

# MASSACHUSETTS SENATE



## LEGISLATIVE DRAFTING AND LEGAL MANUAL

Third Edition  
2003

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April 2003

Dear legislative drafter:

The Senate Counsel's office has prepared the third edition of this Manual to help legislative lawyers and other staff who are drafting or reviewing bills for the Massachusetts Senate. We hope you will find it useful.

Its purpose is to promote uniformity in drafting style, and to make the resulting statutes clear, simple and easy to understand and use. Part 2 also contains a collection of useful legal information about legislation. This Manual is not a substitute for advice and drafting assistance from the Senate Counsel's office. Rather, we hope it will encourage you to call or visit this office for further help.

The Counsel's office welcomes any corrections, suggestions for improvement and other comments.

Sincerely,  
David E. Sullivan

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## **Part 1**

### **Drafting Pointers**

Drafting legislation is an art, not a science. A well drafted bill results, not from slavishly following numerous arbitrary rules, but rather from thorough knowledge of the subject, careful attention to detail, and adherence to such common-sense principles as simplicity, clarity and good organization.

That is the spirit in which we offer the following pointers. We hope that their use will also promote uniformity in style, within the Senate Counsel's office and elsewhere in the Senate. We also hope they will result in laws that are easier to read and to use.

#### **A. Basic principles**

- **Simplicity.**

1. Select short, familiar words and phrases that best express the intended meaning according to common and approved usage. Avoid "legalese". The language of a statute should be dignified, not pompous. Examples: Use "after" instead of "subsequent to"; use "before" instead of "prior to". See Appendix C for a comprehensive list of examples.

2. Do not use both a word and its synonym.

3. Use a pronoun only if its antecedent is unmistakable. Repeat the noun rather than use a pronoun unless the antecedent is a series of nouns.

4. Make free but careful use of possessive nouns, for example "the governor's office", "the department's regulation".

5. Avoid using "aforesaid", "hereinabove", "withheld", "whatsoever", or similar ancient words of reference or emphasis.

6. Do not use "any", "each", "every", "all", or "some" if "a" "an" or "the" can be used with the same result.

7. Do not use "and/or". Use "or" to mean any one or more.

8. Do not use "deem" for "consider".

9. Do not use "he/she". Use gender-neutral terms.

10. Try to use "the," "this" or "that" rather than "said" (except when citing a statute).

- **Conciseness.**

1. Omit needless language.

2. If a word has the same meaning as a phrase, use the word.

3. Use the shortest sentence that conveys the intended meaning.

- **Consistency.**

1. Be consistent in the use of language throughout the bill. Do not use the same word or phrase to convey different meanings. Do not use different language to convey the same meaning.

2. Be consistent in the arrangement of comparable provisions. Arrange in the same way sections containing similar material.

- **Directness.**

If a concept can be expressed positively or negatively, express it positively.

- **Ordinary English.**

Draft in ordinary English. Try to avoid words that might be considered slang. Also try to avoid using a sophisticated word when a simple word will convey the same concept. Abbreviations and contractions generally should not be used. In rare instances where an abbreviation is employed, insert a definition of the abbreviated term.

- **Appropriate material for inclusion.**

1. It is usually best not to include material that has no legal effect in a bill.

2. A statement of purpose or occasional example may, however, be helpful to users, including courts interpreting the act.

3. Information regarding the details of state agency policies is best saved for agency administrative rules. The statutes should set forth legislative policies.

- **Outdated terminology.**

Change or remove questionable, imprecise or outmoded words or terminology, including names of state agencies.

- **Revision.**

After completing the draft of a bill, revise it carefully and critically. Lay the revision aside for a time. Then revise the revision. There is no substitute for time and thoroughness.

Review each use of a defined term to make sure it is used consistently in its defined sense.

## **B. Bill organization**

- **Basic organization.**

1. Organize the bill in the most useful and logical format for the reader. Avoid an organization that requires an understanding of a later section in order to understand an earlier section. Group all sections dealing with a common subject matter.

2. Following is a suggested order of arrangement of a bill or of a chapter of the General Laws:

- a. Short title.
- b. Preamble; findings; purpose.
- c. Definitions.
- d. Scope, exceptions, and exclusions, if any.
- e. Creation of an agency or office.
- f. Administration and procedural provisions.
- g. Substance (state positive requirements in order of time, importance, or other logical sequence).
- h. Prohibitions and penalties.
- i. Repeals.
- j. Saving and transitional provisions to existing relationships, if any.
- k. Effective dates.

3. The most important requirement is that the bill be organized in the format most useful to the reader. For an example of organizing a recently inserted section of the General Laws, see the Small Necessities Leave Act (adapted from G.L. c. 149, § 52D) in Appendix A.

- **Title.**

Use a short, descriptive title for every bill. Examples:

An Act regulating firearms.

An Act establishing the department of social services.

Traditionally, the infinitive form is not used. For example, do not say: “An Act to regulate firearms.” Say: “An Act regulating firearms.”

- **Legislative statements.**

It is sometimes helpful to include language stating the purpose of a bill or reciting legislative findings of facts upon which a bill is predicated. This language may assist a court or agency in ascertaining the legislative intent when applying or interpreting the law. It may be appropriate to include this language in the first section of a chapter of the General Laws or of an uncodified bill.

- **Sections.**

1. Number sections with Arabic numerals consecutively throughout the bill or chapter. In a bill, the sections are identified using all capitals, as in "SECTION 2." In chapters of the General Laws, sections are identified with an initial capital and the rest in lower case, as in "Section 2."

2. Use short sections or subsections. Use a separate section or subsection for each separate topic.

3. Divide a section that covers a number of contingencies, alternatives, requirements, or conditions into subsections and paragraphs, as necessary

4. Designate each subsection, paragraph, subparagraph or clause by a letter or number in accordance with Appendix A.

5. See Sample Form for bills in Appendix B.

- **Items and subsections.**

1. Break a sentence into its parts and present them in itemized form if this will help the reader.

2. Use a single "or" to indicate the disjunctive and a single "and" to indicate the conjunctive, at the end of the next-to-last item in a series. Use a semicolon at the end of each item in the series. The first letter of each item in the series is not capitalized unless the item is a complete sentence.

3. As an alternative to using "or" or "and" to indicate the disjunctive or conjunctive in a series, use a phrase in the introductory clause of the series that clearly expresses how many of the following items are to be included, such as: "any of the following", "one of the following", "all of the following", or "any one or more of the following".

4. Do not include in the last item of a tabulation language that qualifies all of the items.

5. Do not place a sentence or paragraph after a tabulation. If the sentence or paragraph is not a part of the tabulated series, draft it as a separate subsection or paragraph. If possible, designate it as a new subsection.

### **C. Sentence structure**

- **Parallel structure.**

Use of correct parallel structure aids comprehension. For example, do not say "A copy may be obtained by mail or if a person appears personally." Instead, say "A person may obtain a copy by mail or by appearing personally."

- **Subject.**

Unless it is clear from the context, use as the subject of each sentence the person or entity to whom a power, right or privilege is granted or upon whom a duty, obligation, or prohibition is imposed.

- **Verbs.**

1. Use the present tense and the indicative mood.
2. Avoid use of the passive voice.
3. The singular is sometimes simpler and clearer than the plural. For example: "A possibility of reverter is subject to limitations in the document that creates it." is preferable to "Possibilities of reverter are subject to limitations in the documents that create them." However, use the plural if its use is the least awkward solution, especially to avoid gender-specific pronouns.

- **Finite verbs.**

If possible, use finite verbs instead of their corresponding participles, infinitives, gerunds or other noun or adjective forms. Do not say "give consideration to"; say "consider". Do not say "is applicable"; say "applies".

- **Use of infinitives.**

Avoid split infinitives. They often undermine the clarity of the law. If qualifying words separate infinitive phrases repeat "to" in each phrase; if no qualifying words intervene, do not repeat "to".

- **Modifiers.**

If a modifier is intended to affect all terms in a series, the terms should be linked together with the conjunctive "and" or the disjunctive "or". If a modifier is intended to affect only one term, the modifier should be placed immediately before or after the term and the other terms in the series should be set off with commas or semicolons.

- **Provisos.**

Provisos (which usually begin "provided, that") are acceptable, especially in line items of appropriation bills. But, because they unnecessarily complicate sentence structure, try to avoid them. Instead, depending on context, begin the new clause with "but" or "if," or simply start a new sentence.

#### **D. Other grammatical issues**

- **Numbers.**

Use numerals rather than words for numbers in the text of bills and resolutions. This includes dates, times, dollar amounts, percentages and citations to the chapter and section numbers of statutes.

For example:

- “This act shall take effect on July 1, 1997.”
- “Violation of section 23 or of this section shall be punished by a fine of not more than \$500.”
- “The document shall be filed not later than 5:00 p.m.”
- “Section 2 of chapter 123 of the General Laws is hereby repealed.”
- “The amount shall increase by 3 per cent annually.”

Use numerals even for numbers from 1 to 10 (this is for consistency and is the practice followed in the United States Code). The only exceptions, consistent with ordinary English usage, are to use words for numbers that begin a sentence, and for “ordinal” numbers (like “fiftieth” and “eighty-fourth”).

For example:

- “The board shall consist of 9 members.”
- “Twelve members of the board shall constitute a quorum.”
- “They shall conduct a census every tenth year.”

- **Gender.**

Avoid using gender-based personal pronouns whenever possible. Note that G.L. c. 4, § 6 now provides that “words of one gender may be construed to include the other gender and the neuter.”

Try to minimize the need for gender-based pronouns. Repeat the noun, or use the plural form, selecting the least awkward solution. Passive voice may be used if the actor remains clear.

- **Capital letters.**

1. The normal rules of capitalization do not necessarily apply to language in the statutes. Traditionally, Massachusetts statutory usage requires lower case whenever possible. Avoid using capitals except for proper names. The following guides will assist in determining when and when not to capitalize.



2. Proper name, place or designation:

Atlantic Ocean	Great Lakes
Bang's Disease	Camp Hiawatha
Connecticut river	City of Boston
Essex County	World War II
Lake Quinsigamond	Bowdoin street

3. Nation or nationality:

English Language	anti-British
Indian Reservation	Spanish-American War
American Indian	un-American

4. Church, religious organization or memorial:

Christian Science Church	Roman Catholic Church
Forest Home Cemetery	Episcopal Church

5. Political party:

Democratic Party	Republican Party
Socialist Party	American Liberty Party

6. State agency, department or institution:

department of social services  
commissioner of insurance  
Massachusetts veterans home investment board  
registry of motor vehicles  
general court

7. Federal agency or department (capitalize agency names):

federal Department of Housing and Urban Development

9. Organization, society or lodge:

American Veterans of World War II  
Women's Christian Temperance Union  
Loyal Order of Moose

10. Book or publication:

Newsweek magazine	Atlas
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11. Act or law when referred to in body of an act or resolve:

"section 2 of chapter 90 of the General Laws"

"section 1 of chapter 300 of the acts of 1986"

“section 101 of the federal Family and Medical Leave Act of 1993, 29 U.S.C. section 2611”

12. Legal holiday:

Christmas	Independence Day
Memorial Day	Labor Day

13. Capitalize the names of all funds:

General Fund	Commonwealth Stabilization Fund
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14. Lower case in statutes:

attorney general  
president of the United States  
constitution  
supreme judicial court  
congress  
superior court  
governor  
district court  
general court

- **Spelling of particular words.**

The following uniform spellings are suggested:

By-Law Full-Time  
Firefighter Part-Time  
Percent

- **Punctuation.**

1. Punctuate carefully. Changing a comma can change the entire meaning of a sentence.
2. Ordinarily, do not use a comma before "and" to separate the last of a conjunctive series of three or more words, phrases, or clauses in a sentence. Example: “men, women and children”.
3. Ordinarily, do not use a comma before "or" to separate the last of a disjunctive series of three or more words, phrases or clauses in a sentence.
4. Use a colon to introduce a list of items.
5. Try to avoid using parentheses except in the designating of section divisions. Example: "subsection (a)".

6. Do not use brackets as punctuation.
7. Use quotation marks when defining a word or phrase.

Example: "In this section, 'cost of construction' shall mean...."

8. Place a period or comma outside the last quotation mark, unless the entire sentence is quoted; in that case, the period appears inside the quotation marks.
9. Use commas for clarity, especially to set off an introductory phrase or clause, or to separate independent clauses. Example: "The committee shall have several responsibilities, including but not limited to analyzing cases and recommending possible reforms."

#### **E. Use of particular words**

- **“And” and “or”.**

“And” means all of a list of items. “Or” means any one or more of a list of items. Do not use “and/or”; use “or” instead.

- **“Said” and “such”.**

In general, avoid use of “said” and “such”. (“Said” may be used to refer to a previously cited statute.) Instead, use “the” if the reference is unambiguous. Otherwise, use “this”, “that”, “these” or “those”.

- **“Shall” and “may”.**

1. A duty, obligation, requirement, or condition precedent is best expressed by "shall".
2. Use "shall" if the verb it qualifies is in the active voice. Example: "The aggrieved party shall file (active verb in active voice) the application."
3. Use "may" to confer a power, privilege, or right.

Examples "The applicant may demand (power) an extension of time".

"The applicant may appeal (right) the decision."

4. Use "shall not" to express a prohibition.
5. Avoid using hortatory qualifiers, such as "will", "should" and "ought", in the text of a bill.

- **“Which” and “that”.**

1. Use "which" to introduce a nonrestrictive clause.

Example: "An applicant shall sign the application, which need not be verified."

2. Use "that" to introduce a restrictive clause modifying the nearest antecedent.

Example: "An applicant may apply to renew a license that has been revoked."

- **Avoid "the provisions of".**

Instead of the wordy "in accordance with the provisions of this section," say "under this section."

- **Use of the phrase "of the General Laws".**

Do not use the phrase "of the General Laws" in the text of General Laws unless necessary to distinguish other references. In those parts of the acts and resolves that will not be incorporated into the General Laws, when you wish to refer to a section of the statutes, the reference should read, for example, "as required by chapter 6 of the General Laws" or "subject to review under chapter 227 of the General Laws".

## **F. Particular provisions**

- **Statutes in the General Laws.**

Codify in the General Laws statutes that apply throughout the Commonwealth and are not certain to be temporary. Otherwise, the provisions belong in a special act. Try to avoid putting effective dates and other "transitional" provisions in the text of the General Laws; put them in a separate, uncodified section at the end of the bill.

- **Transition.**

An essential step in the preparation of a bill is to determine the effect the bill would have on existing rights, liabilities, and proceedings. Draft any savings clauses and transitional provisions that are necessary to provide appropriate rules governing these matters. If existing rights are preserved, it may be desirable to require that they be asserted within a short, specified period after the effective date of the bill. For an example of a transition provision when new agencies replace old ones, see St. 1996, c. 151, § 634.

Appropriate savings clauses and transitional provisions make it possible for a bill to take effect with minimum disruption of existing expectations and liabilities. Great care must be exercised in drafting these clauses.

- **Effect on present arrangements.**

Give consideration to the effect of a bill on existing relationships, whether they are business, personal, or governmental. "Grandfather" provisions are commonly used to resolve similar conflicts. Make a careful check of current laws.

- **Severability.**

Avoid using a severability clause. Since G.L. c. 4, § 6(11) provides for severability, no further language is necessary. Nor is it useful, because use in some acts but not others may create a negative implication that severability is not intended in acts where the language does not appear.

- **Establishing an agency.**

Use simple language in the present tense to create or establish an agency, commission, or office. Example: "There shall be a division of patient protection in the department of public health."

## APPENDIX A. DIVISION OF SECTIONS .

Sections of the General Laws should be divided in a consistent manner. Following is a suggested pattern:

Section 1.

(a)

(1)

(i)

(A)

Example (adapted from the Small Necessities Leave Act, G.L. c. 149, § 52D):

Section 52D. (a) As used in this section, terms shall have the meanings assigned to them by the federal act, notwithstanding any contrary provision of section 1 of this chapter. In addition, the following terms shall have the following meanings:

"Elderly relative", an individual of at least 60 years of age who is related by blood or marriage to the employee, including a parent.

"Federal act", sections 101 to 105, inclusive, of the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2611 to 2615, inclusive, as it may be amended.

"School", a public or private elementary or secondary school; a Head Start program assisted under the Head Start Act, 42 U.S.C. sections 9831 et seq.; and a children's day care facility licensed under chapter 28A.

(b) An eligible employee shall be entitled to a total of 24 hours of leave during any 12-month period, in addition to leave available under the federal act, to:

(1) participate in school activities directly related to the educational advancement of a son or daughter of the employee, such as parent-teacher conferences or interviewing for a new school;

(2) accompany the son or daughter of the employee to routine medical or dental appointments, such as check-ups or vaccinations; and

(3) accompany an elderly relative of the employee to:

(i) routine medical or dental appointments; or

(ii) appointments for other professional services related to the elder's care, such as interviewing at nursing or group homes.

(c) Unless this section provides otherwise, the federal act shall apply to leave under this section. As provided in section 102(d)(2)(A) of the federal act, 29 U.S.C. section 2612(d)(2)(A), an eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, or medical or sick leave of the employee for any of the leave provided under this section, but nothing in this section shall require an employer to provide paid sick leave or paid medical leave in any situation in which the employer would not normally provide any such paid leave. Leave under this section may be taken intermittently or on a reduced leave schedule.

(d) If the necessity for leave under this section is foreseeable, the employee shall provide the employer with not less than 7 days' notice before the date the leave is to begin. If the necessity for leave is not foreseeable, the employee shall provide such notice as is practicable.

(e) An employer may require that a request for leave under this section be supported by a certification issued at such time and in such manner as the attorney general may by regulation require.

(f) The attorney general shall enforce this section, and may obtain injunctive or declaratory relief for this purpose. Violation of this section shall be subject to the second paragraph of section 150 and to section 180.

## APPENDIX B. SAMPLE FORMS .

### A. Bills amending the General Laws

#### 1. To insert a new chapter:

SECTION 1. The General Laws are hereby amended by inserting after chapter 156 the following chapter:-

#### CHAPTER 156A. BUSINESS VENTURES.

Section 1. No person shall .....

#### 2. To insert a section :

SECTION 2. Said chapter 156A is hereby amended by inserting after section 1 the following section:-

Section 1A. After this hearing .....

[Note: You do not need to use the phrases “as appearing in the 2002 Official Edition” or “as so appearing” if you are inserting or adding a new section in an existing chapter of the General Laws.]

#### 3. To strike out or repeal a section :

SECTION 3. Section 2 of said chapter 156A is hereby repealed.

[Note: You do not need to use the phrases “as appearing in the 2002 Official Edition” or “as so appearing” if you are repealing a section of the General Laws.]

#### 4. To revise or replace a section :

SECTION 4. Said chapter 156A is hereby further amended by striking out section 3, as appearing in the 1996 Official Edition, and inserting in place thereof the following section:-

Section 3. In a city or town with a population .....

#### 5. To insert a paragraph :

SECTION 5. Section 4 of said chapter 156A, as so appearing, is hereby amended by inserting after the first paragraph the following paragraph:-

If a firefighter injured while .....

#### 6. To revise or replace a paragraph :



SECTION 6. Section 5 of said chapter 156A, as so appearing, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

A person who violates this section .....

**7. To insert a word :**

SECTION 7. Section 1 of chapter 189 of the General Laws, as appearing in section 2 of chapter 341 of the acts of 1997, is hereby amended by inserting after the word "travel", in the first sentence, the following words:- to or from the area of .....

[Note: If you are inserting a word or words with a reference to a word and a line number or sentence in a statute, as in item 7 above, the actual line number or sentence is set off by commas after the word being cited as a reference point.]

**8. To strike out words:**

SECTION 8. Section 108 of chapter 175 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking out, in line 469, the words "for any claim relating to dental services".

[Note: If you are striking out words in a statute with reference to a line number, the line number is set off by commas before the words being stricken.]

[Other notes:

- a. The phrase "as appearing in the 2002 Official Edition" follows the reference to the section and chapter of the General Laws being affected. Example: "Section 2 of chapter 111 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by adding the following paragraph:-"
- b. As paragraphs 4, 5 and 6 above demonstrate, the phrase "as so appearing" should be used instead of "as appearing in the 2002 Official Edition" if the previous bill section also contains a reference to the Official Edition.
- c. If the provision of the General Laws that you are amending has been inserted or amended after the most recent Official Edition of the General Laws, include a reference to the act that made the most recent amendment. Example: "Chapter 32A of the General Laws is hereby amended by inserting after section 17G, inserted by section 1 of chapter 81 of the acts of 2000, the following section:-"

**B. Bills amending special acts**

SECTION 9. Section 25 of chapter 16 of the acts of 2002 is hereby amended by striking out, in line 3 of the second paragraph, the word "shall" and inserting in place thereof the following word:- may. [Count line numbers in each paragraph of the official Acts and Resolves.]

**C. Floor amendments of bills**

**1. Inserting a new text :**

[Mr.] [Ms.] moves to amend the bill (Senate, No. 1234) by striking out all after the enacting clause and inserting in place thereof the following text:-

"SECTION 1. Section 2 of chapter 156B of the General Laws is hereby....."

**2. Striking out a section :**

[Mr.] [Ms.] moves to amend the bill (Senate, No. 1234) by striking out section 4.

**3. Striking out a word:**

[Mr.] [Ms.] moves to amend the bill (Senate, No.1234), in section 5, by striking out, in line 14, the word "felony".

**4. Revising a section :**

[Mr.] [Ms.] moves to amend the bill (Senate, No. 1234) by striking out section 6 and inserting in place thereof the following section:-

"SECTION 6. A person who violates this section shall be punished by....."

**5. Amending a pending amendment:**

[Mr.][Ms.] moves to amend the pending amendment (No. 15, by [Mr.][Ms.]) by . . . .

**D. Floor amendments of appropriation bills**

(Note: since an appropriation bill is often the only major bill that the Senate is considering at the time, referring to the bill number is usually not necessary.)

**1. To revise an item :**

[Mr.] [Ms.] moves to amend the bill, in section 2, by striking out item 3456-0010 and inserting in place thereof the following item:-

"3456-0010 For the office of the director, including not more than twenty positions .....\$300,000".

**2. To revise wording :**

[Mr.] [Ms.] moves to amend the bill, in section 2A, in item 3456-0010, by striking out the wording and inserting in place thereof the following wording:-

"For the office of the fire protection division; provided, however, that not more than \$1,000 may be expended for communication equipment, including not more than 20 positions."

**3. To change figures in an item :**

[Mr.] [Ms.] moves to amend the bill, in section 2A, in item 1359-0011, by striking out the figure "\$250,000" and inserting in place thereof the following figure:- "\$130,000".

**4. To insert a new item :**

[Mr.] [Ms.] moves to amend the bill, in section 2A, by inserting after item 1234-0001 the following item:-

"1234-0002 For the King's Highway regional district, prior appropriation continued.....\$1,000,000."

**5. To change a word :**

[Mr.] [Ms.] moves to amend the bill, in section 2B, in item 8129-3310, by striking out the word "definite" and inserting in place thereof the following word:- "indefinite".

**6. To strike out a word:**

[Mr.] [Ms.] moves to amend the bill, in section 2, in item 1233-0022, by striking out the word "definitive".

## APPENDIX C. USE SIMPLE LANGUAGE.

### **Do not say:**

absolutely null and void and of no effect

Accorded

adequate number of

adjudged, ordered, and decreed

admit of

Afforded

Aggregate

among and between

Approximately

at the place where

attempt (as a verb)

by means of

calculate

category

cause it to be done

cease/commence

institute

complete (as a verb)

conceal

consequence

constitute and appoint

contiguous to

corporation organized & existing  
under the laws of Massachusetts

deem/form

does not operate

to donate

### **Say:**

void

given

enough

adjudged

allow

given

total

among (if more than two involved);

between (if two or more but treated  
individually)

about

where

try

by

compute

kind, class, group

have it done

stop

start, begin

finish

hide

result

appoint

next to

a Massachusetts corporation

consider

do

does not

give

during such time as	while
during the course of	during
endeavor (as a verb)	try
enter into a contract with	contract with
evidence, documentary and	evidence
otherwise	show
evinced	but
except that	too many
excessive number of	end
expiration	fail
fail, refuse and neglect	possible
feasible	during (or, while)
for the duration of	to hold
for the purpose of holding	because
for the reason that	immediately
forthwith	often
frequently	full
full and adequate (or, full and complete)	after this.....takes effect
hereafter	in this act (or section or item)
herein	before this.....takes effect
heretofore	
in accordance with	under
in the event that	if
in the interest of	for

initiate	begin
is able to	can
is applicable	applies
is authorized and directed	shall
is authorized to	may
is binding upon	binds
is directed	shall
is entitled (in the sense of has the name)	is called
is unable to	cannot
it is the duty	shall
it shall be lawful to	may
law passed	enacted
manner	way
maximum	most, largest, greatest
minimum	last, smallest
modify	change
negotiate (in the sense of enter into a contract)	make
obtain	get
occasion (as a verb)	cause
of a technical nature	technical
on his application	at his request
on the part of	by
or, in the alternative	or
party of the first part	(the party's name)
	per year

per annum	per cent
per centum	part
portion	have or had
possessed	keep
preserve	earlier or before
prior or prior to	go, go ahead
proceed	obtain, get
procure	carry on its business
prosecute its business	law
provision of law	buy
purchase (as a verb)	under
pursuant to	rest
remainder	give
render (in the sense of give)	

## Part 2

### Related Legal Issues

#### A. Effective Dates and Emergency Preambles.

1. In Massachusetts, a bill “becomes law” when the Governor signs it or when both houses of the Legislature, each by a two-thirds roll call vote, pass it over the Governor’s veto. Article 48 of the Amendments to the state Constitution, G.L. c. 4, §§ 1 and 2, and sometimes the law itself, determine when the law “takes effect”, once it has become law.

2. Article 48 establishes the earliest time when the Legislature may make a law take effect, as follows:

(a) Ordinarily (unless the Constitution expressly excludes the subject matter of the law from the Referendum), a law may not take effect until 90 days after it becomes law, to allow time for voters to file a referendum petition suspending it and placing the question of its repeal on the next regular state election ballot.

(b) The Constitution says a law is not subject to the Referendum, and therefore may have the force of law immediately, if the law:

- relates to religion, religious practices or religious institutions;
- relates to the appointment, qualification, tenure, removal or compensation of judges;
- relates to the powers, creation or abolition of the courts;
- is restricted in its operation to a particular town, city or other political division or to particular districts or localities of the commonwealth; or
- appropriates money for the current or ordinary expenses of the commonwealth or for any of its departments, boards, commissions or institutions.

(c) Laws that are subject to the Referendum and contain an emergency preamble may also take effect as soon as they become law. If a law does not contain an emergency preamble, the Governor may attach a statement of emergency and then the law may take effect when the state Secretary receives the statement.

(d) Like ordinary bills, outside sections of appropriation bills that are “not sufficiently related to appropriations” are separately subject to the Referendum, and so may not take effect until 90 days after they have the force of law, unless they are not subject to the Referendum, or are the subject of an emergency preamble or a Governor’s emergency letter. *Sutton Corporation v. Metropolitan District Commission*, 423 Mass. 200, 214 (1996). Therefore, the Senate and House Counsels advise that, if an appropriation bill includes arguably “unrelated” outside sections intended to take effect immediately, the bill should contain an emergency preamble.



3. Once Article 48 allows a law to take effect, it takes effect immediately, unless either:

(a) it contains a provision making it effective at some other time. Such an effective date is often in the last section of a law.

(b) it is not subject to the Referendum and contains no other effective date. In this case, it takes effect 30 days after it becomes law.

4. Summary:

(a) To take effect immediately, a law must:

(1) (if it is subject to the Referendum) contain an emergency preamble or have a Governor's emergency letter;

(2) (if it is excluded from the Referendum) contain a provision making it effective upon passage. For example, the last section of a purely local law will say: "This act shall take effect upon its passage."

(b) Otherwise, a law's effective date is delayed:

(1) by 90 days, if it is subject to the Referendum and contains no later effective date;

(2) by 30 days, if it is excluded from the Referendum and contains no other effective date;

(3) until some later date contained in the new law itself.

5. When counting days, the day of the governor's approval is excluded. In the case of a legislative override of a veto, the day of the override is excluded.

6. The usual form of an emergency preamble is:

"Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to [state the purpose, including some reference to the reason for immediate effect], therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public [peace, health, safety, or convenience]."

## **B. Governor's Vetoes and Recommended Amendments.**

After the Legislature enacts a bill and lays it before the Governor, the Governor has ten days to sign it, veto it or return it to the Legislature with recommended amendments. See Mass. Const. pt. 2, c. 1, § 1, art. 2, as amended by amend. art. 90, § 1; amend. art. 56, as appearing in amend. art. 90, § 3. If the Legislature "prorogues" or ends its annual session before the ten days expire, the Governor may "pocket veto" a bill simply by not signing it. Mass. Const. amend. art. 1, as appearing in amend. art. 90, § 2.

At least since 1996, the Senate and House Counsels have expressed the opinion that this ten-day period includes Sundays and holidays, even if they fall on the tenth day. See *Opinion of the Justices*, 291 Mass. 572, 575 (1935); letter to Brackett B. Denniston III (Governor's Chief Legal Counsel) from Louis A. Rizoli (House Counsel) and David E. Sullivan (Senate Counsel), July 10, 1996. Since 1996, the Governor has always acted within this "short" ten-day period.

For appropriation bills, the Governor has certain additional powers. A bill makes an appropriation if any part of it sets apart a certain sum of public money for a particular purpose, so that an executive-branch officer may expend it without further legislative action. *Slama v. Attorney General*, 384 Mass. 620, 625 (1981). So for these purposes, in addition to regular "budget" bills, appropriation bills may include bond authorization bills and bills directing revenue to a trust fund for expenditure without further appropriation.

In appropriation bills, the Governor may separately veto or reduce the dollar amount of line items and may veto certain language in line items. See Mass. Const. amend. art. 63, § 5, as appearing in amend. art. 90, § 4. But the Governor cannot separately veto line-item language that imposes conditions or restrictions on appropriated funds, thus freeing appropriated funds for purposes the Legislature did not approve. *Opinion of the Justices*, 419 Mass. 1201 (1994). The Governor may veto such a restriction only if he also reduces the funds appropriated in that item by the amount for the vetoed provision. Of course, he may also veto the entire item.

The Governor may also separately veto individual outside sections of appropriation bills, if they are not closely related to appropriations, but he cannot veto part of an outside section. *Opinion of the Justices*, 411 Mass. 1201, 1215-16 (1991). And the Governor may return with recommended amendments either an entire appropriation bill or a separate outside section of such a bill (again, if the section not closely related to appropriations). *Alliance v. Secretary of Administration*, 413 Mass. 377, 384-85 (1992).

When the Governor returns any bill with recommended amendments, the Legislature may accept or reject the Governor's amendments, or adopt any other amendment, and then re-enact the bill. No two-thirds or rollcall vote is needed, unless the Constitution requires it for some other reason (e.g., borrowing, see part 2.D. below). The Governor then has his usual veto power over the reenacted bill, but may not recommend further amendments.

The Legislature may override any veto (or line-item reduction) by a two-thirds rollcall vote of both houses.

## **C. Home Rule Petitions.**

### **1. Under what circumstances is local approval required?**

Section 8 of the Home Rule Amendment (Mass. Const. amend. art. 2, as appearing in amend. art. 89) requires special procedures --either prior local government approval or a two-thirds vote by each house following the Governor's recommendation -- when the Legislature acts "in relation to" a single city or town.

The Supreme Judicial Court has held that this restriction on legislative power "is to be narrowly construed," and in two recent cases emphasized that it does not prevent legislation on state, regional or general matters. *Clean Harbors of Braintree, Inc. v. Board of Health*, 415 Mass. 876, 881 (1993); *Gordon v. Sheriff of Suffolk County*, 411 Mass. 238, 244 (1991).

In *Gordon*, the court upheld provisions of the FY 1992 main budget transferring the new Suffolk County House of Corrections from the Boston penal institutions department to the Suffolk County sheriff. Recognizing that "[o]peration of county correctional facilities has always been a matter of State and general concern," 411 Mass. at 246, the court concluded that the legislation's "special effect on Boston's penal institution's department . . . neither diminishes its broader purpose nor serves to make the Home Rule Amendment applicable." *Id.* at 245.

In the *Clean Harbors* case, the court upheld a law exempting pre-existing facilities from a statute requiring local boards of health to approve sites for certain hazardous waste facilities. Even though site proceedings were pending before the Braintree Board of Health and the court assumed that the new exemption applied in fact only to this single facility, there was no violation of section 8 because "the waste treatment performed at [this] facility is certainly a matter of State, regional and general concern." 415 Mass. at 882.

On the other hand, the court invalidated an appropriation item that sought to condition distribution of funds to Boston, but no other municipality, on the city's maintaining a certain level of police and fire services. *Mayor of Boston v. Treasurer and Receiver General*, 384 Mass. 718 (1981).

### **2. How often must local approval be obtained?**

The longstanding policy of the Senate is that whenever a new petition for local legislation is filed in a new Legislature, it ordinarily must be based upon a new local approval – not the old local approval used to file a bill in a previous Legislature.

### **3. What constitutes local approval?**

Section 8(1) of the Home Rule Amendment provides that the Legislature may enact special laws relating only to a single city or town "on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town".

Direct voter approval is allowed if the city or town charter provides for the local initiative (or for a referendum to review approval by the local legislative body). E.g., G.L. c. 43, §§ 37-44 (procedures in “plan” cities). *Opinion of the Justices*, 370 Mass. 879 (1976); *Marino v. Town Council*, 7 Mass. App. Ct. 461 (1979).

Otherwise, the local approval must be by vote of the city or town council (with the mayor’s approval if the charter requires it for other municipal legislation) or town meeting. In two advisory opinions to the Legislature, the Justices of the Supreme Judicial Court have interpreted section 8(1) to require approval by “the responsible legislative body of the municipality.” *Opinion of the Justices*, 375 Mass. 843, 845 (1978); *Opinion of the Justices*, 365 Mass. 655, 658 (1974). In both cases, the Justices consulted the municipality’s charter to ascertain what procedures it required for other local legislation, and advised that section 8 required those same procedures to be followed for approving home rule petitions: “§8 evinces no intention to prescribe different legislative procedures for a [home rule petition] from the procedures otherwise followed by the [municipal] legislative body.” 365 Mass. at 659-60 (bill allowing town manager or administrator in “town council” municipalities to veto home rule petitions violated §8, because this official “has no such power in any other legislative context” under the charter). See 375 Mass. at 845-46 (Cambridge’s “Plan E” Mayor had no power to veto home rule petition, because Plan E charter gives him “no legislative powers apart from those powers he possesses as a member of the city council,” including no veto power). But see *Opinion of the Justices*, 429 Mass. 1201 (1999) (city council cannot override mayor’s veto of home rule petition).

Before it can pass a special law based on a home rule petition, the Legislature must have evidence of approval by the municipal legislative body. This should take the form of a copy of the body’s vote (or a certificate of the voters’ vote on an initiative measure), including the date, attested by the original signature of the city or town clerk. At the very least, this vote must request some action by the Legislature or “General Court.”

#### **4. What amendments to home rule petitions are proper?**

Courts applying section 8(1) of the Home Rule Amendment have held that the municipal vote approving a home rule petition may be general or specific. *Newell v. Rent Board of Peabody*, 378 Mass. 443, 446-48 (1979); *Opinion of the Justices*, 356 Mass. 775, 791 (1969); *Nugent v. Town of Wellesley*, 9 Mass. App. Ct. 202 (1980). If the local approval is general (as it was in all three of these cases) -- or if the municipal vote does not restrict amendments -- the Legislature has considerable freedom to amend “within the scope of the general public objectives of the petition.” *Opinion of the Justices*, 356 Mass. 775, 791 (1969). If the municipality wishes to restrict or preclude legislative amendments to its proposal, the municipal vote must say so in unambiguous terms.

Thus, in the view of Senate and House Counsel (in a March 24, 1998 memorandum to city solicitors and town counsels), a municipality has essentially three options when it approves a home rule petition:

**(a) General vote.** The municipal legislative body may approve a vote requesting legislation to accomplish a general purpose. Draft legislation may be attached, but the mere approval of proposed legislation by the municipal legislative body does not restrict legislative amendments. (See Special Commission on Implementation of the Home Rule Amendment, Second Report, Senate No. 10, at 11 [1967].) For example, if the vote sets forth the text of the proposed legislation and requests that the Legislature “enact the following”, this is a general vote because it does not specifically preclude legislative amendments. If a draft bill is not approved, the legislation may be drafted by the municipal executive (the mayor, manager or selectmen), the state legislator who files it, or their respective counsel. One town uses the following form for such a general vote:

Voted, to authorize the Selectmen to petition the Legislature to enact legislation to [insert purpose]; provided, that the Legislature may reasonably vary the form and substance of the requested legislation within the scope of the general public objectives of this petition.

**(b) Vote restricting amendments.** The municipal vote may preclude substantive legislative amendments by clearly saying so. The City of Boston and some other municipalities routinely use this form:

Ordered: That a petition to the General Court, accompanied by a bill for a special law relating to the [city or town of ] to be filed with an attested copy of this order be, and hereby is, approved under Clause (1) of Section 8 of Article 2, as amended, of the Amendments to the Constitution of the Commonwealth of Massachusetts, to the end that legislation be adopted precisely as follows, except for clerical or editorial changes of form only:- [insert text of bill].

The risk of using such language, especially for a town meeting that meets infrequently, is that an amendment necessary to secure passage of the bill may not be approved for many months.

Municipalities should not use the phrase “in substantially the following form” or “substantially as follows”, since the meaning of “substantially” is ambiguous. This phrase may mean that no amendments of “substance” are allowed, or that no “important” amendments are allowed. If the first meaning is desired, the Boston language above should be used.

**(c) Vote allowing municipal executive to approve amendments.** A third option is to use the restrictive language of option (b) above, but also to include language allowing the municipal executive (especially the Selectmen in towns) to approve amendments within the scope of the general public objectives of the petition. The following form is suggested:

Voted, to petition the General Court to the end that legislation be adopted precisely as follows. The General Court may make clerical or editorial changes of form only to the bill, unless the Selectmen [or other municipal executive] approve amendments to the bill before enactment by the General Court. The Selectmen [or other municipal executive] are hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition. [insert text of bill]

#### **D. Special Enactment Requirements.**

The Massachusetts Constitution requires that some bills be enacted by a two-thirds vote of the House and the Senate. The Constitution also requires that certain of these two-thirds votes be by roll call. The rules require a special sticker to appear on each such bill indicating this. The following chart lists these special enactment requirements and shows the sticker corresponding to each.

<p style="text-align: center;"><b>EMERGENCY PREAMBLE</b></p> <p style="text-align: center;">Senate.....Correctly Drawn</p> <p style="text-align: center;"><b>Contains an Emergency Preamble</b></p>	<p>Article 48 of the Amendments to the Massachusetts Constitution requires an emergency preamble to be adopted by a two-thirds vote of the House and of the Senate (see part 2.A. above).</p>
<p style="text-align: center;">For the Senate Committee on</p> <p style="text-align: center;">Bills in the Third Reading</p>	
<p style="text-align: center;"><b>ARTICLE LXII APPLICABLE</b></p> <p style="text-align: center;"><b>Yays and Nays Required</b></p> <p>Senate .....Correctly Drawn</p> <p><b>Provides for the borrowing of money by the Common-wealth and comes within the provisions of Section 3 of Article LXII of the Amendments of the Constitution.</b></p>	<p>Section 3 of Article 62 of the Amendments to the Constitution requires a two-thirds roll call vote of each house to enact a bill that authorizes the Commonwealth to borrow money. (This applies to a bill changing the purpose of an existing bond authorization, but not to a time extension.)</p>
<p style="text-align: center;">For the Senate Committee on</p> <p style="text-align: center;">Bills in the Third Reading</p>	

<p style="text-align: center;"><b>ARTICLE LXII APPLICABLE</b></p> <p>Yeas and Nays Required</p> <p>Senate.....Correctly Drawn</p> <p><i>Provides for the gift, loan or pledge of the credit of the Commonwealth and comes within the provisions of</i></p> <p style="text-align: center;"><i>The first sentence of Section 1 of Article LXII of the Amendments of the Constitution.</i></p>	<p>Section 1 of Article 62 of the Amendments to the Constitution requires a two-thirds roll call vote of each house to enact a bill that gives, loans or pledges the credit of the Commonwealth. (This may include the Commonwealth's agreement to indemnify. <i>Raisman v. J. Cunningham, Inc.</i>, No. 93-5070-G [Mass. Super., Suffolk Sept. 24, 1995].)</p>
<p><i>For the Senate Committee on Bills</i></p> <p><i>in the Third Reading</i></p>	<p>The Home Rule Amendment to the Constitution requires a two-thirds vote of each house to enact a bill recommended by the Governor that relates to a single city or town but has not received local approval (see part 2.C. above).</p>
<p><b>ARTICLE LXXXIX OF THE AMENDMENTS TO THE CONSTITUTION REQUIRES</b></p> <p style="text-align: center;"><b>TWO-THIRDS VOTE ON ENACTMENT</b></p> <p>Senate.....Committee on BTR</p> <p>Correctly Drawn</p>	<p>Article 49, as appearing in Article 97, of the Amendments to the Constitution requires a two-thirds roll call vote of each house to enact a bill that disposes of land or easements acquired for public conservation, open-space, recreational or other dedicated environmental purposes. The bill should clearly identify the land's present uses. (See 1972-73 Rep. Mass. Att'y Gen. 139, 148 [June 20, 1973].)</p>
<p style="text-align: right;"><i>For the Senate Committee</i></p> <p><b>ARTICLE XCVII OF THE AMENDMENTS TO THE CONSTITUTION REQUIRES</b></p> <p style="text-align: center;"><b>TWO-THIRDS ROLL CALL VOTE ON ENACTMENT</b></p> <p style="text-align: center;">Senate.....Committee on BTR</p> <p>Correctly Drawn</p> <hr/> <p style="text-align: right;"><i>For the Senate Committee</i></p>	



<p>ARTICLE CXV APPLICABLE</p> <p>Two-thirds Vote Required</p> <p>Senate.....Committee on BTR</p> <p>Correctly Drawn.</p> <p>Provides for additional cost on two or more municipalities for the compensation, hours, status, conditions or benefits of municipal employment and comes within the provisions of Article CXV of the Amendments to the Constitution.</p>	<p>Article 115 of the Amendments to the Constitution requires a two-thirds vote to enact a bill that imposes additional cost on cities or towns by regulating municipal employment (if each city or town will not have to accept it and the Legislature does not assume the cost; see part 2.G.2. below).</p>
<p>For the Senate Committee</p>	

**E. Separation of Powers.**

**1. Massachusetts constitutional requirements.**

Article 30 of the Massachusetts Constitution’s Declaration of Rights is a strong “separation of powers” provision. It prohibits the executive, legislative and judicial branches of state government from exercising another branch’s powers. In addition, Mass. Const. part 2, c. 1, § 1, art. 2 says that the Legislature may act only by both houses’ passing a bill or resolve and laying it before the Governor for his action (the “presentment” requirement).

**2. Specific limits on legislative power.**

(a) The Legislature may not condition executive action on approval by a legislative officer or committee, or subject executive action to disapproval by any method other than passing a law (a “legislative veto”), or delegate lawmaking or appropriation powers to a legislative officer or committee. See *Opinion of the Justices*, 384 Mass. 840 (1981); *Opinion of the Justices*, 375 Mass. 827 (1978); *Opinion of the Justices*, 369 Mass. 990 (1976). See also Senate Committee on Ways and Means Policy Report, “Separation of Powers and the Legislative Veto,” FY 1993 Budget Recommendations 1-118 (May 1992).

(b) The Legislature may not provide for its own members to perform executive functions, or to participate in appointing executive officers. See *Opinion of the Justices*, 365 Mass. 639, 644 (1974); *Opinion of the Justices*, 303 Mass. 615, 624 (1939).

**3. Permissible legislative action.**

The Legislature may:

- (a) put legislators on purely advisory commissions;
- (b) provide for municipal or private-sector individuals to serve on bodies exercising executive power;
- (c) require agencies to “report and wait” before taking action (especially adopting regulations), to allow time for legislative reaction either informally or by statute (see 1992 SWM report at 124-25) – but note that this process may sometimes be politically inadvisable;
- (d) pass a law to counteract executive action of which it disapproves.

## **F. Money Bills.**

The Massachusetts Constitution says: “All money bills shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.” Pt. 2, c. 1, § 3, art. 7. It is clear that “money bills” are those that affect state tax revenue for general purposes; appropriation bills, which involve spending state funds (see part 2.B. above), are not money bills. *Opinion of the Justices*, 126 Mass. 557 (1878). Therefore, the Senate can (and does) originate appropriation bills. See, e.g., St. 2000, c. 384 (\$57 million supplemental appropriation act, originating as S. 2310, first reported by the Senate Committee on Ways and Means).

Note that a bill that reduces general state tax revenue, as well as one that increases it, is a “money bill.” See *Armstrong v. United States*, 759 F.2d 1378, 1381-82 (9th Cir. 1985); *Wardell v. United States*, 757 F.2d 203, 205 (8th Cir. 1985).

The Senate may even originate some bills that increase revenue. The Justices of the Supreme Judicial Court have said that they will follow court decisions interpreting the parallel “Origination Clause” of the United States Constitution. *Opinion of the Justices*, 337 Mass. 800, 809 (1958). Under those cases, the Senate could originate a bill raising the following kinds of revenue:

- Non-tax revenue, such as fees or fines. *Opinion of the Justices*, 337 Mass. 800, 809 (1958), quoting *United States v. Norton*, 91 U.S. 566, 569 (1876) (limitation “confined to bills to levy taxes in the strict sense of the words”).
- Local taxes, including property taxes or assessments. *Sprint Communications Co. v. Kelly*, 642 A.2d 106 (D.C.), *cert. denied*, 513 U.S. 916 (1994).
- State tax revenue specifically earmarked for a particular program. “[A] statute that creates a particular governmental program and that raises revenue to support that program, as opposed to a statute that raises revenue to support Government generally, is not a ‘Bil[l] for Raising Revenue’ within the meaning of the Origination Clause.” *United States v. Munoz-Flores*, 495 U.S. 385, 398 (1990). “Whatever taxes are imposed are but means to the purposes provided by the act.” *Opinion of the Justices*, 337 Mass. 800, 810 (1958) (citations omitted).

## **G. Local Mandates.**

### **1. The “local mandates” statute.**

The voters originally enacted the local mandates statute, G.L. c. 29, § 27C, as part of the 1980 initiative law called “Proposition 2½.” It says that laws (including state agency regulations) “imposing any direct service or cost obligation upon any city or town” are not effective unless either the municipal legislative body votes to accept the law, or the Legislature appropriates the cost every year.

The local mandates law does not apply to:

- pre-1981 laws.
- “incidental local administration expenses.” These are “relatively minor expenses related to the management of municipal services . . . that . . . are subordinate consequences of a municipality's fulfillment of primary obligations.” *City of Worcester v. The Governor*, 416 Mass. 751, 758 (1994).
- laws that the Legislature specifically exempts (e.g., the Education Reform Act of 1993, see G.L. c. 70, § 15; St. 1993, c. 71, § 67).
- mandates resulting from court decisions, or contained in a law “enacted . . . as a direct result of such a decision.”
- state laws implementing federal mandates (e.g., the state “motor voter” law, St. 1993, c. 475).
- statutory clarifications of existing statutory requirements. *City of Worcester v. The Governor*, 416 Mass. 751 (1994).
- benefits of municipal employees subject to Article 115 (see below).
- legislative conditions attached to appropriated state funds received by a municipality. *School Committee of Lexington v. Commissioner of Education*, 397 Mass. 593 (1986).
- laws governing a regulated industry, in which a municipality voluntarily chooses to participate (e.g., maintenance of a municipal landfill, *Town of Norfolk v. DEQE*, 407 Mass. 233 [1990]).

In addition, the state Auditor’s Division of Local Mandates (DLM, see below) has given advice that the local mandates law does not apply to the following two situations, but these situations remain uncertain because no court has yet addressed them:

- laws imposing costs on municipal retirement systems (which DLM regards as distinct from municipal governments).

- laws creating or expanding property tax exemptions that simply shift costs to other taxpayers.

Only a court can decide that a municipality need not comply with a law that violates the local mandates statute, but the remedy may not include reimbursement. *City of Worcester v. The Governor*, 416 Mass. 751, 761-62 (1994). In practice, however, if the Legislature still wants the law enforced, it will need to appropriate the necessary funds for the future.

The Division of Local Mandates in the Department of the State Auditor (10 West Street, 6th floor, Boston, MA 02114, telephone 727-0980) gives non-binding advice about the local mandates law, including estimates of municipal costs.

## **2. Article 115.**

A 1980 amendment to the Massachusetts Constitution, Article 115, says that state laws regulating municipal employment conditions or benefits are not effective unless (a) the municipal legislative body votes to accept the law; or (b) the Legislature appropriates the cost; or (c) the Legislature enacts the law by a two-thirds vote of both houses.

This constitutional provision does not apply to laws generally regulating benefits of all employees, including private sector as well as municipal employees. *City of Cambridge v. Attorney General*, 410 Mass. 165 (1991).

# Part 3

## Assistance from the Senate Counsel's Office

The Senate Counsel's office provides the following services to Senators and their staffs:

**A. Legislation.** When requested by a Senator, we will:

- answer questions about the form, substance and legality of bills;
- review and comment on draft bills prepared by a Senator's staff or others; or
- draft legislation based on an outline (to comply with the Senate rule, we will also e-mail the text of the bill to the Clerk for you, unless you ask to review it first). If possible, please use the "Request for Draft Legislation" form below.

**B. Resolutions.**

Resolutions are drafted by a Senator's staff member, and are assigned to an Assistant Counsel for editing. The Counsel's office then delivers the completed resolution to the Senate Clerk for action by the Senate.

**C. Research and advice.** We will research and provide advice about legal matters related to Senate business. This includes subjects addressed in the Senate's Employee Handbook, such as conflict of interest, political activity restrictions, reporting illegal or improper conduct, and litigation relating to Senate business.

**D. Library.** The Senate Counsel library in Room 200 is available to Senators and their staffs whenever the office is open.

**REQUEST FOR DRAFT LEGISLATION**

**DATE:**

**FROM: SENATOR**

**TO: COUNSEL TO THE SENATE**

**OUTLINE OF PROPOSED BILL:**


(ATTACH EXTRA SHEET, IF NECESSARY)

**SUGGESTED**

**TITLE:** \_\_\_\_\_

**GENERAL OR SPECIAL LAW AFFECTED, IF KNOWN:** \_\_\_\_\_

\_\_\_\_\_

**DATE REQUIRED:** \_\_\_\_\_

**STAFF MEMBER (OR OTHER PERSON) TO CONTACT FOR INFORMATION:**

\_\_\_\_\_

\_\_\_\_\_

**THIS SPACE RESERVED FOR COUNSEL TO THE SENATE**

**ASSIGNED TO:** \_\_\_\_\_

**DATE COMPLETED:** \_\_\_\_\_