Massachusetts Municipal Association
LEGISLATIVE BULLETIN

June 3, 1994

SENATE COMMITTEE SET TO RELEASE ITS BUDGET

All indications are that the Senate Ways and Means Committee will release its budget recommendations during the week of June 6. Under the rules of the Senate, the budget cannot be taken up sooner than five days after the Ways and Means Committee reports it out, and all amendments must be submitted to the Senate Clerk's Office 48 hours before the full Senate begins its budget deliberations. Therefore, we anticipate that the Senate will complete its work on the budget by the end of the week of June 13. Such a schedule would mean that the Legislature is on target to get the budget to the governor before the beginning of the new fiscal year on July 1.

The MMA will concentrate on three areas in the Senate budget. First, we will push hard for the Senate to adopt the House language on phasing out the cap on the lottery over a five-year period starting in fiscal 1996. Second, we want to restore the line-item for state-owned land to at least the $6.5 million figure that communities have received in past years. (The House adopted an amendment that provides $4 million for state-owned land.) Finally, we will make a major effort to make the education reform bill more workable. In this area we want the Senate to include four amendments adopted by the House: two on waiver processes, one on allowing city council or town meeting approval for school expenses that are not included in a community's foundation spending plan, and one on permitting communuties that are spending below foundation—but are spending above the statewide average from their own resources—to qualify for overburden aid.

Please call your Senator and ask for his or her commitment on these priority items.

Action Awaited on Chapter 90 Funds

The Senate Committee on Ways & Means is continuing its deliberations on the capital expenditures bill, H. 4905, which contains $300 million in Chapter 90 funds for local road projects. The MMA has sent a letter to the full Senate urging them to act upon the capital expenditures bill prior to taking up the budget. The House in May engrossed a capital expenditures bill, H. 4905, that contains $300 million in Chapter 90 bond authorizations for cities and towns. The House bill would expand the Chapter 90 program to include the use of funds for a variety of construction projects. The MMA also urges its members to contact senators to ask for their assistance in moving the bill out of committee to the floor for action as soon as possible.

Changes in School Finance Law Debated

The new school finance law was a hot topic for debate during House consideration of the state's fiscal 1995 budget last month. The version of the budget finally approved by the House and sent to the Senate includes all or parts of four MMA-sponsored changes to the law (see the May 20 *Legislative Bulletin* for details) as well as more than a dozen other proposed changes. Several of these amendments would make the school spending requirements in the new law even more difficult for cities and towns to meet than they are now. The MMA has targeted the following two amendments as the most important to defeat.

Municipal Medicaid Amendment

Section 297 of the House budget bill [House 5001] would prevent cities and towns receiving Medicaid reimbursements related to special education expenses from using these funds to meet the requirements of the new school finance law. School committees would be authorized to spend reimbursement amounts without municipal appropriation, and any such spending would not count toward meeting the "foundation budget" spending targets set under the new law. Under the section 297 rules, cities and towns would appropriate property tax and state aid dollars as they do now to pay for special education expenses, which are included in the spending target, but medical reimbursements would become discretionary revenues for the school committee to spend in addition to "foundation budget" spending. Under current law, Medicaid reimbursements are general fund revenues and may be used to meet the minimum required local contribution. In fact, some cities and towns appropriated these revenues for the support of schools this year and have budgeted amounts for fiscal 1995 as well.

The municipal Medicaid reimbursement program was established last year to provide financial assistance to cities, towns, and regional school districts with special education costs. The Department of Education estimates that more than half of all municipalities are eligible and that when fully implemented the program will provide more than $35 million in reimbursements. In May, $4.1 million was distributed to 32 cities and towns.

The MMA has argued that section 297 should be stricken, and that any Medicaid reimbursements related to special education costs should be used to defray the property tax contribution to this program, not to set up a discretionary fund for school committees. In addition, because special education expenses are included in the foundation budget, Medicaid reimbursements should be available to cities and towns for use in reaching the foundation amount, not for unrelated spending as would be required under section 297.

Excess Debt Service Amendment

Sections 261 and 262 would change the rules for calculating the relief from the required school spending amount that a city or town would be eligible for using the "excess debt service amount" factor under the new school finance law. The new rules would prevent most cities and towns from using this factor. This excess debt factor was included in the law to allow cities and towns with high levels of debt service for school construction projects to count toward meeting the school spending target any debt service amount above the per pupil state-wide average. Under current law, any excess debt service amount is deducted from the "minimum required local contribution." Under sections 261-262, the "excess debt service amount" would be deducted from the "standard of effort." This limits the availability of this factor to cities and towns required to close a standard of effort gap without the benefit of "overburden aid."

Update on Teachers Early Retirement

In the May 20 *Legislative Bulletin*, the MMA notified its members that the Massachusetts Teachers' Retirement Board had informed school superintendents that the cost of the teachers' early retirement program had been recalculated, and, therefore, the program's cost would be much higher than anticipated for most districts. The teachers' retirement board is responsible for preparing a funding schedule for each participating district based on the Public Employee Retirement Administration's analysis of the costs of the additional benefits.

During the May Local Government Advisory Committee meeting, the MMA asked the Weld Administration to provide some relief to districts which had accepted the program based on an erroneous formula. The MTRB met May 27 to review this issue. Based on the advice of the Attorney General's Office, the MTRB determined that once a city, town, or district has accepted the incentive, it cannot rescind it. According to the MTRB, the Attorney General's office noted that there is nothing in the law that prevents a local government that has already accepted the program from capping the number of teachers that can take advantage of the program, or limiting the benefits under the program. According to the MTRB, a municipality wishing to do so would have to use the same procedure to limit or cap as was used to accept the early retirement program.

Court Ruling to End "Flow Control"

The U.S. Supreme Court ruled last month that cities and towns do not have the authority to enact "flow control" by-laws for solid waste disposal. Flow control refers to the process by which a community by-law determines that all of the trash—residential and/or commercial must be disposed at a city or town designated facility. In *C&A Carbone* v. *Town of Clarkstown,* the Court ruled that the commerce clause of the United State's Constitution prohibited that New York community from adopting its by-law on flow control because the U.S. Congress has not yet explicitly authorized communities to adopt such measures.

The effect of this decision will vary quite a bit for Massachusetts municipalities. It will have its greatest effect on those communities that have adopted by-laws requiring private contractors to dispose of a community's trash at a designated facility (including municipally owned landfills) at above market prices. However, those communities that pay the tipping fee themselves can still, by means of a contract, require haulers to dump at a designated disposal facility.

Fortunately, there is a legislative solution to this problem currently before the Congress. S.1634 introduced by U.S. Sens. Howell Heflin (D-Ala.) and David Durenberger (R-Minn.). This bill would permit cities and towns to adopt constitutionally permissable flow control statutes.

Quinn Bill Underfunded in Budget Plans

The MMA has learned that the Police Career Incentive program or "Quinn Bill" was underfunded in Governor Weld's recommended fiscal 1995 budget and the House fiscal 1995 budget by $1.3 million. Both budgeted $11.5 million for the reimbursement program; however, the actual cost for fiscal 1994 reimbursements is $12.8 million. The MMA is working with representatives from unions and the police chiefs association to include $12.8 million in the Senate budget. MMA has contacted Senate Ways and Means Chairman Thomas Birmingham (D-Chelsea) and Sen. James Jajuga (D-Methuen), a leading public safety advocate who also serves on the Senate Ways and Means Committee, and urged them to fully reimburse the police career incentive costs in the Committee's fiscal 1995 budget. For four years "Quinn Bill" payments were underfunded. However, after the concerted efforts of local officials, union representatives, and Attorney General Scott Harshbarger, the state's share of the program was fully funded in the fiscal 1993 and 1994 state budgets. Local officials from communities that have accepted the Quinn Bill are asked to urge their legislators to fully fund the police career incentive program in the Fiscal 1995 state budget.

Commission to Study Labor Procedures

The Legislature's Public Service Committee has recommended the formation of a special commission that would study collective bargaining and dispute resolutions for municipal police officers and firefighters. This initiative is in response to the police and fire unions' demand that compulsory binding arbitration be reinstated in Massachusetts. This commission would be charged with examining procedures in order to resolve situations where collective bargaining negotiations have remained unresolved for an "unreasonable" period of time between the unions and the local government. The commission would be made up of 15 members, including a representative of the MMA, and a management member of the Joint Labor Management Commission.

Just Cause Bill Moves in Senate

The Public Service Committee favorably reported to the Senate S.1686, which would require that non-civil service police chiefs and non-civil service police officers be reappointed except for cause, guaranteeing lifetime tenure for these chiefs and officers. The legislation would require a hearing for cause upon the non-reappointment of a non-civil service police chief or non-civil service police officer, equating non-reappointment with dismissal. This requirement would reverse current case law allowing an appointing authority to allow a non-civil service appointment to expire without a hearing for cause. A potential alternative to S.1686 that would address the police chief concerns would be to create a section of the general laws allowing police chiefs to negotiate employment contracts, similar to MGL Chapter 41, Section 108N, which authorizes town manager employment contracts which cover conditions of employment. This section of the law maintains municipal appointment and removal powers, and specifies that tenure shall not be granted for such positions. Instead of S. 1686, the MMA is asking the Legislature to consider a similar provision for police chiefs, and is scheduled to meet with the chiefs to discuss a compromise agreement.

House Acts on Campaign Finance Bill

Last Thursday, the House debated a campaign and political finance bill, H. 4981. During debate, two floor amendments were adopted pertaining to local government. One amendment sets up a special commission to study Chapters 268A&B, the statutes of the Massachusetts General Laws that cover ethics. A representative of the MMA is to be appointed by the governor to serve on the commission, whose reporting deadline is the first Wednesday in November 1994.

The second amendment includes language requiring a mayor from a city with population of 100,000 or more to designate a national bank or trust company authorized to do business in the commonwealth as a depository for campaign funds. Documentation of the transaction is to be filed with the director of the Office of Campaign and Political Finance within three days of the declaration.

The Senate had previously acted on its own version of the bill, S. 1713. The bill is now before a conference committee for review. The conferees are: Reps. John McDonough (D-Boston), David Cohen (D-Newton), and Robert Hawke (R-Gardner); and Sens. Stanley Rosenberg (D-Amherst), Thomas Birmingham (D-Chelsea), and Richard Tisei (R-Wakefield).

AG to Enforce Prevailing Wage Statutes

The state Attorney General's Office is now responsible for enforcing prevailing wage statutes rather than the state Department of Labor and Industries. The language authorizing the transfer was added as an outside section to the fiscal 1994 budget. The revised statute, Chapter 149 §27B, requires every contractor or subcontractor on public works projects to submit a certified payroll to the awarding authority every week. According to an April Advisory from the Attorney General, local officials are required to monitor the contracts for compliance with prevailing wage statutes, and report any suspected violations to the Attorney General's office. This will increase the workload for every city and town and add cost and liability because no state funding has been provided to cover the costs. The MMA has been in contact with the Office of the State Auditor, which is currently reviewing the new statute to ascertain if it is an unfunded mandate.

Health Care Workshop Reminder

The MMA is holding a workshop on "Managing Health Care Costs," from 8 a.m.—1:30 p.m., Friday, June 24 at the Springfield Holiday Inn. Topics include: a review of the requirements of Chapter 32B, how to work with retirees, and joint purchase arrangements. Please contact Christine Litchfield at the MMA 617-426-7272 to register for the conference.

CITY OF CAMBRIDGE

MASSACHUSETTS 02139 • 617-349-4280
FAX 617-349-4287

Councillor Francis H. Duehay
26 LOWELL STREET
CAMBRIDGE, MASSACHUSETTS 02138
617-547-0271

JUNE 9, 1994

TO: **THE HONORABLE, THE CITY COUNCIL**

FROM: **COUNCILLOR FRANCIS H. DUEHAY**

SUBJECT: **MASSACHUSETTS MUNICIPAL ASSOCIATION LEGISLATIVE BULLETIN**

For your information, I am transmitting a copy of the Massachusetts Municipal Association Legislative Bulletin of June 3, 1994.

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S-295

Communications & Reports
from City Officers

Comm. from Councillor Duehay transmitting for informational purposes a copy of the Massachusetts Municipal Association Legislative Bulletin of June 3, 1994

In City Council,

June 13, 1994

6/13/94 No action taken

6/20/94 - Placed on file