



Office of the State Auditor  
Suzanne M. Bump

*Making government work better*



# Division of Local Mandates

Vincent McCarthy, Director  
[Vincent.McCarthy@sao.state.ma.us](mailto:Vincent.McCarthy@sao.state.ma.us)  
1-617-727-0025

# Looking For Answers on Unfunded Mandates

- In Massachusetts, look to the State Auditor's Office, Division of Local Mandates (DLM), M.G.L. c. 11, § 6B
- The Local Mandate Law, M.G.L. c. 29, § 27C
- Opinions of the State Supreme Judicial Court
- Local financial impact reports, M.G.L. c. 11, § 6B

# Division of Local Mandates

## Introduction

DLM established within State Auditor's Office in 1980 by Proposition 2 ½.

Under the strict revenue limits of Proposition 2 ½, cities and towns could no longer resort to historical practice and raise property taxes to support state mandated programs.

For this reason, Proposition 2 ½ included provisions to limit the authority of state government to mandate costly programs upon cities and towns.

# The Local Mandate Law

M.G.L. c. 29, § 27C

*In general terms: post-1980 state laws and regulations that impose more than incidental administrative expenses upon any city or town must either be fully funded by the Commonwealth, or subject to local acceptance.*

- ◉ DLM responds to written requests for opinions & costs impact analyses from cities, towns, and school districts, as well as members of the State Legislature and state agencies.
- ◉ Responses are in the form of opinion letters and cost determinations.



# Two Forms of Mandate Relief

An opinion and cost determination from DLM does not relieve a city or town from the duty to comply.

Rather, communities may seek relief in the courts or with the Legislature.

# Judicial Relief

- ⦿ Any community aggrieved by an unfunded state mandate may petition the Superior Court for an exemption from compliance.
- ⦿ DLM's determination of the cost of compliance may be offered as prima facie evidence of the amount of state funding necessary to sustain the mandate.
- ⦿ This can be a costly and lengthy process.

# Legislative Relief

- ⦿ Legislative relief is the preferred remedy.
- ⦿ The State Auditor and impacted communities inform and work with legislative leaders to secure state funding or repeal of the mandate.

# Selected DLM Opinions

- School transportation for homeless students
- Law changing procedure for filling a vacancy in the United States Senate in Massachusetts
- Education Service Plans for Expelled Students
- Permitting of Small Solid Waste Disposal Facilities



# School Transportation for Homeless Students

- ◉ Petitioners: State Representatives for the Town of Danvers and the City of Waltham
- ◉ State McKinney-Vento Plan: requires school departments to continually fund transportation and school services for some homeless students back to their community of origin.
- ◉ DLM determined that the state's voluntary participation in federal program was an unfunded state mandate.
- ◉ Danvers costs: over \$100,000
- ◉ Waltham costs: \$140,000

# Statewide Survey

## School Transportation for Homeless Students (continued)

DLM distributed electronic cost survey to 329 school districts.  
Response rate: 80%

The projection for transporting homeless students to and from schools of origin was approximately \$11.3 million.

The Auditor submitted cost projections and recommendations for mandate funding to the Governor and the Legislature.

The General Court approved funding in the fiscal year 2013 state budget. St. 2011, c. 139, § 2, item 7035-0005. In FY 14, the funding amount is \$7.35 million.

## School Transportation for Homeless Students: **\$11.2 million in savings**

Number of Districts Projecting Various Ranges of Costs		
Range of Costs	Number of Districts	Total Cost for Group
\$250,000 or Greater	8	\$3,482,813
\$100,000-\$249,999	25	3,677,521
\$50,000-\$99,999	23	1,507,960
\$25,000-\$49,999	43	1,534,616
\$10,000-\$24,999	51	803,579
> \$0 < \$10,000	59	265,833
No Cost	120	
Totals	329	<b>\$11,272,322</b>

# Vacancy in the United States Senate

- Pre-1981 law: The Governor would fill any vacancy in a MA seat in the U.S. Senate with an interim appointment until the next regularly scheduled biennial election.
- St. 2004, c. 236 amended the law to require the Governor to call an election within 145 to 160 days from the date of the vacancy.
- The Auditor determined that the full cost of conducting the December 2009 special state primary and the January 2010 final election was a state mandate, subject to the Local Mandate Law.
- The General Court appropriated approximately \$7.9 million to assume the cost, and directed DLM to certify costs statewide.
- Using an electronic cost survey, DLM certified the amount of reimbursement due to each community, ranging from almost \$1 million for Boston to about \$650 for Chilmark.
- In 2013, in a similar issue regarding another US Senate special election, DLM certified statewide costs at \$7.3 million, and communities are expected to be reimbursed shortly.



# Student Access to Educational Services and Exclusion from School

- ⦿ A mandate determination was issued for the Ashburnham-Westminster and Leverett school districts.
- ⦿ School committees had no financial obligation to expelled students under pre-1981 state law, nor under current law.
- ⦿ However, Chapter 222 of the Acts of 2012, section 9, effective July 1, 2014, now requires school districts to develop an “education service plan” for students suspended for more than 10 consecutive days or expelled.
- ⦿ These plans may include tutoring, alternative placement, Saturday school, online or distance learning, or assistance in alternative educational services.
- ⦿ DLM determined that the level and method of state reimbursement contemplated by Chapter 222, section 9 ( the special education circuit breaker formula in M.G.L. c. 71B, s. 5A) does not satisfy the LML.
- ⦿ Chapter 222 requires DESE to issue regulations shortly, and DESE has expressed a willingness to be sensitive to local cost concerns.
- ⦿ Also, Chapter 222 requires that DESE file a report to the Legislature on the cost of implementing the law by Nov. 30, 2013.
- ⦿ DESE must also file annual reports to the Legislature on the cost of providing reimbursement for the instructional costs of the alternative educational services.
- ⦿ These provisions demonstrate that the Legislature is aware of the costs of Chapter 222, and may consider additional funding as compliance costs become known.

# Site Assignment & Permitting Small Solid Waste Disposal Facilities

- ⦿ Complaints by the towns of Athol, Halifax, Leverett.
- ⦿ DLM review, determination.
- ⦿ The Auditor advised the communities, the House and Senate leadership, and the Governor's office that the Local Mandate Law applied in this case.
- ⦿ State leaders responded by changing the law to relieve communities of these costs, returning the duties to DEP. (St. 2011, c. 68, §§ 83-86)

# Some Exceptions to the Local Mandate Law

## **The Local Mandate Law does not apply:**

- ◉ When the state law regulates the compensation, hours, status, conditions, or benefits of *municipal employment*.
- ◉ When there is a stipulation that requires municipal compliance with the mandate as a condition of state aid.
- ◉ When the law permits *local option compliance*.

# Some Exceptions to the Local Mandate Law (continued)

## **The Local Mandate Law does not apply:**

- ◉ When the law or regulation is a federal pass-through mandate, such as EPA regulations governing safe drinking water standards.
- ◉ When the Legislature overrides the Local Mandate Law.
- ◉ When the new law imposes only incidental administration expenses on cities and towns.
- ◉ When the mandate applies generally to both public & private sector activities.



# Three Examples of Exceptions: Ethics Reform Act, Dam Safety Law, & Fingerprinting of School Employees

- *When the new law imposes only incidental administration expenses*
  - > **Ethics Reform**
- *When the mandate applies generally to both public & private sector activities*
  - > **Dam Safety Law**
- *When the mandate is not imposed upon cities and towns, but on municipal employees*
  - > **Fingerprinting and Background Checks of Certain School Employees**

# Local Financial Impact Reports

- M.G.L. c. 11 § 6B authorizes DLM to review any law that has a significant financial impact at the local level, even when the more technical standards of the Local Mandate Law do not apply.
- Because the Ashburnham dam safety case raised important issues of public safety and the financial ability of cities and towns to maintain locally-owned dams, DLM undertook further review under c. 11 § 6B, and filed findings and recommendations with the General Court.
- DLM communicated findings & recommendations in testimony to the Legislature's Committee on the Environment, Natural Resources, & Agriculture. The Committee amended a bill under consideration to allow cities and towns to access a proposed revolving loan fund to support remediation of substandard dams.
- A new revolving fund of approximately \$20 million has been created and is being split evenly to finance low interest loans and grants for remediation of dams and seawalls.

# How to Request a Mandate Determination

Address a letter to:

The Honorable Suzanne M. Bump  
Auditor of the Commonwealth  
State House, Room 229  
Boston, MA 02133

- Cite the law or regulation imposing costs and the nature of the local financial impact. Provide cost data, if possible.
- State your request for a DLM determination of the fiscal impact of the mandate under the provisions of M.G.L. c. 29, § 27C.