This means using public seals on items such as letterhead or envelopes for political campaign purposes is prohibited.
C. Prohibition on Soliciting and Receiving Contributions by Paid State Employees

Section 13 of the law prohibits paid state, county, city or town employees, other than elected officials, from directly or indirectly soliciting or receiving any contributions or anything of value for any political purpose. “Political purpose” includes fundraising activity on behalf of any candidate or political committee, including parties, PACs, people’s committees (an offshoot of PACs) and ballot question committees on any level – local, state or federal.

This prohibition applies to:

- public employees at any time – during both working and non-working hours. The prohibition also has no geographic restriction: a public employee may not solicit or receive funds in any location, not just his or her own community.

- paid employees of any state, county or municipal office or agency, including public authorities, boards and commissions.

- part-time as well as full-time public employees. The law establishes no threshold level of hours worked or pay earned.

- appointed, paid members of public boards (including municipal committees). If a member of a public board or commission receives a stipend of any amount, he or she is considered a public employee. Reimbursement for expenses is not considered compensation and does not by itself define a person as public employee under Section 13.

Elected officials may receive compensation, but they are not subject to the prohibitions of Section 13. If an elected official is also an appointed public employee, however (such as a selectman who is also employed by the Commonwealth), the public employee status overrides the elected official’s exemption and the individual may not solicit or receive contributions for political purposes.

Examples of PROHIBITED fundraising activities by public employees include:

- Selling or distributing tickets for a fundraising event to benefit any political candidate or political committee and soliciting attendance at such an event by telephone or otherwise;

- Otherwise asking for contributions to support any candidate or political committee (federal, state, county or local) or a ballot question;

- Hosting a political fundraising event;

- Accepting donations or payment for admission at a political fundraising event or accepting money at the door of a political fundraising event;

- Signing a fundraising letter or advertisement on behalf of a candidate or political committee;

- Permitting your name to be listed on campaign stationery as an officer, member or supporter, if the stationery is used to solicit funds for a political purpose;
- Providing persons raising money for a candidate or committee with the names of individuals who would then be solicited;
- Providing general or specific advice to a political campaign with regard to fundraising strategies.

Despite the restriction on political fundraising, public employees may engage in a variety of other campaign activities without violating the provisions of Section 13.

This prohibition does **not** apply to:

- A person who is not compensated for his or her work for a public entity. (Employees or board members who voluntarily decline their pay or stipend, however, are still bound by the restriction).
- A public employee who is raising money for humanitarian, charitable or educational causes. Only political fundraising falls under Section 13. Nonpolitical fundraising should be approved by an employee’s supervisor and, if appropriate, the State Ethics Commission.
- A former public employee who is retired. Though they may draw a pension check, workers retired from public employment are not considered public employees under Section 13.
The Office of Campaign and Political Finance ("OCPF") is an independent state agency that administers Massachusetts General Laws Chapter 55, the campaign finance law. Included in Chapter 55 are sections governing the role of public employees, public buildings and other public resources in campaigns. This brochure is intended to provide guidance to public employees and officials, political candidates and committees and other parties on the application of these sections of Chapter 55 to campaigns.

This publication is only meant to be an introductory guide to the campaign finance laws governing public employees, buildings and resources, not a substitute for these laws. OCPF is available to help public employees, officials and campaigns comply with the provisions of this statute. It is the responsibility of all those participating in political activities in Massachusetts, especially all public employees, to become familiar with the provisions of these laws. In addition, other statutes, regulations or administrative policies of your agency or department as well as local charters may regulate the activities of a public employee. You should, therefore, review plans for political activity with your agency or town counsel. Violations of the law carry serious penalties of fines, imprisonment or both. For additional information, please contact OCPF at the phone numbers or address listed on the back cover of this guide. The guide addresses issues concerning Massachusetts public employees only. Federal employees and employees of a state, county or municipal agency that receives federal funding may have additional restrictions under the federal Hatch Act. For more information on the Hatch Act consult the U.S. Office of the Special Counsel in Washington at (800) 85-HATCH (800-854-2824).

**Office of Campaign and Political Finance**

Chapter 1173 of the Acts of 1973 strengthened the state campaign finance laws and established the Office of Campaign and Political Finance. While the 1970s saw a push for reforms in campaign finance disclosure laws all across the country, portions of the campaign finance law were on the books in Massachusetts as early as 1884. Those laws provide for restrictions on and protections for public employees as well as the political use of public buildings.

OCPF administers sections 13 through 17 of M.G.L. Chapter 55. These laws concerning public employees' political activity were designed to:

- Protect public employees from being coerced into providing political contributions or services in their employment;
- Protect individuals doing business with the public sector from being coerced into contributing to any political fund or rendering any political service; and
- Separate governmental activity from political campaign activities.

This guide provides a summary of M.G.L. Chapter 55, Sections 13 through 17 and is divided into three sections: Public Employees; Public Buildings and Public Resources. The complete text of these laws can be found at the end of this guide, following Frequently Asked Questions.
I. Public Employees

Section 13: Soliciting and Receiving Contributions

M.G.L. Chapter 55, Section 13 prohibits paid state, county, city or town employees, other than elected officials, from directly or indirectly soliciting or receiving any contributions or anything of value for any political purpose. “Political purpose” includes fundraising activity on behalf of any candidate or political committee, including parties, PACs, people’s committees (an offshoot of PACs) and ballot question committees on any level – local, state or federal.

This prohibition applies to:

- public employees at any time – during both working and non-working hours. The prohibition also has no geographic restriction: a public employee may not solicit or receive funds in any location, not just his or her own community.

- paid employees of any state, county or municipal office or agency, including public authorities, boards and commissions.

- part-time as well as full-time public employees. The law establishes no threshold level of hours worked or pay earned.

- appointed, paid members of public boards (including municipal committees). If a member of a public board or commission receives a stipend of any amount, he or she is considered a public employee. Reimbursement for expenses is not considered compensation and does not by itself define a person as public employee under Section 13.

Elected officials may receive compensation, but they are not subject to the prohibitions of Section 13. If an elected official is also an appointed public employee, however (such as a selectman who is also employed by the Commonwealth), the public employee status overrides the elected official’s exemption and the individual may not solicit or receive contributions for political purposes.

This prohibition does not apply to:

- a person who is not compensated for his or her work for a public entity. (Employees or board members who voluntarily decline their pay or stipend, however, are still bound by the restriction).

- a public employee who is raising money for humanitarian, charitable or educational causes. Only political fundraising falls under Section 13. Nonpolitical fundraising should be approved by an employee’s supervisor and, if appropriate, the State Ethics Commission.

- A former public employee who is retired. Though they may draw a pension check, workers retired from public employment are not considered public employees under Section 13.
Examples of PROHIBITED fundraising activities by public employees include:

- Selling or distributing tickets for a fundraising event to benefit any political candidate or political committee and soliciting attendance at such an event by telephone or otherwise;

- Otherwise asking for contributions to support any candidate or political committee (federal, state, county or local) or a ballot question;

- Hosting a political fundraising event;

- Accepting donations or payment for admission at a political fundraising event or accepting money at the door of a political fundraising event;

- Signing a fundraising letter or advertisement on behalf of a candidate or political committee;

- Permitting your name to be listed on campaign stationery as an officer, member or supporter, if the stationery is used to solicit funds for a political purpose;

- Providing persons raising money for a candidate or committee with the names of individuals who would then be solicited;

- Providing general or specific advice to a political campaign with regard to fundraising strategies.

Despite the restriction on political fundraising, public employees may engage in a variety of other campaign activities without violating the provisions of section 13.

Examples of ALLOWABLE activity include:

- Making a contribution to a candidate or political committee or attending a political fundraiser;

- Serving as a member of a political committee or holding any committee position, aside from treasurer or any other position that involves fundraising;

Performing any service for a campaign that does not involve fundraising, such as holding signs, stuffing envelopes, signing endorsement letters (as long as those letters do not also ask for money) or working at political fundraisers in a non-fundraising capacity, such as setting up tables or preparing food, not collecting money at the door.

- Meeting with anyone, including other public employees, for political purposes, as long as no fundraising activity takes place;

- Raising money for humanitarian, charitable or educational causes or other issues not related to elections.
Public employees may also run for public office. If, however, you are a public employee and you plan to raise money as part of your campaign for public office, you must organize a political committee and have the political committee handle all fundraising activities for you.

A public employee who is a candidate may not even solicit or receive contributions for the committee organized on his or her behalf. Rather, the employee must refer all questions about fundraising, including offers of contributions, to the committee. In addition, a committee organized on behalf of a public employee may not solicit or receive any contribution from any individual who has an interest in any matter in which the public employee candidate participates, is an employee of the candidate or is otherwise the subject of such employee's official responsibility. For example, the appointed head of a state agency who runs for public office may not solicit or receive contributions from any employee at that same agency, since its employees are the subject of the public employee candidate's official responsibility.

Section 15  Contributions by Public Officials

Section 15 prohibits bribes or any “quid pro quo” payments to public officials, but allows all elected and appointed public officials of the Commonwealth, a county or a city or town to make political contributions to any candidate or political committee.

Sections 16-17: Coercion or politically related job actions

Various sections of the campaign finance law protect public employees and those in the private sector from being forced to contribute to or otherwise support a political candidate or committee. Likewise, the law also protects employees from being subject to retribution from their employers for not supporting a candidate or political committee.

Section 16 protects public employees from being required to make contributions or render political services in exchange for their employment, and protects them from retribution for failing to do so.

Section 16A protects individuals doing business with the Commonwealth from having to render a political service or make a political donation in exchange for doing business with the state.

Section 16B protects any employee, public or private, from being forced to contribute or render service to a political candidate or committee. (Employees of a political campaign are, understandably, not covered by this section.)

Section 17 provides additional protection against retribution to a public employee or officer who fails to give or withholds a contribution or who contributes to an opposition candidate or cause.

II. Public Buildings

M.G.L. Chapter 55, Section 14 prohibits anyone from soliciting political contributions in a building occupied for state, county or municipal purposes. The prohibition applies to all public employees, elected and appointed officials, members of the general public and anyone else who enters a public building. Fundraising activity for any candidate or political committee – federal, state, county or local – is not allowed.

The following activities may not take place in a public building:
asking for or receiving contributions to any political committee or candidate;

- using a public building as a return address for contributions or using a phone number in the building as a contact for buying tickets to a fundraiser;

- posting an advertisement or a circular selling tickets to a fundraiser or otherwise seeking contributions.

The Section 14 prohibition applies to such buildings as the State House, city and town halls, public schools, police and fire stations, municipal and county offices, offices of public agencies, commissions and authorities, public works facilities and senior centers. Clubhouses and other buildings at a publicly owned golf course would also be subject to the prohibition if the facility were staffed by public employees. If the facility is run for the state, city or town by a private contractor using private employees, the Section 14 prohibition likely would not apply. Contact OCPF for further guidance on fundraisers at publicly owned golf courses.

A building does not have to be publicly owned in order to be “occupied for state, county or municipal purposes” under Section 14. Even a building that is privately owned but occupied by government offices is considered a public building for the purposes of the campaign finance law. If only a portion of a private building is made up of government offices or facilities, those sections are subject to the fundraising restriction, but not any sections occupied by private employers or common areas such as the lobby.

Please note that Section 14 applies only to public buildings, not public property such as parks, streets and other common areas. Property owned by a public entity such as the state, a city or a town may be used for fundraising to the extent allowed by the owner. Such access, however, must be consistently available to all political candidates and committees; if one candidate may have a fundraiser at a certain public park, all other candidates must be granted use of the park under the same terms and conditions if they request it (they do not all have to be notified of its availability). On the other hand, the campaign finance law does not prevent a public entity from adopting a policy denying use of its property for any political fundraising, as long as that policy is consistently applied.

The Section 14 restriction applies to political fundraising only. For guidance on use of public buildings for other political activities, see the following section, Public Resources and Campaigns.

III. Public Resources and Campaigns

In Anderson v. City of Boston (1978), the state's Supreme Judicial Court prohibited a municipality from spending public money to try to convince voters to support a statewide ballot question. The court ruled that public resources may not be used to support or oppose a ballot question. The office has applied this principle to prohibit the use of public resources for any political campaign purpose whatsoever. Public employees, as well as other persons, are prohibited from using any public resources for political campaign purposes, including the promotion of a candidate or any political committee or party.
“Public resources” are defined as anything that is paid for with public money, whether raised through taxes or fees. This definition includes:

- **Staff time:** When public employees are on the job, they are prohibited from engaging in political campaign activity. This includes activities such as holding campaign signs, stuffing or addressing envelopes with campaign literature, or in any way soliciting votes or funds for political purposes. **In addition, paid appointed public employees are prohibited from political fundraising at any time, whether at work or not.**

- **Office and other equipment:** Copy machines, fax machines, typewriters, telephones, computers, cars and trucks are some examples of taxpayer funded equipment that fall under this category.

- **Public buildings:** Using a public building or any part thereof for political campaign purposes is prohibited, **unless** equal access to the building is provided to any group wishing to use it, under the same terms and conditions as all other groups. **Under no circumstances** may any political fundraising go on in a public building or any part of any building occupied for a state, county or municipal purpose.

- **State, county or municipal seals:** Public seals are considered public resources and may not be used for political campaign purposes. This means using public seals on items such as letterhead or envelopes for political campaign purposes is prohibited.

**What are "political campaign purposes"?**

In the context of M.G.L. Chapter 55, "political campaign purposes" are broadly defined and include promoting or opposing a candidate's nomination or election to public office or a political party office such as a state, ward, town or city party committee; promoting or opposing a vote on a ballot question; or aiding, promoting or antagonizing the interests of a political party.

"Political campaign purposes" does not include issues that are not on the ballot, and does not include lobbying boards or other political bodies. An expenditure made primarily to influence a legislative body or town meeting, not a ballot question, is not prohibited by the *Anderson* decision. For example, a municipal department could use public resources to ask voters to support an article on the town meeting warrant; the department could not use such resources to support a question on the election ballot.

As noted above, public buildings may be used for political purposes in some limited circumstances. Political committees may hold meetings in a town hall or school as long as equal access is provided: all such committees have the same opportunity to use the building, or no such groups may do so. The principle of equal access also applies to candidates and political committees campaigning or seeking signatures on a petition in a public building: as long as equal access is provided, there is no violation of the campaign finance law. The public entity owning the building may, consistent with the campaign finance law, set a policy regarding access, as long as it is applied evenly. Remember, despite any equal access that is provided, the prohibition against soliciting or receiving political contributions still applies; any use that is allowed may not involve fundraising.

**May public officials take positions on ballot questions?**
Public resources may not be used to prepare or distribute materials which promote, oppose or otherwise seek to influence a ballot question.

However, if policy-making public officials were not allowed to discuss officially or to take positions on ballot questions that affect the public they serve, they would be hampered in that service. Therefore, policy-making officials may discuss officially ballot questions that affect their agencies or a segment of the population which their agencies serve. Policy-making officials include elected officials, commissioners, cabinet secretaries, and department and agency heads at the state, county and municipal levels.

In addition, policy-making public officials may use resources of their offices -- within limits and under certain circumstances -- to prepare analyses of ballot questions, answer questions regarding ballot questions, and direct staff to help prepare such materials. They are not, however, allowed to distribute such materials to voters or a class of voters at public expense.

It is also important to note that the Secretary of the Commonwealth's Elections Division has advised that public officials may not publish and distribute so-called "voter information" materials, even if they are truly impartial, at public expense unless state statute expressly authorizes it.

OCPF has prepared several pieces of informational material concerning the use of public resources and the Anderson decision. For more information on the rights of or limitations on public policy making officials and the distribution of voter information, see:

- Interpretative Bulletin IB-92-02, “Extent to which Appointed and Elected Officials May Act or Speak in Support of or Opposition to Ballot Questions.”

Elected incumbents are also allowed, in certain circumstances, to use public resources to respond to criticism from election opponents concerning their job performance or the state of their offices. For example, an incumbent whose opponent charges he is mismanaging public money could commission a budget review within his office to respond to the charge. The incumbent could also comment on the charges through his official (i.e., publicly funded) spokesman. The use of public resources in this situation is limited, however: the incumbent cannot use public resources to attack his or her opponent or comment beyond the scope of the original charge. For further guidance, see Interpretive Bulletin IB-95-03, “Use of Public Resources by Elected Officials to Communicate with Constituents or Respond to Criticism.”

**Seeking Guidance from OCPF**

Anyone wishing to receive guidance on his or her own campaign finance activities should contact the office prior to undertaking a particular activity. This office issues written advisory opinions based on written requests describing specific facts and circumstances. The office will issue opinions only on prospective activities.
If you have any questions concerning advisory opinions, please contact OCPF. You may also obtain informal, oral advice by calling the office.

In addition to specific advisory opinions, from time to time the Director of OCPF issues Interpretive Bulletins setting policy guidelines on a variety of subjects. These documents are publicly available from OCPF and provide helpful guidance to public employees.

**Filing a Complaint**

If you have reason to believe that a violation of the campaign finance laws has occurred, you may file a complaint with this office. OCPF reviews all matters brought to its attention, regardless of the source of the complaint. The office keeps the identities of all complainants confidential.

OCPF will not comment on any matter that is under review or investigation. Consequently, an individual making a complaint will not receive periodic information on the status of the complaint. However, the complainant will receive notice of any public disposition of a case.

This office welcomes individuals with information concerning possible violations of the campaign finance law to call or write OCPF.

**Frequently Asked Questions**

I am a public employee. May I...

Q. ...ask a friend or relative to purchase a ticket to a fundraiser for a political candidate?  
A. No. Section 13 prohibits this activity.

Q. ...hold a fundraiser for a political candidate in my home?  
A. No. Section 13 prohibits this activity.

Q. ...make a political contribution?  
A. Yes. If the candidate is a public employee or an incumbent elected official, you must make the contribution to the political committee organized on the candidate's behalf, not directly to the candidate. You should also be aware that the law does not allow political committees organized on behalf of candidates who are also public employees to solicit or receive contributions from their employees or anyone else within those employees’ “area of responsibility.” You should also make sure political contributions are not prohibited by regulations at your own office.

Q. ...give permission for my name to appear on a fundraising letter either in the letterhead, text, or as the signatory of such letter soliciting for a candidate?  
A. No. This activity is not allowed under Section 13.

Q. ...give permission for my name to appear in the body of a fundraising letter for my own candidacy?"
A. Yes, as long as you do not appear to be soliciting in the letter and you do not sign such a letter.

Q. **...have a committee use the State House or a city or town hall as an address to send a donation for a political committee?**
A. No. This activity is prohibited under Section 14.

Q. **...run for public office?**
A. M.G.L. Chapter 55 does not prevent a public employee from running for public office. If you run for office, however, you must organize a political committee to handle fundraising activities on your behalf. You should be aware that the campaign finance law does not allow you to solicit or receive contributions from your employees or anyone in your “area of responsibility.” You should also check with your agency or city/town for further guidance or restrictions.

Q. **...be the treasurer of my local party committee?**
A. No. An appointed public employee is prohibited from being the treasurer of any political committee.

Q. **...be a member of a political committee or work for a political committee or a candidate if I were not the treasurer of the committee?**
A. Yes. As long as you are not involved in the committee’s fundraising there are no prohibitions on being a member or working on a candidate's or a political committee's behalf.

Q. **...be forced to make a political contribution or perform any sort of political service, or be subject to demotion or other job action if I refuse to do so?**
A. No. The campaign finance law protects public employees against such coercion.

Q. I am an appointed state employee, but also a selectman in my home town. Do the limitations on fundraising in Section 13 apply to me?
A. Yes. While elected public officials are exempt from Section 13, its fundraising restrictions would still apply to you for your campaign or any other political campaign because of your appointed public employment.

Q: I am an unpaid member of a city board. Are my political fundraising activities still limited by the campaign finance law?
A: No. The campaign finance law allows you or any other appointed, uncompensated “person in the service” of the Commonwealth or any city or town to solicit, receive or make campaign contributions to candidates or political committees. You may also serve as an officer, including a treasurer, of a political committee. The campaign finance law does, however, prohibit you or any other person from soliciting contributions in a public building. In addition, the campaign finance law protects you and others from being removed from office for making or not making a political contribution or for rendering or not rendering a political service, such as actively supporting a candidate or committee.

Q. May I use paper and photo copying equipment in my school office to print flyers asking people to vote for a referendum question?
A. No. The use of public resources to promote or oppose a ballot question, or any matter that appears on an election ballot, is prohibited.

Q. May I use the paper and copier in my school office to print a “fact sheet” that does not ask people to vote for or against a ballot question, but merely provides objective information?
A. No. Even if voter information commenting on the substance of a ballot question is intended to be objective and factual, it may not be produced or distributed using public funds. As a practical matter, even material billed as “objective” or “informational” contains advocacy, even implicit.

Q. May governmental resources be used to distribute a flyer that simply informs people about the time, date and place of an election and contains a brief title describing the ballot question or its text?
A. Yes, but great care should be taken to avoid the appearance of advocacy. A brief, neutral title identifying the ballot question may be used. For example, the title “school expansion project” would be appropriate. On the other hand, titles which would not be appropriate include “ballot question relating to need for school expansion,” or “ballot question addressing school overcrowding problem.”

Q. I am an elected selectman. May I speak out in favor of or opposition to a ballot question and ask my aide to prepare an analysis of how that question might affect the town I represent?
Yes, provided that no public resources are used to distribute such analysis to voters. In other words, you may take a position on a ballot question at any meetings, forums and interviews and also authorize documents or studies concerning the question for your board’s use. Such documents, however, may not be distributed to voters using town resources.
Chapter 55: Section 1. Definitions

Section 1. For the purpose of this chapter, unless a different meaning clearly appears from the context, the following words shall have the following meanings:

"Ballot question committee", a political committee which receives or expends money or other things of value for the purpose of favoring or opposing the adoption or rejection of a specific question or questions submitted to the voters including, without limitation, a charter change, an initiative or referendum question or a constitutional amendment.

"Candidate", any individual who seeks nomination or election to public office, whether or not such individual is nominated or elected. For the purpose of this chapter, an individual shall be deemed to be seeking nomination or election to such office if he has (1) received a contribution or made an expenditure, or has given his consent for any other person or committee to receive a contribution or make an expenditure, for the purpose of influencing his nomination or election to such office, whether or not the specific public office for which he will seek nomination or election is known at the time the contribution is received or the expenditure is made, or (2) taken the action necessary under the laws of the commonwealth to qualify himself for nomination or election to such office, or, if said individual holds elective public office, whether elected or appointed to such office, and he has (3) received any money or anything of value, or made any disbursement resulting from any purchases, made from said individual, or a committee, or a person acting on behalf of said individual or committee, whether through the device of tickets, advertisements, or otherwise, for any fund-raising activity, including a testimonial, regardless of the purpose of said activity, held on behalf of said individual at any time while he holds said public office.

"Candidate's committee", the political committee organized on behalf of a candidate, as provided in section five. The term "candidate's committee" shall also apply to the campaign fund of a candidate who has not organized a political committee for the purpose of carrying out the election campaign of such candidate or who receives contributions or makes expenditures independently of said committee.

"Clearly identified candidate", a candidate whose name, photo or image appears in a communication or a candidate whose identity is apparent by unambiguous reference in a communication.

"Contribution", a contribution of money or anything of value to an individual, candidate, political committee, or person acting on behalf of said individual, candidate or political committee, for the purpose of influencing the nomination or election of said individual or candidate, or for the purpose of supporting or opposing a political party committee, or for the purpose of promoting or opposing a charter change, referendum question, constitutional amendment, or other question submitted to the voters, and shall include any: (1) gift, subscription, loan, advance, deposit of money, or thing of value, except a loan of money to a candidate by a national or state bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business; (2) transfer of money or anything of value between political committees; (3) payment, by any person other than a candidate
or political committee, or compensation for the personal services of another person which are rendered to such candidate or committee; (4) purchase from an individual, candidate, or political committee, or person acting on behalf of said individual, candidate, or political committee, whether through the device of tickets, advertisements, or otherwise, for fund-raising activities, including testimonials, held on behalf of said individual, candidate or political committee, to the extent that the purchase price exceeds the actual cost of the goods sold or services rendered; (5) discount or rebate not available to other candidates for the same office and to the general public; and (6) forgiveness of indebtedness or payment of indebtedness by another person; but shall not include the rendering of services by speakers, editors, writers, poll watchers, poll checkers or others, nor the payment by those rendering such services of such personal expenses as may be incidental thereto, nor the exercise of ordinary hospitality; provided, however, that a transfer of funds or payments by a depository candidate or his committee to the political committee of a party, for goods or services provided to a candidate or his committee by such political party shall not be considered to be a contribution.

"Director", the director of campaign and political finance.

"Election", any convention or caucus or a political party held to nominate a candidate, and any city, town or state primary, primary or election, and any special preliminary, primary or election.

"Electioneering communication", any broadcast, cable, mail, satellite or print communication that: (1) refers to a clearly identified candidate; and (2) is publicly distributed within 90 days before an election in which the candidate is seeking election or reelection; provided, however, that "electioneering communication" shall not include the following communications: (1) a communication that is disseminated through a means other than a broadcast station, radio station, cable television system or satellite system, newspaper, magazine, periodical, billboard advertisement, or mail; (2) a communication to less than 100 recipients; (3) a news story, commentary, letter to the editor, news release, column, op-ed or editorial broadcast by a television station, radio station, cable television system or satellite system, or printed in a newspaper, magazine, or other periodical in general circulation; (4) expenditures or independent expenditures or contributions that must otherwise be reported under this chapter; (5) a communication from a membership organization exclusively to its members and their families, otherwise known as a membership communication; (6) bonafide candidate debates or forums and advertising or promotion of the same; and (7) internet or email communications.

"Executive agent", an executive agent as defined in section thirty-nine of chapter three.

"Expenditure", any expenditure of money, or anything of value, by an individual, candidate, or political committee, or a person acting on behalf of said individual, candidate, or political committee, for the purpose of influencing the nomination or election of said individual or candidate, or of presidential and vice presidential electors, or for the purpose of promoting or opposing a charter change, referendum question, constitutional amendment, or other question submitted to the voters, and shall include: (1) any purchase, payment, distribution, loan, advance, deposit, or gift of money, or anything of value; and (2) any transfer of money or anything of value between political committees.

"Independent expenditure", an expenditure made, or liability incurred, by an individual, group, or association for goods or services expressly advocating the election or defeat of a clearly identified candidate which is made or incurred without cooperation or consultation with any candidate, or a nonelected political committee organized on behalf of a candidate, or any agent of a candidate and
which is not made or incurred in concert with, or at the request or suggestion of, any candidate, or any nonelected political committee organized on behalf of a candidate or agent of such candidate.

"Legislative agent", a legislative agent as defined in section thirty-nine of chapter three.

"Political action committee", a political committee which is not a candidate's committee, a political party committee nor a ballot question committee; provided, however, that a political committee which only receives contributions from individuals in an amount or value of one hundred dollars or less in any calendar year, which has been in existence for six months or more and which contributes to five or more candidates shall not be a political action committee; provided, further, that said one hundred dollar amount shall be indexed biennially for inflation by the director, who, not later than December thirty-first of each odd numbered year, shall calculate and publish such index amount, using the federal consumer price index for the Boston statistical area.

"Political committee", any committee, association, organization or other group of persons, including a national, regional, state, county, or municipal committee, which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates, or of presidential and vice presidential electors, or for the purpose of opposing or promoting a charter change, referendum question, constitutional amendment, or other question submitted to the voters.

"Political party committee", a political committee organized in accordance with chapter fifty-two on behalf of a political party, as defined in section one of chapter fifty, whether elected or non-elected.

Notwithstanding any other provisions of this chapter, any receipt or disbursement of any money or anything of value by an individual, or person acting on behalf of said individual, which is not otherwise a "contribution" or "expenditure" as defined in this section, resulting from any purchases from said individual, or any person acting on behalf of said individual, whether through the device of tickets, advertisements, or otherwise, for any fund-raising activity, including a testimonial, held on behalf of said individual, regardless of the purpose of said activity, shall be deemed to be a "contribution" or "expenditure" if said individual: (1) is a candidate in accordance with the provisions of clauses (1) or (2) of the definition of "Candidate" at the time of said receipt or disbursement; (2) holds elective public office, whether elected or appointed to such office, at the time of said receipt or disbursement, and thereby becomes a candidate in accordance with the provisions of clause (3) of said definition; or (3) becomes a candidate in accordance with said clauses (1) or (2) of said definition subsequent to such receipt or disbursement, and shall be reported as a contribution or an expenditure in accordance with the provisions of sections eighteen and nineteen.

Notwithstanding any other provisions of this chapter, communications from a membership organization, not including a corporation subject to section eight, to its members and their families on any subject shall not be deemed to be a contribution or expenditure.

**Chapter 55, Section 13. Solicitation or receipt of political campaign contributions by appointive public officers or employees prohibited; exception; penalties.**

Section 13. No person employed for compensation, other than an elected officer, by the commonwealth or any county, city or town shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office or of any political committee, or for any political purpose whatever, but this section shall not prevent such persons from being members of political organizations or committees. The soliciting or receiving of any gift, payment,
contribution, assessment, subscription or promise of money or other thing of value by a non-elected political committee organized to promote the candidacy for public office of a person so employed for compensation by the commonwealth or any county, city or town, shall not be deemed to be a direct or indirect solicitation or receipt of such contribution of such person; provided, however, that no such gift, payment, contribution, assessment, subscription or promise of money or other thing of value may be solicited or received on behalf of such a person from any person or combination of persons if such person so employed knows or has reason to know that the person or combination of persons has an interest in any particular matter in which the person so employed participates or has participated in the course of such employment or which is the subject of his official responsibility.

Any appointed officer or employee convicted of violating any provision of this section may be removed by the appointing authority without a hearing.

Violation of any provision of this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars.

Chapter 55, Section 14. Soliciting contributions in public buildings prohibited; penalties.

Section 14. No person shall in any building or part thereof occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value for the purposes set forth in section thirteen.

Any appointed officer or employee convicted of violating any provision of this section may be removed by the appointing authority without a hearing.

Violation of any provision of this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars.

Chapter 55, Section 15. Political contributions by public officers or employees restricted; penalties.

Section 15. No officer, clerk or other person in the service of the commonwealth or of any county, city or town shall, directly or indirectly, give or deliver to an officer, clerk or person in said service, or to any councillor, member of the general court, alderman, councilman or commissioner, any money or other valuable thing on account of, or to be applied to, the promotion of any political object whatever.

Nothing in this section shall be construed to prevent any officer, clerk or other person in the public service of the commonwealth, or of any county, city or town from making a contribution to a candidate or to an elected or nonelected political committee.

Violation of any provision of this section shall be punished by a fine of not less than one hundred nor more than one thousand dollars.

Chapter 55, Section 16. Requiring political contributions or services of persons in public service prohibited; penalty.

Section 16. No person in the public service shall, for that reason, be under obligation to contribute to
any political fund, or to render any political service, and shall not be removed or otherwise prejudiced for refusing to do so.

Violation of any provision of this section shall be punished by a fine of not less than one hundred nor more than one thousand dollars.

Chapter 55, Section 16A. Obligation to make political contribution or render political service; penalty.

Section 16A. No person doing business with the commonwealth shall, for that reason, be under obligation to contribute to any political fund, or to render any political service, and shall not be otherwise prejudiced for refusing to do so.

Violations of any provision of this section shall be punished by a fine of not less than one hundred nor more than one thousand dollars.

Chapter 55, Section 16B. Obligation to make political contribution or render political service; penalty.

Section 16B. No person employed for compensation shall be under any obligation to contribute to any candidate or political committee, or to render any political service on account of, or as a consequence of, his employment and such person shall not be removed or otherwise prejudiced for refusing to do so. This section shall not apply to a person employed by a candidate or political committee or other organization organized for the purpose of rendering political service. A violation of this section shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months or both such fine and imprisonment. Each such violation shall constitute a separate offense.

Chapter 55, Section 17. Public service status of officers or employees protected relative to political contributions; penalty.

Section 17. No officer or employee of the commonwealth or any of any county, city or town shall discharge, promote, or degrade an officer or employee, or change his official rank or compensation, or promise or threaten so to do, for giving withholding or neglecting to make a contribution of money or other valuable thing for political purpose.

Violation of any provision of this section shall be punished by a fine of not less than one hundred nor more than one thousand dollars.
SECTION H

STANDARDS FOR EXPENDITURES OF TRUST FUNDS

BOARD OF HIGHER EDUCATION
ROLE OF TRUST FUNDS

The term “trust funds” as used in public higher education refers to non-appropriated funds held by the public institutions of higher education. In Massachusetts, trust funds play an important role in financing the educational needs of all students in the public higher education system. The statutory authority for trust funds in Massachusetts is found in Massachusetts General Laws chapter 15A, Section 9 (N) and 22 (E), Chapter 73 Section 14 and Chapter 75 Section 11. The language contained in the various statutes provide authority for the Board of Higher Education and institutional boards of trustees to seek, accept, establish and administer trust funds for campus projects, programs and activities. The statutes stipulate that all income received be held in trust and be expended for the purposes for which the trust funds were established. It is important, therefore, that institutions carefully review the purposes for which a trust fund has been established before making any expenditures from the trust fund. Trust funds are used to complement state appropriations in order to ensure sufficient funding of an institution’s total needs. Without trust funds, the Commonwealth’s appropriation would have to be increased or some services could not be undertaken. Trust funds can also provide a vehicle to manage supplemental programs to better meet the needs of the college or university community.

Typically, trust fund revenues are used in connection with a variety of campus activities such as auxiliary enterprises (e.g., student housing, bookstores, food service, vending machines), student activities, financial aid, medical services, public services and research. These funds are self-sustaining. The public colleges and the University have two primary sources of income: state appropriations and local campus revenues or trust funds.

- The expenditure of state appropriated funds is governed by detailed state regulations which control expenditures for all state agencies. Statutory authority for enforcing state regulations rests with several entities including the State Comptroller. The Office of the State Auditor has authority under Chapter 11, Section 12 of the Massachusetts General Laws to audit colleges and universities programmatic and financial activity including trust funds in accordance with General Accepted Government Auditing Standards.
Trust funds expenditures, however, are regulated differently. Although technically “public” funds, trust funds are not “appropriated” funds, and therefore, are not subject to the same spending rules and regulations as appropriated funds. In many cases, other external regulations govern expenditures of campus trust funds. For example, sponsored research trust funds would be subject to federal and state regulations concerning the expenditure of research monies. Student housing funds may be governed by regulations pertaining to debt service payments associated with dormitory construction. Where external, third-party regulations do not exist, responsibility for regulating and controlling the expenditure of campus trust funds rests with local boards of trustees. The Board of Higher Education does not have statutory authority over institutional trust funds. The Office of the State Auditor has statutory authority to audit Trust Fund revenue and expenditures.

Because trust fund regulations are locally developed and controlled, they vary from institution to institution and there is a wide spectrum of institutional policies, procedures and regulations which apply. They range from extremely limited regulations to conformity with all state regulations pertaining to appropriated funds. In the vast majority of cases, the guidelines can be considered general in nature, leaving much to the discretion of institutional boards and administrators.

**PURPOSE OF THE STANDARDS**

A generally shared objective of the Commonwealth of Massachusetts is to improve the quality and effectiveness of its public higher education system and to raise it to a position of leadership in the United States. It is important that the development, utilization, and management of trust funds be conducted in a manner that meets with general approval. Clearly, expenditures from trust funds should be consistent with this overall, long-range goal.

Therefore, these standards for the expenditure of trust funds are intended:

1. To provide some guidance and suggestions on selected expenditures made in the interest of promoting the mission of the institution.

2. To outline recommended standards for expenditures which have the appearance of providing personal benefits to college officials and friends, or of being lavish or extravagant in nature.

It is impossible to discuss every conceivable type of expenditure, which might be made from these funds. These standards are designed to provide greater clarity and more uniformity in the determination of appropriate and inappropriate expenditures of these funds.

The standards should be considered minimum standards. Local boards of trustees must develop institutional guidelines and standards which may be more but not less restrictive.

The standards in this report are designed to apply primarily to those trust funds, which permit broad, discretionary expenditures. However, they shall also be applied to expenditures from all trust funds established by boards of trustees, which are not governed by external (non-trustee) regulations or restrictions.
• **Underlying Principles**

A number of important principles underlie these standards:

1. Institutional autonomy and flexibility as well as local decision-making are important and should be encouraged. These standards should not be construed as an attempt to usurp local authority or to centralize decision-making. Each institution must have the flexibility to fulfill its distinctive mission within the public higher education system.

2. No set of general or detailed guidelines can be a substitute for personal ethics and sound judgment. Expenditures of trust funds should be made with the assumption that those decisions and choices will become public knowledge.

3. Local boards of trustees have the responsibility to issue guidelines to ensure that all Trust Fund revenues due to be received have been received and properly deposited and accounted for.

4. Local boards of trustees have the responsibility to issue clear guidelines for the expenditure of trust funds and to establish the mechanism and structures to actively review these expenditures. Accountability is a critical component of local autonomy. Individuals and institutions should be held accountable for their choices and decisions, including the expenditure of trust funds.

5. Public colleges and the University are members of and participants in the larger communities they serve. As such, they must interact with community groups and civic associations and it can be appropriate for them to make modest and limited expenditures in support of these entities.

6. State institutions, like private institutions, must engage in activities which promote employee morale, generate philanthropic support and enhance the well-being of the institution. Accordingly, reasonable and appropriate expenditures to support such activities can and should be made.

7. Trust funds should not be spent in a manner which gives the impression of lavishness or extravagance. Travel, entertainment and other expenditures should be made in moderation and good taste.

8. Expenditure of trust funds may be subject to federal and state income taxation if they exceed normal allowances, are not adequately accounted for, and/or do not satisfy a requirement that the expenditure was accomplished to satisfy the business needs of the institution.

The following pages outline minimum standards to ensure the proper control of the receipt and expenditure of trust funds.

**RESPONSIBILITY AND REPORTING**

(1) Responsibility for the specific trust fund guidelines and regulations rests with the institutional board of trustees. These guidelines should include policies and procedures concerning trust
fund revenue sources, appropriate and inappropriate expenditures, bank accounts, spending approval levels and required documentation.

(2) Responsibility for trust administration rests with the president or chancellor of the institution. Records shall be maintained in accordance with proper accounting procedures, including documentation of receipts, disbursements and bank accounts.

(3) Policies, procedures and internal controls should be established for all Trust Fund administrative and financial activity. All transactions and significant events should comply with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, and the Office of the State Comptroller’s Internal Control Guides for Departments.

(4) All trust fund activities shall be subject to regular audit and inspection by the State Auditor’s department and the Board of Higher Education.

(5) Clear goals and objectives for the trust fund should be established by the institution and, where feasible, an annual budget should be developed, reviewed by the president and submitted to the board of trustees for approval before the beginning of each fiscal year. Such budgets should include sufficient detail to permit the identification of major expenditures. Expenditures should not exceed budgeted amounts for each Trust Fund without prior approval.

(6) The president shall provide a detailed accounting of trust fund expenditures to the board of trustees on, at least, a quarterly basis and the audited financial statements to the Board of Higher Education on an annual basis. Additional reports may be requested at the discretion of either board.

(7) The level of detail required in the quarterly and annual report is left to the discretion of the board of trustees at each campus. However, the level of detail must be sufficient to satisfy board member inquiries and audit requirements and it should also include:

- certification by the president that all records were maintained in accordance with proper accounting procedures, including documentation of receipts, disbursements and bank accounts, and
- relationship of the expenditure to institutional mission should be clearly stated or evident

In addition, the president and/or board of trustees should report all violations of trust fund expenditure standards as well as the follow-up action taken to address each violation to the Board of Higher Education. This report should be made on a quarterly basis if violations occur. If no violations occur during the year, the audit report and management letter are required as confirmation of this fact.

(8) Also in accordance with Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls at State Agencies, all unaccounted for variances, loses, shortages or theft of funds or property shall be immediately reported to the Office of the State Auditor (OSA). The OSA is responsible to determine the internal control weaknesses that contributed to or caused an unaccounted-for variance, loss, shortage or theft of funds or property; make
recommendations to correct the condition found; identify the internal control policies and procedures that need modification; and report the matter to appropriate management and, if appropriate, law-enforcement officials.

(9) Wherever these standards require the board of trustees approval, approval may be given by any one of three entities: the full board, a sub-committee of the board or a designated trustee(s). The choice is up to the full board of trustees and should be included in the campus procedures or guidelines.

(10) Wherever these standards require prior approval, the approval of the annual budget by the board of trustees satisfies prior approval requirements for any expenditure highlighted in these standards if that annual budget includes sufficient detail to permit the identification of said expenditure.

(11) The president or his or her designees should have discretion over trust fund expenditures up to a ceiling specified by the board of trustees except in the following eight circumstances which require approval by the Board of Trustees regardless of the amount of the expenditures:

- expenditures which personally benefit the president,
- expenditures for renovations or repairs of president’s office or home,
- expenditures for individual’s membership dues (in excess of $500 for employees other than the president and for amounts in excess of $1,000 for the president), except for fees or dues associated with professional organizations that directly advance the institution’s mission,
- expenditures for attendance at charitable dinners or events,
- expenditures for trustee travel,
- expenditures for entertainment of guests in president/chancellor’s home,
- expenditures for moving costs, and
- expenditures for purchase or lease of motor vehicles (for use by the president or other administrators.)

Additional discussions on the above expenditures are included in the following sections of the standards.

(12) Individual expenditures over the ceiling as specified by the board of trustees require the prior approval of the board of trustees. Each board of trustees shall inform the Chancellor of the Board of Higher Education of the ceiling specified by that board.
CATEGORIES OF EXPENDITURE

(1) Expenditures of a Personal Nature

Whenever an expenditure would personally benefit or might be seen to personally benefit an individual, that person is prohibited from approving such an expenditure, regardless of the dollar amount. In addition to any board approval required elsewhere in this document, in all such circumstances, an institutional official at a higher organizational level must approve the expenditure in advance.

In the case of a president, the board of trustees must provide prior approval of such expenditures.

(2) General Campus Operations

A. Facilities renovations, repairs, or decorations may be funded through a combination of the institution’s appropriation from the Commonwealth and trust funds. When such expenditures for president/chancellor’s home or office are to be made, they must have the prior approval of the board of trustees except in an emergency, in which case the board should be informed as soon as practicable. All such expenditures shall conform to the competitive bidding policies of the Commonwealth and to its associated procurement procedures.

B. Contractor and consultant fees paid from trust funds should conform to state law pertaining to such activities.

C. Publications, including president’s reports, newsletters, advertisements, magazines, invitations an others should avoid the appearance of extravagance.

D. Individual’s membership fees for civic, academic and/or professional organizations in excess of $500 must have prior approval by the board of trustees except for such memberships for the president so long as fees are not in excess of $1,000.

E. Outright contributions to charitable organizations are prohibited. However, where attendance at a charitable dinner or event will further the public purpose of the institution, expenditure may be permitted subject to prior approval by the board of trustees. The board of trustees may wish to impose a reasonable annual limit on such events for each organization.

F. Contributions to individuals (or their associated committees) seeking elected, public office are prohibited.

G. Contributions to political action committees (PACs) or equivalent organizations are prohibited.

(3) Travel and Substance Costs

A. Employee Travel: When traveling to and from institutional business activities, actual expenditures for transportation, including bus, railroad, airline, subway, taxi
and personal auto should be reimbursed to the extent that these expenditures exceed the normal daily cost of commuting to and from the institution. Where practical, the least expensive mode of transportation should be selected.

A comprehensive travel expense voucher must be filed for each trip. The voucher should reflect the cost of registration at a convention or meeting; transportation including local transportation, lodging, meals, and miscellaneous costs. Invoices in support of each item of cost shall be attached to the voucher. If one or more costs items have been separately paid by the institution (e.g. airfare), the cost item should be reported on the voucher, noted as paid and a copy of the airfare ticket or other invoice attached to the voucher. Adequate conference registration documentation should be attached to the voucher to demonstrate the extent to which meals were included in the registration fee.

In particular, all individuals should fly coach class or at discount fares where available.

Reimbursement for personal automobile mileage may be reimbursed at the prevailing state rate plus documented parking and tolls or the applicable collective bargaining agreement.

The circumstances of an out-of-town trip and the availability of public transportation may require the use of rental cars. Individuals should make every effort to take advantage of discount rates with car rental companies.

When traveling on institutional business, staff members should live and conduct business in a cost efficient manner which is both comfortable and safe. Where appropriate and available, discount rates on hotel and motel stays should be taken advantage of. All charges, other than basic room charge and tax, such as meals, or phone calls should be separately identified on the expense report.

- Campus board of trustees should establish separate reimbursement policies for incidental travel expenses.

Business meals including food and beverages expenses must be reasonable and appropriate under the circumstances.

Examples of reasonable expenses:

- Meal expenditures which have a clear business purpose
- Meals while traveling out-of-town on institutional business
- Expenditures for the purpose of recruiting potential employees
- Meals incurred as part of attendance at conferences or meetings of professional organizations

Expense documentation should include:
• Date, city, restaurant and description of meal (lunch, dinner, etc.)

• Name(s), company, affiliation(s) and business relationship(s) of person(s) in attendance

• Business purpose and benefit to the institution for incurring the expenses

• Amount spent

In addition, business meal expenses must be documented by a receipt. Any meal not accompanied by a receipt may be reimbursed at the Commonwealth’s per diem rate for meals. Also individuals monthly charges should be accompanied by an original receipt.

Expenditures of a personal nature, unreasonable or excessive expenses, and those not specifically related to the conduct of institutional business are not reimbursable. The following are indicative of the type of expenditures that should not be reimbursed:

• Excessive or extravagant costs (e.g., expensive wines, exclusive restaurants)

• Personal entertainment

• Travel insurance in excess of the amount automatically provided by the institution and the Commonwealth

• Fines for traffic or parking violations

• Insurance for a personally-owned car

• Articles stolen from a personal or rental car

• Briefcases and luggage

• Expenses incurred in connection with personal business

• Any unexplained expenses

B. Non-employee Travel: Trust fund expenditures to pay for spouse or personal guest travel are not permitted. If the spouse or guest is a participant on a conference panel or program, expense reimbursement should be sought from the sponsoring organization or personal funds should be used.

At the president’s direction, students may be allowed to incur travel expenses charged to the trust funds. Trustee travel must be approved by the chairman of the board of trustees. In all cases, the activities and expenses must be clearly related to the mission of the institution.

For such individuals, expense documentation should conform to the documentation required for employee expenses. In addition, the listing of unallowable expense noted for employees also applies to the aforementioned individuals.

(4) Personal and Student Loans
A. Personal loans should not be granted to institutional staff, students or board members. This requirement does not apply to regular financial aid programs at the institution.

B. In certain rare circumstances, it may be permissible to provide salary advances to employees if the institution cannot meet payroll due to technical difficulties (e.g., computer failure, etc.). Such advances should be repaid promptly to the trust fund.

(5) Employee and Student Recognition and Activities

A. Within moderate limits set by the board of trustees, certain expenditures of trust funds to enhance employees and student morale or to recognize achievement, longevity, performance or retirement can be made. These circumstances include but are not limited to:

- institutional social functions, and
- employee and student recognition awards and dinners.

(6) Entertainment of institutional donors, alumni, friends, guests and visitors

A. Such entertainment should be in moderation and good taste.

B. It is appropriate for a college president to entertain guests in his or her home as part of official duties. Such expenditures must have prior approval of the board of trustees.

C. Areas of expenditure for entertainment can include:

- Equipment and furniture rentals
- Materials and supplies
- Food and beverage
- Entertainment
- Service staff
- Travel and related expenses (in conformity with the travel guidelines noted above)

D. Sports, theatre and other entertainment tickets cannot be purchased with trust funds unless the event is being held on campus and the expenditure benefits the mission of the institution or directly supports its instructional programs.

(7) Miscellaneous

A. Moving expenses are appropriate for the President and selected employees of the institution. Attracting individuals of high quality can require moving them from other parts of the state or country. Moving expenses should not exceed the regional, average cost of moving between two points, and must have the prior approval of the board of trustees. Competitive bids for moving costs should be sought in all cases.
These expenditures should not include storage fees while an employee waits to sell or purchase a home.

B. Purchase or lease of any motor vehicle with trust funds (for use by the president or other administrators) must have prior approval of the board of trustees. The lease or purchase of a full-sized, mid-priced automobile for the president’s use may be appropriate. If a more expensive vehicle is desired by the president, the difference between the stated limits and the actual cost should be paid with the president’s personal funds. Compliance with IRS guidelines for the personal use of an institutional vehicle should be adhered to by a president or other administrator.

C. Purchase of flowers, gifts and cards in moderation from trust funds may be appropriate. Appropriate occasions include but are not limited to:

- death or illness of an employee, student, trustee or person of special importance to the institution, or immediate family of said persons, and
- visit of special guests.

D. Private clubs initiation fees and membership dues are not an allowable expense. Membership fees for professional or academic organizations and civic groups are an allowable expense; however, any initiation fee or annual membership fee for the president in excess of $1,000 must have the prior approval of the institution’s board of trustees. Membership fees in excess of $500 for employees other than the president must have prior approval.

E. Policies passed by the Board of Higher Education after approval of the Trust Fund Guidelines (last revised on December 5, 2000) shall supersede expenditure and reporting requirements as indicated in these Guidelines.

CLOSING COMMENTS

As noted previously, these proposed minimum standards for the expenditure of trust funds are not all-inclusive. It is impossible to outline every possible type of expenditure which might be made from these funds. However, when a trust fund expenditure decision must be made, it should be made in recognition of the public nature of these funds and in moderation of good taste.

Campus boards of trustees are expected to establish standards for the expenditures of trust funds that meet or exceed the Board of Higher Education’s minimum standards as identified in this document. The institution’s board of trustees shall approve campus-based standards. Each institution shall make its standards for the expenditure of trust fund available to the campus community.

The Board of Higher Education and the campuses will undertake a review of their standards for the expenditure of trust funds at least every five years.
SECTION I

GENERAL RECORDS SCHEDULE
FOR COMMUNITY COLLEGES

SECRETARY OF STATE’S OFFICE
In 1989, the Secretary of State's Office developed a comprehensive disposal schedule for public records held and maintained by the Community Colleges of the Commonwealth. The schedule was most recently revised in 2011. As the Community Colleges' Boards of Trustees possess public records, the schedule shall be consulted prior to the disposal of any Board records.
Massachusetts
Statewide Records Retention Schedule
01-11

A publication of the Records Conservation Board produced in conjunction with the
Massachusetts Archives and the Supervisor of Records

2011 Edition
As amended through April 6, 2011
Expiration Date
In effect until superseded

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H Education

H1 Administration

1 HEGIS Report Records
Documents reports on the institution sent to the U.S. Department of Education.

Retention Period:
Permanent.

2 Dean's Records
Document's the Dean's activities. Includes subject or correspondence files maintained for monitoring and decision making purposes.

Retention Period:
Retain until administrative use ceases. Permission from RCB not required for destruction.
See also record series “Executives’ Correspondence/Subject Files (A3-1).”

3 Satellite Campus Oversight Records
Documents the management of satellite campuses. Includes reports, memos, directives, and related correspondence.

Retention Period:
Retain until administrative use ceases. Permission from RCB not required for destruction.

H2 Admissions

1 Student Admissions/Registration Records
Documents applications to the school and subsequent progress. Includes transcripts, acceptance letters, transfer records, course credit sheets and evaluations, veteran information, and related correspondence.

Retention Period:
(a) Matriculated students' records: Retain 5 years after graduation or separation from institution.
(b) All other records: Retain 3 years.
See also record series “Official Course and Grade Records (H5-6).”

2 Student Immunization Records
Documents the immunization of students entering the institution. Includes immunization record and related correspondence.

Retention Period:
(a) Students entering health training programs: Retain 5 years after separation from the program.
(b) All other records: Retain 10 years.
See also record series “Student Health Clinic Records (H9-5).”
105 CMR.

3 Tuition and Fees Records
Documents tuition and fee structure, analysis, and policy.

Retention Period:
(a) Policy documentation: Permanent.
(b) Actual payments: Retain 3 years after settlement.

4 Student Financial Aid Records
Documents aid given to students to help pay for schooling. Includes financial aid applications, federal student aid forms, federal tax forms, award letters and confirmations, verification records, and interview documentation.

**Retention Period:**
Retain 5 years after separation.

5 Student Scholarships, Fellowships, and Awards Records
Documents the process to give scholarships and other aid awards.

**Retention Period:**
(a) Summary records: Permanent.
(b) All other records: Retain 5 years.

6 Student Record Transcript Requests Records
Documents requests for student transcripts.

**Retention Period:**
Retain 1 year.

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**H3 Academic Program**

1 Academic Program Administration Records
Documents the routine daily administration of courses and programs of the institution. Includes referral, orientation, facilitative and other administrative correspondence and materials.

**Retention Period:**
Retain 3 years.

2 Academic Advisement Records
Documents faculty or academic advisors advisement of students.

**Retention Period:**
Retain 3 years after student graduates or separates from academic program.

3 Student Internships and Practicums Records
Documentation of field experience.

**Retention Period:**
Retain 5 years after separation. Record with registrar.

4 Independent/Cooperative or Alternate Study Records
Documents alternative course programming.

**Retention Period:**
Retain 3 years.
5 International Studies Program Records
Documents programs of foreign study sponsored or in conjunction with other colleges.

Retention Period:
Review by the Archives after 6 years.

6 Award Establishment Records
Documents the establishment of awards.

Retention Period:
(a) Summary documentation: Permanent.
(b) All other records: Retain until administrative use ceases. Permission from RCB not required for destruction.

7 Commencement and Awards Records
Documents graduation ceremonies and awards given to outstanding students. Includes programs, program revisions, logistical support documentation, and related correspondence.

Retention Period:
(a) Final programs with edits: Permanent.
(b) All other records: Retain 3 years H Education H

H4 Course and Curriculum

1 Curriculum Development Records
Documents the development of courses.

Retention Period:
Retain until administrative use ceases. Permission from RCB not required for destruction.

2 Class Schedule Records
Documents courses scheduled to be taught.

Retention Period:
Official copy: Permanent.

3 Course Outlines and Descriptions Records
Documents descriptions of courses taught by institution.

Retention Period:
Permanent.

H5 Testing and Grades

1 Student Tests and Examinations
Documents tests taken by students as part of course requirements.

Retention Period:
(a) Final tests taken as requirements for degree programs: Permanent.
(b) All other records: Retain 1 year.
2 Student Evaluations of Teachers
Documents student evaluations of courses and instructors. Includes questionnaires and summary reports.

Retention Period:
(a) Where information is summarized: Retain summary report 6 years and discard data forms, otherwise:
(b) Retain data forms 6 years.
Note: Records may be used for tenure review.

3 Masters Theses
Documents papers completed as partial fulfillment of degree requirements.

Retention Period:
Permanent.

4 Academic Degree Audit Records
Documents review of student coursework to determine if they have met the requirements to receive their degree. Includes degree applications, degree audits, credit evaluations, course substitution forms, honors recommendations, and related notes and correspondence.

Retention Period:
(a) Approved degree application documents: Retain 5 years after graduation or separation.
(b) Denied or withdrawn application materials: Retain 1 year.
Note: Denied students are required to reapply and submit a new application to be considered for graduation.

5 General Educational Development (GED) Certification Records
Documents the certification that an individual has passed the GED test as equivalent of a high school education.

Retention Period:
(a) Official copy: Retain 60 years.
(b) All other records: Retain 3 years.

6 Academic Degree Audit Records
Documents review of student coursework to determine if they have met the requirements to receive their degree. Includes degree applications, degree audits, credit evaluations, course substitution forms, honors recommendations, and related notes and correspondence.

Retention Period:
(a) Approved degree application documents: Retain 5 years after graduation or separation.
(b) Denied or withdrawn application materials: Retain 1 year.
Note: Denied students are required to reapply and submit a new application to be considered for graduation.

7 General Educational Development (GED) Certification Records
Documents the certification that an individual has passed the GED test as equivalent of a high school education.

Retention Period:
(a) Official copy: Retain 60 years.
(b) All other records: Retain 3 years.

8 Official Course and Grade Records
Provides a permanent record of student’s courses taken and grades received as maintained by the Registrar.

**Retention Period:**
(a) Official courses taken and transcripts: Permanent.
(b) Transcript requests: Retain 1 year.

**H6 Faculty**

**1 Faculty Personal and Professional Papers**
Consists of faculty research or other materials where left in the institution’s care.

**Retention Period:**
Review by the Archives if left in custody of institution.

**2 Tenure and Promotion Records**
Documents changes in faculty employment.

**Retention Period:**
Retain 6 years.

**3 Teacher Certification Records**
Documents the certification of teachers by the Department of Education in compliance with 71 MGL 38G.

**Retention Period:**
(a) Records before 1980: Retain 40 years.
(b) All other records: Retain 6 years after expiration. Educational Reform Act of 1993. 71 MGL 38G.

**4 Faculty Appointment Records**
Documents the appointment and subsequent history of individuals to join the institution’s faculty.

**Retention Period:**
(a) Summary record: Permanent.
(b) All other records: Retain 6 years after separation.

**5 Faculty Workload Records**
Documents work assignments of individual faculty.

**Retention Period:**
Retain 3 years.
Note: These records may be used for tenure review.

**6 Sponsored Research Records**
Documents grants to pursue academic research.

**Retention Period:**
Review by the Archives after 6 years after close.
H7 Student Activities

1 Student Event/Activities Applications Records
Documents student participation in special activities.
Retention Period:
Retain 3 years.

2 Student Clubs and Associations Records
Documents the activities of student run clubs and associations.
Retention Period:
Retain until administrative use ceases. Permission from RCB not required for destruction.

3 Student Government Records
Documents activities of student government groups.
Retention Period:
Retain until administrative use ceases. Permission from RCB not required for destruction.

4 Student Newspaper
Documents the publication of the student newspaper.
Retention Period:
(a) Final publications: Permanent.
(b) Photographs and artwork: Retain until administrative use ceases. Permission from RCB not required for destruction.
(c) Newspaper staff memorabilia: Permanent.
(d) Summary policy and administrative records: Permanent.
(e) All other records: Retain 3 years.

5 Student Athletic Participation Records
Documents student participation in sports.
Retention Period:
(a) Retain summary documentation, films, and photos: Permanent.
(b) All other records: Retain 6 years after separation.

H8 Student Affairs

1 Student Grievance/Complaint Records
Documents student complaints.
Retention Period:
Retain 3 years after closure.

2 Student Discipline Records
Documents the discipline of students for infraction of school policy.
Retention Period:
(a) Expulsion records: Retain 25 years.
(b) All other records: Retain 3 years after separation.

3 Student Disability Records
Provides a record of disability information on students.
Retention Period:
Retain 5 years after student graduates or withdraws.

4 International Students Case Files
Documents international students enrolled at the school.
Retention Period:
Retain 5 years after separation.

H9 Student Services

1 Student Support Services Records
Documents programs to support student life.
Retention Period:
(a) Substantive summary data: Permanent.
(b) All other records: Retain 3 years.

2 Special Services Program Records
Documents special programs for students not within normal course schedule.
Retention Period:
(a) Summary records: Permanent.
(b) All other records: Retain 3 years.

3 Student Counseling Records
Documents social services provided to students.
Retention Period:
Retain 6 years after separation.

4 Student Career/Placement Records
Documents records kept on file for placement purposes.
Retention Period:
Retain 10 years.

5 Student Health Clinic Records
Documents student clinic health histories. Includes visit documentation and charts, medical notes, and related correspondence.
Retention Period:
Retain 20 years.
111 MGL 70.
H10 Library and Learning Center

1 Borrowers Records
Documents library use by patrons.

Retention Period:
Retain until items are returned.

H11 Department of Early Education & Care: Licensing

1 Substitute Care Program Files (A)
Includes Regional Office files (Office of Record), arranged alphabetically by corporate name.

Retention Period:
Retain 27 years after creation of document.

2 Substitute Care Program Files (B)
Includes Central Office files, arranged alphabetically by corporate name.

Retention Period:
Retain 5 years after creation of document.

3 Group Day Care/SACC Program Files (A)
Includes school age Child Care, Regional Office files (Office of Record), arranged alphabetically by corporate name.

Retention Period:
Retain 27 years after creation of document.

4 Group Day Care/SACC Program Files (B)
Central Office files, arranged alphabetically by corporate name.

Retention Period:
Retain 5 years after creation of document.

5 Family Day Care Program Files (A)
Regional Area/Office files, (Office of Record) arranged alphabetically by corporate name.

Retention Period:
Retain 27 years after creation of document.

6 Family Day Care Program Files (B)
Central Office files, arranged alphabetically by corporate name.

Retention Period:
Retain 5 years after creation of document.

7 Investigation Files (A)
Regional/Area (FDC) Office files. Includes a copy of the complaint, copies from licensing files, collateral contacts, reports, resolution form or referral to Central Office. Arranged alphabetically.

**Retention Period:**
Retain 27 years after creation of document.

8 Investigation Files (B)
Central Office files. Includes a copy of the complaint, copies from licensing files, collateral contacts, reports, resolution form or referral to Central Office. May also include therapist reports, medical records, interim/final reports, memos, investigation notes, legal documents and orders. Arranged alphabetically by program.

**Retention Period:**
Retain 27 years after creation of document.

**H12 Charter School Application Records**

Documents the application process for awarding charters to establish charter schools. Includes documents created or received by the Department and the Board of Elementary and Secondary Education during the course of the application process for charter schools.

**Retention Period:**
(a) Documents submitted by applicants, public comments, reviewers’ comments formally collected by the Department of Elementary and Secondary Education, synopses of consensus discussions and interviews, and documents provided to the Board of Elementary and Secondary Education in connection with the Board's deliberation and vote regarding the award of charters. Includes prospectuses, applications, correspondence, memoranda, reports, synopses, plans, and publications: Retain 5 years after vote by Board of Elementary and Secondary Education.

(b) All other records created during the process of developing documents in (a). Includes notes, worksheets, outlines, design and layout trial sheets, and rough drafts: Retain until administrative use ceases.
SECTION J

IMMUNITY & INDEMNIFICATION LAWS
1. **IMMUNITY PROTECTION**

A Community College Trustee is considered a “public employee” under M.G.L., Chapter 258, the Massachusetts Tort Claims Act (the “Act”). According to the Act, a public employee is immune from liability for negligent or wrongful acts or omissions, including gross negligence, arising out of activities performed within the scope of the employee’s official duties or employment. In such circumstance, the public employer shall be liable for the negligence of a public employee in an amount not to exceed of $100,000.00. A public employer shall not be liable for punitive damages. A public employee shall have no immunity protection for injury caused by intention torts.

2. **INDEMNIFICATION OF LEGAL COSTS AND DAMAGES**

While a public employee is not immune from liability for intention torts, including a civil rights violation, the employee may nevertheless be indemnified by his/her employer for financial losses suffered as a result of such conduct. According to M.G.L., Chapter 258, Section 9, a public employee “may” be indemnified in an amount not to exceed one million ($1,000,000.00) dollars for intentional torts or a civil rights violation, so long as the employee was acting within the scope of his/her official duties or employment when the intentional tort occurred. A public employee shall not be eligible for indemnification if his/her violation of any person’s civil rights was the result of “grossly negligent, willful or malicious” conduct.

While indemnification under Chapter 258 is available to a public employee at a public employer’s discretion, Community College Trustees have a statutory right to indemnification under M.G.L., Chapter 15A, §22. According to Section 22, the Commonwealth “shall indemnify a trustee of a community college … against loss … for any claim arising out of any … judgment, decision, or conduct of said trustee; provided, however, that said trustee has acted in good faith and without malice; and provided, further, that the defense or settlement of such claim shall have been made by the attorney general or his designee.” Section 22 does not specify any limitation on the amount a Trustee may be indemnified.

3. **SUMMARY**

Accordingly, so long as a Trustee is acting within the scope of his/her official duties, in good faith, and without malice, a Trustee shall be immune from liability for negligent acts, and indemnified for any financial losses suffered due to intention torts or civil rights violations, except those committed in a grossly negligent, willful or malicious manner.
Chapter 258: Section 1. Definitions.

As used in this chapter the following words shall have the following meanings:-

"Acting within the scope of his office or employment", acting in the performance of any lawfully ordered military duty, in the case of an officer or soldier of the military forces of the commonwealth.

"Executive officer of a public employer", the secretary of an executive office of the commonwealth, or in the case of an agency not within the executive office, the attorney general; the adjutant general of the military forces of the commonwealth; the county commissioners of a county; the mayor of a city, or as designated by the charter of the city; the selectmen of a town or as designated by the charter of the town; and the board, directors, or committee of a district in the case of the public employers of a district, and, in the case of any other public employer, the nominal chief executive officer or board.

"Public attorney", the attorney who shall defend all civil actions brought against a public employer pursuant to this chapter. In the case of the commonwealth he shall be the attorney general; in the case of any county he shall be the district attorney as designated in sections twelve and thirteen of chapter twelve; in the case of a city or town he shall be the city solicitor or town counsel, or, if the town has no such counsel, an attorney employed for the purpose by the selectmen; in the case of a district he shall be an attorney legally employed by the district for that purpose. A public attorney may also be an attorney furnished by an insurer obligated under the terms of a policy of insurance to defend the public employer against claims brought pursuant thereto.

"Public employee", elected or appointed, officers or employees of any public employer, whether serving full or part-time, temporary or permanent, compensated or uncompensated, and officers or soldiers of the military forces of the commonwealth. For purposes of this chapter, the term "public employee" shall include an approved or licensed foster caregiver with respect to claims against such caregiver by a child in the temporary custody and care of such caregiver or an adult in the care of such caregiver for injury or death caused by the conduct of such caregiver; provided, however, that such conduct was not intentional, or wanton and willful, or grossly negligent. For this purpose, a caregiver of adults means a member of a foster family, or any other
individual, who is under contract with an adult foster care provider as defined and certified by
the division of medical assistance.

"Public employer", the commonwealth and any county, city, town, educational collaborative, or
district, including any public health district or joint district or regional health district or regional
health board established pursuant to the provisions of section twenty-seven A or twenty-seven B
of chapter one hundred and eleven, and any department, office, commission, committee, council,
board, division, bureau, institution, agency or authority thereof including a local water and sewer
commission including a municipal gas or electric plant, a municipal lighting plant or cooperative
which operates a telecommunications system pursuant to section 47E of chapter 164, department,
board and commission, which exercises direction and control over the public employee, but not a
private contractor with any such public employer, the Massachusetts Bay Transportation
Authority, the Massachusetts Port Authority, the Massachusetts Turnpike Authority, or any other
independent body politic and corporate. With respect to public employees of a school committee
of a city or town, the public employer for the purposes of this chapter shall be deemed to be said
respective city or town.

Chapter 258: Section 2. Liability of governmental unit; exclusiveness of remedy;
cooperation of public employee; subsequent actions; representation by public attorney.

Public employers shall be liable for injury or loss of property or personal injury or death caused
by the negligent or wrongful act or omission of any public employee while acting within the
scope of his office or employment, in the same manner and to the same extent as a private
individual under like circumstances, except that public employers shall not be liable to levy of
execution on any real and personal property to satisfy judgment, and shall not be liable for
interest prior to judgment or for punitive damages or for any amount in excess of one hundred
thousand dollars. The remedies provided by this chapter shall be exclusive of any other civil
action or proceeding by reason of the same subject matter against the public employer or, the
public employee or his estate whose negligent or wrongful act or omission gave rise to such
claim, and no such public employee or the estate of such public employee shall be liable for any
injury or loss of property or personal injury or death caused by his negligent or wrongful act or
omission while acting within the scope of his office or employment; provided, however, that a
public employee shall provide reasonable cooperation to the public employer in the defense of
any action brought under this chapter. Failure to provide such reasonable cooperation on the part
of a public employee shall cause the public employee to be jointly liable with the public
employer, to the extent that the failure to provide reasonable cooperation prejudiced the defense
of the action. Information obtained from the public employee in providing such reasonable
cooperation may not be used as evidence in any disciplinary action against the employee. Final
judgment in an action brought against a public employer under this chapter shall constitute a
complete bar to any action by a party to such judgment against such public employer or public
employee by reason of the same subject matter.

Notwithstanding that a public employee shall not be liable for negligent or wrongful acts as
described in the preceding paragraph, if a cause of action is improperly commenced against a
public employee of the commonwealth alleging injury or loss of property or personal injury or
death as the result of the negligent or wrongful act or omission of such employee, said employee
may request representation by the public attorney of the commonwealth. The public attorney
shall defend the public employee with respect to the cause of action at no cost to the public

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employee; provided, however, that the public attorney determines that the public employee was acting within the scope of his office or employment at the time of the alleged loss, injury, or death, and, further, that said public employee provides reasonable cooperation to the public employer and public attorney in the defense of any action arising out of the same subject matter. If, in the opinion of the public attorney, representation of the public employee, under this paragraph would result in a conflict of interest, the public attorney shall not be required to represent the public employee. Under said circumstances, the commonwealth shall reimburse the public employee for reasonable attorney fees incurred by the public employee in his defense of the cause of action; provided, however, that the same conditions exist which are required for representation of said employee by the public attorney under this paragraph.

**Chapter 258: Section 6. Defense of actions; service of process.**

The public attorney shall defend all civil actions brought against a public employer or public employee of the commonwealth pursuant to this chapter. Service of process for such civil action shall be made upon the public attorney or, where no such public attorney has been employed for such purpose at the time service is made, service shall be made upon the executive officer of such public employer.

**Chapter 258: Section 8. Insurance.**

A public employer may procure insurance for payment of damages incurred pursuant to this chapter.

**Chapter 258: Section 9. Indemnity of public employees.**

Public employers may indemnify public employees from personal financial loss and expenses, including legal fees and costs, if any, in an amount not to exceed one million dollars arising out of any claim, action, award, compromise, settlement or judgment by reason of an intentional tort, or by reason of any act or omission which constitutes a violation of the civil rights of any person under any federal or state law; if such employee or official at the time of such intentional tort or such act or omission was acting within the scope of his official duties or employment. No such employee or official shall be indemnified under this section for violation of any such civil rights if he acted in a grossly negligent, willful or malicious manner.

For purposes of this section, persons employed by a joint health district, regional health district or regional board of health, as defined by sections twenty-seven A and twenty-seven B of chapter one hundred and eleven, shall be considered employees of the city or town in which said incident, claim, suit, or judgment is brought pursuant to the provisions of this chapter.

**Chapter 258: Section 10. Application of secs. 1-8**

The provisions of sections one to eight, inclusive, shall not apply to:-

(a) any claim based upon an act or omission of a public employee when such employee is exercising due care in the execution of any statute or any regulation of a public employer, or any municipal ordinance or by-law, whether or not such statute, regulation, ordinance or by-law is valid;
(b) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a public employer or public employee, acting within the scope of his office or employment, whether or not the discretion involved is abused;

(c) any claim arising out of an intentional tort, including assault, battery, false imprisonment, false arrest, intentional mental distress, malicious prosecution, malicious abuse of process, libel, slander, misrepresentation, deceit, invasion of privacy, interference with advantageous relations or interference with contractual relations;

(d) any claim arising in respect of the assessment or collection of any tax, or the lawful detention of any goods or merchandise by any law enforcement officer;

(e) any claim based upon the issuance, denial, suspension or revocation or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization;

(f) any claim based upon the failure to inspect, or an inadequate or negligent inspection, of any property, real or personal, to determine whether the property complies with or violates any law, regulation, ordinance or code, or contains a hazard to health or safety, except as otherwise provided in clause (1) of subparagraph (j).

(g) any claim based upon the failure to establish a fire department or a particular fire protection service, or if fire protection service is provided, for failure to prevent, suppress or contain a fire, or for any acts or omissions in the suppression or containment of a fire, but not including claims based upon the negligent operation of motor vehicles or as otherwise provided in clause (1) of subparagraph (j).

(h) any claim based upon the failure to establish a police department or a particular police protection service, or if police protection is provided, for failure to provide adequate police protection, prevent the commission of crimes, investigate, detect or solve crimes, identify or apprehend criminals or suspects, arrest or detain suspects, or enforce any law, but not including claims based upon the negligent operation of motor vehicles, negligent protection, supervision or care of persons in custody, or as otherwise provided in clause (1) of subparagraph (j).

(i) an claim based upon the release, parole, furlough or escape of any person, including but not limited to a prisoner, inmate, detainee, juvenile, patient or client, from the custody of a public employee or employer or their agents, unless gross negligence is shown in allowing such release, parole, furlough or escape.

(j) any claim based on an act or failure to act to prevent or diminish the harmful consequences of a condition or situation, including the violent or tortious conduct of a third person, which is not originally caused by the public employer or any other person acting on behalf of the public employer. This exclusion shall not apply to:

(1) any claim based upon explicit and specific assurances of safety or assistance, beyond general representations that investigation or assistance will be or has been undertaken, made to the direct victim or a member of his family or household by a public employee, provided that the injury
resulted in part from reliance on those assurances. A permit, certificate or report of findings of an investigation or inspection shall not constitute such assurances of safety or assistance; and

(2) any claim based upon the intervention of a public employee which causes injury to the victim or places the victim in a worse position than he was in before the intervention; and

(3) any claim based on negligent maintenance of public property; (4) any claim by or on behalf of a patient for negligent medical or other therapeutic treatment received by the patient from a public employee.

Nothing in this section shall be construed to modify or repeal the applicability of any existing statute that limits, controls or affects the liability of public employers or entities.

Chapter 15A: Section 22. Board of trustees of community or state colleges; powers and duties.

(The last paragraph of Section 22 addresses the issue of indemnification)

Each board of trustees of a community college or state college shall be responsible for establishing those policies necessary for the administrative management of personnel, staff services and the general business of the institution under its authority. Without limitation upon the generality of the foregoing, each such board shall: (a) cause to be prepared and submit to the council estimates of maintenance and capital outlay budgets for the institution under its authority; (b) establish all fees at said institution subject to guidelines established by the council. Said fees shall include fines and penalties collected pursuant to the enforcement of traffic and parking rules and regulations. Said rules and regulations shall be enforced by persons in the employ of the institution who throughout the property of the institution shall have the powers of police officers, except as to the service of civil process. Said fees established under the provisions of this section shall be retained by the board of trustees in a revolving fund or funds, and shall be expended as the board of the institution may direct; provided that the foregoing shall not authorize any action in contravention of the requirements of Section 1 of Article LXIII of the Amendments to the Constitution. Said fund or funds shall be subject to annual audit by the state auditor; (c) appoint, transfer, dismiss, promote and award tenure to all personnel of said institution; (d) manage and keep in repair all property, real and personal, owned or occupied by said institution; (e) seek, accept and administer for faculty research, programmatic and institutional purposes grants, gifts and trusts from private foundations, corporations, federal agencies, alumnae and other sources, which shall be administered under the provisions of section two C of chapter twenty-nine and may be disbursed at the direction of the board of trustees pursuant to its authority; (f) implement and evaluate affirmative action policies and programs; (g) establish, implement and evaluate student services and policies; (h) recommend to the council admission standards and instructional programs for said institution, including all major and degree programs provided, however, that said admission standards shall comply with the provisions of section thirty; (i) have authority to transfer funds within and among subsidiary accounts allocated to said institution by the council; (j) establish and operate programs, including summer and evening programs, in accordance with the degree authority conferred under the provisions of this chapter; (k) award degrees in fields approved by the council; either
independently or in conjunction with other institutions, in accordance with actions of the boards of trustees of said other institutions and the council; (m) submit a five year master plan to the council, which plan shall be updated annually on or before the first Wednesday of December in each year; (n) submit financial data and an annual institutional spending plan to the council for review. Said plan shall include an account of spending from all revenue sources including but not limited to, trust funds; (n) develop a mission statement for the institution consistent with identified missions of the system of public higher education as a whole, as well as the identified mission of the category of institution within which the institution operates. Said mission statement shall be forwarded to the council for its approval. The board of trustees shall, after its approval, make said mission statement available to the public; (p) submit an institutional self-assessment report to the council, which the board of trustees shall make public and available at the institution. Said assessment report shall be used to foster improvement at the institution by the board of trustees and shall include information relative to the institution's progress in fulfilling its mission, as approved by the council. Said report shall be submitted, initially, by January first, nineteen hundred and ninety-three and every two years thereafter.

The board of trustees of each institution may delegate to the president of such institution any of the powers and responsibilities herein enumerated.

_The commonwealth shall indemnify a trustee of a community college or state college against loss by reason of the liability to pay damages to a party for any claim arising out of any official judgment, decision, or conduct of said trustee; provided, however, that said trustee has acted in good faith and without malice; and provided, further, that the defense or settlement of such claim shall have been made by the attorney general or his designee._ If a final judgment or decree is entered in favor of a party other than said trustee, the clerk of the court where such judgment or decree is entered shall, within twenty-one days after the final disposition of the claim, provide said trustee with a certified copy of such judgment or entry of decree, showing the amount due from said trustee, who shall transmit the same to the comptroller who shall forthwith notify the governor; and the governor shall draw his warrant for such amount on the state treasurer, who shall pay the same from appropriations made for the purpose by the general court.
SECTION K

BIOGRAPHIES OF ATTORNEYS

OFFICE OF THE GENERAL COUNSEL
ATTORNEY BIOGRAPHIES

Kenneth A. Tashjy, General Counsel
Ken received a B.A. in Psychology from Susquehanna University, an M.Ed. in Higher Education Administration from the University of Massachusetts at Amherst, and his J.D. from Suffolk University Law School. Prior to joining the Counsel’s Office in 1996, he served as Managing Director of College Counsel Legal Services, an education law consulting firm, and as an attorney in the litigation division for the Boston firm, Morrison, Mahoney and Miller. Prior to practicing law, Ken served as a student affairs administrator at Bowdoin College, Simmons College, the College of William and Mary, and the University of Massachusetts at Amherst. Ken has also served as an adjunct instructor at Suffolk University and Brandeis University.

James R. Brown, Labor Counsel
Jim received his B.S. in Finance and Economics and a Master’s in Business Administration from Boston University, and his J.D. from the New England School of Law. Prior to earning his law degree, Jim served as Director of Graduate and Continuing Education at Framingham State College and as Dean of Continuing Education at Dean College in Franklin, Mass. While at Dean, he served on the College’s collective bargaining negotiating team and represented the college before the NLRB. He also served as an adjunct instructor teaching business and computer courses. Jim joined the General Counsel’s Office in 1998.

Gina Yarbrough, Associate General Counsel
Gina joined the General Counsel’s Office in 2005 and came from the Boston firm of Stoneman, Chandler & Miller, where she practiced employment and education law. Gina received her B.S. in Communication Studies from Emerson College and her J.D. from Boston College Law School. She has served on the boards of several prestigious legal organizations, such as Woman’s Bar Foundation, Massachusetts Law Reform Institute, and the Department of Mental Health’s Human Rights Advisory Committee.

Carol Wolff Fallon, Assistant General Counsel
Carol received her B.S. in Business Administration from the University of Vermont and her J.D. from Vermont Law School. She was legal counsel for the Rhode Island State Police where she provided advice and training on issues including employment and liability and served as a member of the State Police collective bargaining negotiating team. Carol provided legal advice to various public colleges and universities and the Massachusetts Board of Higher Education and its predecessor boards from 1983 until 1997. Her responsibilities included providing legal advice on numerous education and employment issues that affected higher education.