COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT
No. SJC-13893

ARCANGELO CELLA, TERESA DEL SIGNORE, KATHERINE HOREY, and SUSAN M. RENFREW,

Plaintiffs-Appellants,

v.

ANDREA J. CAMPBELL, in her official capacity as the Attorney General of the Commonwealth of Massachusetts, and WILLIAM F. GALVIN, in his official capacity as Secretary of the Commonwealth of Massachusetts,

Defendants-Appellees.

On Reservation and Report from the Supreme Judicial Court for Suffolk County

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Opening Brief of Plaintiffs-Appellants

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STATEMENT OF ISSUES

1. Whether the Attorney General erred in certifying Petition 25-21 for inclusion on the November 2026 ballot where Petition 25-21 impermissibly "relates to religion" because whether a dwelling unit is regulated depends on whether it is used for solely religious purposes.

2. Whether the Attorney General erred in certifying Petition 25-21 for inclusion on the November 2026 ballot because the Petition proposes a law that is "inconsistent with" the "right to receive compensation for private property appropriated to public use."

3. Whether the Attorney General erred in certifying Petition 25-21 for inclusion on the November 2026 ballot because the Petition violates art. 48's relatedness requirement by asking the voters two unrelated policy questions: first, whether voters favor regulating rent increases for long term residential rentals (Petition 25-21's stated purpose), and second whether voters favor regulating the price of "short-term rentals," including vacation and seasonal rentals, which are already governed by a separate regulatory scheme.

4. Whether the Attorney General's summary of Petition 25-21 is "fair" because the summary does not inform voters that Petition 25-21 proposes to repeal the existing law prohibiting rent control in Massachusetts and replace it with a law that does the opposite: imposes a state-wide residential rent control regime.

STATEMENT OF THE CASE

In 2025, proponents of a proposed initiative petition, titled "An Initiative Petition to Protect Tenants by Limiting Rent Increases," submitted the petition with the required signatures to the Attorney General for certification. Record Appendix ("R.A.") 43 ¶ 2. The Attorney General numbered the initiative petition as No. 25-21 ("Petition 25-21" or the "Petition"). *Id.* On or about September 3, 2025, the Attorney General certified that the Petition complied with Article 48 of the Massachusetts Constitution (*id.*) and prepared a summary of the Petition (the "Summary"). R.A. 44 ¶ 4. Proponents of Petition 25-21 filed the Petition and Summary of the Petition with the Secretary of the Commonwealth, who then provided blank petitions for the signature gathering process. *Id.* ¶¶ 5-6.

Thereafter, the Secretary transmitted Petition 25-21 to the Clerk of the House of Representatives. *Id.* ¶ 8. If the Legislature does not act, and the proponents of Petition 25-21 timely submit sufficient additional signatures to the Secretary, the Secretary intends to include the proposed law in the Information for Voters Guide to be printed in summer 2026, and to include the Petition on the ballot for presentation to the people in November 2026. *Id.* ¶ 9.

Plaintiffs, all registered Massachusetts voters (R.A. 43 ¶ 1), filed a Complaint with the Supreme Judicial Court for Suffolk County on February 6, 2026. R.A. 10. The Complaint sought writs of mandamus and certiorari and a declaratory judgment

requesting that the Court invalidate Petition 25-21 and quash the Attorney General's certification of the Petition. *Id.* On February 9, 2026, the parties filed a joint request that the Single Justice reserve and report the case to the Supreme Judicial Court for the Commonwealth to resolve all issues presented by the Complaint. R.A. 34. On February 10, 2026, the Single Justice (Gaziano, J.) reserved and reported the case for determination by the full Court. R.A. 7; Addendum to Appellants' Brief ("Add.").

STATEMENT OF THE FACTS

A. A BRIEF HISTORY OF RENT CONTROL IN MASSACHUSETTS

i. Massachusetts Law Broadly Prohibits Rent Control

Since January 1, 1995, Massachusetts has operated under a "uniform statewide policy that broadly prohibits any regulatory scheme based upon or implementing rent control." G. L. c. 40P, § 2 ("Massachusetts Rent Control Prohibition Act"); St. 1994, c. 368, § 1. Before G. L. c. 40P was enacted, Massachusetts had a controversial rent control regime dating back to 1970, at first operating state-wide and then pursuant to a local option. *See* St. 1970, c. 842 ("1970 Rent Control Act").[1] The controversial rent control regime ended in 1994, when

[1] The 1970 Rent Control Act included an emergency preamble that declared "a serious public emergency exists with respect to the housing" especially in cities and towns with populations over 50,000 where there was a "substantial and increasing shortage of rental housing accommodations for families of low and moderate income and abnormally high rents. . . ." *See* St. 1970, c. 842, § 1.

voters at the 1994 state election were presented with Question 9, which proposed to "prohibit rent control for most privately owned housing units in Massachusetts, and would nullify certain existing rent control laws." Question 9, 1994. (Add. 171). A majority of Massachusetts voters answered "yes" to Question 9, thus eliminating existing rent control laws in favor of a broad statute prohibiting rent control. *See* St. 1994, c. 368, § 1, effective January 1, 1995.[2]

While G. L. c. 40P broadly prohibits rent control, it also provides protection to property owners in the event municipalities adopt rent control measures. G. L. c. 40P, §§ 2, 4. Critically, if rent control is enacted, property owners must be compensated "for each unit in the amount of the difference between the unit's fair market rent and the unit's below market, rent controlled rent." G. L. c. 40P, § 4(c). This statutory guarantee ensures that property owners (and mortgage lenders with security interests in rental income) have a right to market rate compensation even if rent control is reinstituted. *Id*.

ii. Earlier Rent Control Regimes Established a Constitutional Floor Guaranteeing Residential Rental Owners a "Fair Net Operating Income"

For more than thirty years owners of residential rental property have been guaranteed the right to receive compensation at market rates if rent control is

[2] This statute was repealed by St. 1997, c. 19, § 10 and replaced with G. L. c. 40P.

imposed. G. L. c. 40P, § 4(c). But even before rent control was prohibited in Massachusetts, property owners in the municipalities that adopted rent control laws were nevertheless guaranteed at least a "fair net operating income" for renting their properties to the public. *See* St. 1970, c. 842; *Marshal House, Inc. v. Rent Control Bd.*, 358 Mass. 686, 703 (1971) (solidifying the "fair net operating income" constitutional floor in challenges to state and local rent control laws). The 1970 Rent Control Act established the framework for rent regulation, but also required that rent increase rates must "assure that rents for controlled rental units are established at levels which yield to landlords a fair net operating income for such units." St. 1970, c. 842, §§ 7(a), 7(b) (enumerating factors to be considered in determining "whether a controlled rental unit yields a fair net operating income"). Earlier rent control legislation in Massachusetts contained similar language. *See Marshal House*, 358 Mass. at 705 (citing St. 1953, c. 434, § 5(a)).

Intended as a temporary measure to address an emergency housing shortage, the 1970 Rent Control Act expired by its own terms on April 1, 1976,[3] at which point municipalities across Massachusetts were free to enact local laws continuing those policies. Indeed, Boston, Brookline, Cambridge, and Somerville enacted local rent

[3] St. 1970, c. 842, § 13 as amended by St. 1974, c. 360; St. 1975 c. 851, § 1.

control laws resembling the 1970 Rent Control Act,[4] which became a significant source of disagreement and litigation.

A unifying and constitutionally significant component of the 1970 Rent Control Act and its local progeny was that rental property owners were entitled to at least a "fair net operating income." *See* St. 1970, c. 842, § 7 (including a specific mechanism for recouping capital costs and extraordinary expenses); *Marshal House*, 358 Mass. at 703. When those laws were challenged as unconstitutionally confiscatory, courts affirmed their validity ***because*** those statutes guaranteed property owners at least a "fair net operating income." *See, e.g., id.*; *Zussman v. Rent Control Bd.*, 371 Mass. 632, 637-638 (1976) (rents must be "set so as to assure to landlords a reasonable return on their investment"). These cases established the constitutional rent control floor: property owners "have a right to [rental] rates which are not confiscatory," and a valid rent control law must "insure to landlords a fair return on the value of the property." *Marshal House*, 358 Mass. at 703.

The upshot of the history of rent control in Massachusetts is that ***for more than fifty-five years***, Massachusetts law has guaranteed property owners ***at least*** a ***fair net operating income***. Today, G. L. c. 40P guarantees property owners the right to a return above the constitutional floor at rates determined by the market even if

[4] In contrast, Petition 25-21 would extend to all towns and cities in Massachusetts, regardless of population size, and there is no opt out provision. *See* Petition, §§ 1-5 (R.A. 28; Add. 58-60).

rent control is implemented. Petition 25-21 would erase these guaranteed rights by repealing and replacing G. L. c. 40P with a rent control scheme that would eliminate both the right to market rate compensation and the constitutional fair net operating income floor.

B. PETITION 25-21 SEEKS TO REPEAL THE MASSACHUSETTS RENT CONTROL PROHIBITION ACT AND REPLACE IT WITH A RIGID, STATE-WIDE RENT CONTROL REGIME

Petition 25-21 proposes to repeal G. L. c. 40P and replace it with a rigid rent control scheme that omits the key constitutional safeguards of the 1970 Rent Control Act and its local progeny. The Petition's stated purpose is to "provide housing stability for tenants, landlords, and communities across the commonwealth, and curb displacement as a result of the housing shortage and affordability crisis in Massachusetts." Petition 25-21, § 1 (R.A. 27; Add. 58). It seeks to accomplish this by imposing "a limit on any annual rent increase for a covered dwelling unit in the commonwealth, which shall not exceed the annual increase in Consumer Price Index or 5%, whichever is lower, in any 12-month period." Petition, § 3 (R.A. 27; Add. 58). This limit "shall apply whether or not there is a change in tenancy during the relevant 12-month period." *Id*.

If enacted, the Petition would establish the rent being charged as of January 31, 2026 (almost ten months before the election) as the "base rent upon which any annual rent increase shall be applied." Petition, § 3 (R.A. 28; Add. 59). For vacant

units, the last rent amount charged serves as the base rent; for units unrented in the previous five years, the rent charged after enactment is the base. *Id.* Unlike the 1970 Rent Control Act, the Petition lacks any procedural safeguards for property owners to seek exceptions to rent increase limits due to increased costs, personal hardship, or any other extenuating circumstances. *See* Petition, § 4 (R.A. 28; Add. 59).

The Petition includes a single definition. "Covered Dwelling Units" are defined as "all dwelling units leased for residential, but not commercial, use" but excluding five categories of dwelling units that would not be subject to the annual rent increase limit. These are: (a) units in owner-occupied buildings with four or fewer units, (b) units whose rents are already regulated by a public authority, (c) units that are rented primarily to transient guests for a period of less than 14 consecutive days, (d) units in facilities operated solely for educational, religious, or non-profit purposes, and (e) units for which the first residential certificate of occupancy is less than 10 years old. Petition, § 2 (R.A. 27; Add. 58).

Violations of the law would be actionable as unfair and deceptive practices under G. L. c. 93A, enforceable by the aggrieved person or the Attorney General. Petition, § 4 (R.A. 28; Add. 59).

In many ways, the Petition is straightforward: it proposes to uniformly impose rent increase limits on all covered dwelling units in Massachusetts, which would be applied mechanically and without oversight. (R.A. 27-28; Add. 58-59). Every

covered residential unit in Massachusetts would be subject to the same percentage increase in rent regardless of geography or the costs associated with owning and operating that rental property including property taxes, insurance, capital improvements, or any other costs shouldered by the property owner. *See* Petition, § 3 (R.A. 27; Add. 58). A property owner's change in costs of ownership or maintenance is irrelevant to the rent increase formula. *Id.*

Instead, the sole determining factor for calculating annual rent increases is the Consumer Price Index ("CPI"). Although the Petition ***does not define CPI***, CPI is an umbrella term for a number of different federal statistical measures published by the U.S. Bureau of Labor Statistics ("BLS") that measure "inflation as experienced by consumers in their day-to-day living expenses" by analyzing the "average change over time in the prices paid by consumers for a representative basket of consumer goods and services."[5] BLS publishes multiple versions of the CPI to measure economic impacts on different populations or regions, such as CPI for all urban consumers ("CPI-U") and Urban Wage Earners and Clerical Workers ("CPI-W").[6] The Petition does not specify which CPI it would impose, but as an illustrative point

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[5] Bureau of Labor Statistics, U.S. Department of Labor, *Consumer Price Index, Frequently Asked Questions* (https://www.bls.gov/cpi/questions-and-answers.htm) (last visited March 9, 2026).

[6] For this reason, references to the CPI in the General Laws typically refer to the CPI that is most relevant to the subject matter. *See, e.g.*, G. L. c. 60, § 79 (CPI for Urban Consumers; low-value tax-taking parcel limits); G. L. c. 62, § 1 (CPI All Urban Consumers for the Boston area; inflation adjustment of revenues).

of reference, the CPI-U increased by 2.4% over the twelve months ending January 2026 and 3.0% the previous year ending January 2025.[7] It bears emphasizing that the Petition neither identifies which CPI to apply nor indicates whether property owners would be required to review regional or national statistics.

C. THE PETITION WOULD ALSO REGULATE SHORT-TERM, SEASONAL, AND VACATION RENTALS ALREADY GOVERNED BY G. L. C. 64G

From the Cape and Islands to the Berkshires, short-term rentals of two to four weeks are widespread across Massachusetts and serve as a significant driver of hospitality and tourism-generated tax revenue.[8] Many of these vacation and seasonal rentals are already regulated by a comprehensive state-local regulatory framework. *See* G. L. c. 64G; St. 2018, c. 337 (An Act Regulating and Insuring Short-Term Rentals) ("Short-Term Rental Act"). "Short-term rentals" covered under the statute include all residential accommodations, reserved in advanced, with "occupancy" not exceeding thirty-one consecutive days. G. L. c. 64G, § 1. In practice, G. L. c. 64G contributes to a shared state-local administrative framework governing short-term

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[7] *See* Bureau of Labor Statistics, U.S. Department of Labor, *The Economics Daily*: *Consumer prices up 2.4 percent over the year ended January 2026* (https://www.bls.gov/opub/ted/2026/consumer-prices-up-2-4-percent-over-the-year-ended-january-2026.htm).

[8] Mass.gov, *What do we know about seasonal homes and short-term rentals?*, https://www.mass.gov/info-details/what-do-we-know-about-seasonal-homes-and-short-term-rentals (last visited March 9, 2026) ("118,000 units in Massachusetts are reported as being used for "seasonal, recreational, or occasional use" and "[a]s of July 2024, there were 43,400 short term rentals (STRs) listed on the [state] registry").

rentals of fewer than thirty-one days in which the state oversees tax and registration compliance while municipalities may adopt ordinances addressing local registration, licensing, inspections, and related operational requirements for short-term rentals.

While the Petition does not announce it, the measure goes far beyond its stated purpose of regulating long term residential tenancies by also regulating the prices charged for short-term rentals, vacation rentals, and seasonal rental stays between fourteen to thirty-one days.

D. THE ATTORNEY GENERAL'S SUMMARY OF PETITION 25-21

On or about September 3, 2025, the Attorney General prepared and released a summary of the Petition, as is required under Article 48. The Attorney General's summary states:

> This proposed law would limit the annual rent increase for residential units in Massachusetts to the annual increase in the Consumer Price Index for a 12-month period, or 5%, whichever is lower. The law would not apply to units in owner-occupied buildings with four or fewer units; units that are subject to regulation by a public authority; units rented to transient guests for periods of less than 14 days; units operated for educational, religious, or non-profit purposes; and units that received their residential certificate of occupancy within the last 10 years. The rent in place for a unit as of January 31, 2026, would serve as the base rent for the annual rent increase limit. A violation of this law would be a violation of the state consumer protection law.

Final Petition Summary 25-21 (R.A. 32).

The Attorney General's summary does not inform voters that the Petition proposes to repeal the current law prohibiting rent control and replace it with mandating uniform rent control. *See id*. Nowhere does the summary explain that the

Petition would strike out and replace an existing law rather than simply proposing a new law. *Compare id. with* Attorney General's Summary in 1994 (Question 9 "would prohibit rent control for most privately owned housing units in Massachusetts, ***and would nullify certain existing rent control laws***") (emphasis added) (Add. 171). And the Summary similarly fails to inform voters that it would also limit price increases for many "short-term rentals."

SUMMARY OF THE ARGUMENT

There are at least four independent reasons the Attorney General erred in certifying that the Petition satisfies art. 48.

First, the Petition violates art. 48's categorical bar on measures "relat[ing] to religion, religious practices or religious institutions," because the Petition exempts "dwelling units in facilities operated solely for . . . religious . . . purposes," which makes religious classification and use the operative factor in determining whether a dwelling unit is regulated (**pp. 22-27**).

Second, the Petition is "inconsistent with . . . the right to receive compensation for private property appropriated to public use" for at least three related reasons: (1) it would immediately eliminate the express statutory right under G. L .c. 40P to receive market rate compensation for renting property to the public if rent control is imposed; (2) it would eliminate the constitutionally mandated "fair net operating income" floor that Massachusetts law has guaranteed rental property

owners since at least 1970; and (3) the proposed law would effect a regulatory taking by imposing a catastrophic economic impact on property owners whose reasonable investment-backed expectations have been built on over fifty years of statutory guarantees, while burdening property owners alone with the entire cost of the proposed statewide rent control regime without any path to compensation. (**pp. 27-40**).

Third, the Attorney General erred in certifying the Petition because it violates art. 48's related subjects requirement by "yoking together disparate policy decisions" that voters must approve or reject as a whole: the Petition's stated purpose is to provide housing stability for tenants and curbing displacement by regulating rent increases for long-term residential tenancies, but buried in its exclusions section is an undisclosed second policy question asking voters whether they favor regulating short-term vacation and seasonal rentals between fourteen to thirty-one days that are already governed by a comprehensive state-local regulatory framework (**pp. 41-45**).

Finally, the Attorney General's summary is not "fair" within the meaning of art. 48 because it fails to inform voters of the Petition's "main feature," which is that the Petition would repeal the existing law broadly prohibiting rent control in Massachusetts and replace it with a law doing the opposite – broadly mandating rent control across the Commonwealth (**pp. 45-51**).

For these reasons, this Court should declare that the Attorney General's certification of Petition 25-21 does not comply with art. 48 and enjoin the Secretary from placing the Petition on the November 2026 ballot.

ARGUMENT

I. STANDARD OF REVIEW

"Under art. 48, the Attorney General serves as the first line of defense against confusing, misleading, or otherwise invalid initiative provisions" *Carney v. Attorney General*, 447 Mass. 218, 225 (2006), but this Court is the final constitutional safeguard under art. 48, reviewing the Attorney General's certification decisions *de novo*. *Abdow v. Attorney General*, 468 Mass. 478, 487 (2014).

II. PETITION 25-21 "RELATES TO RELIGION" BECAUSE RELIGIOUS CLASSIFICATION DETERMINES WHETHER A DWELLING UNIT IS REGULATED UNDER THE PROPOSED LAW

Petition 25-21 applies broadly to "all dwelling units leased for residential, but not commercial, use," subject to five specific exclusions, one of which exempts "dwelling units in facilities operated solely for . . . religious . . . purposes." Petition, § 2 (R.A. 27; Add. 58). This provision falls squarely within art. 48's categorical bar excluding any "measure that relates to religion, religious practices or religious institutions." art. 48, The Initiative, II, § 2, of the Amendments to the Massachusetts Constitution, as amended by art. 74 of the Amendments.

This Court has twice considered art. 48's exclusion of a measure "that relates to religion, religious practices or religious institutions." *See Opinion of the Justices*, 309 Mass. 555 (1941) and *Collins v. Secretary of Commonwealth*, 407 Mass. 837 (1990). Most recently, the Court in *Collins* began by examining the religious-political climate at the time of the Massachusetts Constitutional Convention of 1917-1918,[9] with a keen focus on the text of the delegates' debates, to determine whether a neutral law on its face nevertheless "relates to religion." *See Collins*, 407 Mass. at 845-846. Explaining the purpose behind art. 48's categorical ban on matters relating to religion, the Court concluded that:

> The debates of the Constitutional Convention confirm that, with respect to the provisions excluding measures and laws relating to religion, religious practices, or religious institutions from the initiative and referendum, the intent and understanding of the convention was to ***avoid*** the consequences of permitting ***State-wide public political discussion of matters relating to religion.***

Id. at 845 (emphasis added) (collecting the debates of the delegates). Indeed, the threshold "harm sought to be addressed was ***public political debate*** concerning

[9] On November 6, 1917, days before the delegates debated and then approved the religion exclusion, voters in the Massachusetts state election ratified the eighteenth Amendment to the Massachusetts Constitution ("Anti-Aid Amendment"), barring public appropriations to institutions not under exclusive public control, most predominantly, religious institutions. *See* Bridgman, Raymond L., *The Massachusetts Constitutional Convention of 1917*, 39-40 (1923 ed.) (Add. 175-176). The day after the Anti-Aid Amendment was ratified, the Convention reconvened by considering what would become art. 48's religion exclusion. *Id.*

measures and laws relating to religion, religious practices, and religious institutions." *Id.* at 846.[10]

Taken as a whole, the 1917-1918 Convention fortified the initiative process from the possibility of public debate over religion infiltrating the political arena by establishing a layered system of protective exclusions in the initiative process including (1) a categorical bar on religious matters, (2) a structural bar on amending the exclusions themselves, and (3) a specific exemption protecting the Anti-Aid Amendment. *See id.* at 846, n.8. Indeed, the Convention carefully phrased the broad religious matters exclusion to not only prohibit doctrinal matters but any matter that related to religion or used religion as a factor in applying the law. *Id.* at 845-846, 849 (the plain meaning of art. 48, "confirmed by examination of the debates at the Constitutional Convention . . . reveals a clear intent to prevent the initiative and referendum process from becoming a vehicle for public political debate, and enactment or rejection, of laws involving religion, religious practices, or religious institutions") (citation omitted). Thus, any measure that "relates to religion"—positively or negatively—is excluded from the initiative process. *Id*. at 849.

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[10] The adoption of the religious matters exclusion of art. 48 shared and built on the Anti-Aid Amendment's goal of eliminating divisive public political discussion about religion. *See Bloom v. Sch. Comm. of Springfield*, 376 Mass. 35, 39 (1978) (Anti-Aid proponents urged "that to promote civic harmony the irritating question of religion should be removed from politics as far as possible").

Equipped with the history of art. 48, the Court concluded that "[u]nder the plain meaning of art. 48, where a law 'by its terms deals with religion, religious practices, or religious institutions, ***it is excluded***.'" *Collins*, 407 Mass. at 851 (emphasis added) (citation omitted). Thus, under art. 48, if a proposed law contains a provision dealing expressly with religion, religious practices, or religious institutions, it cannot be presented to voters by way of initiative petition. *Id.* at 849, 852. Consequently, the Court need only determine that religion is a factor in applying a proposed law to conclude that it "relates to religion" and must be excluded. *Id.* at 849. An analysis of whether the proposed law targets religion or the extent to which it benefits or burdens religion is not the test, and engaging in such an analysis would ignore the harm art. 48 sought to prevent: "***public political debate*** concerning measures and laws relating to religion, religious practices, and religious institutions." *Id.* at 846 (citing *Opinion of the Justices*, 309 Mass. at 558-559). Because the Petition's exclusion for "dwelling units in facilities operated solely for . . . religious . . . purposes" turns on a religious classification, religion is inescapably a factor in the proposed law's application, making it unsuitable for the initiative process. Petition, § 2 (R.A. 27; Add. 58).

Collins controls the analysis and outcome here. In *Collins*, the Court analyzed a referendum seeking to repeal an amendment to the Massachusetts anti-discrimination law (G. L. c. 151B) that added "sexual orientation" as a protected

classification. *Id*. at 839. There was no question that the purpose of the amendment was to expand the scope of the state anti-discrimination law. *Id.* But two of the nearly twenty amended sections also broadened the exemptions for religious organizations from the anti-discrimination provisions of c. 151B. *Id.* at 841-842. These provisions used religious classification to "draw lines demarcating the circumstances when certain otherwise prohibited employment-related actions will be exempt from regulation." *Id.* at 843-844. Indeed, "an institution's connection with religion [was] the sole factor in the application of the exemption" and "directly provide[d] for special treatment of 'any religious or denominational institution or organization.'" *Id*. at 847-848. Because religion was the operative factor in determining whether the regulation applied or whether an organization was exempt from regulation, the Court concluded that the law "'relates to religion, religious practices or religious institutions' within the meaning of art. 48." *Id.* at 847; *compare Opinion of the Justices*, 309 Mass. at 559 (concluding law did not relate to religion where "[r]eligion is not a factor in its application").

Art. 48 provides, in unqualified terms, that "[n]o measure that relates to religion, religious practices or religious institutions . . . shall be proposed by an initiative petition." Petition 25-21 "relates to religion" because the proposed law's operative coverage turns on religious status and use. While the law would impose broad rent increase limits for "all dwelling units leased for residential, but not

commercial use" in Massachusetts, it exempts dwelling units from regulation if those units are "operated solely for . . . religious . . . purposes." Petition, § 2(d) (R.A. 27; Add. 58). This clause functions as a categorical exemption for otherwise qualifying religious facilities, excluding certain dwelling units from the petition's core regulatory regime based entirely on religious character. And determining whether a particular dwelling unit is in fact "operated solely for" religious purposes will inevitably involve review and analysis by either a regulating body—although none is identified—or the courts. *See Caplan v. Acton*, 479 Mass. 69, 90 (2018) (analyzing the history of the amendment to the Anti-Aid Amendment in 1917 to guard against the risk of government entanglement in matters of religion). Accordingly, Petition 25-21 must be excluded from the ballot because religious classification and use is unquestionably a factor in determining whether the regulation would apply to an otherwise covered dwelling unit.

III. THE PETITION WOULD TAKE PROPERTY WITHOUT JUST COMPENSATION

The Petition is "inconsistent with . . . [t]he right to receive compensation for private property appropriated to public use" for at least three related reasons. ***First***, the Petition would immediately eliminate property owners' express right to receive market rate compensation for renting property to the public in the event rent control is implemented. *See* G. L. c. 40P, § 4(c). ***Second***, it would also immediately

eliminate the constitutionally mandated "fair net operating income" floor for property owners who rent their property to the public. ***Third***, the Petition would effect a regulatory taking.

A petition is "inconsistent with . . . [t]he right to receive compensation for private property appropriated to public use" if there is a reasonable possibility that it (1) would constitute an appropriation of a right to property protected by art. 10 of the Massachusetts Declaration of Rights and the takings clause of the Fourteenth Amendment to the United States Constitution and (2) does not provide for adequate compensation for the appropriation. *Dimino v. Secretary of the Commonwealth*, 427 Mass. 704, 708, 710 (1998) (eliminating part of bondholders' security interest in toll revenue was inconsistent with the right to receive compensation for private property appropriated to public use); *see Yankee Atomic Elec. Co. v. Secretary*, 403 Mass. 203, 219 n.6 (1988) (*Yankee II*) (Lynch, J., dissenting) (requirement under Article 48 that the Attorney General "shall certify," e.g., "make certain," that the petition contains no excluded matter, indicates that "if there is any reasonable possibility that the petition impinges on an excluded matter, it may not be certified" (quoting *Yankee Atomic Elec. Co. v. Secretary*, 402 Mass. 750, 757 (1988) (*Yankee I*)).

A. The Petition Violates Art. 48's Excluded Matters Clause By Eliminating The Statutorily-Guaranteed Right to Market Rate Compensation

In 1994, the voters chose to eliminate the rent control regime emanating from the Rent Control Act of 1970, replacing it with "a uniform statewide policy that broadly prohibits any regulatory scheme based upon or implementing rent control." G. L. c. 40P, §§ 2, 3 (defining "rent control" as "any regulation that in any way requires below-market rents for residential properties"). Bulwarking the statutory guarantee that only the market shall dictate rental rates, G. L. c. 40P further promises residential rental property owners the right to receive compensation at market rates even if a rent control law is adopted: "a municipality adopting such regulation ***shall compensate*** owners of rent controlled units for each unit in the amount of the ***difference between the unit's fair market rent and the unit's below market***, rent controlled rent." G. L. c. 40P, § 4(c) (emphasis added). For more than thirty years, Massachusetts residential rental property owners, residential real estate developers, and mortgage lenders, have operated in an environment where market rate compensation for residential rentals is absolute and statutorily guaranteed. *See id*.

If enacted, Petition 25-21 would immediately eliminate not only property owners' right to market rate rent, but also the compensation that state law currently guarantees to them if rent control is imposed. G. L. c. 40P, § 4(c). This Court declared in *Dimino* that a petition that similarly would have appropriated compensation authorized by statute—bondholders' rights to the Massachusetts

Transit Authority's (the "Authority") toll collection revenue under trust agreements authorized by the Authority's enabling act—was "inconsistent with . . . the right to receive compensation." 427 Mass. at 710, 711. The petition at issue in *Dimino*, which would have abolished tolls on Massachusetts highways, "str[uck] at the very heart of the express provisions . . . ***which the Legislature authorized***." *Id.* at 710 (quoting *Opinion of the Justices*, 356 Mass. 775, 794 (1969) (emphasis added)).

So, too, here. Chapter 40P expressly authorizes compensation for property owners in any municipality that enacts rent control. G. L. c. 40P, § 4(c). The Petition would eliminate that right to compensation specifically guaranteed by statute, just like the petition in *Dimino* would have destroyed the bondholders' security interests that were authorized by statute. *See* 427 Mass. at 709. Therefore, just like the petition in *Dimino*, the Petition here is "inconsistent with . . . the right to receive compensation for private property appropriated for public use." *Id.* at 708.

The Petition is also "inconsistent with . . . the right to receive compensation" because it would unconstitutionally impair contracts, including debt service coverage ratio ("DSCR") loan agreements and agreements related to the development of affordable housing.[11] In *Dimino*, this Court reasoned that the

[11] *Lendmire Expands DSCR Investor Programs to 40 States and Washington D.C.*, Nat'l Law Rev. (Feb. 20, 2026), https://natlawreview.com/press-releases/lendmire-expands-dscr-investor-loan-programs-40-states-and-washington-dc ("DSCR loans—also referred to as rental income loans, cash-flow loans, or

petition, like prior bills proposing toll freezes, would "deprive[] bondholders of their security interest in toll revenues—an interest which was expressly bestowed upon them by contract—and therefore would violate their constitutional rights." 427 Mass. at 709 (citing *Opinion of the Justices*, 356 Mass. at 793-794). A toll freeze bill was "a direct legislative repudiation of an arrangement which [the enabling act] empowered the [Massachusetts Turnpike] Authority to make, going to the essence of the bond contract and materially reducing the attractiveness of the revenue security." *Id.* (quoting *Opinion of the Justices*, 356 Mass. at 794). The petition in *Dimino* would not just have frozen toll collections, it would have abolished them, so it constituted a "full-blown appropriation of the bondholders' right to that property." *Id.*

Here, the proposed law would similarly frustrate a variety of interests contractually tied to the ability to charge market rent rates, including DSCR loans and developers', lenders', and investors' interests in affordable housing projects combining both affordable units and market rate units. *See* A Home for Everyone: Massachusetts' Comprehensive Housing Plan for 2025-2029, Construction Finance Explainer (market-rate units support development of affordable housing because

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investor non-QM mortgages—allow real estate investors to qualify primarily based on property performance").

"market rate-units generally offset the lost income from the affordable units").[12] It is "indisputably true" evidence of "common knowledge or observation," *Dimino*, 427 Mass. at 707 (quoting *Yankee I*, 402 Mass. at 759 n.7), that commercial loans for multifamily properties and other rental properties are tied to and often secured by not only the property but also the market rate rents those properties generate. By capping the rental income of units financed by DSCR loans and other financing dependent on revenue generated from the rental property, the Petition would diminish the value of rental properties and reduce the rental income of properties, depriving lenders of their security interests in either or combination of both. *See Dimino*, 427 Mass. at 709 (a toll freeze would have "[gone] to the essence of the bond contract and materially reduc[ed] the attractiveness of the revenue security" (quoting *Opinion of the Justices*, 356 Mass. at 794)).

Because this is a clear-cut violation of art. 48's prohibition on any initiative petition that is "inconsistent with . . . the right to receive compensation for private property appropriated for public use," the Petition must be excluded from the ballot.

B. The Petition Would Also Eliminate the Minimally Constitutionally Permissible "Fair Net Operating" Floor Without Compensation

Even before the enactment of the Massachusetts Rent Control Prohibition Act, Massachusetts rental property owners were guaranteed a reasonable return on

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[12] https://www.mass.gov/info-details/home-for-everyone-construction-finance-explainer (last access March 9, 2026)

investment for their rental properties through assurances of a "fair net operating income." *See* St. 1970, c. 842, § 7 (requiring rent controls to "***yield to landlords a fair net operating income***") (emphasis added). Although rent control laws are currently prohibited, the constitutional floor established by the regime springing from the 1970 Rent Control Act is particularly relevant here.

Determining the required fair net operating income under the 1970 Rent Control Act and its local counterparts, however imperfect, took into account the property owner's costs of owning and operating the rentals including taxes, maintenance, and capital improvements. *See* St. 1970, c. 842, § 7(b). But the 1970 Act provided that property owners were entitled to do more than just break even. As interpreted by this Court, the statute guaranteed the "right to [rental] rates which are not confiscatory," providing a higher standard to ensure property owners a "fair return on the value of their property," which the Court interpreted as requiring a "fair net operating income, meaning that "***rents be set so as to assure to landlords a reasonable return on their investment***." *Marshal House*, 358 Mass. at 703 (discussing *Aetna Cas. & Sur. Co. v. Comm'r of Ins.*, 358 Mass. 272, 281 (1970)). Interpreting "fair net operating income" in any way other than assuring property owners a reasonable return on their investment would be confiscatory in that it would violate their right to receive compensation for the appropriation of property for public use. *See id.*

Because the Petition, unlike the 1970 Rent Control Act, eliminates the possibility of maintaining the guarantee of a fair net operating income, it presents property owners with two choices: submit to confiscatory rent increase limits or stop renting to the public. This is exactly the unconstitutional Hobson's choice the Court struck down in *Aetna Casualty & Surety Co. v. Commissioner of Insurance*.

In *Aetna*, companies licensed to sell automobile property damage liability insurance challenged a statute requiring that the 1971 rates for automobile insurance, including property damage liability insurance, "shall be at least fifteen per cent lower than all rates for such coverage" in effect in 1970. 358 Mass. at 273-274. The Court considered the aggregate experience of the insurance companies between 1967 through 1970 and determined that if the property damage rates and total premiums were reduced by fifteen percent as required by the statute, the Companies would sustain a significant underwriting loss for the year. *Id.* at 275-276. The Court based that assessment on the assumption that expenses other than losses would remain substantially same, but that the average cost of claims would increase at the rate of 7.2% per year, which was the average increase for the previous five years. *Id.* at 275 & n.3. The Court concluded that the statute's estimated effect was unconstitutional. *Id.* at 281. Concluding that the Legislature could not "impose unconstitutional conditions upon the exercise of the right to engage" in a lawful business, the Court explained:

> *The insurers are not required to either submit to confiscatory rates or go out of business. They have a right to rates which are not confiscatory, or which satisfy any higher applicable statutory standards . . . .*

Id. (emphasis added). Because the available data established that companies would be forced to operate at a loss under the statute, the Court held that the 1971 rates were confiscatory and therefore unconstitutional. *Id.*

The same fate awaits residential rental property owners in the Commonwealth if the Petition is presented to voters and enacted. The Petition would limit any annual rent increase for a covered dwelling unit to the annual increase in the undefined-CPI or five percent, whichever is lower. Petition, § 3 (R.A. 28; Add. 59). The annual increase in even just one of the CPI indexes, CPI-U for example, has been far below five percent and has hovered between 2-3%. *See* U.S. Bureau of Labor Statistics, *Consumer Price Index Historical Table for U.S. City Average* (*supra* note 7); *see Aetna*, 358 Mass. at 275 (analyzing the average percent increase in claims over a five-year period). Although the Petition does not tell voters that a rent increase limit tethered to some version of CPI would likely be closer to 2.5% per year, that is what the historical data shows, and that will be the very real impact on property owners.

Based on the average year-to-year cost increases associated with operating rental units in Massachusetts, these increases will almost immediately outpace the

rent increase allowable under the Petition.[13] When this happens, owners of residential rental property will be forced to shoulder the entirety of the difference themselves or stop renting. The Petition would therefore "convert[] an economically viable enterprise into an economic albatross," the "classic case of a regulation leaving a landowner with only the burdens of ownership and none of the benefits." *Yankee II*, 403 Mass. at 216 (Lynch, J., dissenting); *see MacGibbon v. Bd. of Appeals*, 356 Mass. 635, 641 (1970).

Like in *Aetna*, the Petition will require that property owners and DSCR lenders "either submit to confiscatory [rents or loan terms] or go out of business." *See* 358 Mass. at 280. Such a result is unconstitutional, particularly where, as this Court has held, property owners have a right not only to rents that are not confiscatory, but indeed, to a "higher" standard: fair return on the value of the property. *See Marshal House*, 358 Mass. at 703 ("[A] rent control law should contain some such higher statutory standard [than solely non-confiscatory], so as to insure

[13] Guilfoyle, *FY2025 Tax Levies, Assessed Values and Tax Rates*, https://www.mass.gov/info-details/fy2025-tax-levies-assessed-values-and-tax-rates (last accessed March 9, 2026) (Add. 184) (Massachusetts property taxes increased at an average of 5.1% in FY2024); Centopani, *Home Insurance Costs Surged 34% in Last Five Years*, The Mortgage Reports (May 15, 2024) https://themortgagereports.com/112679/states-surging-home-insurance-costs (Add. 177) (reporting a 22.8% increase in Massachusetts home insurance premiums from 2018-2023).

to landlords 'a fair return on the value of the property'") (quoting *Answer of the Justices*, 356 Mass. 769, 773 (1969)).

C. The Petition Would Also Effect a Regulatory Taking

On its face, the Petition presents a regulatory taking of property owners' and mortgage lenders' property interests by making it "commercially impracticable" to rent properties in Massachusetts. *See Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). A petition presents a regulatory taking when it "goes too far." *Yankee II*, 403 Mass. at 209 (quoting *Mahon*, 260 U.S. at 415). An art. 48 analysis involves considering the "apparent factual impact flowing from a petition's language" and "facts which can be officially noticed." *Yankee I*, 402 Mass. at 759.

A regulation "goes too far," and therefore "results in a compensable taking of property," depending on "(1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the government action." *Carney v. Attorney General*, 451 Mass. 803 (2008) (citation omitted). The three factors are "designed to measure the 'severity of the burden that government imposes upon private property rights.'" *Giovanella v. Conservation Comm'n*, 447 Mass. 720, 725 (2006) (quoting *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 539 (2005)). Under these factors, the Petition would result in a regulatory taking.

1. Economic Impact of the Regulation

First, the economic impact of the Petition, as indicated by the "apparent factual impact flowing from [the] [P]etition's language" and "facts which can be officially noticed," would be widespread and catastrophic for property owners, mortgage lenders, residential real estate developers, and tenants. *Yankee I*, 402 Mass. at 758-759. Of course, the mere diminution in property value, by itself, is likely not a taking, but the economic impact of the regulation is a key factor in the regulatory takings analysis. *FBT Everett Realty, LLC v. Mass. Gaming Comm'n*, 489 Mass. 702, 713 (2022). In measuring economic impact, this Court "compare[s] the value that has been taken from the property with the value that remains in the property." *Id.*

Here, as explained *supra*, the proposed law's economic impact, as evident from the Petition's text and officially noticed facts, will be catastrophic. While the Petition will cap rent increases at the annual CPI or five percent (whichever is lower), the Petition does not cap operating and maintenance costs, taxes, or insurance costs. The rising costs of owning and operating residential rental units will almost immediately outpace the permitted increase in rent under the Petition. *See* supra note 13. Costs will increase but property owners will be prohibited from receiving a fair net operating income to keep pace with those rising costs. There is no regulatory process through which owners may be permitted to recover their investments—that is expressly eliminated. *Compare Yankee II*, at 209-210 & n.7. The Petition would

thus render the business of leasing residential property, the primary purpose of owning such units, and the business of financing loans specifically to finance residential rental property "commercially impracticable." *Mahon*, 260 U.S. at 414. Not only will the value of properties decrease, and the flow of rental income securing mortgages on those properties will be impaired, but the impact on residential real estate development will also be severe.

2. Reasonable Investment-Backed Expectations

Since at least 1970, rental property owners have been guaranteed the right to rent out their units at rates allowing them to earn at least a fair net operating income. *See Marshal House*, 358 Mass. at 703. And since 1994, they have been guaranteed an affirmative right to rent their properties at market rates. *See* G. L. c. 40P. With these express statutory protections, it is hard to conceive of a stronger reasonable investment-backed expectation. *See Leonard v. Brimfield*, 423 Mass. 152, 155 (1996) ("A property owner's investment-backed expectations must be reasonable and predicated on existing conditions.").

3. Character of the Government Action

The prohibition against taking private property without just compensation was "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *FBT*, 489 Mass. at 717 (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)). The

government's police power to protect "public health, public safety, and public morals," has its limitations. *Abdow*, 468 Mass. at 489. Where, as here, its actions are "functionally equivalent to the classic taking in which government directly appropriates private property," compensation is required. *FBT*, 489 Mass. at 714.

Here, the Petition goes too far: it imposes a strict rent increase cap on all covered dwelling units across the Commonwealth, without the guarantee of a fair net operating income. See Petition, § 3. In doing so, the Petition would burden owners of covered dwelling units with the entire cost of overhauling the rental framework in the Commonwealth, likely without actually accomplishing the ends that the Petition purports to achieve.[14] Because the Petition "burdens some owners disproportionately," it is akin to an "exercise[] of eminent domain," requiring compensation, and therefore the government action factor supports that the Petition would constitute a regulatory taking. *FBT*, 489 Mass. at 714 (discussing *Abdow*, 468 Mass. at 489).

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[14] An inflexible rent increase cap will neither "provide housing stability for tenants, landlords, and communities across the Commonwealth" nor "curb displacement as a result of the housing shortage and affordability crisis in Massachusetts," which purports to be the purpose of the Petition. Petition, § 1. To the contrary, it will drive owners of residential rental property and residential real estate developers out of the market in droves, which will dramatically reduce the supply of rental units in Massachusetts and further displace tenants. Leung, *He's Invested Billions in Boston*, Boston Globe (Mar. 2, 2026) (https://www.bostonglobe.com/2026/03/01/business/boston-commercial-real-estate-investor/) (Add. 194).

IV. THE PETITION VIOLATES THE RELATED SUBJECTS REQUIREMENT OF ARTICLE 48.

The Petition asks voters to decide at least two distinct policy questions. The first question is clearly articulated in the text of Petition: do voters favor enacting a statewide cap on rent increases to purportedly provide housing stability for tenants, landlords, and communities? The second question is not advertised and is embedded in the Petition's "exclusions section"; it indirectly asks voters whether they favor amending the existing regulatory regime governing "short-term rentals" by implementing a new pricing regulation for fourteen to thirty-one day short-term and vacation rentals.

The Attorney General may only certify petitions that contain subjects "'which are related or which are mutually dependent' (related subjects requirement)." *Gray v. Attorney General*, 474 Mass. 638, 644 (2016) (quoting Amended art. 48, The Initiative, II, § 3). "Petitions that bury separate policy decisions in obscure language heighten concerns that voters will be confused, misled, and deprived of a meaningful choice—the very concerns that underlie art. 48's related subjects requirement." *El Koussa v. Attorney General*, 489 Mass. 823, 838-839 (2022).

Here, the Petition contains two unrelated subjects. First, as discussed, purportedly stabilizing long-term residential rents in Massachusetts, and second, regulating prices charged for short-term rentals.

The relevant exception to the Petition's broad coverage of imposing rent increase limits on "all dwelling units leased for residential, but not commercial use" is that "[d]welling units that are rented primarily to transient guests for a period of less than 14 consecutive days" are not subject to rent control. Petition, § 2(c) (R.A. 27; Add. 58). By necessary implication, dwelling units that are rented to transient guests for a period of 14 days or more (unless another exception applies) ***are subject to rent control***. Although the Petition does not disclose it to voters, "short-term rentals" are already regulated and governed by state and local laws. *See* G. L. c. 64G; St. 2018, c. 337 (Short-Term Rental Act). Under the Short-Term Rental Act, "occupancy" of a "short-term rental"[15] is defined as "the use or possession or the right to the use or possession of a room in a short-term rental normally used for sleeping and living purposes ***for a period of not more than 31 consecutive calendar days.***" *Id.* (emphasis added). The Short-Term Rental Act authorizes municipal regulation and imposes insurance and tax compliance obligations for short-term rentals. *See, e.g.*, G. L. c. 64G, §§ 1, 3, 14; G. L. c. 175, § 4F.

Although the Petition does not invoke G. L. c. 64G or the term "short-term rental," by its terms the Petition would overlap with, and regulate, a portion of the

[15] The statute defines a "short-term rental" as a residential property that is not a hotel, motel, lodging house, or bed and breakfast where at "at least 1 room or unit is rented to an occupant" and "all accommodations are reserved in advance." G. L. c. 64G.

short-term rental market that the Legislature has already chosen to regulate through taxation, registration, and local licensing. Short-term rentals that are rented primarily to transient guests for fewer than fourteen days will ***not*** be subject to rent control, but short-term rentals that are rented primarily to transient guests between fourteen to thirty-one days would be subject to rent control and potential liability under c. 93A.

Regulating the price of short-term rentals between fourteen to thirty-one consecutive days presents a fundamentally different policy question than rent control for more conventional, non-transient, residential tenancies. A voter who may be in favor of rent control generally, or specifically in population dense cities and towns, might be opposed to price control for short-term vacation or seasonal rentals and the potential impact on the tourism industry. Indeed, a voter could reasonably see the Petition's effect on short-term rentals as cutting against the stated purpose of the Petition, which is "to provide housing stability for tenants, landlords, and communities across the commonwealth, and curb displacement as a result of the housing shortage and affordability crisis in Massachusetts." For example, a residential rental property owner who rents their Cape house during the peak summer rental season and also during the off season (at much lower rental rates) would likely be strongly opposed to the Petition imposing base rent as of January 31, 2026 (the off-season rent), without an ability to "reset" the rent to peak season rent or increase

the rent at all more than the lower of CPI or 5% per year. That strong opposition to regulating short-term rentals while leaving the door open to simultaneously favoring the Petition's stated purpose demonstrates that the Petition's policies are not mutually dependent. *See Anderson v. Attorney General*, 479 Mass. 780, 786 (2018) (voters cannot "sever the unobjectionable from the objectionable," they must "vote to approve or reject an initiative petition in its entirety") (citation omitted); *see also El Koussa v. Attorney General*, 489 Mass. at 829 (quoting *Gray*, 474 Mass. at 649 ("yoking together disparate policy decisions into a single package that voters are only able to approve or disapprove as a whole, is to engage in 'the specific misuse of the initiative process that the related subjects requirement was intended to avoid.'") (citation omitted)).

The regulation of short-term rentals between fourteen to thirty-one days is not the only hidden pitfall of the Petition. The exception to the definition of "covered dwelling unit" applies to dwelling units leased *primarily* to transient guests for a period of less than fourteen consecutive days, without stating whether the determination of whether it is rented "primarily to transient guests for a period of less than 14 consecutive days" is measured by ***either*** the time the dwelling unit is rented ***or*** the type of renters. Petition, § 2(c) (R.A. 27; Add. 58). Is a house that is rented ten times in the summer months for a week at a time, for a total of ten weeks, and once over the winter for six months, subject to rent control? Does a two-month

vacation rental to someone other than a non-transitory renter, whatever that might mean, bring an otherwise covered dwelling unit within the statute's ambit? This ambiguity is precisely the situation that related subject matters requirement of Article 48 is intended to protect against. *El Koussa*, 488 Mass. at 838-839 ("When even lawyers and judges cannot be sure of the meaning of the contested provisions, it would be unfaithful to art. 48's design to allow the petition to be presented to the voters, with all the attendant risks that voters will be confused or misled.").

Due to this ambiguity, and the fact that voters are not being told they are also casting a vote on regulating short-term rentals, voters will not be in a position to make an informed decision. Presenting voters with disparate policy questions, particularly where one of those independent considerations is embedded in the text of the Petition and is ***not*** obvious on the face of the Petition puts voters in the position that they "may not even be aware they are making the second, unrelated policy decision." *El Koussa*, 488 Mass. at 838-839.

V. THE ATTORNEY GENERAL'S SUMMARY IS NOT "FAIR" BECAUSE IT FAILS TO INFORM VOTERS THAT THE PROPOSED LAW WOULD REPEAL THE EXISTING LAW BROADLY PROHIBITING RENT CONTROL AND REPLACE IT WITH THE OPPOSITE – A LAW BROADLY MANDATING RENT CONTROL.

A. STANDARD OF REVIEW

Article 48 entrusts the Attorney General with the constitutional duty of preparing a "fair and concise" summary of all initiative petitions being presented to

the voters. *Massachusetts Teachers Ass'n v. Secretary of the Commonwealth*, 384 Mass. 209, 227, 229-230 (1981). This Court will not substitute its judgment for the Attorney General's where the challenge to the adequacy or fairness of the Attorney General's summary is only "a matter of degree." *Id*. at 230. But the limited deference extended to the Attorney General's "reasonable judgments as to what are minor matters" in the summary is inapplicable where the Attorney General's summary fails to inform voters of "the main features of the measure they are being asked for vote on." *Sears v. Treasurer & Receiver Gen.*, 327 Mass. 310, 326 (1951) (rejecting a summary that "does not mention the fact that the measure is a repeal of and substitute for existing law"). A summary that fails to meet those standards requires that the initiative petition at issue be rejected because "[f]ailure to comply [with art. 48] will mean that no valid law has been enacted, no matter how great the popular majority may have been in its favor." *Id.* at 321.

Only where the summary informs voters that the ballot initiative they are being asked to decide seeks to repeal and replace an existing law, is it properly before the voters. *Id.* The Petition fails that test.

B. A SUMMARY THAT "DOES NOT MENTION THE FACT THAT THE MEASURE IS A REPEAL OF AND SUBSTITUTE FOR EXISTING LAW" IS NOT "FAIR"

Article 48 requires the Attorney General to prepare "a fair, concise summary . . . of the proposed measure." Amended art. 48, The Initiative, II, § 3, as

appearing in art 74. The Attorney General's summary is a constitutional safeguard because it "is one of the key pieces of information available to voters both when they are asked to sign an initiative petition and when they ultimately vote on an initiative that has made its way onto the ballot." *Hensley v. Attorney General*, 474 Mass. 651, 659-660 (2016). The functional purpose of the summary is "to insure . . . that the voters understand the law upon which they are voting." *Opinion of the Justices*, 357 Mass. 787, 800 (1970). "If the [summary] is not substantially adequate and accurate, a great safeguard of direct legislation is lost." *Evans v. Secretary of Commonwealth*, 306 Mass. 296, 299 (1940). The summary is essential for ensuring an informed populace; "[m]any voters never read more than the title and summary of the text of initiative proposals. Therefore, it is of critical importance that titles and summaries be concise, accurate and impartial." *National Conference of State Legislatures, Initiative and Referendum in the 21st Century*, at 24 (2002) (Add. 234).

A summary is only "fair" where it is "complete enough to serve the purpose of giving the voter who is asked to sign a petition or who is present in a polling booth a fair and intelligent conception of the main outlines of the measure." *Abdow*, 468 Mass. at 505 (quoting *Sears*, 327 Mass. at 324). Although "details may be omitted or in many instances covered by broad generalizations . . . mention ***must*** be made of at least the main features of the measure." *Id*. (emphasis added).

The main feature of every proposed measure, regardless of topic, is how it would affect existing law: would the law create a new regulatory scheme where none exists; would it amend an existing regulatory scheme; or would it instead abolish an existing regulatory scheme and replace it with something new, and perhaps substantively opposite? Without knowing how a proposed law would affect existing law, a voter cannot reasonably understand "precisely what they are being asked to do." *See Abdow*, 468 Mass. at 507 (where summary accurately informed voters they were being asked to abolish wagering on simulcast greyhound racing, the voter could not "possibly misunderstand the measure's intended effect"). It is exactly for this reason that where a summary "does not mention the fact that the measure is a repeal of and substitute for existing law" it is not "fair" and does not meet art. 48's requirements. *Sears*, 327 Mass. at 326.

The ***text*** of Petition 25-21 asks whether voters favor repealing the existing law broadly prohibiting rent control in Massachusetts and replacing it with an opposite policy, a law broadly imposing rent control across the Commonwealth. But the Attorney General's ***summary*** does not. It fails to inform voters that the Petition is asking two questions: (1) whether they prefer the more than thirty-year-old regulatory regime currently in place prohibiting rent control in Massachusetts, or (2) whether they want to repeal the existing regulatory scheme and replace it with a diametrically opposite policy that broadly imposes rent control on all covered

dwelling units in Massachusetts. While the summary describes many features contained in the Petition itself, it does not mention the Petition's main feature or operative effect on existing law— that it would repeal and replace it. Indeed, by only describing Petition 25-21 as "[t]his proposed law," voters are not given the opportunity to understand precisely what the Petition is asking them to do. *See* Petition Summary ("This proposed law would limit the annual rent increases for residential units in Massachusetts . . . .").

This Court's decision in *Sears v. Treasurer & Receiver General*, is directly on point and controls. In *Sears*, the Attorney General's summary provided a cursory explanation of what the proposed law sought to do without mentioning that it would be "a complete revision" of this existing statute. *Id.* at 325. Observing that the summary was "no more than would fairly serve as a title for the measure," the Court noted that the summary was silent on many key features of the proposed law. *Id.* at 326 (concluding that the summary made no mention of how funds would be obtained to make the proposed expenditures, who would administer the law, or the legal standards applied to the law). The summary's fatal flaw was that it "does not mention the fact that the measure is a repeal of and substitute for existing law." *Id.* The Court underscored the problem with the summary by explaining that the Attorney General may have also been able to draft a "fair" summary "merely by pointing out the difference between a proposed measure and the existing law . . . so that the voter

may get a fair comprehension of what the law will be if the measure is adopted." *Id.* Having failed to accomplish that, the summary was inadequate. *Id.*

Here, just like *Sears*, Petition 25-21 proposes a complete reversal of existing law. And, just like *Sears*, the Attorney General's summary "does not mention the fact that the measure is a repeal of and substitute for existing law." *Id.* This omission, standing alone, is fatal because without this information in the Summary, voters are deprived of the key information they need to fairly understand what the Petition is asking them to decide and how that decision will affect existing law. To be certain, the Attorney General's summary in this case provides more detail about what is included in the proposed law than the summary in *Sears*. But that is of no moment where the Summary here is silent on the proposed law's main feature and effect on existing law – the repeal and replacement of G. L. c. 40P.

The Attorney General's summary for the 1994 ballot initiative, which enacted the law that the Petition seeks to repeal and replace, underscores the inadequacy of the Summary here. The Attorney General's summary in 1994 began by stating: "This proposed law would prohibit rent control for most privately owned housing units in Massachusetts, and ***would nullify certain existing rent control laws . . . .***" Question 9, 1994. (Add. 171). The summary further explains the features of the proposed law, reiterating that "[e]xisting state and local rent control laws would be nullified. The proposed law would not affect publicly owned or subsidized housing, federally

assisted housing, or mobile homes." *Id.* These key indicators of fairness in the 1994 Summary—what the measure proposes and how it would affect existing law—makes clear the Petition 25-21 Summary cannot survive art. 48 scrutiny.

Not only does the summary here fail to explicitly inform voters that it proposes to repeal and replace an existing law or that there is an existing law, like the 1994 Summary, it also fails to satisfy the alternative path laid out in *Sears*: "pointing out the difference between a proposed measure and existing law." 327 Mass. at 326.[16]

CONCLUSION

For the foregoing reasons, Plaintiffs-Appellants respectfully request that this Court declare that the Petition and the Summary do not comply with art. 48 of the Massachusetts Constitution, and order that the Secretary of the Commonwealth shall not place the Petition on the November 2026 ballot.

---

[16] Included in the more than forty petitions the Attorney General certified for the November 2026 election, the Attorney General drafted multiple summaries that do inform the voters about how a measure would change existing law. *See, e.g.*, Petition 25-09 (Add. 279) ("proposed law would change the [legal] type and amount of marijuana . . . by repealing the laws" currently in effect); Petition 25-32 (Add. 281) ("proposed law would eliminate [existing] requirement [for] cities and towns defined . . . as 'MBTA communities,'" and "would repeal any law" inconsistent with the proposed prohibitions); Petition 25-42 (Add. 282) (proposed law would "eliminate required charges to ratepayers" and "eliminate any existing regulations" related to relevant cost-recovery mechanisms).

Respectfully submitted,

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Date: March 10, 2026

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2026-0063

ARCANGELO CELLA, TERESA DEL SIGNORE, KATHERINE HOREY, AND SUSAN M. RENFEW

v.

ANDREA J. CAMPBELL, IN HER OFFICIAL CAPACITY AS THE ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS, AND WILLIAM F. GALVIN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS

RESERVATION AND REPORT

This matter came before the court, Gaziano, J., on the plaintiffs' complaint for declaratory judgment, writ of certiorari, and relief in the nature of mandamus, concerning whether Initiative Petition No. 25-21 may appear on the 2026 statewide ballot. The parties have requested a decision by July 1, 2026, in order to meet the applicable printing deadlines for the Information for Voters Guide disseminated to registered voters in the Commonwealth.

Upon consideration of the parties' submissions, I hereby reserve and report this case, without decision, for determination by the Supreme Judicial Court for the Commonwealth. The record before the full court shall consist of the following:

(1) all papers filed in SJ-2026-0063;

(2) the docket sheet for SJ-2026-0063; and

(3) this court's reservation and report.

The clerk of the county shall assemble and transmit the record to the full court forthwith.

The plaintiffs shall be designated the appellants, and the defendants shall be designated the appellees. The plaintiffs' collective brief shall be filed in the full court on or before **March 10, 2026.** The defendants' collective brief shall be filed in the full court on or before **April 9, 2026.** The plaintiffs' collective reply brief, if any, and any amicus briefs, shall be filed on or before **April 16, 2026.** Enlargements of time should not be anticipated. Oral argument shall take place in May 2026, or such other time as the full court may order. The matter shall proceed in all respects in conformance with the Massachusetts Rules of Appellate Procedure.

By the Court,

/s/ Frank M. Gaziano
Frank M. Gaziano
Associate Justice

Dated: February 10, 2026

INITIATIVE PETITION FOR A LAW

An Initiative Petition to Protect Tenants by Limiting Rent Increases

Be it enacted by the People, and by their authority:

The General Laws are hereby amended by striking out chapter 40P and inserting in place thereof the following chapter:-

CHAPTER 40P. LIMITING RENT INCREASES

Section 1. Purpose.

The purpose of this act is to provide housing stability for tenants, landlords, and communities across the commonwealth, and curb displacement as a result of the housing shortage and affordability crisis in Massachusetts.

Section 2. Definitions.

For the purposes of this chapter:-

"Covered Dwelling Units" shall mean all dwelling units leased for residential, but not commercial, use, except:

(a) Dwelling units in owner-occupied buildings with four or fewer units.

(b) Dwelling units whose rents are subject to regulation by a public authority; provided, however, that occupancy by a tenant with a mobile housing voucher does not constitute being regulated by a public authority.

(c) Dwelling units that are rented primarily to transient guests for a period of less than 14 consecutive days.

(d) Dwelling units in facilities operated solely for educational, religious, or non-profit purposes.

(e) Dwelling units for which the first residential certificate of occupancy is less than 10 years old, for a period of 10 years from the date at which such certificate of occupancy was issued.

Section 3. Rent increase limits.

This chapter shall establish a limit on any annual rent increase for a covered dwelling unit in the commonwealth, which shall not exceed the annual increase in Consumer Price Index or 5%, whichever is lower, in any 12-month period. This limit shall apply whether or not there is a change in tenancy during the relevant 12-month period.

1. AG 2. _____ 3. _____ 4. _____ 5. _____ 6. KSM 7. _____ 8. _____ 9. AG 10. JM

11. _____ 12. JP 13. _____ 14. _____ 15. _____ 16. _____ 17. M.A.E 18. _____ 19. _____ 20. _____

For purposes of this chapter, the rent amount in place on January 31, 2026, shall serve as the base rent upon which any annual rent increase shall be applied. If a covered dwelling unit is vacant on the date of adoption, the last rent amount charged shall serve as the base rent. If there was no previous rent amount, or if no rent has been charged for at least the previous five years, for a covered dwelling unit the rent amount the owner first charges following the date of adoption shall serve as the base rent.

Where dwelling units are exempt, a notice of exemption must be provided with the lease for all tenancies. If there is no written lease for such dwelling units, the tenants-at-will must be provided with a written notice of exemption prior to the acceptance of the initial rent payment.

Section 4. Penalties.

Any violation of this chapter shall be deemed an unfair and deceptive act under chapter 93A of the General Laws. Any person claiming a violation of this chapter may pursue remedies under section 9 of chapter 93A. The attorney general is hereby authorized to bring an action under section 4 of chapter 93A to enforce this provision and to obtain restitution, civil penalties, injunctive relief, and any other relief awarded pursuant to said chapter 93A.

Section 5. Interpretation of This Chapter.

Nothing in this section shall be construed to interfere with any existing rights or protections afforded to tenants under current state or federal law.

The undersigned voters have reviewed the final text of this Initiative Petition, fully subscribe to its contents, and agree to be one of the original signers of the petition.

1. Adan Arenas
2. _____
3. _____
4. _____
5. _____
6. Willie M. Hurd
7. _____
8. _____
9. Annie Gordon
10. Julia Mejia
11. _____
12. Isabel Lopez
13. _____
14. _____
15. _____
16. _____
17. M. Antonio Ennis — M. ANTONIO ENNIS
18. _____
19. _____
20. _____

ALM GL ch. 40P, § 2

Current through Chapter 5 of the 2026 Legislative Session of the 194th General Court

Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE VII CITIES, TOWNS AND DISTRICTS (Chs. 39 - 49A) > TITLE VII CITIES, TOWNS AND DISTRICTS (Chs. 39 — 49A) > Chapter 40P The Massachusetts Rent Control Prohibition Act (§§ 1 — 5)

§ 2. Purpose.

The purpose of this chapter is to establish a uniform statewide policy that broadly prohibits any regulatory scheme based upon or implementing rent control, except where, following an initial six month period, compliance with such a scheme is voluntary and uncoerced on the part of property owners. Even when voluntary, rent control should be severely restricted in scope. This policy is based on the belief that the public is best served by free market rental rates for residential properties and by unrestricted home ownership. The terms of this chapter shall be liberally construed to effect this purpose.

History

1997, 19, § 10.

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ALM GL ch. 40P, § 3

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§ 3. Definition of Rent Control.

For purposes of this chapter, the words “rent control” shall mean:

(a) any regulation that in any way requires below-market rents for residential properties; and

(b) any regulation that is part of a regulatory scheme of rent control as defined in clause (a), including the regulation of occupancy, services, evictions, condominium conversion and the removal of properties from such rent control scheme; except that

(c) this definition does not include the regulation of, or agreements affecting, publicly owned housing, publicly subsidized housing, federally assisted housing, or mobile homes.

History

1997, 19, § 10.

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ALM GL ch. 40P, § 4

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§ 4. General Prohibition, Exception.

No city or town may enact, maintain or enforce rent control of any kind, except that any city or town that accepts this chapter may adopt rent control regulation that provides:

(a) after six months from the date of the initial adoption of rent control regulation by a particular city or town, compliance on the part of property owners as to the rent control regulation or any subsequently adopted rent control regulation shall be entirely voluntary and uncoerced, and the property of a person or entity declining to have his or its property subjected to such regulation shall be wholly unaffected by any aspect of the rent control regulation or any subsequently adopted rent control regulation;

(b) such regulation may not include the regulation of occupancy, services, evictions, condominium conversion or the removal of properties from such regulation, nor may such regulation apply to any rental unit that is owned by a person or entity owning less than ten rental units or that has a fair market rent exceeding $400; and

(c) a municipality adopting such regulation shall compensate owners of rent controlled units for each unit in the amount of the difference between the unit's fair market rent and the unit's below market, rent controlled rent, with such compensation coming from the municipality's general funds, so that the cost of any rent control shall be borne by all taxpayers of a municipality and not by the owners of regulated units only.

History

1997, 19, § 10.

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ALM GL ch. 40P, § 5

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§ 5. Preemption.

Because rent control is a matter of statewide concern, this chapter shall preempt, supersede or nullify any inconsistent, contrary or conflicting state or local law.

History

1997, 19, § 10.

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ALM GL ch. 64G, § 1

Current through Chapter 5 of the 2026 Legislative Session of the 194th General Court

Annotated Laws of Massachusetts > PART I ADMINISTRATION OF THE GOVERNMENT (Chs. 1 - 182) > TITLE IX TAXATION (Chs. 58 - 65C) > TITLE IX TAXATION (Chs. 58 — 65C) > Chapter 64G Room Occupancy Excise (§§ 1 — 18)

§ 1. Definitions.

As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

"Bed and breakfast establishment", a private owner-occupied house where not less than 4 rooms are let, a breakfast is included in the rent and all accommodations are reserved in advance.

"Bed and breakfast home"', a private owner-occupied house where not more than 3 rooms are let, a breakfast is included in the rent and all accommodations are reserved in advance.

"Commissioner", the commissioner of revenue.

"Hosting platform", a service through a digital platform, third-party website, software, online-enabled application, mobile phone application or some other, similar electronic process that allows: (i) an operator to advertise, list or offer the use of an accommodation subject to the excise under this chapter in exchange for rent; (ii) an operator to collect the payment of rent on an accommodation; and (iii) a person to arrange, book, reserve or rent an accommodation.

"Hotel", a building used for the feeding and lodging of guests licensed or required to be licensed under *section 6 of chapter 140*.

"Intermediary", a person or entity, other than an operator, that facilitates the sale, use or possession of an occupancy and charges a room charge to the general public; provided, however, that the term "facilitates" shall include a person or entity that brokers, coordinates or in any other way arranges for the purchase, sale, use or possession of occupancies by the general public; provided further, that the term "intermediary" shall include a hosting platform and operator's agent.

"Lodging house", a house licensed or required to be licensed under *section 23 of chapter 140* and where lodgings are rented to not less than 4 people who shall not be within the second degree of kindred to the owner or operator of such lodging house.

"Motel", a building or portion of a building in which a person is lodged for hire with or without meals and that is licensed or required to be licensed under *section 32B of chapter 140*; provided, however, that a "motel" shall not include a hotel or lodging house.

"Occupancy", the use or possession or the right to the use or possession of a room in a bed and breakfast establishment, hotel, lodging house or motel designed and normally used for sleeping and living purposes for a period of not more than 90 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant, guest or licensee, or the use or possession or the right to the use or possession of a room in a short term rental normally used for sleeping and living purposes for a period of not more than 31 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant, guest or licensee; provided, however, that "occupancy" shall include the right to the use or possession of the furnishings or the services and accommodations, including breakfast in a bed and breakfast establishment, accompanying the use and possession of such a room.

"Occupant", a person who uses, possesses or has a right to use or possess a room in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel for rent under a lease, concession, permit, right of access, license or agreement.

"Operator", a person operating a bed and breakfast establishment, hotel, lodging house, short-term rental or motel in the commonwealth including, but not limited to, the owner or proprietor of such premises, the lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such bed and breakfast establishment, hotel, lodging house, short-term rental or motel.

"Operator's agent", a person who on behalf of an operator of a bed and breakfast establishment, hotel, motel, short-term rental or lodging house: (i) manages the operation or upkeep of a property offered for rent; or (ii) books reservations at a property offered for rent; provided, however, that an "operator's agent" shall include, but not be limited to, a property manager, property management company or real estate agent.

"Person", an individual, partnership, trust or association, with or without transferable shares, joint-stock company, corporation, society, club, organization, institution, estate, receiver, trustee, assignee or referee and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of individuals acting as a unit.

"Professionally-managed unit", 1 of 2 or more short-term rental units that are located in the same city or town, operated by the same operator and are not located within a single-family, two-family or three-family dwelling that includes the operator's primary residence.

"Rent", the total consideration paid by or on behalf of an occupant, including any service, cleaning or other charge, to an operator or an intermediary collecting and remitting the excise on behalf of an operator under section 13 in exchange for occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature; provided, however, that "rent" shall not include: (i) bona fide refundable security deposits; (ii) any amount paid by an occupant that is included in the taxable gross receipts of the operator under chapter 64H or 64I where the operator is a vendor for purposes of those chapters; or (iii) amounts paid by an occupant to an operator for services offered by the operator on similar terms to non-occupants in the regular course of the operator's business.

"Short-term rental", an owner-occupied, tenant-occupied or non-owner occupied property including, but not limited to, an apartment, house, cottage, condominium or a furnished accommodation that is not a hotel, motel, lodging house or bed and breakfast establishment, where: (i) at least 1 room or unit is rented to an occupant or sub-occupant; and (ii) all accommodations are reserved in advance; provided, however, that a private owner-occupied property shall be considered a single unit if leased or rented as such.

History

1966, 14, § 25; 1967, 745; 1984, 358, § 1; 1988, 31, § 1; *2018, 337, § 6*, effective March 28, 2019.

Annotations

Notes

Editor's Notes

Acts 2018, 337, § 5A (as enacted by *2019, 5 § 37*) provides:

Sections 6 to 8 [of *2018, 337*] inclusive, shall take effect for transfers of occupancies in bed and breakfast establishments, hotels, lodging houses and motels beginning on or after July 1, 2019.

Acts 2019, 5, § 32 provides:

SECTION 32. *Section 6 of chapter 337 of the acts of 2018* is hereby amended by striking out, in *section 1 of chapter 64G* of the General Laws, the definition of "Rent" and inserting in place thereof the following definition:

"Rent", the total consideration paid by or on behalf of an occupant, including any service, cleaning or other charge, to an operator or an intermediary collecting and remitting the excise on behalf of an operator under section 13 in exchange for occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature; provided, however, that "rent" shall not include: (i) bona fide refundable security deposits; (ii) any amount paid by an occupant that is included in the taxable gross receipts of the operator under chapter 64H or 64I where the operator is a vendor for purposes of those chapters; or (iii) amounts paid by an occupant to an operator for services offered by the operator on similar terms to non-occupants in the regular course of the operator's business.

Amendment Notes

The 1967 amendment rewrote subdivisions (a), (b), and (c) to extend the room occupancy excise to include accommodations which are required to be licensed but which are not licensed as such.

The 1984 amendment rewrote the definition of "Lodging house" in clause (b).

The 1988 amendment made technical changes throughout the section, in the opening paragraph, substituted "As" for "When" and changed "otherwise requires" to "requires otherwise", in the definition of "Motel", substituted "thereof" for "of a building", rewrote the definitions of "Operator", "Occupancy" and "Occupant" to include the reference to "bed and breakfast", and added the definitions of "Bed and breakfast establishment" and "Bed and breakfast home". Section 7 provides:

SECTION 7. The provisions of chapter sixty–four G of the General Laws, in effect prior to the effective date of this act, shall not apply to the transfer of room occupancies in a bed and breakfast home, as defined in section one of this act, made prior to the effective date of this act; provided, however, that such provisions shall continue to apply to transfers made prior to the effective date of this act if the excise imposed by said chapter sixty–four G was collected by such bed and breakfast home from the occupant.

The 1989 amendment in the definition of "Occupancy", in clause (g), corrected "period or ninety" to "period of ninety".

The 2018 amendment, effective March 28, 2019, rewrote this section.

Notes to Decisions

ALM GL c 64G, by its terms, does not impose a room occupancy excise on rent paid by individuals who remain longer than 90 consecutive days as guests in a hotel, motel, lodging house or other similar establishment listed in the definition of "occupancy." Therefore, *830 Mass. Code Regs. § 64G.1.1*, which applies a contrary rule, is invalid. *Lowney v. Comm'r of Revenue, 67 Mass. App. Ct. 718, 856 N.E.2d 879, 2006 Mass. App. LEXIS 1152 (Mass. App. Ct. 2006)*.

Under the plain language of *ALM GL c 64G, §§ 1* and *3*, taxpayers were not obliged to collect room occupancy excise taxes for the first 90 days of occupancy from guests who stayed at their motel for more than 90 days. Therefore, the Massachusetts Appellate Tax Board erred by denying their request for a tax abatement. *Lowney v. Comm'r of Revenue, 67 Mass. App. Ct. 718, 856 N.E.2d 879, 2006 Mass. App. LEXIS 1152 (Mass. App. Ct. 2006)*.

Commissioner of Revenue, under Section 182 of Chapter 184 of Acts of 2002, has established 2–month "amnesty" program beginning on October 1, 2002 and ending on December 2, 2002: this Technical Information Release examines such amnesty program, including, inter alia, subjects of eligibility in program, responsible persons, payment requirements, scope of amnesty, verification and assessment, abatements, disclosure, and forms. Mass Dept of Rev TIR 02-14.

Opinion Notes

Notes to Opinions

Attorney General Opinions

Commissioner of corporations and taxation cannot require payment of room occupancy excise tax on consideration charged for personal occupancy of any room or building in city or town when such city or town does not require license in accordance with *ALM GL c 140, §§ 6*, *23*, or *32B*. 1966–1967 Mass. Op. Att'y Gen. 34.

Commissioner of corporations and taxation has no authority under this section to determine whether city or town should require license for hotel, lodging house, or motel. 1966–1967 Mass. Op. Att'y Gen. 34.

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Legal Information Institute's Property Tax Overview, see *www.law.cornell.edu/wex/property*_tax

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ALM GL ch. 64G, § 3

Current through Chapter 5 of the 2026 Legislative Session of the 194th General Court

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§ 3. Excise Tax.

An excise shall be imposed upon the transfer of occupancy of a room or unit in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel by an operator at the rate of 5 per cent of the total amount of rent for each such occupancy. An excise shall not be imposed if the total amount of rent is less than $15 per day or its equivalent.

The operator shall pay the excise to the commissioner at the time provided for filing the return required under *section 16 of chapter 62C*.

No excises or fees established under this chapter shall be imposed upon the transfer of occupancy of a short-term rental if the operator transfers such short-term rental for not more than 14 days in a calendar year, provided, that the operator has first: (i) registered with the commissioner in accordance with *section 67 of chapter 62C*; and (ii) filed a declaration with the commissioner, signed by the operator and subject to *section 5 of chapter 62C*, setting forth the intention to transfer the short-term rental for not more than 14 days in a calendar year. Such a declaration, if applicable, shall be required annually in a manner determined by the commissioner. If the operator transfers the short-term rental for 15 days or more in the same calendar year, or fails to register and file a declaration as required by this section, then the operator shall be liable for the payment of required excises and fees under this chapter, including payment of required taxes and fees on the first 14 days the short-term rental was transferred in the calendar year.

History

1966, 14, § 25; 1976, 415, § 70; 1984, 358, § 2; 1988, 31, § 3; *2018, 337, § 6*, effective March 28, 2019.

Annotations

Notes

Editor's Notes

Acts 1969, 546, § 22, provides as follows:

SECTION 22. There is hereby imposed, in addition to the taxes levied under the provisions of chapters sixty–four B and sixty–four G of the General Laws, an additional tax equal to fourteen per cent of the taxes imposed under the provisions of said chapters.

Except as hereinbefore provided, all provisions of said chapter sixty–four B and sixty–four G relative to the assessment, collection, payment, abatement, verification and administration of taxes, including penalties, shall, so far as pertinent, be applicable to the tax imposed by this section.

> For the purpose of adding and collecting the tax imposed by this section and the tax imposed by said chapter sixty–four B and sixty–four G, the commissioner of corporations and taxation, with the approval of the state tax commission, shall issue a tax schedule showing the total of the taxes due for each bracket of taxable charges or rent, as defined in said chapters. Such schedule shall be in such form, including the number and size of the brackets, as said commissioner, with the approval of said commission, may determine.

Acts 2018, 337, § 5A (as enacted by *2019, 5 § 37*) provides:

> Sections 6 to 8 [of *2018, 337*] inclusive, shall take effect for transfers of occupancies in bed and breakfast establishments, hotels, lodging houses and motels beginning on or after July 1, 2019.

Amendment Notes

The 1976 amendment added the second paragraph relative to time for payment. This amendment was part of an overall legislative design to consolidate all state tax administrative provisions in a single chapter, ALM GL c 62C.

The 1984 amendment in the second sentence of the first paragraph, increased the reference to the amount of rent to “fifteen” dollars from “two” dollars.

The 1988 amendment rewrote the first sentence of the first paragraph, to include the reference to “bed and breakfast establishment”. Section 7 provides:

> SECTION 7. The provisions of chapter sixty–four G of the General Laws, in effect prior to the effective date of this act, shall not apply to the transfer of room occupancies in a bed and breakfast home, as defined in section one of this act, made prior to the effective date of this act; provided, however, that such provisions shall continue to apply to transfers made prior to the effective date of this act if the excise imposed by said chapter sixty–four G was collected by such bed and breakfast home from the occupant.

The 2018 amendment, effective March 28, 2019, rewrote this section which formerly read: “An excise is hereby imposed upon the transfer of occupancy of any room or rooms in a bed and breakfast establishment, hotel, lodging house, or motel in this commonwealth by any operator at the rate of five per cent of the total amount of rent for each such occupancy. No excise shall be imposed if the total amount of rent is less than fifteen dollars per day or its equivalent. The operator shall pay the excise to the commissioner at the time provided for filing the return required by section sixteen of chapter sixty-two C.” Section 14 provides:

> SECTION 14. Sections 3, 3A, 3C and 3D of chapter 64G of the General Laws shall take effect for transfers of occupancies of short-term rentals that commence on or after July 1, 2019 and for which contracts with occupants were entered into on or after January 1, 2019.

Notes to Decisions

Proposed legislation which would dedicate in trust portion of local–option room excise collected for benefit of Massachusetts Convention Center Authority would violate constitutional requirement that all moneys received on behalf of Commonwealth be paid into treasury and expended only by appropriation of Legislature, because of lack of supervision or control by legislative and state and local government agencies over activities of Authority and expenditure of funds. *Opinion of Justices to Senate, 396 Mass. 1201, 484 N.E.2d 95, 1985 Mass. LEXIS 1762 (Mass. 1985)*.

Under the plain language of *ALM GL c 64G, §§ 1* and *3*, taxpayers were not obliged to collect room occupancy excise taxes for the first 90 days of occupancy from guests who stayed at their motel for more than 90 days. Therefore, the Massachusetts Appellate Tax Board erred by denying their request for a tax abatement. *Lowney v. Comm'r of Revenue, 67 Mass. App. Ct. 718, 856 N.E.2d 879, 2006 Mass. App. LEXIS 1152 (Mass. App. Ct. 2006)*.

ALM GL c 64G, by its terms, does not impose a room occupancy excise on rent paid by individuals who remain longer than 90 consecutive days as guests in a hotel, motel, lodging house or other similar establishment listed in the definition of "occupancy." Therefore, *830 Mass. Code Regs. § 64G.1.1*, which applies a contrary rule, is invalid. *Lowney v. Comm'r of Revenue, 67 Mass. App. Ct. 718, 856 N.E.2d 879, 2006 Mass. App. LEXIS 1152 (Mass. App. Ct. 2006)*.

Lease by hotel of space used by lessee as lounge or retail store is not subject to room occupancy excise. Mass Dept of Rev L R 83–1.

Owner in time–sharing condominium where furnished units are owned for 31 one–week intervals from April through November, and where each one–week interval has its own recorded deed and each owner of each interval pays real estate taxes, need not collect room occupancy excise when such owner rents out his interval personally or through real estate agent; time–sharing condominium does not possess characteristics of motel and is thus not subject to room occupancy excise. Mass Dept of Rev L R 84–84.

Where company operates bed–and–breakfast reservation service by matching visitors to Massachusetts with local hosts who will lodge visitors in their homes as paying guests, and where company collects charges from such visitors and sends them to hosts after deducting commission as payment for its services, such charges are subject to room occupancy excise and total charges paid for meals in such operations are subject to sales tax; in neither event should deduction be made from charges for commissions paid to company or other reservation service. Mass Dept of Rev L R 84–90.

Hotel operator may allocate single fee between charge for rent subject to room occupancy excise and charge for meals subject to sales tax on meals, provided that allocation is reasonable and fully documented in operator's books and records. Mass Dept of Rev L R 86–2.

Operator may not allocate portion of single fee to non–taxable charge for use of recreational facilities unless discharge is entirely optional. Mass Dept of Rev L R 86–2.

Operators of hotels, motels and lodging houses located in Commonwealth are required to collect state and local room occupancy excises imposed by ALM GL c 64G upon rental of rooms to DPW or its clients under Emergency Assistance Program. Mass Dept of Rev L R 86–5.

No tax applies to overnight accommodations rented by individual bed, rather than by room, in dormitory style accommodations, at charge of less than $15 for such occupancy, unless guest seeks to guarantee privacy in dormitory room and rents all beds in room at $12 rate per bed, in which case room occupancy tax is levied on entire amount charged for room. Mass Dept of Rev L R 86–7.

Converted condominium units were not subject to the room occupancy excise under this section with respect to rentals commencing on or after May 4, 1994, the date the town in which the units were located determined that the units, or the relevant portion thereof, did not need to be registered as a motel under the provisions of *ALM GL c 140, § 32*B. Mass Dept of Rev L R 95–12.

Any acceptable means of electronic filing, including telephone filing, will satisfy requirement that any filing entity that remits wage withholding under ALM GL c 62B, state and local room occupancy excise under ALM GL c 64G, or sales and use taxes under ALM GL c 64H and 64I, including sales taxes imposed on meals and telecommunications services; such requirement can be met by any acceptable means of electronic filing, including telephone filing, and such requirement applies to all filing entities remitting returns for listed taxes, including third–party bulk filers, regardless of dollar amount of their annual tax liability. Mass Dept of Rev TIR 03-11.

As of January 1, 2004, rule announced in Mass Dept of Rev TIR 02–22 is modified and electronic filing threshold is reduced to $10,000 for those filers; filing entities with combined liability for preceding calendar year of $10,000 or more for one or more of 3 categories of taxes must, as of January 1, 2004, file electronically and pay amounts due via electronic funds transfer. Mass Dept of Rev TIR 03-11.

Once tax liability of employer, operator, or vendor reaches electronic filing threshold in one taxable year, filing entity must electronically file in all subsequent years regardless of amount due, as long as it has obligation to file one of 3 categories of taxes in Massachusetts; however, filing entities using payroll processing service that electronically files wage withholding returns and payments are not required to electronically file room occupancy and sales and use tax returns and documents unless their combined liability for 3 categories of taxes reaches $10,000 threshold. Mass Dept of Rev TIR 03-11.

Filing entities that electronically file voluntarily even though their tax liability does not exceed $10,000 may choose not to electronically file in subsequent years, so long as their combined liability for 3 categories of taxes is below threshold. Mass Dept of Rev TIR 03-11.

Employer remitting wage withholding under ALM GL c 62B, operator remitting state and local room occupancy excise under ALM GL c 64G, and vendor remitting sales and use taxes under ALM GL c 64H and 64I, including sales taxes imposed on meals and telecommunications services, with liability over $10,000 threshold, must, as of September 1, 2003, file amendments and abatement requests (currently both Form CA–6) for those taxes by electronic means; however, if return was return with zero tax due that was filed by touch–tone telephone, file or may file paper Form CA–6. Mass Dept of Rev TIR 03-11.

Commissioner of Revenue would postpone, until January 1, 2005, electronic requirement for extension requests and accompanying payments; before January 1, 2005, corporations may continue to request extensions using paper means, and are not required to make accompanying payments electronically, and corporations have option to request extensions and make payments electronically if they choose. Mass Dept of Rev TIR 03-15.

As of January 1, 2005, all corporations must use electronic means to request extensions and make accompanying payments. Mass Dept of Rev TIR 03-15.

Operators of room rentals must keep records sufficient to determine whether proper amount of tax has been paid, as well as records substantiating repayment of previously paid taxes to occupants whose rentals exceed 90 days in length; such records must be kept for amount of time specified in Record Retention Regulation (830 CMR § 62C,.25.1) and must be produced for review by Department of Revenue in course of audit of operator. Mass Dept of Rev TIR 07-2.

Regarding local option portion of room occupancy excise, municipalities are advised that future collections of room occupancy will no longer include first 90 days of prolonged stay where duration of arrangement is known in advance; municipalities that have received excise payment that includes taxes collected during first 90 days of occupancy will either have these amounts deducted from future payments, or will have to repay them. Mass Dept of Rev TIR 07-2.

Operator who has previously collected and paid over taxes on room occupancies exceeding 90 days may recover them by filing application for abatement (Form CA-6) with Department of Revenue (DOR) prior to expiration of any period of limitations set out in *ALM GL c 62C, § 37*; no actual refund of money will be made unless operator proves to satisfaction of DOR that tax has been, or will be, paid or credited to occupant. Mass Dept of Rev TIR 07-2.

If there is no agreement on length of room rental, operator must collect tax from occupant on ongoing basis and remit any tax collected to Department of Revenue (DOR) monthly in accordance with *830 CMR § 62C.16.1*; after passage of 90th day, operator must return or credit any tax collected to occupant, and may recover any tax paid over to DOR by (1) taking credit against any tax owed on future returns, or (2) by filing application for abatement with DOR on Form CA-6. Mass Dept of Rev TIR 07-2.

When length of room rental has been agreed to in advance, will exceed 90 days, and is evidenced by writing (that need not be formal contract), operator need not collect tax during period of occupancy; however, if, despite agreement, rental terminates prior to 90th day, operator must retroactively collect and remit tax for each day of occupancy. Mass Dept of Rev TIR 07-2.

With regard to complimentary and discounted hotel rooms, when hotel receives no benefit beyond actual rent paid in money, excise is computed on amount actually paid for occupancy; when hotel receives benefit, either direct or indirect, beyond actual rent paid in money, excise is based on fair market value of room received. Mass Dept of Rev Directive 06-7.

Room occupancy excise must be collected if (1) place in which complimentary or discounted room is located is hotel, (2) there is transfer of occupancy, and (3) there is consideration (in money or otherwise, including services) for transfer valued at $15.00 or more; all 3 such elements must be present before complimentary or discounted room may be taxed. Mass Dept of Rev Directive 06-7.

Research References & Practice Aids

Research References and Practice Aids

Code of Massachusetts Regulations

Room occupancy excise. 830 CMR 64G.01 et seq.

Federal Aspects

Federal income tax deduction for state and local taxes, *26 USCS § 164*.

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ALM GL ch. 64G, § 14

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§ 14. Regulation of Registered Operators; Penalties.

A city or town, by ordinance or by-law, may regulate operators registered pursuant to *section 67 of chapter 62C* and impose penalties for the violation of such an ordinance or by-law. A city or town, by ordinance or by-law, may:

(i) regulate the existence or location of operators under this section within the city or town, including regulating the class of operators and number of local licenses or permits issued to operators under this section and the number of days a person may operate and rent out an accommodation in a calendar year;

(ii) require the licensing or registration of operators within the city or town; provided, however, that a city or town may: (A) accept a certificate of registration issued to an operator in accordance with *section 67 of chapter 62C* in lieu of requiring an operator to obtain a local license or registration under this section; or (B) issue a provisional license or registration to permit an operator to offer accommodations on temporary or seasonal basis;

(iii) require operators to demonstrate that any properties or premises controlled, occupied, operated, managed or used as accommodations subject to the excise under this chapter are not subject to any outstanding building, electrical, plumbing, mechanical, fire, health, housing or zoning code enforcement, including any notices of violation, notices to cure, orders of abatement, cease and desist orders or correction notices;

(iv) require properties or premises controlled, occupied, operated, managed or used by operators as an accommodation subject to the excise under this chapter to undergo health and safety inspections; provided, however, that the cost of any inspection conducted under this section shall be charged to and solely paid by the operator under this section; provided further, that after any initial health and safety inspection, the city or town may determine the frequency of any subsequent inspections;

(v) establish a civil penalty for violation of an ordinance or by-law enacted pursuant to this section; provided, however, that a city or town that suspends or terminates an operator's right to operate an accommodation for a violation of any ordinance or bylaw shall notify the commissioner of revenue of the suspension or termination; and

(vi) establish a reasonable fee to cover the costs associated with the local administration and enforcement of regulating operators and accommodations.

Notwithstanding any ordinance or by-law adopted by a city or town pursuant to this section, an operator of a short-term rental shall post inside the short-term rental unit information regarding the location of any fire extinguishers, gas shut off valves, fire exits and fire alarms in the unit and building.

Nothing in this section shall preclude a city or town from publishing a public registry of all short-term rental accommodations located within that city or town offered for rent by operators who are registered in accordance with *section 67 of chapter 62C*. A city or town may determine what relevant information shall be listed, including where the accommodation is located.

History

2018, 337, § 8, effective March 28, 2019.

Annotations

Notes

Codification

***Acts 2018, 337, § 8*,** effective March 28, 2019, enacted this section.

Editor's Notes

Acts 2018, 337, § 5A (as enacted by *2019, 5 § 37*) provides:

> Sections 6 to 8 [of *2018, 337*] inclusive, shall take effect for transfers of occupancies in bed and breakfast establishments, hotels, lodging houses and motels beginning on or after July 1, 2019.

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ALM GL ch. 64G, § 16

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§ 16. Short-term Rentals Subject to Rent Control Provisions.

For residential units subject to rent control provisions, operators of short-term rentals shall charge not more than the prorated maximum amount allowed.

History

2018, 337, § 8, effective March 28, 2019.

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2017 Mass. HB 4841

Enacted, December 28, 2018

Reporter
2018 Mass. ALS 337; 2018 Mass. Ch. 337; 2017 Mass. HB 4841; 2018 Mass. Acts 337

MASSACHUSETTS ADVANCE LEGISLATIVE SERVICE > MASSACHUSETTS 190TH GENERAL COURT - 2018 REGULAR SESSION > CHAPTER 337 > HOUSE BILL 4841

Synopsis

AN ACT REGULATING AND INSURING SHORT-TERM RENTALS.

Text

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 23A of the General Laws is hereby amended by adding the following section:-

Section 68.

(a) The executive office of housing and economic development, in consultation with the executive office of technology services and security and the department of revenue, shall establish and maintain a registry for all operators under chapter 64G who file an application and are issued a certificate of registration in accordance with section 67 of chapter 62C.

(b) The executive office of housing and economic development shall promulgate regulations, in accordance with section 2 of chapter 30A, that are necessary to: (i) develop and implement a registry that is accessible and available to the public; and (ii) support the competitive operation of the traditional lodging industry, short-term rental industry and hosting platforms to operate competitively in the commonwealth. The regulations shall require that a public hearing be held and that a small business impact statement be filed.

(c) The executive office of housing and economic development shall, in developing regulations to implement the registry, consider: (i) existing practices of peer states; (ii) data security practices, protocols and standards; (iii) technological feasibility of existing digital systems, including the feasibility of developing and maintaining a searchable online directory; (iv) information required to be collected and maintained for operators in the registry, which shall, at a minimum, include a list of accommodations offered for rent by operators who are registered in accordance with section 67 of chapter 62C, provided, however, that the location information for any accommodation offered for rent shall be limited to the name of the street and the city or town where the accommodation is located; (v) any forms or records necessary to implement this section and meet such requirements under this chapter and chapter 64G; (vi)

practices utilized to disclose or report information to cities and towns by request; (vii) impacts on the traditional lodging industry, short-term rental industry and hosting platforms; (viii) the fiscal impact to the commonwealth; and (ix) any relevant federal or state laws and regulations.

The executive office of housing and economic development shall establish procedures and protocols to protect the confidentiality and security of an operator's personal information and tax information and prohibit the disclosure of such personal information and tax information maintained pursuant to this section.

SECTION 2. Chapter 29C of the General Laws is hereby amended by adding the following 2 sections:-

Section 19.

There shall be a separate fund to be known as the Cape Cod and Islands Water Protection Fund. The fund shall be subject to this chapter, except as otherwise provided in this section. There shall be credited to the fund revenue from appropriations or other money authorized by the general court and specifically designated to be credited to the fund including, but not limited to, revenues received under the excise imposed under section 3C of chapter 64G, any investment income earned on the fund's assets and all other sources, each source being tracked separately for accounting purposes as of June 30 of each year.

The trust shall hold the fund in an account separate from other funds of the trust. Proceeds of the fund shall not be used to offset or otherwise replace contract assistance funds or reserve funds used for pool financing. The trust shall apply and disburse amounts credited to the fund, without further appropriation, to provide subsidies and other assistance, which may include principal forgiveness, to local governmental units and other eligible borrowers in the payment of debt service costs on loans and other forms of financial assistance made by the trust for water pollution abatement projects in municipalities that are members of the fund. Each municipality within Barnstable or Nantucket counties or within the county of Dukes County shall be a member of the fund if it is subject to: (i) an area wide wastewater management plan under section 208 of the federal Clean Water Act, 33 U.S.C. 1288; or (ii) a suitable equivalent plan determined by the department of environmental protection. Water pollution abatement projects eligible for subsidies and other assistance under this section may include the utilization of innovative strategies and alternative septic system technologies that result in nutrient reduction for marine and fresh waters.

The fund may provide subsidies and other assistance as provided in this section with respect to debt incurred prior to the establishment of the fund in the towns of Nantucket, Edgartown, Tisbury, Oak Bluffs, Falmouth, Chatham and Provincetown and the city of Barnstable for water pollution abatement projects apart from the trust.

Amounts credited to the fund shall be expended or applied only with the approval of the Cape Cod and Islands Water Protection Fund Management Board established under section 20 and in a manner determined by the board, in addition to any approvals required under this chapter. The board, subject to a memorandum of understanding with the department of environmental protection, may direct the comptroller to transfer a specified amount not to exceed 10 per cent of the annual revenue deposited into the fund to the department for the department to contract with a regional planning agency, institution of higher education or non-profit corporation to

evaluate and report on the efficacy of adaptive management measures to reduce nitrogen pollution of coastal waterways undertaken pursuant to an area wide wastewater management plan or a suitable equivalent plan, to monitor the water quality and watersheds of areas subject to the study and to support further assessment and water quality modeling to further refine area wide wastewater management plans or suitable equivalent plans in Barnstable and Nantucket counties and the county of Dukes County. Any amounts remaining in the fund at the end of a fiscal year shall be carried forward into the following fiscal year and shall remain available for application and disbursement without further appropriation.

A municipality that is a member of the fund under this section may withdraw from the fund by a 2/3 vote of its legislative body; provided, however, that a municipality shall not withdraw from the fund during the term of any financial assistance award from the fund to the municipality. A municipality that has withdrawn from the fund shall not have representation on the Cape Cod and Islands Water Protection Fund Management Board established under section 20. A municipality that has withdrawn from the fund and votes, by majority vote of its legislative body, to return to the fund shall not receive money from the fund until not less than 2 years from the date of its vote to return.

Section 20.

There shall be a Cape Cod and Islands Water Protection Fund Management Board that shall consist of 1 person to be appointed by each board of selectmen or town council in each municipality that is a member of the Cape Cod and Islands Water Protection Fund; provided, however, that an appointee of a board of selectmen or town council shall be a member of the respective appointing authority, a town manager, town administrator or other municipally employed professional staff. The executive director of the Cape Cod commission, the executive director of the Martha's Vineyard commission and the town manager of Nantucket shall serve as non-voting ex-officio members of the board.

Each member of the management board shall serve for a term of 3 years and until a successor is appointed and qualified and each member of the management board shall be eligible for reappointment. Each member of the management board appointed to fill a vacancy on the management board shall be appointed for the unexpired term of the vacant position. The members of the management board shall select a member to serve as chairperson and vice-chairperson for a term established by vote of the management board. The Cape Cod commission, in consultation with the Martha's Vineyard commission, shall provide administrative and technical support to the management board and may be compensated for its associated costs by vote of the management board. The management board's duties shall be limited to determining the method for subsidy allocation, including, but not limited to, an equitable distribution among participating municipalities consistent with revenue deposited from each municipality into the fund, and to ensuring that money from the Cape Cod and Islands Water Protection Fund is spent only for the purposes in section 19.

SECTION 3. Section 1 of chapter 40U of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out, in line 5, the words "regulating the" and inserting in place thereof the following words:- related to the use of property for short-term rental use or regulating a.

SECTION 4. Section 16 of chapter 62C of the General Laws, as so appearing, is hereby further amended by inserting after subsection (g) the following subsection:-

(g ½) Notwithstanding subsection (g), the department of revenue shall promulgate regulations to minimize the administrative burden relative to filing returns under said subsection (g) on operators who offer their accommodations to the public for not less than 1 day in 5 separate months, or fewer, in the taxable year. The regulations may authorize an operator to file a return only for a month that the operator's accommodation is offered to the public.

SECTION 5. Subsection (b) of section 21 of said chapter 62C, as amended by section 3 of chapter 90 of the acts of 2018, is hereby amended by adding the following 2 paragraphs:-

(29) the disclosure of information necessary for administration of the community impact fee imposed pursuant to section 3D of chapter 64G.

(30) the disclosure of information to the executive office of housing and economic development necessary for the establishment and maintenance of a registry pursuant to section 68 of chapter 23A.

SECTION 6. Chapter 64G of the General Laws is hereby amended by striking out sections 1 to 6, inclusive, as appearing in the 2016 Official Edition, and inserting in place thereof the following 11 sections:-

Section 1.

As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

"Bed and breakfast establishment", a private owner-occupied house where not less than 4 rooms are let, a breakfast is included in the rent and all accommodations are reserved in advance.

"Bed and breakfast home"', a private owner-occupied house where not more than 3 rooms are let, a breakfast is included in the rent and all accommodations are reserved in advance.

"Commissioner", the commissioner of revenue.

"Hosting platform", a service through a digital platform, third-party website, software, online-enabled application, mobile phone application or some other, similar electronic process that allows: (i) an operator to advertise, list or offer the use of an accommodation subject to the excise under this chapter in exchange for rent; (ii) an operator to collect the payment of rent on an accommodation; and (iii) a person to arrange, book, reserve or rent an accommodation.

"Hotel", a building used for the feeding and lodging of guests licensed or required to be licensed under section 6 of chapter 140.

"Intermediary", a person or entity, other than an operator, that facilitates the sale, use or possession of an occupancy and charges a room charge to the general public; provided, however, that the term "facilitates" shall include a person or entity that brokers,

coordinates or in any other way arranges for the purchase, sale, use or possession of occupancies by the general public; provided further, that the term “intermediary” shall include a hosting platform and operator’s agent.

“Lodging house”, a house licensed or required to be licensed under section 23 of chapter 140 and where lodgings are rented to not less than 4 people who shall not be within the second degree of kindred to the owner or operator of such lodging house.

“Motel”, a building or portion of a building in which a person is lodged for hire with or without meals and that is licensed or required to be licensed under section 32B of chapter 140; provided, however, that a “motel” shall not include a hotel or lodging house.

“Occupancy”, the use or possession or the right to the use or possession of a room in a bed and breakfast establishment, hotel, lodging house or motel designed and normally used for sleeping and living purposes for a period of not more than 90 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant, guest or licensee, or the use or possession or the right to the use or possession of a room in a short term rental normally used for sleeping and living purposes for a period of not more than 31 consecutive calendar days, regardless of whether such use and possession is as a lessee, tenant, guest or licensee; provided, however, that “occupancy” shall include the right to the use or possession of the furnishings or the services and accommodations, including breakfast in a bed and breakfast establishment, accompanying the use and possession of such a room.

“Occupant”, a person who uses, possesses or has a right to use or possess a room in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel for rent under a lease, concession, permit, right of access, license or agreement.

“Operator”, a person operating a bed and breakfast establishment, hotel, lodging house, short-term rental or motel in the commonwealth including, but not limited to, the owner or proprietor of such premises, the lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such bed and breakfast establishment, hotel, lodging house, short-term rental or motel.

“Operator’s agent”, a person who on behalf of an operator of a bed and breakfast establishment, hotel, motel, short-term rental or lodging house: (i) manages the operation or upkeep of a property offered for rent; or (ii) books reservations at a property offered for rent; provided, however, that an “operator’s agent” shall include, but not be limited to, a property manager, property management company or real estate agent.

“Person”, an individual, partnership, trust or association, with or without transferable shares, joint-stock company, corporation, society, club, organization, institution, estate, receiver, trustee, assignee or referee and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, or any combination of individuals acting as a unit.

“Professionally-managed unit”, 1 of 2 or more short-term rental units that are located in the same city or town, operated by the same operator and are not located within a single-family, two-family or three-family dwelling that includes the operator’s primary residence.

"Rent", the total consideration paid by or on behalf of an occupant, including any service, cleaning or other charge, to an operator or an intermediary collecting and remitting the excise on behalf of an operator under section 13 for occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature.

"Short-term rental", an owner-occupied, tenant-occupied or non-owner occupied property including, but not limited to, an apartment, house, cottage, condominium or a furnished accommodation that is not a hotel, motel, lodging house or bed and breakfast establishment, where: (i) at least 1 room or unit is rented to an occupant or sub-occupant; and (ii) all accommodations are reserved in advance; provided, however, that a private owner-occupied property shall be considered a single unit if leased or rented as such.

Section 2.

This chapter shall not include: (i) lodging accommodations at a federal, state or municipal institution; (ii) lodging accommodations, including dormitories, at religious, charitable, educational and philanthropic institutions; provided, however, that the exemption allowed shall not apply to accommodations provided by any such institution at a hotel or motel generally open to the public and operated by the institution; (iii) privately-owned and operated convalescent homes or homes for the aged, infirm, indigent or chronically ill; (iv) religious or charitable homes for the aged, infirm, indigent or chronically ill; (v) summer camps for children up to 18 years of age or developmentally disabled individuals; provided, however, that a summer camp that offers its facilities off season to individuals 60 years of age or older for a period of not more than 30 days in a calendar year shall not lose its exemption under this section; (vi) bed and breakfast homes; (vii) lodging accommodations provided to seasonal employees by employers; (viii) alcohol and drug free housing that is certified pursuant to section 18A of chapter 17; (ix) tenancies at will or month-to-month leases; and (x) time-shares, as defined in section 2 of chapter 183B.

For the purposes of this section, "developmentally disabled individual" shall mean an individual who has a severe chronic disability that: (i) is attributable to a mental or physical impairment or combination of mental and physical impairments; (ii) is likely to continue indefinitely; (iii) results in substantial functional limitations in not less than 3 of the following areas of major life activity: (A) self-care; (B) receptive and expressive language; (C) learning; (D) mobility; (E) self-direction; (F) capacity for independent living; and (G) economic self-sufficiency; and (iv) reflects the individual's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services that are of lifelong or extended duration and are individually planned and coordinated.

Section 3.

An excise shall be imposed upon the transfer of occupancy of a room or unit in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel by an operator at the rate of 5 per cent of the total amount of rent for each such occupancy. An excise shall not be imposed if the total amount of rent is less than $15 per day or its equivalent.

The operator shall pay the excise to the commissioner at the time provided for filing the return required under section 16 of chapter 62C.

No excises or fees established under this chapter shall be imposed upon the transfer of occupancy of a short-term rental if the operator transfers such short-term rental for not more than 14 days in a calendar year, provided, that the operator has first: (i) registered with the commissioner in accordance with section 67 of chapter 62C; and (ii) filed a declaration with the commissioner, signed by the operator and subject to section 5 of chapter 62C, setting forth the intention to transfer the short-term rental for not more than 14 days in a calendar year. Such a declaration, if applicable, shall be required annually in a manner determined by the commissioner. If the operator transfers the short-term rental for 15 days or more in the same calendar year, or fails to register and file a declaration as required by this section, then the operator shall be liable for the payment of required excises and fees under this chapter, including payment of required taxes and fees on the first 14 days the short-term rental was transferred in the calendar year.

Section 3A.

A city or town that accepts this section may impose a local excise upon the transfer of occupancy of a room in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel located within that city or town by an operator at a rate of not more than 6 per cent of the total amount of rent for each such occupancy; provided, however, that the city of Boston may impose such local excise upon the transfer of occupancy of a room in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel located within the city by an operator at the rate of not more than 6.5 per cent of the total amount of rent of each such occupancy. No excise shall be imposed if the total amount of rent is less than $15 per day or its equivalent or if the accommodation is exempt under section 2. An operator shall pay the local excise imposed under this section to the commissioner at the same time and in the same manner as the excise due to the commonwealth. All sums received by the commissioner under this section as excise, penalties or forfeitures, interest, costs of suit and fines shall at least quarterly be distributed, credited and paid by the state treasurer upon certification of the commissioner to each city or town that has adopted this section in proportion to the amount of such sums received from the transfer of occupancy in each such city or town. Acceptance of this section shall be: (i) by a majority vote of the city council with the approval of the mayor in the case of a city with a mayor elected to serve as the chief executive officer of the city; (ii) by a majority vote of the city council in every other city; (iii) by a majority vote of the annual town meeting or a special meeting called for that purpose in the case of a municipality with a town meeting form of government; or (iv) by a majority vote of the town council in the case of a municipality with a town council form of government. This section shall take effect on the first day of the calendar quarter following 30 days after its acceptance or on the first day of a later calendar quarter as the city or town may designate. The city or town, in accepting this section, shall not revoke or otherwise amend the applicable local tax rate more often than once in a 12-month period.

The commissioner shall make available to a city or town requesting such information the total amount of room occupancy tax collected in the preceding fiscal year in the city or town requesting the information.

Section 3B.

Notwithstanding sections 9 and 10 of chapter 152 of the acts of 1997, the convention center financing fee imposed upon the transfer of occupancy of a short-term rental in the cities of Boston, Cambridge, Springfield, Worcester, West Springfield and Chicopee shall revert half to the General Fund and half to the city in which the short-term rental was transferred.

Section 3C.

In addition to the excise imposed under section 3 and any excise imposed under section 3A, an excise shall be imposed on the transfer of occupancy of a room in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel located within a municipality that is a member of the Cape Cod and Islands Water Protection Fund established under section 19 of chapter 29C at a rate of 2.75 per cent of the total amount of rent for each such occupancy; provided, however, that all revenues received from the excise under this section shall be credited to the Cape Cod and Islands Water Protection Fund. An excise shall not be imposed if the total amount of rent is less than $15 per day or its equivalent. An operator shall pay the excise due to the Cape Cod and Islands Water Protection Fund to the commissioner at the same time and in the same manner as the excise due to the commonwealth.

Section 3D.

(a) A city or town that accepts section 3A may, by a separate vote and in the same manner of acceptance as set forth in section 3A, impose upon an operator a community impact fee of not more than 3 per cent of the total amount of rent for each transfer of occupancy of a professionally managed unit that is located within that city or town.

(b) A city or town that votes to impose a community impact fee under subsection (a) may, by a separate additional vote and in the same manner of acceptance as set forth in section 3A, also impose the community impact fee upon each transfer of occupancy of a short-term rental unit that is located within a two-family or three-family dwelling that includes the operator’s primary residence.

(c) All community impact fees under this section shall be paid monthly by the operator to the municipality. A city or town shall dedicate not less than 35 per cent of the community impact fees collected under this section to affordable housing or local infrastructure projects.

Section 4.

Except as provided in section 13, reimbursement for the excise imposed under this chapter shall be paid by the occupant of any such room to the operator and each operator shall add to the rent and collect from the occupant the full amount of the excise imposed by this chapter or an amount equal as nearly as possible or practical to the average equivalent thereof and such excise shall be a debt from the occupant to the operator when so added to the rent and shall be recoverable at law in the same manner as other debts.

Section 5.

The amount of the excise collected by the operator from the occupant pursuant to this chapter shall be stated and charged separately from the rent and shown separately on any record of the excise at the time the transfer of occupancy is made or on any evidence of such transfer issued or used by the operator.

Section 6.

A person shall not operate a bed and breakfast establishment, hotel, lodging house, short-term rental or motel unless a certificate of registration has been issued to the person in accordance with section 67 of chapter 62C.

Section 6A.

No person subject to this chapter shall engage in an unlawful practice under section 4 of chapter 151B.

SECTION 7. Said chapter 64G is hereby further amended by striking out sections 7A and 7B, as so appearing, and inserting in place thereof the following 2 sections:-

Section 7A.

An operator who has paid to the commissioner an excise pursuant to section 3 upon an account later determined to be worthless shall be entitled to an abatement of the excise paid on the worthless account. A claim for abatement shall be filed not later than April 15 annually and shall cover the amount of the excise on accounts determined to be worthless in the prior calendar year.

An operator who recovers an excise on an account determined to be worthless and for which an application for abatement has been filed shall report and include the same in a monthly return at the time of recovery.

Section 7B.

An operator who fails to pay to the commissioner money required to be paid by this chapter shall be personally and individually liable therefor to the commonwealth. As used in this section, the term “operator” shall include an officer or employee of a corporation or a member or employee of a partnership or a limited liability company who, as such officer, employee or member, is under a duty to pay the excises imposed by this chapter.

An operator who misrepresents to an intermediary that the transfer of occupancy of the operator’s property is exempt from the excise imposed by sections 3, 3A and 3C and the community impact fee imposed by section 3D shall be liable for any unpaid excise under said sections 3, 3A and 3C and the community impact fee imposed by said section 3D and shall be deemed to have committed an unfair trade practice under chapter 93A in making such a misrepresentation to the intermediary.

SECTION 8. Said chapter 64G is hereby further amended by striking out section 12, as so appearing, and inserting in place thereof the following 7 sections:-

Section 12.

No excise shall be imposed under this chapter upon the transfer of occupancy of a room in a hotel, lodging house, short-term rental or motel if the occupant is an employee of the United States military traveling on official United States military orders that encompass the date of such occupancy. Each operator shall maintain such records as the commissioner shall require to substantiate exemptions claimed under this section.

Section 13.

(a) An operator may elect to allow an intermediary to collect rent or facilitate the collection or payment of rent on its behalf through a written agreement on an accommodation subject to the excise under this chapter. An intermediary that enters into a written agreement with the operator to collect rent or facilitate the collection or payment of rent on behalf of the operator of an accommodation subject to the excise under this chapter shall: (i) apply for and obtain a certificate of registration from the commissioner in accordance with section 67 of chapter 62C on behalf of the operator; (ii) assess, collect, report and remit the excise to the commissioner as described for operators in sections 3, 3A, 3B, 3C, 5, 7A, 7B and 12; (iii) assess, collect and remit the community impact fee to the municipality as described for operators in section 3D; (iv) maintain records of any excises collected that have been remitted to the commissioner and shall make these records available to the department upon request; (v) ensure that the operator is registered pursuant to said section 67 of said chapter 62C prior to permitting such operator to list or offer an accommodation for rent through the use of the intermediary; and (vi) notify the operator that the operator must comply with all applicable municipal, state and federal laws including, but not limited to, the collection and remittance of required excises. The certificate of registration obtained from the commissioner pursuant to this subsection shall identify and be in the name of the individual operator, not the intermediary.

(b) An intermediary collecting and remitting the excise on behalf of an operator shall provide notification within a reasonable time to the operator that the excise has been collected and remitted to the commissioner pursuant to section 3. The notification may be delivered in hand or by mail or conveyed by electronic message, mobile or smart phone application or another similar electronic process, digital media or communication portal. An operator shall not be responsible for collecting and remitting the excise on a transaction for which the operator has received notification from an intermediary that the excise has been collected and remitted to the commissioner on their behalf.

(c) The intermediary shall not be liable for faults in collecting or remitting the excise proximately caused by the intermediary’s reasonable reliance on representations made to it by the operator about the nature of the property being rented, the duration of the occupancy or other similar misrepresentations made by the operator to the intermediary. The operator shall be liable for any unpaid excise resulting from any such misrepresentation. An intermediary shall not be liable for any over collection of the excise if the excise collected was remitted to the commissioner and the over collection resulted from the intermediary’s reasonable reliance on the operator’s representations about the nature of the property being rented or the nature of the occupancy or whether such property was exempt from the excise. The operator shall be liable for monetary damages to the occupant resulting from any such misrepresentations.

Section 14.

A city or town, by ordinance or by-law, may regulate operators registered pursuant to section 67 of chapter 62C and impose penalties for the violation of such an ordinance or by-law. A city or town, by ordinance or by-law, may:

(i) regulate the existence or location of operators under this section within the city or town, including regulating the class of operators and number of local licenses or permits issued to operators under this section and the number of days a person may operate and rent out an accommodation in a calendar year;

(ii) require the licensing or registration of operators within the city or town; provided, however, that a city or town may: (A) accept a certificate of registration issued to an operator in accordance with section 67 of chapter 62C in lieu of requiring an operator to obtain a local license or registration under this section; or (B) issue a provisional license or registration to permit an operator to offer accommodations on temporary or seasonal basis;

(iii) require operators to demonstrate that any properties or premises controlled, occupied, operated, managed or used as accommodations subject to the excise under this chapter are not subject to any outstanding building, electrical, plumbing, mechanical, fire, health, housing or zoning code enforcement, including any notices of violation, notices to cure, orders of abatement, cease and desist orders or correction notices;

(iv) require properties or premises controlled, occupied, operated, managed or used by operators as an accommodation subject to the excise under this chapter to undergo health and safety inspections; provided, however, that the cost of any inspection conducted under this section shall be charged to and solely paid by the operator under this section; provided further, that after any initial health and safety inspection, the city or town may determine the frequency of any subsequent inspections;

(v) establish a civil penalty for violation of an ordinance or by-law enacted pursuant to this section; provided, however, that a city or town that suspends or terminates an operator's right to operate an accommodation for a violation of any ordinance or bylaw shall notify the commissioner of revenue of the suspension or termination; and

(vi) establish a reasonable fee to cover the costs associated with the local administration and enforcement of regulating operators and accommodations.

Notwithstanding any ordinance or by-law adopted by a city or town pursuant to this section, an operator of a short-term rental shall post inside the short-term rental unit information regarding the location of any fire extinguishers, gas shut off valves, fire exits and fire alarms in the unit and building.

Nothing in this section shall preclude a city or town from publishing a public registry of all short-term rental accommodations located within that city or town offered for rent by operators who are registered in accordance with section 67 of chapter 62C. A city or town may determine what relevant information shall be listed, including where the accommodation is located.

Section 15.

Nothing in this chapter shall confer a right to lease, sublease or otherwise offer a residential unit as a short-term rental where such use is prohibited by a homeowner's association agreement or requirements, a rental agreement or any other restriction, covenant, requirement or enforceable agreement.

Section 16.

For residential units subject to rent control provisions, operators of short-term rentals shall charge not more than the prorated maximum amount allowed.

Section 17.

The commissioner shall annually publish a report on the economic activity of short-term rentals in the commonwealth rented for occupancy through a hosting platform or intermediary. The commissioner may require a hosting platform, intermediary or operator of a short-term rental to submit to the department of revenue, in a form approved by the commissioner, information necessary to compile the report including, but not limited to: (i) the aggregate rent paid by all occupants during the reporting period: (ii) the total amount of revenue collected from the excise on the transfer of occupancy of the short-term rentals; and (iii) the total amount of revenue collected from the local excise on the transfer of occupancy of the short-term rentals.

The department shall make available any data set used pursuant to this section to a regional planning agency, municipality or other public agency requesting such information; provided, however, that the department shall utilize the practices that are necessary to prevent the public disclosure of personal information regarding operators and occupants. The department shall annually publish local summary statistics on its website. The department shall take all measures necessary to protect the confidentiality and security of an operator's personal tax information from any disclosure pursuant to this section.

Section 18.

The commissioner shall promulgate rules and regulations for assessing, reporting, collecting, remitting and enforcing the room occupancy excise pursuant to this chapter.

SECTION 9. Chapter 175 of the General Laws is hereby amended by inserting after section 4E the following section:-

Section 4F.

(a) As used in this section, the terms "hosting platform", "operator" and "short-term rental" shall have the same meanings as under section 1 of chapter 64G unless the context clearly requires otherwise.

(b) An operator shall maintain liability insurance of not less than $1,000,000 to cover each short-term rental, unless such short-term rental is offered through a hosting platform that maintains equal or greater coverage. Such coverage shall defend and indemnify the operator and any tenants or owners in the building for bodily injury and property damage arising from the short-term rental.

(c) Prior to an operator offering a short-term rental through the use of a hosting platform, the hosting platform shall provide notice to the operator that standard homeowners or renters insurance may not cover property damage or bodily injury to a third-party arising from the short-term rental.

(d) Insurers that write homeowners and renters insurance may exclude any and all coverage afforded under the policy issued to a homeowner or lessee for any claim resulting from the rental of any accommodation under chapter 64G. Insurers that exclude the coverage described in this section shall not have a duty to defend or indemnify any claim expressly excluded by a policy. Nothing under this section shall preclude an insurer from providing coverage for short-term rentals.

(e) Any policy or policy form intended to cover operators of short-term rentals from liabilities, whether the policy or policy form is provided by a hosting platform or an operator itself, shall be filed according to instructions provided by the division of insurance.

(f) An operator who intends to operate a short-term rental shall provide notice to any insurer that writes a homeowners or renters insurance policy for the property where such short-term rental is to be located of the operator's intent to operate such short-term rental.

SECTION 10.

There shall be a commission to study the feasibility and potential for use of lodging units within the hospitality industry, including hotel, motel, bed and breakfast and short-term rentals, as resources to increase the availability of emergency shelter for individuals and families displaced during extreme weather events or other states of emergency declared by the governor. The commission shall study and make recommendations relating to: (i) ways to maintain up-to-date inventories of units available for shelter during emergencies; (ii) networks to alert local officials about the availability of hospitality industry units as emergency shelter; (iii) platforms and protocol for communication and coordination between the hospitality industry and state and local officials during emergencies; and (iv) any other factors deemed relevant by the chair of the commission.

The commission shall consist of: the director of the Massachusetts emergency management agency or a designee, who shall serve as chair; 2 members appointed by the Massachusetts Lodging Association, Inc.; 3 members appointed by the Massachusetts Municipal Association, Inc., 2 of whom shall have experience in local emergency planning and management and 1 of whom shall have experience in municipal licensure processes; and 3 members appointed by the governor, 1 of whom shall be a representative of the department of revenue, 1 of whom shall be a representative of a hosting platform, as defined in section 1 of chapter 64G of the General Laws, and 1 of whom shall be a representative of a non-profit entity with experience in national-level emergency management and relief.

The commission shall report the results of its study, together with drafts of recommended legislation, if any, by filing the report with the clerks of the house of representatives and senate not later than January 1, 2020.

SECTION 11.

The transfer of occupancy of a room in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel in a municipality that becomes a member of the Cape Cod and Islands Water Protection Fund under section 19 of chapter 29C of the General Laws after June 1, 2019 shall be subject to the excise under section 3C of chapter 64G of the General Laws on the first day of a calendar quarter after it has joined the fund, as the municipality may designate.

SECTION 12.

Notwithstanding section 19 of chapter 29C of the General Laws, a municipality included in the Cape Cod and Islands Water Protection Fund shall not withdraw from the fund for 1 year after the effective date of this act.

SECTION 13.

The executive office of housing and economic development shall promulgate regulations necessary to implement a registry pursuant to section 68 of chapter 23A of the General Laws not later than September 30, 2019.

SECTION 14.

Sections 3, 3A, 3C and 3D of chapter 64G of the General Laws shall take effect for transfers of occupancies of short-term rentals that commence on or after July 1, 2019 and for which contracts with occupants were entered into on or after January 1, 2019.

SECTION 14A.

Section 3B of chapter 64G of the General Laws shall take effect for transfers of occupancies on short-term rentals that commence 90 days after the commonwealth has discharged its obligations on the payment of special obligation bonds of the commonwealth issued pursuant to sections 11 and 12 of chapter 152 of the acts of 1997, as amended, as certified by the secretary of administration and finance.

SECTION 15.

A city or town that accepted section 3A of chapter 64G of the General Laws before July 1, 2019 shall be deemed to have accepted said section 3A of said chapter 64G for the purposes of this act.

SECTION 16.

Section 9 shall take effect on July 1, 2019.

History

Approved by the Governor December 28, 2018

Effective date: March 28, 2019

Sponsor

Report of Conference Committee

MASSACHUSETTS ADVANCE LEGISLATIVE SERVICE
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and means and the joint committee on public service.

SECTION 10. The public employee retirement administration commission shall analyze and valuate the costs and the actuarial liabilities attributable to the cost of living benefits payable in accordance with the provisions of section 9 of this act for each retirement system that has adopted a funding schedule pursuant to subdivision (6A) of section 22 of chapter 32 of the General Laws or pursuant to section 22D of said chapter 32. On or before December 31, 1997, the commission shall file a report in writing of its findings with the joint committee on public service and with the board of each such system and with each legislative body as defined in subsection (1) of section 22D of said chapter 32 of each such system.

Approved June 6, 1997.

Chapter 18. AN ACT AUTHORIZING THE CITY OF HOLYOKE TO ISSUE BONDS OR NOTES FOR THE PURPOSE OF ACQUIRING OR DEMOLISHING BLIGHTED BUILDINGS IN THE CITY.

Be it enacted, etc., as follows:

SECTION 1. The city of Holyoke is hereby authorized to issue bonds or notes for the purpose of acquiring or demolishing condemned properties within the city, or both, in order to promote the public health, safety and welfare of residents of said city. Bonds or notes issued pursuant to the authority hereof shall be within the limit of indebtedness prescribed in section ten of chapter forty-four of the General Laws, shall be issued for terms not to exceed twenty years from the date of issue and shall otherwise be subject to the provisions of said chapter forty-four. No property shall be acquired hereunder unless and until the mayor makes a finding that such property constitutes a threat to the health, safety and welfare of the citizens of said Holyoke.

SECTION 2. This act shall take effect upon its passage.

Approved June 6, 1997.

Chapter 19. AN ACT MAKING CERTAIN CORRECTIVE CHANGES IN CERTAIN GENERAL AND SPECIAL LAWS.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is immediately to make certain corrective changes in certain general and special laws, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. Chapter 6 of the General Laws is hereby amended by striking out sections 205 to 208, inclusive, inserted by section 20A of chapter 60 of the acts of 1994, and inserting

in place thereof the following four sections:-

Section 209. There is hereby established a Massachusetts office of volunteerism, in this section and in sections 210 to 213, inclusive, called the office, consisting of an executive director, in this section and in said sections 210 to 213, inclusive, called the director, and an advisory council, as hereinafter described. The director shall be appointed by the governor after consultation with the advisory council, and shall serve at the pleasure of the governor. The director shall, at the time of appointment, have substantial professional experience in the field of volunteer administration, to all aspects of, including but not limited to, human resource management, communications, fund raising, training and education. The position of director shall be classified in accordance with section 45 of chapter 30, and the salary shall be determined in accordance with section 46C of said chapter 30. The director shall, with the advice of the advisory council, have sole charge of the supervision and administration of the office. The director may, subject to appropriation, employ and remove such assistant directors and other employees and consultants as may be deemed necessary to enable the performance of duties. The provisions of chapter 31 and section 9A of chapter 30 shall not apply to the director or to such assistant directors and consultants as may be appointed. In making such appointments, the director shall make every reasonable effort to ensure that volunteers are actively involved and that persons having experience with volunteer efforts are employed.

Section 210. Subject to the approval of the secretary of administration, the director may apply for and accept on behalf of the commonwealth any federal, local or private grants of money or property, whether real or personal, from any source, whether public or private, bequests, gifts or contributions to aid the financing of any of the programs or policies of the office. Such funds shall be received by the state treasurer on behalf of the commonwealth and deposited in a separate account and shall be expended under the direction of the director, with the approval of the secretary of administration.

The office may make agreements with other departments and agencies of the commonwealth and may contract with other individuals, organizations, corporations, associations and other legal entities including private agencies, or any department or agencies of the federal government or the commonwealth or any political subdivisions thereof, to carry out any of the functions and purposes of the office. The director shall establish standards and procedures governing such agreements and contracts subject to the approval of the secretary of administration.

Section 211. The office, in order to plan, initiate, promote and evaluate a statewide program of services on behalf of the volunteer community shall have the following powers and duties:

(a) identify, coordinate and share information on resources on volunteerism and to encourage the participation of all segments of the community in volunteerism;

(b) to provide the volunteer community with technical information and access to the skills and knowledge necessary to make current programs more effective, and to encourage their growth and experimentation with new ideas;

(c) to be an advocate for volunteerism to help build within the commonwealth a positive climate for volunteerism that addresses issues of leadership, recognition, legislation, and change;

(d) to encourage the corporate community of the commonwealth to become an active partner in the support of volunteer services in the commonwealth, in the public and not-for-profit sectors, in the areas of youth development and education, on policy-making boards, and with the encouragement of employees' participation in volunteer efforts;

(e) to serve as a clearinghouse, to facilitate the sharing of ideas, materials and experiences; to recognize and promote successful learning models and service opportunities in a statewide network, identifying projects with the most valuable learning potential and thereby reducing duplication of efforts and costs;

(f) to assist and support public sector volunteer programs;

(g) (1) to prepare and submit to the governor an annual report which shall be a public document which shall include the description and evaluation of activities of the office in implementing the aforementioned duties and functions, (2) to prepare and submit a description, evaluation and analysis of public policies, programs, services and regulations that affect or may affect volunteer efforts and services, (3) prepare and submit recommendations for the development, coordination and improved responsiveness of such policies, programs, services and regulations.

Section 212. In order to fulfill the functions of the office such information as the director may require shall be made available upon request by any department, division, board, bureau, commission, or agency of the commonwealth.

SECTION 2. Said chapter 6 is hereby further amended by striking out section 209, as appearing in the 1994 Official Edition, and inserting in place thereof the following section:-

Section 213. The governor initially shall appoint an advisory council of volunteerism which shall consist of no fewer than 12 and no more than 20 members. Persons shall be eligible for appointment if their positions, knowledge or experience enables them to represent the concerns, needs and recommendations of volunteerism and if they have been recommended by the director. The council shall at all times be persons actively engaged in activities concerning volunteerism. Each member shall serve for a term of four years as governed by council by-laws.

The director initially shall nominate persons whose service will ensure representations of the interests of the volunteer community at large from all areas of the commonwealth. Council membership shall include at least three current volunteer administrators; a minimum of one representative from the corporate sector, a minimum of one representative from community service programming in education, and one volunteer. The director's nominations shall be named from a list provided by consumer groups, health and human services agencies or individuals representing such volunteers.

Once established, the advisory council shall elect a chairperson and establish by-laws which will govern all aspects of its operation. These by-laws shall be subject to the approval of the governor. The advisory council shall meet at least eight times a year, and shall serve

without compensation but shall be reimbursed for expenses necessarily incurred in the performance of their duties.

Said advisory council shall advise the director on policy, planning, and the need of the commonwealth for programs and services encouraging and strengthening the volunteer system in the commonwealth; assist the director in establishing priorities for office activities; and annually review the programs, budgets, and policies of the office.

SECTION 3. Paragraph (b) of section 4A of chapter 7 of the General Laws, as appearing in section 35 of chapter 151 of the acts of 1996, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The human resources division shall be headed by a personnel administrator who shall also serve as assistant secretary for human resources.

SECTION 4. Section 23 of said chapter 7, as appearing in the 1994 Official Edition, is hereby amended by striking out, in line 2, the words "the preceding section, and inserting in place thereof the following words:- section 22.

SECTION 5. Section 50 of said chapter 7, as most recently amended by section 3 of chapter 306 of the acts of 1996, is hereby further amended by striking out the introductory paragraph and inserting in place thereof the following introductory paragraph:-

The public employee retirement administration commission, established under section 4A, shall have general responsibility for the efficient administration of the public employee retirement system, under chapter 32. The public employee retirement administration commission's powers and duties shall include, but not be limited to:.

SECTION 6. Chapter 19A of the General Laws is hereby amended by striking out section 37, added by chapter 306 of the acts of 1993, and inserting in place thereof the following section:-

Section 38. No person trained and designated by the department of elder affairs as a counselor or coordinator in the serving health information needs of elders program, whether acting on a compensated or volunteer basis shall be liable in any civil or criminal action by reason of the good faith performance of his official duties. The department shall make publicly available a description of the function and the responsibilities of such counselor.

SECTION 7. Section 7 of chapter 21 of the General Laws, as amended by section 3 of chapter 453 of the acts of 1996, is hereby further amended by striking out the second sentence and inserting in place thereof the following sentence:- Five board members shall be appointed from one of each of the five fish and game districts, at least one of whom shall have been actively engaged in farming on land owned by him for a period of not less than five years.

SECTION 8. Chapter 29 of the General Laws is hereby amended by striking out section 2GG, inserted by section 1 of chapter 413 of the acts of 1996, and inserting in place thereof the following section:-

Section 2JJ. There shall be established and set up on the books of the commonwealth a separate fund to be known as the Child Care Quality Fund. There shall be credited to said Fund revenues received from the sale of Invest in Children distinctive registration plates issued pursuant to subsection (b) of section 2E of chapter 90. Amounts credited to said fund

shall be available for expenditure by the commissioner of the office for children for providing grants to not for profit child care organizations for the purpose of improving child care services including, but not limited to, teacher training, training and education of consumers and parents, the purchase of educational curricula and materials, specialized training for bilingual and bicultural providers and consumers and technical assistance for acquiring accreditation by the National Association for the Education of Young Children.

SECTION 9. Chapter 32 of the General Laws is hereby further amended by striking out section 100A, as amended by section 4 of chapter 220 of the acts of 1995, and inserting in place thereof the following section:-

Section 100A. (a) Notwithstanding any other provision of this chapter or any other general or special law to the contrary, there shall be paid a killed in the line of duty benefit, to be administered and paid for, subject to appropriation, by the state board of retirement.

(b) The state board of retirement shall adopt regulations to administer said benefit.

(c) The killed in the line of duty benefit shall be a one-time award in the amount of $100,000, payable to the family of a firefighter, public prosecutor, police officer or corrections officer who while in the performance of his duties and as a result of incident, accident or violence, is killed or sustains injuries which are the direct and proximate cause of his death.

(d) The $100,000 killed in the line of duty benefit shall be in addition to amounts payable under section 100 and shall be payable to the family of the deceased public safety employee in a manner determined by the state board of retirement. As used in this section, the word "family" shall mean the surviving spouse of such firefighter, public prosecutor, police officer or corrections officer, or, if there is no surviving spouse, the child or children of such firefighter, public prosecutor, police officer or corrections officer, or, if there is no surviving child, the parent of such firefighter, public prosecutor, police officer or corrections officer. The board, at its discretion, may purchase life insurance for the purpose of paying said benefit.

(e) The presumptions created by section 94, 94A and 94B shall not apply to eligibility for the $100,000 killed in the line of duty benefit.

(f) The $100,000 killed in the line of duty benefit shall not be taxable by the commonwealth.

(g) This section shall apply in the case of the death of a public prosecutor occurring on or after January 1, 1995.

SECTION 10. The General Laws are hereby amended by striking out chapter 40 O, inserted by section 1 of chapter 368 of the acts of 1994, and inserting in place thereof the following chapter:-

CHAPTER 40P.

The Massachusetts Rent Control Prohibition Act.

Section 1. This chapter shall be known as The Massachusetts Rent Control Prohibition Act.

Section 2. The purpose of this chapter is to establish a uniform statewide policy that broadly prohibits any regulatory scheme based upon or implementing rent control, except where, following an initial six month period, compliance with such a scheme is voluntary and uncoerced on the part of property owners. Even when voluntary, rent control should be severely restricted in scope. This policy is based on the belief that the public is best served by free market rental rates for residential properties and by unrestricted home ownership. The terms of this chapter shall be liberally construed to effect this purpose.

Section 3. For purposes of this chapter, the words "rent control" shall mean:

(a) any regulation that in any way requires below-market rents for residential properties; and

(b) any regulation that is part of a regulatory scheme of rent control as defined in clause (a), including the regulation of occupancy, services, evictions, condominium conversion and the removal of properties from such rent control scheme; except that

(c) this definition does not include the regulation of, or agreements affecting, publicly owned housing, publicly subsidized housing, federally assisted housing, or mobile homes.

Section 4. No city or town may enact, maintain or enforce rent control of any kind, except that any city or town that accepts this chapter may adopt rent control regulation that provides:

(a) after six months from the date of the initial adoption of rent control regulation by a particular city or town, compliance on the part of property owners as to the rent control regulation or any subsequently adopted rent control regulation shall be entirely voluntary and uncoerced, and the property of a person or entity declining to have his or its property subjected to such regulation shall be wholly unaffected by any aspect of the rent control regulation or any subsequently adopted rent control regulation;

(b) such regulation may not include the regulation of occupancy, services, evictions, condominium conversion or the removal of properties from such regulation, nor may such regulation apply to any rental unit that is owned by a person or entity owning less than ten rental units or that has a fair market rent exceeding $400; and

(c) a municipality adopting such regulation shall compensate owners of rent controlled units for each unit in the amount of the difference between the unit's fair market rent and the unit's below market, rent controlled rent, with such compensation coming from the municipality's general funds, so that the cost of any rent control shall be borne by all taxpayers of a municipality and not by the owners of regulated units only.

Section 5. Because rent control is a matter of statewide concern, this chapter shall preempt, supersede or nullify any inconsistent, contrary or conflicting state or local law.

SECTION 11. Section 42A of chapter 54 of the General Laws, as amended by section 1 of chapter 389 of the acts of 1996, is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence:- The state secretary and the city or town clerks shall cause each question appearing upon ballots prepared by them to be designated as follows: Questions submitted to the people under Article XLVIII of the Amendments to the Constitution of the Commonwealth shall appear first in order upon the ballot numbered consecutively, and the first such question so appearing shall be designated

by the numeral 1; additional questions shall follow numbered so that all questions appearing upon such ballot shall be numbered consecutively; provided, however, that the fair, concise summary of any measure submitted to the voters under the provisions of said Article XLVIII shall be accompanied on the ballot by the one sentence statement describing the effect of a yes or no vote, prepared as required in section 53.

SECTION 12. Section 7A of chapter 89 of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by striking out, in line 34, the word "lines" and inserting in place thereof the following word:- lanes.

SECTION 13. Section 2D of chapter 111 of the General Laws, as so appearing, is hereby amended by striking out the definition of "Sero-positive" and inserting in place thereof the following definition:-

"Seropositive", the status of having tested positive for HIV antibodies.

SECTION 14. Section 4K of said chapter 111, as so appearing, is hereby amended by striking out, in lines 14 and 15, the words "such provider's compliance with state and federal standards.".

SECTION 15. Section 5J of said chapter 111, as so appearing, is hereby amended by striking out, in line 6, the word "answers" and inserting in place thereof the following word:- answer.

SECTION 16. Section 25C of said chapter 111 is hereby amended by striking out, in line 33, as so appearing, the word "of" and inserting in place thereof the following word:- or.

SECTION 17. Section 25D of said chapter 111, as so appearing, is hereby amended by striking out, in line 15, the first time it appears, the word "of" and inserting in place thereof the following word:- or.

SECTION 18. Section 27B of said chapter 111, as so appearing, is hereby amended by striking out, in line 87, the words "vice chairman" and inserting in place thereof the following word:- vice-chairman.

SECTION 19. Section 31C of said chapter 111, as so appearing, is hereby amended by striking out, in line 38, the word "of fence" and inserting in place thereof the following word:- offense.

SECTION 20. Section 150A of said chapter 111, as so appearing, is hereby amended by striking out, in line 86, the first time it appears, the word "the".

SECTION 21. Section 150A½ of said chapter 111, as so appearing, is hereby amended by striking out, in line 33, the word "a".

SECTION 22. Section 170 of said chapter 111, as so appearing, is hereby amended by striking out, in line 1, the word "wilfully" and inserting in place thereof the following word:- willfully.

SECTION 23. Section 189A of said chapter 111, as so appearing, is hereby amended by striking out, in line 20, the word "title," and inserting in place thereof the following word:- title;.

SECTION 24. Section 192A of said chapter 111, as so appearing, is hereby amended by striking out, in line 1, the word ", approve" and inserting in place thereof the following word:- approve.

SECTION 25. Section 197 of said chapter 111, as so appearing, is hereby amended by striking out, in line 5, the word "subsections" and inserting in place thereof the following word:- subsection.

SECTION 26. Section 197B of said chapter 111, as so appearing, is hereby amended by striking out, in line 44, the word "a" and inserting in place thereof the following word:- an.

SECTION 27. Section 197C of said chapter 111, as so appearing, is hereby amended by striking out, in line 19, the word "a" and inserting in place thereof the following word:- an.

SECTION 28. Said section 197C of said chapter 111, as so appearing, is hereby further amended by inserting after the word "blood", in line 21, the following word:- lead.

SECTION 29. Section 198 of said chapter 111, as so appearing, is hereby amended by striking out, in line 12, the word "is" and inserting in place thereof the following word:- be.

SECTION 30. Section 8 of chapter 111D of the General Laws, as so appearing, is hereby amended by striking out, in line 64, the word "provided." and inserting in place thereof the following word:- provided;.

SECTION 31. Section 18 of chapter 111E of the General Laws, as so appearing, is hereby amended by striking out, in line 14, the word "the" and inserting in place thereof the following word:- and.

SECTION 32. Section 3 of chapter 111F of the General Laws, as so appearing, is hereby amended by inserting after the word "that", in line 22, the following word:- a.

SECTION 33. Section 11 of chapter 111H of the General Laws, as so appearing, is hereby amended by striking out, in line 2, the word "twelve" and inserting in place thereof the following word:- twelve,.

SECTION 34. Said section 11 of said chapter 111H, as so appearing, is hereby further amended by striking out, in line 19, the word "section" and inserting in place thereof the following word:- sections.

SECTION 35. Section 5F of chapter 112 of the General Laws, as so appearing, is hereby amended by striking out, in line 18, the word "its" and inserting in place thereof the following word:- it.

SECTION 36. Section 12R of said chapter 112, as so appearing, is hereby amended by striking out, in line 15, the words "section Within" and inserting in place thereof the following words:- section. Within.

SECTION 37. Section 23E of said chapter 112 is hereby amended by striking out, in line 1, as so appearing, the word "prevention" and inserting in place thereof the following word:- preventing.

SECTION 38. Said section 23E of said chapter 112, as so appearing, is hereby further amended by striking out, in line 3, the word "Commonwealth" and inserting in place thereof the following word:- commonwealth.

SECTION 39. Section 24B of said chapter 112, as so appearing, is hereby amended by striking out, in line 12, the word "nonresidents" and inserting in place thereof the following word:- non-residents.

SECTION 40. Section 43A of said chapter 112, as so appearing, is hereby amended by striking out the definition of "Dental hygienists" and inserting in place thereof the following definition:-

"Dental hygienist", a person registered and licensed by the board, pursuant to the provisions of section 51.

SECTION 41. Section 53 of said chapter 112, as so appearing, is hereby amended by striking out, in line 12, the words "or her".

SECTION 42. Section 60N of said chapter 112, as so appearing, is hereby amended by inserting after the word "provisions", in line 2, the following words:- of sections.

SECTION 43. Section 81J of said chapter 112, as so appearing, is hereby amended by inserting after the word "of", in line 141, the following word:- a.

SECTION 44. Section 81P of said chapter 112, as so appearing, is hereby amended by striking out, in line 28, the word "subpoenas" and inserting in place thereof the following word:- subpoena.

SECTION 45. Section 87C½ of said chapter 112, as so appearing, is hereby amended by striking out, in line 68, the word "eighty-seven D" and inserting in place thereof the following word:- 87D½.

SECTION 46. Section 87D of said chapter 112, as so appearing, is hereby amended by inserting after the word "eighty-seven B½", in line 57, the following word:- shall.

SECTION 47. Section 87DD of said chapter 112, as so appearing, is hereby amended by inserting after the word "is", in line 11, the following word:- in.

SECTION 48. Section 87EE of said chapter 112, as so appearing, is hereby amended by striking out, in line 12, the word "at".

SECTION 49. Section 87QQ of said chapter 112, as so appearing, is hereby amended by striking out, in line 27, the word "such: a" and inserting in place thereof the following word:- such; a.

SECTION 50. Section 87GGG of said chapter 112, as so appearing, is hereby amended by inserting after the word "fee", in line 4, the following word:- as.

SECTION 51. Section 45 of chapter 114 of the General Laws, as so appearing, is hereby amended by striking out, in line 16, the first time it appears, the word "a".

SECTION 52. Section 28 of chapter 119 of the General Laws is hereby amended by striking out subsection (b), as amended by section 55 of chapter 5 of the acts of 1995, and inserting in place thereof the following subsection:-

(b) Actions under this section to establish support of a child may be commenced by a parent, whether a minor or not; by the child; by the child's guardian, next of kin, or other person standing in a parental relation to the child; by the authorized agent of the department of social services or any agency licensed under chapter 28A, provided that the child is in their custody; or if the child is or was a recipient of any type of public assistance, by the de-

partment of transitional assistance. In the event that someone other than the department of transitional assistance commences the action, if the parent or child is or was a recipient of any type of public assistance, the court shall notify said department of the pendency of the action and the department shall be permitted to intervene in the action.

SECTION 53. Section 2 of chapter 119A of the General Laws is hereby amended by striking out, in line 21, as appearing in the 1994 Official Edition, the words "public welfare" and inserting in place thereof the following words:- transitional assistance.

SECTION 54. Section 4 of said chapter 119A is hereby amended by striking out, in line 12, as so appearing, the words "public welfare" and inserting in place thereof the following words:- transitional assistance.

SECTION 55. Section 5 of said chapter 119A is hereby amended by striking out, in line 31, as so appearing, the words "public welfare" and inserting in place thereof the following words:- transitional assistance.

SECTION 56. Section 34B of chapter 121B of the General Laws, as so appearing, is hereby amended by striking out, in line 61, the first time it appears, the word "of" and inserting in place thereof the following word:- or.

SECTION 57. Section 2 of chapter 123A of the General Laws, as so appearing, is hereby amended by striking out, in line 4, the words "and judicated" and inserting place thereof the following word:- adjudicated.

SECTION 58. The fifth paragraph of section 2 of chapter 128C of the General Laws, as amended by section 4 of chapter 268 of the acts of 1995, is hereby further amended by striking out the fourth sentence and inserting in place thereof the following sentence:- With respect to horse racing, the greyhound racing meeting licensee located in Bristol county may simulcast with the permission of the commission every live running horse racing card of the running horse racing meeting licensee located in Suffolk county.

SECTION 59. Section 21 of chapter 131 of the General Laws, as amended by section 2 of said chapter 453 of the acts of 1996, is hereby further amended by striking out the first sentence and inserting in place thereof the following sentence:- Except as provided in sections 21A, 70, 81 and 82, nothing in this chapter shall be construed to prohibit the training of hunting dogs, so-called, or conducting or engaging in a field trial with such dogs; provided, however, that except during other open seasons promulgated by the director, no firearms may be carried by any person so training or conducting or engaging in such field trials.

SECTION 60. Said chapter 131 is hereby further amended by striking out section 21A, inserted by section 2 of chapter 453 of the acts of 1996, and inserting in place thereof the following section:-

Section 21A. It shall be unlawful to pursue or hunt bear or bobcat with the aid of a dog.

It shall be unlawful to hunt bear by the aid of baiting or knowingly to hunt bear in a baited area. "Baiting" means the placing, exposing, depositing, distributing, or scattering of any substance so as to constitute for bears a lure or attraction to areas where hunters are attempting to take them.

The prohibition on the use of a dog or baiting may be waived by the director upon written application (1) for the control of individual animals specifically identified as posing a threat to human safety or individual animals that have destroyed livestock, property or crops, and (2) for legitimate scientific research projects that are conducted in a humane manner.

Whoever violates the provisions of this section, or any rule or regulation made under the authority thereof, shall be punished by a fine of not less than $300 nor more than $1,000, or by imprisonment for not more than six months, or by both such fine and imprisonment for each violation. A person found guilty of, or convicted of, or assessed in any manner after a plea of nolo contendere, or penalized for, a second violation of this section shall surrender to an officer authorized to enforce this chapter all hunting and dog training licenses and permits issued to him and shall be barred forever from obtaining any such licenses and permits.

SECTION 61. Said chapter 131 is hereby further amended by striking out section 80A, as amended by section 1 of chapter 453 of the acts of 1996, and inserting in place thereof the following section:-

Section 80A. Notwithstanding any other provision of this chapter, a person shall not use, set, place, maintain, manufacture or possess any trap for the purpose of capturing furbearing mammals, except for common type mouse and rat traps, nets, and box or cage type traps, as otherwise permitted by law. A box or cage type trap is one that confines the whole animal without grasping any part of the animal, including Hancock or Bailey's type live trap for beavers. Other than nets and common type mouse or rat traps, traps designed to capture and hold a furbearing mammal by gripping the mammal's body, or body part are prohibited, including steel jaw leghold traps, padded leghold traps, and snares.

The above provision shall not apply to the use of prohibited devices by federal and state departments of health for the purpose of protection from threats to human health and safety.

A person or his duly authorized agent may apply to the director for a special permit to use otherwise prohibited traps on property owned by such person. Issuance of such special permits shall be governed by rules and regulations adopted by the director pursuant to chapter 30A. Such rules and regulations shall include, but not be limited to, provisions relative to the following:

The applicant shall apply to the director in writing and shall state that there exists on the property an animal problem which cannot be reasonably abated by the use of traps other than those prohibited by this section, and that the applicant has attempted to abate the problem using traps permitted under this section. If the director determines that the applicant has complied with sections 37 and 80, if required to do so, and any other laws regarding trapping, and that such an animal problem exists which cannot reasonably be abated by the use of alternative, nonlethal management techniques or traps other than those prohibited by this section, the director may authorize the use, setting, placing or maintenance of such traps, not including leghold traps, for a period not exceeding 30 days during which time the applicant shall remain in compliance with the procedures for obtaining a special permit as set forth in regulations adopted pursuant to this section.

Whoever violates any provisions of this section, or any rule or regulation made under the authority thereof, shall be punished by a fine of not less than $300 nor more than $1,000, or by imprisonment for not more than six months, or by both such fine and imprisonment for each trap possessed, used, set, placed, maintained, or manufactured. Each day of violation shall constitute a separate offense. A person found guilty of, or convicted of, or assessed in any manner after a plea of nolo contendere, or penalized for, a second violation of this section shall surrender to an officer authorized to enforce this chapter any trapping license and problem animal control permit issued to such person and shall be barred forever from obtaining a trapping license and a problem animal control permit.

SECTION 62. Section 19B of chapter 138 of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by striking out, in line 127, the word "follow" and inserting in place thereof the following word:- follows.

SECTION 63. Section 21A of chapter 147 of the General Laws, as so appearing, is hereby amended by striking out, in line 10, the word ", who" and inserting in place thereof the following word:- who.

SECTION 64. Section 8 of chapter 149 of the General Laws, as so appearing, is hereby amended by striking out, in line 5, the word "shall".

SECTION 65. Section 20C of said chapter 149, as so appearing, is hereby amended by striking out, in line 37, the word "of", the first time it appears, and inserting in place thereof the following word:- or.

SECTION 66. Said section 20C of said chapter 149, as so appearing, is hereby further amended by striking out, in line 38, the word "of", the second time it appears, and inserting in place thereof the following word:- or.

SECTION 67. Section 29A of said chapter 149, as so appearing, is hereby amended by inserting after the word "bond", in line 8, the following word:- in.

SECTION 68. Section 34B of said chapter 149, as so appearing, is hereby amended by striking out, in line 3, the word "of" and inserting in place thereof the following word:- or.

SECTION 69. Section 44A of chapter 149 of the General Laws, as so appearing, is hereby amended by striking out, in line 143, the words "and hundred" and inserting in place thereof the following words:- hundred and.

SECTION 70. Section 44E of said chapter 149 is hereby amended by striking out, in line 8, as so appearing, the first time it appears, the word "or" and inserting in place thereof the following word:- of.

SECTION 71. Section 44F of said chapter 149 is hereby amended by striking out, in line 6, as so appearing, the word "dollars;" and inserting in place thereof the following word:- dollars:.

SECTION 72. Section 44J of said chapter 149 is hereby amended by striking out, in line 20, as so appearing, the word "specification" and inserting in place thereof the following word:- specifications.

SECTION 73. Section 50A of said chapter 149, as so appearing, is hereby amended by inserting after the word "or", in line 8, the following words:- the term "watchman" as used.

SECTION 74. Section 54 of said chapter 149 is hereby amended by striking out, in line 7, as so appearing, the word "or" and inserting in place thereof the following word:- of.

SECTION 75. Section 56 of said chapter 149 is hereby amended by striking out, in line 52, as so appearing, the word "that".

SECTION 76. Section 60 of said chapter 149 is hereby amended by striking out, in lines 32 and 35, as so appearing, the word "meridiem" and inserting in place thereof, in each instance, the following word:- meridian.

SECTION 77. Section 72 of said chapter 149, as so appearing, is hereby amended by striking out, in line 2, the word "the".

SECTION 78. Section 76 of said chapter 149, as so appearing, is hereby amended by striking out, in line 6, the word "inclusive" and inserting in place thereof the following word:- , inclusive.

SECTION 79. Section 79 of said chapter 149, as so appearing, is hereby amended by striking out, in line 9, the word ", this" and inserting in place thereof the following word:- this.

SECTION 80. Section 87 of said chapter 149, as so appearing, is hereby amended by striking out, in line 29, the word "own".

SECTION 81. Said section 87 of said chapter 149, as so appearing, is hereby further amended by striking out, in line 52, the words "one of the aforesaid proofs of age is objectionable" and inserting in place thereof the following words:- none of the aforesaid proofs of age are obtainable.

SECTION 82. Section 90 of said chapter 149, as so appearing, is hereby amended by striking out, in line 13, the first time it appears, the word "of" and inserting in place thereof the following word:- or.

SECTION 83. Section 132 of said chapter 149, as so appearing, is hereby amended by striking out, in line 2, the word "used" and inserting in place thereof the following word:- use.

SECTION 84. Section 142F of said chapter 149, as so appearing, is hereby amended by inserting after the word "hundred", in line 2, the first time it appears, the following word:- and.

SECTION 85. Section 145 of said chapter 149, as so appearing, is hereby amended by striking out, in line 13, the words "home workers" and inserting in place thereof the following word:- homeworkers.

SECTION 86. Section 162 of said chapter 149, as so appearing, is hereby amended by striking out, in line 5, the word "purpose" and inserting in place thereof the following word:- purposes.

SECTION 87. Section 184 of said chapter 149, as so appearing, is hereby further amended by striking out, in line 40, the word "section" and inserting in place thereof the following word:- sections.

SECTION 88. Said section 184 of said chapter 149, as so appearing, is hereby further amended by striking out, in line 68, the word "the", the first time it appears, and inserting in place thereof the following word:- The.

SECTION 89. Said section 184 of said chapter 149, as so appearing, is hereby further amended by striking out, in line 73, the word "transaction" and inserting in place thereof the following word:- transactions.

SECTION 90. Section 185 of said chapter 149 is hereby amended by striking out, in line 102, as so appearing, the second time it appears, the word "person" and inserting in place thereof the following word:- persons.

SECTION 91. Section 3 of chapter 150 of the General Laws, as so appearing, is hereby amended by striking out, in line 18, the word ", may" and inserting in place thereof the following word:- may.

SECTION 92. Section 1 of chapter 150A of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by striking out, in line 46, the word ", and" and inserting in place thereof the following word:- ; and.

SECTION 93. Section 16 of chapter 150C of the General Laws, as so appearing, is hereby amended by striking out, in line 1, the word "(a) An" and inserting in place thereof the following word:- An.

SECTION 94. Section 3 of chapter 150E of the General Laws, as so appearing, is hereby amended by striking out, in line 16, the second time it appears, the word "of" and inserting in place thereof the following word:- or.

SECTION 95. Section 17 of chapter 151 of the General Laws, as amended by section 447 of chapter 151 of the acts of 1996, is hereby further amended by striking out the words "other than place of employment" and inserting in place thereof the following words:- other than places of employment.

SECTION 96. Section 8 of chapter 151A of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by striking out, in line 17, the word "or," and inserting in place thereof the following word:- or.

SECTION 97. Said section 8 of said chapter 151A, as so appearing, is hereby further amended by striking out, in line 40, the word "chapter." and inserting in place thereof the following word:- chapter; or.

SECTION 98. Section 14A of said chapter 151A is hereby amended by striking out, in line 64, as so appearing, the word "paragraphs" and inserting in place thereof the following word:- paragraph.

SECTION 99. Section 29D of said chapter 151A is hereby amended by striking out, in line 164, as so appearing, the word "director" and inserting in place thereof the following word:- commissioner.

SECTION 100. Section 41 of said chapter 151A, as so appearing, is hereby amended by striking out, in line 3, the word "act" and inserting in place thereof the following word:- fact.

SECTION 101. Section 58 of said chapter 151A, as so appearing, is hereby amended by striking out, in line 21, the word "directory" and inserting in place thereof the following word:- director.

SECTION 102. Said section 58 of said chapter 151A, as so appearing, is hereby further amended by striking out, in line 57, the word "section" and inserting in place thereof the following word:- sections.

SECTION 103. Section 66 of said chapter 151A, as so appearing, is hereby amended by striking out, in line 39, the word "therefore" and inserting in place thereof the following word:- therefor.

SECTION 104. Section 71C of said chapter 151A, as so appearing, is hereby amended by striking out, in line 12, the word "sections" and inserting in place thereof the following word:- section.

SECTION 105. Section 4 of chapter 151B of the General Laws, as so appearing, is hereby amended by striking out, in line 392, the word "renting" and inserting in place thereof the following word:- rental.

SECTION 106. Said section 4 of said chapter 151B, as so appearing, is hereby further amended by striking out, in line 396, the word "rent" and inserting in place thereof the following word:- rental.

SECTION 107. Section 3 of chapter 151D of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by striking out, in line 13, the word "for", the first time it appears, and inserting in place thereof the following word:- or.

SECTION 108. Said section 3 of said chapter 151D, as so appearing, is hereby further amended by striking out, in line 110, the second time it appears, the word "of" and inserting in place thereof the following word:- or.

SECTION 109. Section 13 of said chapter 151D, as so appearing, is hereby amended by striking out, in line 27, the word "then" and inserting in place thereof the following word:- the.

SECTION 110. Chapter 156C of the General Laws is hereby amended by striking out section 66, as appearing in section 18 of chapter 281 of the acts of 1995, and inserting in place thereof the following section:-

Section 66. Any recordable instrument purporting to affect an interest in real property, including without limitation, any deed, lease, notice of lease, mortgage, discharge or release of mortgage, assignment of mortgage, easement and certificate of fact, executed in the name of a limited liability company by any person who is identified on the certificate of organization, as amended, of a domestic limited liability company, or on the application for registration, as amended, of a foreign limited liability company, as a manager or as a person authorized to execute, acknowledge, deliver and record recordable instruments affecting interests in real property, shall be binding on the limited liability company in favor of a seller, purchaser, grantor, grantee, lessor, lessee, mortgagor, mortgagee, and any other person relying in good faith on such instrument, notwithstanding any inconsistent provisions of the operating agreement, side agreements among the members or managers, by-laws or rules, resolutions or votes of the limited liability company.

SECTION 111. Section 5 of chapter 168 of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by striking out, in line 33, the word "government" and inserting in place thereof the following word:- governing.

SECTION 112. Section 39 of said chapter 168, as so appearing, is hereby amended by striking out, in line 30, the word "shall".

SECTION 113. Section 11A of chapter 175 of the General Laws, as so appearing, is hereby amended by striking out, in line 1, the word ", shall" and inserting in place thereof the following word:- shall.

SECTION 114. Section 5C of chapter 175A of the General Laws, as so appearing, is hereby amended by striking out, in line 565, the word "person" and inserting in place thereof the following word:- reports.

SECTION 115. The definition of "Health plan" in section 1 of chapter 176M of the General Laws, as amended by section 9 of chapter 467 of the acts of 1996, is hereby further amended by striking out the second sentence and inserting in place thereof the following sentence:- The words "health plan" shall not include accident only, credit or dental insurance, hospital indemnity insurance policies which for the purposes of this chapter shall mean policies issued pursuant to chapter 175 which provide a benefit not to exceed $250 per day, as adjusted on an annual basis by the amount of increase in the average weekly wage in the commonwealth as defined in chapter 152, to be paid to an insured or a dependent, including the spouse of an insured, on the basis of a hospitalization of the insured or a dependent, or disability income insurance, coverage issued as a supplement to liability insurance, insurance arising out of a worker's compensation law or similar law, automobile medical payment insurance, insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in a liability insurance policy or equivalent self insurance, long term care only insurance, or any policy subject to the provisions of chapter 176K.

SECTION 116. Section 13 of chapter 211D of the General Laws, as appearing in the 1994 Official Edition, is hereby amended by striking out, in line 20, the word "counsel" and inserting in place thereof the following word:- defender.

SECTION 117. Section 26 of chapter 218 of the General Laws, as so appearing, is hereby amended by striking out, in line 42, the word "section" and inserting in place thereof the following word:- , section.

SECTION 118. Section 108 of chapter 231 of the General Laws, as so appearing, is hereby amended by striking out, in line 26, the word "know" and inserting in place thereof the following word:- known.

SECTION 119. Section 5A of chapter 252 of the General Laws, as so appearing, is hereby amended by striking out, in line 15, the words "mosquito and greenhead fly control fund" and inserting in place thereof the following words:- Mosquito and Greenhead Fly Control Fund.

SECTION 120. Section 23A of chapter 276 of the General Laws, as so appearing, is hereby amended by striking out, in line 36, the word "prosection" and inserting in place thereof the following word:- prosecution.

SECTION 121. Section 6A of chapter 279 of the General Laws, as so appearing, is hereby amended by striking out, in lines 10 and 12, the word "meridiem" and inserting in place thereof, in each instance, the word:- meridian.

SECTION 122. Section 71 of said chapter 279, as so appearing, is hereby amended by striking out, in line 12, the word "outweight" and inserting in place thereof the following word:- outweigh.

SECTION 123. Section 34 of chapter 438 of the acts of 1896, as amended by section 33 of chapter 189 of the acts of 1992, is hereby further amended by adding the following paragraph:-

There shall be a conservation commission consisting of seven members, who shall be residents of the city of Holyoke, appointed by the mayor subject to confirmation by the city council. The members shall be appointed for three year terms commencing on the first Tuesday in February. Any vacancy shall be filled for the unexpired term in the same manner as an original appointment. A member may be removed for cause in the manner provided by section 8C of chapter 40 of the General Laws.

SECTION 124. Section 192 of chapter 151 of the acts of 1996 is hereby repealed.

SECTION 125. Section 247 of chapter 151 of the acts of 1996 is hereby repealed.

SECTION 126. Chapter 494 of the acts of 1996 is hereby repealed.

SECTION 127. Sections 7, 59, 60 and 61 shall take effect as of December 5, 1996. Section 10 shall take effect as of January 1, 1995.

Approved June 6, 1997.

Chapter 20. AN ACT RELATIVE TO THE ISSUE OF CERTAIN BONDS AND BOND ANTICIPATION NOTES BY THE CITY OF NORTH ADAMS.

Be it enacted, etc., as follows:

SECTION 1. Notwithstanding the provisions of section 17 of chapter 44 of the General Laws or any other general or special law to the contrary, the city of North Adams may issue notes in an aggregate principal amount not to exceed $9,679,570 to refund an equal amount of bond anticipation notes of the city currently outstanding and payable on July 1, 1997; provided, however, that at the time of the issue of any notes hereunder the mayor and city treasurer certify that the city is taking all reasonable action necessary to obtain federal or state aid for the water treatment facility project financed with the proceeds of such bond anticipation notes and in their opinion the potential receipt of any such federal or state aid by the city would be jeopardized by the issue of bonds to pay such bond anticipation notes. Any bonds issued by the city to refund the currently outstanding bond anticipation notes or any notes issued pursuant to this act may be issued in the full amount of such notes, and shall have their maturities arranged so that the annual combined payments of principal and interest payable in each year shall be as nearly equal as practicable in the opinion of the mayor and city treasurer or in accordance with a schedule providing for a more rapid amortization of principal. Except as otherwise provided in this act, indebtedness incurred by the city for the water treatment facility project shall be subject to the applicable provisions of said chapter 44.

Chapter 366. AN ACT PROVIDING FOR ADDITIONAL LIFE INSURANCE BENEFITS.

Be it enacted, etc., as follows:

Section 11A of chapter 32B of the General Laws, as appearing in the 1992 Official Edition, is hereby amended by striking out, in lines 54 and 59, the word "seventy", each time it appears, and inserting in place thereof, in each instance, the following word:- seventy-five.

Approved January 13, 1995.

Chapter 367. AN ACT RELATIVE TO POST-RETIREMENT EMPLOYMENT FOR PUBLIC RETIREES.

Be it enacted, etc., as follows:

SECTION 1. Section 91 of chapter 32 of the General Laws, as appearing in the 1992 Official Edition, is hereby amended by striking out, in lines 88 and 89, the words "one hundred and twenty days, or".

SECTION 2. Said section 91 of said chapter 32, as so appearing, is hereby further amended by striking out, in lines 99 and 100, the words "days exceeds one hundred and twenty or if the number of".

Approved January 13, 1995.

Chapter 368. AN ACT TO PROHIBIT RENT CONTROL IN MASSACHUSETTS, EXCEPT WHERE VOLUNTARY, FOLLOWING AN INITIAL 6-MONTH PERIOD.

Be it enacted by the People, and by their authority, as follows:

SECTION ONE. The General Laws are hereby amended by inserting after chapter 40N the following chapter 40 O:

Chapter 40 O

The Massachusetts Rent Control Prohibition Act

Section 1. *Title.* This chapter shall be known as "The Massachusetts Rent Control Prohibition Act."

Section 2. *Purpose.* The purpose of this chapter is to establish a uniform statewide policy that broadly prohibits any regulatory scheme based upon or implementing rent control, except where, following an initial 6-month period, compliance with such a scheme is voluntary and uncoerced on the part of property owners. Even when voluntary, rent control should be severely restricted in scope. This policy is based on the belief that the public is best served by free-market rental rates for residential properties and by unrestricted

home ownership. The terms of this chapter shall be liberally construed to effect this purpose.

Section 3. *Definition of Rent Control.* For the purposes of this chapter, the term "rent control" shall mean:

(a) any regulation that in any way requires below-market rents for residential properties; and

(b) any regulation that is part of a regulatory scheme of rent control as defined in subsection (a), including the regulation of occupancy, services, evictions, condominium conversion and the removal of properties from such a rent control scheme; except that

(c) this definition does not include the regulation of, or agreements affecting, publicly owned housing, publicly subsidized housing, federally assisted housing, or mobile homes.

Section 4. *General Prohibition; Exception.* No city or town may enact, maintain or enforce rent control of any kind, except that any city or town that accepts this chapter may adopt rent control regulation that provides:

(a) after six (6) months from the date of the initial adoption of rent control regulation by a particular city or town, compliance on the part of property owners as to the rent control regulation or any subsequently adopted rent control regulation shall be entirely voluntary and uncoerced, and the property of a person or entity declining to have his or its property subjected to such regulation shall be wholly unaffected by any aspect of the rent control regulation or any subsequently adopted rent control regulation;

(b) such regulation may not include the regulation of occupancy, services, evictions, condominium conversion or the removal of properties from such regulation, nor may such regulation apply to any rental unit that is owned by a person or entity owning less than ten rental units or that has a fair market rent exceeding $400; and

(c) a municipality adopting such regulation shall compensate owners of rent-controlled units for each unit in the amount of the difference between the unit's fair-market rent and the unit's below-market, rent-controlled rent, with such compensation coming from the municipality's general funds, so that the cost of any rent control shall be borne by all taxpayers of a municipality and not by the owners of regulated units only.

Section 5. *Preemption.* Because rent control is a matter of statewide concern, this chapter shall preempt, supersede or nullify any inconsistent, contrary or conflicting state or local law.

Section 6. *Severability.* The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, the remainder of this chapter shall continue to be valid and in effect.

SECTION TWO. *Effective Date.* This act shall become effective on January 1, 1995.

This law was approved by the people at the November 8, 1994 election under the provisions of Article XLVIII of the Amendments to the Constitution.

2. Each dwelling unit in a multiple dwelling, whether connected to the district water main directly or indirectly, and whether in one or more buildings, shall be assessed as one unit. For the purpose of this section, multiple family dwellings shall be deemed to include, but not be limited to, more than single family buildings, apartment houses, complexes, town houses, condominiums, motels, hotels, or otherwise.

OTHER USES:

1. For use other than residential, there shall be an assessment of a minimum of one unit, and an additional one unit for every ten thousand square feet of floor space, or major portion thereof, exceeding an initial ten thousand feet.

2. When a water service has previously been connected, and been in use for more than one year, a fee of one-half unit per additional dwelling unit for every ten thousand square feet or major portion thereof shall be assessed.

3. The fee under this act shall be assessed by the water commissioners, based on plans submitted for which a building permit has been issued. All charges under this act shall be paid before any water is turned-on.

4. In addition to the fees prescribed by this act, the owner shall pay the rates established from time to time for water usage and shall also pay for all service work, materials, inspection or other charges that may be incurred during the installation of the water main or service to the building or buildings serviced.

5. The money collected under the permanent water system development fee shall be held by the treasurer of the district in a separate account which shall be used to defray the cost of additional water supply, storage and pressure facilities that may be needed to supply sufficient water and adequate pressure to meet the added demands for water by the cumulative effect of new units being supplied by the water district.

Approved December 24, 1975.

Chap. 851. AN ACT EXTENDING THE OPERATION OF THE LAW ENABLING CITIES AND TOWNS TO CONTROL RENTS AND EVICTIONS.

Whereas, The deferred operation of this act would tend to defeat its purpose which is, in part, to alleviate the severe shortage of rental housing in certain areas of the commonwealth, which shortage has caused a serious emergency detrimental to the public peace, health, safety and convenience, therefore this act is hereby declared to be an emergency law, necessary for the immediate preservation of the public peace, health, safety and convenience.

Be it enacted, etc., as follows:

SECTION 1. Chapter 842 of the acts of 1970 is hereby amended by striking out section 13, as amended by chapter 360 of the acts of 1974, and inserting in place thereof the following section:—

Section 13. Termination. This act and all powers delegated herein shall terminate on April first, nineteen hundred and seventy-six; provided that the provisions of this act shall be treated as still remaining in force for the purpose of sustaining any proper suit, action or prosecution with respect to any right, liability or offense arising under the provisions of this act.

SECTION 2. This act shall take effect upon its passage.

Approved December 31, 1975.

Chap. 852. AN ACT PROVIDING FOR IMPROVING RACING RECEIPTS IN THE COMMONWEALTH.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to regulate the tax on running horse, harness horse and dog racing meetings, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted, etc., as follows:

SECTION 1. During the nineteen hundred and seventy-six, nineteen hundred and seventy-seven, nineteen hundred and seventy-eight and nineteen hundred and seventy-nine calendar years, each licensee conducting a running horse racing meeting, except at a state or county fair under the provisions of section five of chapter one hundred and twenty-eight A of the General Laws shall return to the winning patrons in the manner provided by said section all sums deposited as wagers at said meeting, less the breaks, as defined in said section, and less an amount not to exceed nineteen per cent of the total amount so deposited.

Every licensee shall cause to be posted in conspicuous places available to the public in all areas where wagers are made the following notice:

"All patrons are advised that from each dollar waged no more than $.81 shall be awarded in prizes."

SECTION 2. In order that the effect of this act, the intent of which is to provide funds to improve the quality of running horse racing meetings in the commonwealth and thereby to increase the activities at such racing meetings and the revenue therefrom, can be determined at the earliest possible date, each person licensed to conduct such racing meetings and required to pay over to the state racing commission the sums required under the provisions of section five of chapter one hundred and twenty-

ing liquor, opium or other drugs, cruel and abusive treatment or, on the libel of the wife, if the husband, being of sufficient ability, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her; provided, however, that a divorce shall be decreed although both parties have cause, and no defense upon recrimination shall be entertained by the court.

SECTION 2. Said chapter 208 is hereby further amended by striking out section 22, as amended by chapter 433 of the acts of 1962, and inserting in place thereof the following section:—

Section 22. In order to prove a libel for divorce on the grounds of desertion, the libellant shall establish that the libellee left voluntarily and without justification and with intent not to return, that at the time such libellee left the libellant did not consent thereto, and that the libellee failed to cohabit with the libellant for at least one year next prior to the date of filing of the libel. A libel for divorce for desertion shall not be defeated by a temporary return or other act of the libellee if the court finds that such return or other act was not made or done in good faith, but with intent to defeat such libel. The prior filing of a libel for divorce or a petition for separate support shall not be deemed to raise a conclusive presumption to defeat a libel for divorce for desertion.

SECTION 3. Sections one and two of this act shall take effect as to libels for divorce filed on or after July first, nineteen hundred and seventy-four.

Approved June 13, 1974.

Chap. 359. AN ACT PROVIDING PENALTIES FOR VIOLATIONS OF THE CONTROLLED SUBSTANCES ACT RELATIVE TO RESEARCH AND STUDY PROJECTS INVOLVING CERTAIN DRUGS.

Be it enacted, etc., as follows:

Section 8 of chapter 94C of the General Laws is hereby amended by adding after paragraph (*h*), added by section 11 of chapter 806 of the acts of 1972, the following paragraph:—

(*i*) Whoever knowingly or intentionally violates any provision of this section shall be punished for each offense by imprisonment in a jail or house of correction for not more than one year or by a fine of not more than one thousand dollars, or both.

Approved June 13, 1974.

Chap. 360. AN ACT EXTENDING THE OPERATION OF THE LAW ENABLING CITIES AND TOWNS TO CONTROL RENTS AND EVICTIONS.

Be it enacted, etc., as follows:

Section 13 of chapter 842 of the acts of 1970 is hereby amended by

striking out, in line 2, the words "April the first" and inserting in place thereof the words:— December the thirty-first.

Approved June 13, 1974.

Chap. 361. AN ACT RELATIVE TO THE PROMULGATION OF CERTAIN REGULATIONS UNDER THE LAW PROVIDING FOR THE ESTABLISHMENT OF CERTAIN STATE ADMINISTRATIVE PROCEDURES.

Be it enacted, etc., as follows:

SECTION 1. Paragraph (5) of section 1 of chapter 30A of the General Laws, as most recently amended by section 2 of chapter 712 of the acts of 1970, is hereby further amended by striking out clause (*c*).

SECTION 2. Paragraph (3) of section 3 of said chapter 30A is hereby amended by striking out the first paragraph, as appearing in section 1 of chapter 681 of the acts of 1954, and inserting in place thereof the following paragraph:—

If the agency reasonably finds that the immediate adoption or amendment of a regulation is necessary for the preservation of the public health, safety or general welfare, and that observance of the requirements of notice and affording interested persons an opportunity to present data, views, or arguments would be contrary to the public interest, the agency may dispense with such requirements and adopt the regulation or amendment as an emergency regulation or amendment. The agency's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation or amendment as filed with the state secretary under section thirty-seven of chapter thirty. An emergency regulation or amendment shall not remain in effect for longer than three months unless during that time the agency gives notice and affords interested persons an opportunity to present data, views, or arguments as required in this section, and files notice of compliance with the state secretary.

SECTION 3. Said chapter 30A is hereby further amended by striking out section 7, as amended by section 1 of chapter 1114 of the acts of 1973, and inserting in place thereof the following section:—

Section 7. Unless an exclusive mode of review is provided by law, judicial review of any regulation or of the sufficiency of the reasons for its adoption as an emergency regulation may be had through an action for declaratory relief in the manner and to the extent provided under chapter two hundred and thirty-one A.

Approved June 14, 1974.

Chap. 362. AN ACT ALLOWING THE SAVINGS BANK INVESTMENT FUND TO ESTABLISH SEPARATE INVESTMENT FUNDS.

Be it enacted, etc., as follows:

SECTION 1. Section 1 of chapter 283 of the acts of 1945 is hereby

Chap. 841. AN ACT RELATIVE TO THE ENFORCEMENT OF AIR POLLUTION CONTROL REGULATIONS.

Be it enacted, etc., as follows:

SECTION 1. The second paragraph of section 31C of chapter 111 of the General Laws, as appearing in section 4 of chapter 672 of the acts of 1954, is hereby amended by striking out, in line 3, the words "and shall enforce".

SECTION 2. The fourth paragraph of said section 31C of said chapter 111, added by chapter 483 of the acts of 1963, is hereby amended by striking out, in lines 2 and 3, the words "by a fine of not less than fifty dollars nor more than one hundred dollars" and inserting in place thereof the words:—, for the first offence, by a fine of not less than fifty dollars nor more than one hundred dollars and for a subsequent offence, by a fine of not less than two hundred dollars nor more than five hundred dollars.

SECTION 3. Said section 31C of said chapter 111 is hereby further amended by adding the following paragraph:—

Rules and regulations promulgated or adopted under the provisions of this section shall be enforced by said board of health or other legal authority either of which may delegate the power to enforce specific regulations to other agencies or departments of the same city or town. The superior court shall have jurisdiction in equity to enforce such rules and regulations and may restrain by injunction any violation thereof. *Approved August 28, 1970.*

Chap. 842. AN ACT ENABLING CERTAIN CITIES AND TOWNS TO CONTROL RENTS AND EVICTIONS.

Whereas, The deferred operation of this act would tend to defeat its purpose which is, in part, to alleviate the severe shortage of rental housing in certain areas of the commonwealth, which shortage has caused a serious emergency detrimental to the public peace, health, safety and convenience, therefore this act is hereby declared to be an emergency law, necessary for the immediate preservation of the public peace, health, safety and convenience.

Be it enacted, etc., as follows:

SECTION 1. *Declaration of Emergency.* The general court finds and declares that a serious public emergency exists with respect to the housing of a substantial number of the citizens in certain areas of the commonwealth but especially in the cities of the commonwealth regardless of population and towns with a population of fifty thousand or over, which emergency has been created by housing demolition, deterioration of a substantial portion of the existing housing stock, insufficient new housing construction, increased costs of construction and finance, inflation and the effects of the Vietnam war, and which has resulted in a substantial and increasing shortage of rental housing accommodations for families of low and moderate income and abnormally high rents; that unless residential rents and eviction of tenants are regulated and controlled, such emergency and the further inflationary pressures resulting therefrom will produce serious threats to

the public health, safety and general welfare of the citizens of the aforementioned communities and in other communities adjacent to them; that such emergency should be met by the commonwealth immediately and with due regard for the rights and responsibilities of its local communities.

SECTION 2. This act shall take effect in any city and in any town with a population of fifty thousand or over, on the thirtieth day following acceptance of its provisions. A city or town which has accepted this act may, in like manner, revoke its acceptance.

SECTION 3. *Definitions.* The following words or phrases as used in this act shall have the following meanings:

(a) "Rental units", any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, including houses, apartments, rooming or boardinghouse units, and other properties used for living or dwelling purposes, together with all services connected with the use or occupancy of such property.

(b) "Controlled rental units", all rental units except:

(1) rental units in hotels, motels, inns, tourist homes and rooming or boarding houses which are rented primarily to transient guests for a period of less than fourteen consecutive days;

(2) rental units the construction of which was completed on or after January one, nineteen hundred and sixty-nine, or which are housing units created by conversion from a nonhousing to a housing use on or after said date;

(3) rental units which a governmental unit, agency, or authority either:

(i) owns or operates; or

(ii) regulates the rents, other than units regulated (a) under the provisions of this act, or (b) under the provisions of chapter seven hundred and ninety-seven of the acts of nineteen hundred and sixty-nine and any act in amendment thereof or in addition thereto, or (c) under the provisions of any other general or special law authorizing municipal control of rental levels for all or certain rental units within a municipality; or

(iii) finances or subsidizes, if the imposition or rent control would result in the cancellation or withdrawal, by law, of such financing or subsidy;

(4) rental units in cooperatives;

(5) rental units in any hospital, convent, monastery, asylum, public institution or college or school dormitory operated exclusively for charitable or educational purposes; or nursing home or rest home or charitable home for the aged, not organized or operated for profit;

(6) the rental unit or units in an owner-occupied two-family or three-family house;

(7) that a municipality accepting the provisions of this act may exempt those rental units for which the rent charges exceeds limits specified by said municipality; provided that in no event shall more than twenty-five per cent of the total rental units in said municipality be exempted under this subsection.

(c) "Rent", the consideration, including any bonus, benefits, or gratuity demanded or received for or in connection with the use or

occupancy of rental units or the transfer of a lease of such rental units.

(d) "Services", repairs, replacement, maintenance, painting, providing light, heat, hot and cold water, elevator service, window shades and screens, storage, kitchen, bath and laundry facilities and privileges, janitor services, refuse removal, furnishings, and any other benefit, privilege or facility connected with the use or occupancy of any rental unit. Services to a rental unit shall include a proportionate part of services provided to common facilities of the building in which the rental unit is contained.

SECTION 4. *State Assistance and Review.* (a) The department of community affairs shall establish a bureau of rental housing to assist municipalities which accept this act to carry out local rent control in a manner to best effectuate the provisions of the act and with due regard for the rights and responsibilities of the accepting municipality.

(b) The bureau of rental housing shall carry out studies and analyses, collect and publish data and information and render other assistance to municipalities which have accepted the provisions of this act or which propose to do so.

(c) Said bureau may advise a municipality which has accepted the provisions of this act that the local execution of rent control does not conform to the intent of this act.

SECTION 5. *Local Rent Board or Administration.* (a) At the time of acceptance of this act the city or town shall also determine in like manner whether the act will be administered by a rent control board or by a rent control administrator. Upon acceptance of this act and prior to its effective date, the mayor of a city, or the city manager in a city having a manager form of government, or the board of selectmen in a town shall appoint rent control administrator or a rent control board to serve at the pleasure of the appointing authority.

(b) Members of rent boards shall receive no compensation for their services, but shall be reimbursed by their city or town for necessary expenses incurred in the performance of their duties.

(c) Either the rent control board, hereinafter called the board, or the rent control administrator, hereinafter called the administrator, as the case may be, shall be responsible for carrying out the provisions of this act, and shall hire, with the approval of the appointing official or officials, such personnel as are needed, shall promulgate such policies, rules and regulations as will further the provisions of this act, and shall recommend to the city or town for adoption such ordinances and by-laws as may be necessary to carry out the purposes of this act.

(d) The board or the administrator may make such studies and investigations, conduct such hearings, and obtain such information as is deemed necessary in promulgating any regulation, rule or order under this act, or in administering and enforcing this act and regulations and orders promulgated hereunder. For the foregoing purposes, a person may be summoned to attend and testify and to produce books and papers in like manner as he may be summoned to attend as a witness before a court. Any person who rents or offers for rent or acts as broker or agent for the rental of any controlled rental unit may be required to furnish under oath any information required by

the board or administrator, and to produce records and other documents and make reports. Such persons shall have the right to be represented by counsel, and a transcript shall be taken of all testimony and such person shall have the right to examine said transcript at reasonable times and places. Section ten of chapter two hundred and thirty-three of the General Laws shall apply, and for the purposes of this act a justice of the district court shall have the same power as a justice of the supreme judicial or superior court to implement the provisions of said section.

(e) The board or the administrator shall have the power to issue orders and promulgate regulations to effectuate the purposes of this act.

SECTION 6. *Maximum Rent.* (a) The maximum rent of a controlled rental unit shall be the rent charged the occupant for the month six months prior to the acceptance of this act by a municipality; provided that the rent board or the administrator of any municipality, wherein the rents are subject to regulation by any general or special law, may establish as a maximum rent the maximum rent, if any, established for rental units within such municipality by such general or special law. If the rental unit was unoccupied at that time but was occupied at any time prior to acceptance of this act, the maximum rent shall be the rent charged therefor for the month closest to six months prior to the effective date of the act. If the maximum rent is not otherwise established, it shall be established by the board or the administrator. Any maximum rent may be subsequently adjusted under the provisions of section seven.

(b) The board or the administrator shall require registration of all controlled rental units on forms authorized or to be provided by said board or administrator.

SECTION 7. *Maximum Rent Adjustment.* (a) The board or the administrator shall make such individual or general adjustments, either upward or downward, of the maximum rent established by section six for any controlled rental unit or any class of controlled rental units as may be necessary to assure that rents for controlled rental units are established at levels which yield to landlords a fair net operating income for such units. For the purposes of this section, the word "class" shall include all the controlled rental units within a municipality or any categories of such rental units based on size, age, construction, rent, geographic area or other common characteristics, providing the board or the administrator has by regulation defined any such categories.

(b) The following factors, among other relevant factors, which the board or the administrator by regulation may define, shall be considered in determining whether a controlled rental unit yields a fair net operating income:

(1) increases or decreases in property taxes;

(2) unavoidable increases or any decreases in operating and maintenance expenses;

(3) capital improvement of the housing unit as distinguished from ordinary repair, replacement and maintenance;

(4) increases or decreases in living space, services, furniture, furnishings or equipment;

(5) substantial deterioration of the housing units other than as a result of ordinary wear and tear; and

(6) failure to perform ordinary repair, replacement and maintenance.

(c) For the purpose of adjusting rents under the provisions of this section, the board or the administrator may promulgate a schedule of standard rental increases or decreases for improvement or deterioration in specific services and facilities.

(d) The board or the administrator may refuse to grant a rent increase under this section, if it determines that the affected rental unit does not comply with the state sanitary code and any applicable municipal codes, ordinances or by-laws, and if it determines that such lack of compliance is due to the failure of the landlord to provide normal and adequate repair and maintenance. The board or the administrator may refuse to grant a rent decrease under this section, if it determines that a tenant is more than sixty days in arrears in payment of rent unless such arrearage is due to a withholding of rent under the provisions of section eight A of chapter two hundred and thirty-nine of the General Laws.

(e) The board or the administrator may remove maximum rental levels, established under this section and section six, for any class of controlled rental units if in its judgment the need for continuing such maximum rental levels no longer exists because of sufficient construction of new rental units the rental levels for which are comparable to the rental levels of the class of controlled rental units for which maximum rental levels are to be discontinued or because the demand for rental units has been otherwise met. Any maximum rental level removed under this paragraph shall be reimposed or adjusted and reimposed upon a finding by the rent board or administrator that a substantial shortage of rental units exists in such city or town and that the reimposition of rent control is necessary in the public interest. Any action under this paragraph shall be subject to the hearing and notice requirements of paragraph (b) of section eight.

SECTION 8. *Rent Adjustment Hearings.* (a) The board or the administrator shall consider an adjustment of rent for an individual controlled rental unit upon receipt of a petition for adjustment filed by the landlord or tenant of such unit or upon its own initiative. The board or the administrator shall notify the landlord, if the petition was filed by the tenant, or the tenant, if the petition was filed by the landlord, of the receipt of such petition and of the right of either party to request a hearing. If a hearing is requested by either party, or if the action is undertaken on the initiative of the board or the administrator the hearing shall be conducted before the administrator or at least one member of the board prior to the decision by the board or the administrator to grant or refuse a rental adjustment. Notice of the time and place of the hearing shall be furnished to the landlord and tenant. The board or the administrator may consolidate petitions relating to controlled rental units in the same building, and all such petitions may be considered in a single hearing.

(b) On its own initiative, the board or the administrator may make a general adjustment, by percentage, of the rental levels for any class of controlled rental units within a municipality. Prior to making such adjustment, a public hearing shall be held before the administrator or

before at least a majority of the board. Notice that an adjustment is under consideration, a description of the class of rental units which would be affected by the adjustment, and the time and place of said public hearing shall be published three times in at least one newspaper having a general circulation within the city or town.

(c) Notwithstanding any other provision of this section, the board or the administrator may, without holding a hearing, refuse to adjust a rent level for an individual rental unit if a hearing has been held with regard to the rental level of such unit within twelve months.

(d) Hearings required by paragraph (a) shall be conducted in accordance with the provisions of section eleven of chapter thirty A of the General Laws except that requirements (7) and (8) of said section eleven shall not apply to such hearings.

SECTION 9. *Evictions.* (a) No person shall bring any action to recover possession of a controlled rental unit unless:

(1) the tenant has failed to pay the rent to which the landlord is entitled;

(2) the tenant has violated an obligation or covenant of his tenancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation after having received written notice thereof from the landlord;

(3) the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the controlled rental unit, or is creating a substantial interference with the comfort, safety, or enjoyment of the landlord or other occupants of the same or any adjacent accommodation;

(4) the tenant is convicted of using or permitting a controlled rental unit to be used for any illegal purpose;

(5) the tenant, who had a written lease or rental agreement which terminated on or after this act has taken effect in a city or town, has refused, after written request or demand by the landlord, to execute a written extension or renewal thereof for a further term of like duration and in such terms that are not inconsistent with or violative of any provisions of this act;

(6) the tenant has refused the landlord reasonable access to the unit for the purpose of making necessary repairs or improvements required by the laws of the United States, the commonwealth, or any political subdivision thereof, or for the purpose of inspection as permitted or required by the lease or by law, or for the purpose of showing the rental unit to any prospective purchaser or mortgagee;

(7) the person holding at the end of a lease term is a subtenant not approved by the landlord;

(8) the landlord seeks to recover possession in good faith for use and occupancy of himself, or his children, parents, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law;

(9) the landlord seeks to recover possession to demolish or otherwise remove the unit from housing use; and

(10) the landlord seeks to recover possession for any other just cause, provided that his purpose is not in conflict with the provisions and purposes of this act.

(b) A landlord seeking to recover possession of a controlled rental unit shall apply to the board or the administrator for a certificate of eviction. Upon receipt of such an application, the board or the admin-

istrator shall send a copy of the application to the tenant of the controlled rental unit together with a notification of all rights and procedures available under this section. If the board or the administrator finds that the facts attested to in the landlord's petition are valid and in compliance with paragraph (a), the certificate of eviction shall be issued.

(c) A landlord who seeks to recover possession of a controlled rental unit without obtaining such certificate of eviction shall be deemed to have violated this act, and the board or the administrator may initiate a criminal prosecution for such violation.

(d) Notwithstanding the provisions of this section the United States, the commonwealth, or any agency or political subdivision thereof, may maintain an action or proceeding to recover possession of any rental unit operated by it if such action or proceeding is authorized by the statute or regulation under which such units are administered.

(e) The provisions of this section shall be construed as additional restrictions on the right to recover possession of a controlled rental unit. No provision of this section shall entitle any person to recover possession of such a unit.

SECTION 10. *Judicial Review.* (a) Any person who is aggrieved by any action, regulation or order of the board or the administrator may file a complaint against the board or the administrator in a district court within the territorial jurisdiction of which is located the controlled rental unit affected by such action, regulation or order, and thereupon an order of notice shall be issued by such court and served on the board or the administrator. Such district court shall have exclusive original jurisdiction over such proceedings and shall be authorized to take such action with respect thereto as is provided in the case of the superior court under the provisions of chapter two hundred and thirty-one A of the General Laws, except that section three of said chapter two hundred and thirty-one A shall not apply. All orders, judgments and decrees of such district court may be appealed as is provided in the case of a civil action in such district court.

(b) The district court within the territorial jurisdiction of which is located the controlled rental unit affected shall have exclusive original jurisdiction over actions arising out of the provisions of section eleven.

SECTION 11. *Civil Remedies.* (a) Any person who demands, accepts, receives or retains any payment of rent in excess of the maximum lawful rent, in violation of the provisions of this act or any regulation or order hereunder promulgated, shall be liable as hereinafter provided to the person from whom such payment is demanded, accepted, received or retained, or to the municipality for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of one hundred dollars, or not more than three times the amount by which the payment or payments demanded, accepted, received or retained exceed the maximum rent which could be lawfully demanded, accepted, received or retained, whichever is the greater; provided that if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation, the amount of such liquidated damages shall be the amount of the overcharge or overcharges.

(b) If the person from whom such payment is demanded, accepted, received or retained in violation of the provisions of this act or any rule or regulation hereunder promulgated fails to bring an action under this section within thirty days from the date of the occurrence of the violation, the board or the administrator may either settle the claim arising out of the violation or bring such action. Settlement by the board or the administrator shall thereafter bar any other person from bringing action for the violation or violations with regard to which a settlement has been reached. If the board or the administrator settles said claim, it shall be entitled to retain the costs it incurred in the settlement thereof, and the person against whom the violation was committed shall be entitled to the remainder. If the board or the administrator brings action under the provisions of this section, it shall be entitled to receive attorneys fees and costs under the provisions of paragraph (a) and the person against whom the violation was committed shall be awarded liquidated damages under said paragraph (a).

(c) A judgment for damages or on the merits in any action under this section shall be a bar to any recovery under this section in any other action against the same defendant on account of any violation with respect to the same person prior to the institution of the action in which such judgment was rendered. Action to recover liquidated damages under the provisions of this section shall not be brought later than one year after the date of the violation. A single action for damages under the provisions of this section may include all violations of the provisions of this section committed by the same defendant against the same person.

SECTION 12. *Criminal Penalties.* (a) It shall be unlawful for any person to demand, accept, receive or retain any rent for the use of occupancy of any controlled rental unit in excess of the maximum rent prescribed therefor under the provisions of this act or any order or regulation hereunder promulgated, or otherwise to do or omit to do any action in violation of the provisions of this act or any order or regulation hereunder promulgated.

(b) It shall be unlawful for any person to demand, accept, receive or retain any payment which exceeds the maximum lawful rent for one month as a finder's fee or service charge for the opportunity to examine or lease any controlled rental unit, and no finder's fee or service charge shall be lawful unless the person from whom the payment is demanded, accepted, received or retained actually rents or leases the controlled rental unit with regard to which payment of said fee of said charge has been demanded, accepted, received or retained.

(c) Whoever willfully violates any provision of this act or any rule or regulation hereunder promulgated, or whoever knowingly makes any false statement in any testimony before the rent board or administrator or whoever knowingly supplies the rent board or administrator with any false information shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than ninety days or both; provided, however, that in the case of a second or subsequent offense, such person shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than one year, or both.

SECTION 13. *Termination.* This act and all powers delegated herein shall terminate on April the first, nineteen hundred and seventy-five; provided that the provisions of this act shall be treated as still remaining in force for the purpose of sustaining any proper suit, action or prosecution with respect to any right, liability or offense arising under the provisions of this act.

SECTION 14. *Severability.* If any provisions of this act or the application of such provision to any person or circumstance shall be held invalid, the validity of the remainder of this act and the applicability of such provision to other persons or circumstances shall not be affected thereby. *Approved August 31, 1970.*

Chap. 843. AN ACT TO PROVIDE FOR THE ESTABLISHMENT AND ADMINISTRATION OF RENT REGULATION AND THE CONTROL OF EVICTIONS IN HOUSING ACCOMMODATIONS IN THE TOWN OF BROOKLINE.

Be it enacted, etc., as follows:

SECTION 1. *Declaration of Emergency.* The general court finds and declares that a serious public emergency exists in the town of Brookline with respect to the housing of a substantial number of the citizens of said town, which emergency has been created by housing demolition, an expanding student population, a substantial elderly population, deterioration of a substantial portion of the existing housing stock, insufficient new housing construction, increased costs of construction and finance, inflation and the effects of the Vietnam conflict, and which has resulted in a substantial and increasing shortage of rental housing accommodations and in abnormally high rents; that unless residential rents and eviction of tenants are regulated and controlled, such emergency and the further inflationary pressures resulting therefrom will produce serious threats to the public health, safety and general welfare of the citizens of Brookline, particularly families of low and moderate income and elderly on fixed income; that such emergency should be met by the commonwealth immediately and with due regard for the rights and responsibilities of Brookline.

SECTION 2. *General Powers.* The town of Brookline may, by by-law, regulate rents for the use or occupancy of housing accommodations in the town, establish a rent board for the purpose of regulating rents, minimum standards for use or occupancy of housing accommodations in the town and evictions of tenants from such housing accommodations and may, by by-law, require registration by owners of housing accommodations under penalty of perjury of information relating to the housing accommodations. Such rents, standards and evictions may be regulated by the rent board so as to remove hardships or correct inequities for both the owner and tenants of such housing accommodations. The rent board shall have all powers necessary or convenient to perform its functions. It may make rules and regulations, require registration by owners of housing accommodations under penalty of perjury of information relating to the housing accommodations, sue and be sued, compel the attendance of persons and the production of papers and information, and issue appropriate orders which shall be binding on both the owner and tenants of such housing accommodations. Viola-

ACTS

AND

RESOLVES

PASSED BY THE

General Court of Massachusetts

IN THE YEAR

1953

TOGETHER WITH

TABLES SHOWING CHANGES IN THE STATUTES, ETC.

PUBLISHED BY

EDWARD J. CRONIN

Secretary of the Commonwealth



BOSTON
WRIGHT & POTTER PRINTING COMPANY
1953

ACTS AND RESOLVES

OF

MASSACHUSETTS

1953

☞ The General Court, which was chosen November 4, 1952, assembled on Wednesday, the seventh day of January, 1953, for its first annual session.

The oaths of office were taken and subscribed by His Excellency CHRISTIAN A. HERTER and His Honor SUMNER G. WHITTIER on Thursday, the eighth day of January, in the presence of the two Houses assembled in convention.

ing sentence: — The proceeds of bonds of the authority issued under this paragraph shall be used by it only for the purposes hereinbefore set forth and pending such use may be invested in obligations of the United States government, maturing, in the case of each purchase of such obligations by the authority, in not more than one year from the date of such purchase.

SECTION 2. The second paragraph of section 22 of said chapter 544 is hereby amended by striking out the last sentence and inserting in place thereof the following sentence: — The proceeds of said bonds or notes of the authority shall be used by it only for the purposes hereinbefore set forth and pending such use may be invested in obligations of the United States government, maturing, in the case of each purchase of such obligations by the authority, in not more than one year from the date of such purchase.

SECTION 3. Section 6 of chapter 649 of the acts of 1949 is hereby amended by striking out the fifteenth sentence and inserting in place thereof the following sentence: — The proceeds of bonds of the authority issued under this section shall be used by it only for the purposes hereinbefore set forth and pending such use may be invested in obligations of the United States government, maturing, in the case of each purchase of such obligations by the authority, in not more than one year from the date of such purchase.

SECTION 4. This act shall take effect upon its passage.

Approved June 2, 1953.

Chap. 434 AN ACT RELATIVE TO RENT CONTROL.

Emergency preamble.

Whereas, The deferred operation of this act would tend to defeat its purpose which is, in part, to alleviate the severe shortage of rental housing in certain areas of the commonwealth which shortage has caused a serious emergency detrimental to the public peace, health, safety and convenience, therefore this act is hereby declared to be an emergency law, necessary for the immediate preservation of the public peace, health, welfare, safety and convenience.

Be it enacted, etc., as follows:

Declaration of emergency.

SECTION 1. The general court finds and declares that a serious public emergency exists with respect to the housing of a substantial number of the citizens in certain areas of this commonwealth, which emergency has been created by war, the effects of war and the national emergency which presently confronts our nation, and which has resulted in a substantial shortage of rental housing accommodations; that unless residential rents and eviction of tenants are regulated and controlled, such emergency and the inflationary pressures resulting therefrom will produce serious threats to the public health, safety and general welfare of the citizens of this commonwealth; that such emergency should be met

by the commonwealth immediately and with due regard for the rights and responsibilities of its local communities.

SECTION 2. The following words or groups of words as used in this act shall have the following meanings: Definitions.

(*a*) "Housing accommodations", any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, including houses, apartments, rooming or boarding-house accommodations, and other properties used for living or dwelling purposes, together with all privileges, services, furnishings, furniture and facilities connected with the use or occupancy of such property.

(*b*) "Controlled housing accommodations", all housing accommodations except:

(1) Those housing accommodations, in any establishment which on the effective date of this act is commonly known as a hotel in the community in which it is located, which are occupied by persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; or

(2) Any motor court, or any part thereof; any trailer, or trailer space, used exclusively for transient occupancy on the effective date of this act, or any part thereof; or any tourist home serving, on said date, transient guests exclusively, or any part thereof; or

(3) Any housing accommodations (*i*) the construction of which was completed on or after February first, nineteen hundred and forty-seven, or which are housing accommodations created by a change from a non-housing to a housing use on or after February first, nineteen hundred and forty-seven, or which are additional housing accommodations created by conversion on or after February first, nineteen hundred and forty-seven; provided, however, that any housing accommodations resulting from any conversion created on or after April first, nineteen hundred and forty-nine, shall continue to be controlled housing accommodations unless the city or town rent board issues an order decontrolling them, which it shall issue if it finds that the conversion resulted in additional, self-contained family units as defined by regulations issued by it; or (*ii*) the construction of which was completed on or after February first, nineteen hundred and forty-five, and prior to February first, nineteen hundred and forty-seven, and which between the date of completion and June thirtieth, nineteen hundred and forty-seven, both dates inclusive, at no time were rented, other than to members of the immediate family of the landlord, as housing accommodations; or (*iii*) which on the effective date of this act are vacant or later become vacant, except as otherwise provided in section five (*b*); or (*iv*) which on the effective date of this act had a rental at the gross monthly rate of more than one hundred and fifty dollars; or

(4) Non-housekeeping, furnished housing accommodations; or

(5) Any housing accommodation which was not controlled under any provision of any federal rent control law or regulation in effect immediately preceding the effective date of this act; or

(6) On or after July thirty-first, nineteen hundred and fifty-three, all housing accommodations in every city and town in the commonwealth except the housing accommodations in those cities and towns which accept the provisions of this act in accordance with section twelve.

SECTION 3. (*a*) The governor, with the advice and consent of the council, may appoint at any time after the passage of this act a temporary state housing rent co-ordinator who shall serve at the pleasure of and directly under the governor. Said co-ordinator may be a person employed by the commonwealth in another capacity and, if so, may receive additional compensation notwithstanding the provisions of section twenty-one of chapter thirty of the General Laws. Said co-ordinator may employ and remove such persons as he deems necessary; and he shall be provided adequate offices for the performance of his duties. All such employees shall be exempt from the operation of chapter thirty-one of the General Laws and section nine A of chapter thirty of the General Laws.

(*b*) The co-ordinator may prescribe such forms to be used consistent with the provisions of this act as he deems necessary or desirable to effectuate the provisions hereof. He shall be available, in an advisory capacity, to city and town rent boards for the purpose of attaining, as nearly as practicable, uniformity in establishing rents, and rules and regulations. The co-ordinator shall co-operate with the federal government in effectuating the purposes of this act, and shall endeavor to procure and may accept from officers and agencies of the federal government such co-operation, information, records, data and equipment as will assist the local rent boards in effectuating such purposes.

Unpaid rent boards.

SECTION 4. (*a*) Upon the acceptance of this act as set forth in sections twelve and fourteen, the mayor or city manager in cities having a manager form of government subject in both instances to confirmation by the city council; and, in towns, the board of selectmen, shall appoint a rent board of at least five members. A majority of said board shall be representatives of the public interest and the remainder shall be equally representatives of the landlords and tenants. Said rent board shall have the powers set forth in sections five and nine with respect to controlled housing accommodations in such city or town.

Employees.

(*b*) Members of rent boards shall receive no compensation for their services as such, but shall be reimbursed by said city and town for necessary expenses incurred in the performance of their duties. A rent board may employ and fix the salaries of such assistants and clerical aid as it deems

necessary, with the approval of the mayor or city manager or the board of selectmen, as the case may be. Such assistants and clerical aid may be removed at the pleasure of the rent board and shall be exempt from the operation of chapter thirty-one and section nine A of chapter thirty of the General Laws. During the current fiscal year, rent boards are authorized to incur liabilities in carrying out the provisions of this act and payments therefor shall be made from the city or town treasury from any available funds therein, and the sums so expended in that period shall be certified by the treasurer of the city or town in January of nineteen hundred and fifty-four to the board of assessors who shall, without further vote of the city or town, raise such sums in the tax levy of nineteen hundred and fifty-four. To provide funds for meeting subsequent expenditures authorized hereunder, a city or town may raise such sums as may be necessary by taxation, or by transfer from available revenue funds.

(*c*) Forty per cent of the amounts expended by the cities and towns for the purposes of this act with the approval of the rent boards shall be reimbursed by the commonwealth upon approval and certification to the comptroller by the co-ordinator.

Powers and duties.

SECTION 5. (*a*) Subject to the provisions hereof, no person shall demand, accept or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established therefor by federal rent controls in force immediately preceding the effective date of this act; provided, however, that the city or town rent board shall, by regulation or order, make such individual and general adjustments in such maximum rents with respect to any housing accommodations or any class of housing accommodations as may be necessary to remove hardships or to correct other inequities, or further to carry out the purposes and provisions of this act, provided that the landlord certifies that he is maintaining all services required to be furnished as of the date determining the maximum rent under federal rent controls in force immediately preceding the effective date of this act, and that he will continue to maintain such services as long as the adjustment in such maximum rent which may be granted continues in effect. In making and recommending individual and general adjustments to remove hardships or to correct other inequities, due weight shall be given to the principle of maintaining maximum rents for controlled housing accommodations at levels which will yield to landlords a fair net operating income from such housing accommodations. In determining whether the maximum rent for controlled housing accommodations yields a fair net operating income from such housing accommodations, due consideration shall be given to the following, among other relevant factors; (1) increases in property taxes; (2) unavoidable increases in operating and maintenance expenses; (3) major capital improvement of

the housing accommodations as distinguished from ordinary repair, replacement and maintenance; (4) increases or decreases in living space, services, furniture, furnishings or equipment; and (5) substantial deterioration of the housing accommodations, other than ordinary wear and tear, or failure to perform ordinary repair, replacement or maintenance.

(*b*) The rent board is authorized and directed to remove any or all maximum rents in such city or town or portion thereof or with respect to any class of housing accommodations if in its judgment the need for continuing maximum rents in such city or town or portion thereof or with respect to such class of housing accommodations no longer exists, due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met. The rent board may re-establish maximum rents in such city or town or with respect to those housing accommodations referred to in section two (*b*) (3) (*iii*) and (*iv*) if, in its judgment, such action again becomes necessary to carry out the purposes of this act and provided, further, that it finds and declares that a substantial shortage of rental housing accommodations exists in such city or town and that the control of rents therein is necessary in the public interest.

(*c*) Any action taken under the provisions of the preceding paragraph except with respect to those housing accommodations referred to in section two (*b*) (3) (*iii*) and (*iv*) shall be preceded by a public hearing at which interested persons shall be given a reasonable opportunity to be heard with the right to be represented by counsel and as to which notice of the time, date, place and purpose of such hearing shall be given in writing to the mayor or selectmen not less than fifteen days prior to such date and by publication in a newspaper of general circulation in the city or town at least fifteen days prior to such date.

(*d*) Nothing in this act shall be interpreted or construed to authorize the prohibition, in the case of any rental agreement hereafter entered into, of the demand, collection or retention of a security deposit, if said deposit does not exceed the rent for one month in addition to the otherwise authorized collection of rent in advance.

Appeals.

SECTION 6. (*a*) Any person who is aggrieved by any action, regulation or order of the rent board may file a complaint against the rent board in the district court for the judicial district within which is located the controlled housing accommodation affected by such action, regulation or order, and thereupon an order of notice shall be issued by such court and served on the rent board. Such district court shall have exclusive original jurisdiction of such proceedings and shall be authorized to take such action with respect thereto as is provided in the case of the superior court under the provisions of chapter two hundred and thirty-one A of the General Laws. Section three of said chapter two hundred and thirty-one A shall not apply. All

orders, judgments and decrees of such district court may be reviewed as is provided in the case of an action at law in such district court.

(*b*) The district court for the judicial district within which is located the controlled housing accommodation concerned shall have exclusive original jurisdiction of actions arising out of the provisions of section seven of this act.

(*c*) Any party to a proceeding brought under the provisions of (*a*) and (*b*) may, no later than the time provided for the filing of an answer, file in said court a claim of trial by jury, with an affidavit of such party that in his opinion there is an issue of fact requiring a trial by jury and that such trial is in good faith intended, together with the sum of five dollars for the entry of the cause in the superior court. The clerk shall forthwith transmit the papers in the cause and send the entry fee to the clerk of the superior court and the case shall proceed as though originally entered there, except that section three of chapter two hundred and thirty-one A of the General Laws shall not apply.

SECTION 7. (*a*) Any person who demands, accepts, receives or retains any payment of rent in excess of the maximum rent prescribed under the provisions of this act, or any regulation, order or requirement thereunder, shall be liable to the person from whom such payment is demanded, accepted, received or retained, or shall be liable to the municipality as hereinafter provided, for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amounts of (1) fifty dollars, or (2) not more than three times the amount by which the payment or payments demanded, accepted, received or retained exceed the maximum rent which could lawfully be demanded, accepted, received or retained, as the court in its discretion may determine, whichever in either case may be the greater amount: provided, that the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation.

Limitation of suits.

(*b*) Suit to recover liquidated damages as provided in this section may be brought not later than one year after the date of violation: provided, that if the person from whom such payment is demanded, accepted, received or retained either fails to institute an action under this section within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the rent board, on behalf of the municipality, may settle the claim arising out of the violation or not later than one year after the date of violation may institute such action. If such claim is settled or such action is instituted, the person from whom such payment is demanded, accepted, received or retained, shall thereafter be barred from bringing an action for the same violation or violations. For the purpose of determining the amount of liquidated damages

to be awarded to the plaintiff in an action brought under subsection (*a*) of this section, all violations alleged in an action under said subsection (*a*) which were committed by the defendant with respect to the plaintiff prior to the bringing of such an action shall be deemed to constitute one violation and, the amount demanded, accepted, received or retained in connection with such one violation shall be deemed to be the aggregate amount demanded, received or retained in connection with all such violations. A judgment for damages or on the merits in any action under this section shall be a bar to any recovery under this section in any other action against the same defendant on account of any violation with respect to the same person prior to the institution of the action in which such judgment was rendered.

Penalties.

SECTION 8. (*a*) It shall be unlawful for any person to demand, accept, receive or retain any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under this act, or otherwise to do or omit to do any act, in violation of this act, or of any regulation or order or requirement under this act, or to offer, solicit, attempt or agree to do any of the foregoing.

(*b*) Any person who wilfully violates any provisions of this act, or who knowingly makes any statement or entry false in any material respect in any document or report required to be kept on file under this act, or under any order or regulation issued by the rent board pursuant thereto, shall be fined not more than five hundred dollars or imprisoned not more than ninety days, or both.

SECTION 9. (*a*) Any rent board may make such studies and investigations, conduct such hearings, and obtain such information, as it deems necessary in prescribing any regulation or order under this act, or any administration and enforcement of this act and regulations and orders prescribed thereunder. For such purposes it may require any person who rents or offers for rent or acts as broker or agent for the rental of any controlled housing accommodations to furnish any information required by it under oath, and to produce records and other documents and make reports.

(*b*) For the foregoing purposes a person may be summoned to attend and testify and to produce books and papers in like manner as he may be summoned to attend as a witness before a court. Such person shall have the right to be represented by counsel and to examine the transcript of his testimony at reasonable times and places. Section ten of chapter two hundred and thirty-three of the General Laws shall apply.

SECTION 10. No person shall bring any action to recover possession of any controlled housing accommodations, except: (*a*) for non-payment of rent; (*b*) for nuisance; (*c*) when the landlord seeks in good faith to recover possession for the use and occupancy as a housing accommodation by members of his immediate family, and for the purpose of this section, immediate family shall include the landlord's children, step-

children, adopted children, father, mother, brother, sister, father-in-law, mother-in-law, son-in-law and daughter-in-law; (*d*) when the landlord seeks in good faith to recover possession for the immediate purpose of remodeling substantially or making substantial structural alteration in a manner which cannot practicably be done with the tenant in possession, provided that the owner can establish that additional housing accommodations will be made available by such remodeling or alteration, and provided, further, that such approval as may be required by law for such remodeling or alteration has been obtained; (*e*) when the landlord seeks in good faith to recover possession for the immediate purpose of demolishing the building in which the premises are located, provided that such approval as may be required by law for such demolition has been obtained; (*f*) when the landlord is a nonprofit religious, charitable or educational institution which seeks in good faith to recover possession for the immediate purpose of housing its staff members; (*g*) when the tenant has violated a substantial obligation of his tenancy other than the obligation to surrender possession of such housing accommodations; (*h*) when the tenant has refused the landlord access to the housing accommodations at reasonable times for the purpose of inspection; (*i*) when the tenant's lease or other rental agreement has expired or otherwise terminated, and at the time of termination the occupants of the housing accommodations are subtenants or other persons who occupied under a rental agreement with the tenant, and no part of the accommodations are used by the tenant as his dwelling.

SECTION 11. Notwithstanding the provisions of this act the United States, the commonwealth, or any agency or political subdivision thereof, may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulation under which such accommodations are administered.

Acceptance by municipalities.

SECTION 12. Any city or town in which federal rent controls exist at the time of the passage of this act may, between the date of said passage and June thirtieth, nineteen hundred and fifty-four, by vote of the city council, if a city, or of a town meeting called for the purpose, if a town, accept the provisions of this act. Such vote shall include a declaration that a substantial shortage of rental housing accommodations exists in such city or town and that the control of rents therein is necessary in the public interest. Such city or town, after taking such action, may in like manner at any time thereafter rescind it.

SECTION 13. This act shall take effect in any municipality which has voted to accept the provisions of this act under section twelve immediately upon the termination of existing federal rent controls effective therein.

Termination.

SECTION 14. This act and all powers delegated herein shall terminate on June thirtieth, nineteen hundred and

fifty-four, provided, however, that any city or town in which rent controls are effective on that date may vote to continue the provisions of this act in accordance with section twelve for an added period not exceeding nine months from said date. This act shall not apply in any municipality of the commonwealth during the period in which a law of the United States imposes, or but for this act would impose, rent controls therein. As to offences committed or rights or liabilities incurred prior to such termination, the provisions of this act shall be treated as still remaining in force for the purpose of sustaining any proper suit, action or prosecution with respect to any such right, liability or offence.

SECTION 15. If any provision of this act or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of this act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

Approved June 2, 1953.

Chap. 435 AN ACT PLACING CERTAIN EMPLOYEES OF THE DEPARTMENT OF EDUCATION UNDER THE CIVIL SERVICE LAWS.

Be it enacted, etc., as follows:

SECTION 1. The positions of persons employed in the department of public welfare, under the provisions of chapter six hundred and thirty-four of the acts of nineteen hundred and forty-one, shall, upon the effective date of this act, be transferred to the department of education and become subject to the same laws and rules governing other employees in the department of education engaged in carrying out the provisions of chapter five hundred and forty-eight of the acts of nineteen hundred and forty-eight, as amended.

SECTION 2. The incumbent of every such position on January second, nineteen hundred and fifty-three shall be subjected to a qualifying examination for such position by the division of civil service. If such an incumbent passes said examination, he shall be certified for said position and shall be deemed to be permanently appointed thereto without serving any probationary period, and his tenure of office, as well as the tenure of office of any subsequent incumbent of said position, shall be unlimited, subject, however, to the provisions of the civil service laws and rules.

Approved June 2, 1953.

Chap. 436 AN ACT RELATIVE TO THE PAYMENT OF SALARY OR WAGES AND OTHER SUMS OWING BY POLITICAL SUBDIVISIONS OF THE COMMONWEALTH UPON THE DEATHS OF THEIR OFFICERS AND EMPLOYEES.

Be it enacted, etc., as follows:

G. L. (Ter. Ed.), 35, new § 19B, added.

SECTION 1. Chapter 35 of the General Laws is hereby amended by inserting after section 19A, inserted by section 2 of chapter 635 of the acts of 1945, the following section: —

ALM Constitution Amend. Art. XLVIII

Constitution text current through the November 2023 Election

Art. XLVIII. Initiative and Referendum

Annotated Constitution of Massachusetts
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End of Document

ALM Constitution Amend. Art. XLVIII, c. I

Constitution text current through the November 2023 Election

Initiative and Referendum Defined.

Legislative power shall continue to be vested in the general court; but the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection; and the popular referendum, which is the power of a specified number of voters to submit laws, enacted by the general court, to the people for their ratification or rejection.

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ALM Constitution Amend. Art. XLVIII, c. II, § 1

Constitution text current through the November 2023 Election

Annotated Constitution of Massachusetts > A CONSTITUTION OR FORM OF GOVERNMENT > ARTICLES OF AMENDMENT > Art. XLVIII. Initiative and Referendum > The Initiative > II. Initiative Petitions

Section 1. Contents.

An initiative petition shall set forth the full text of the constitutional amendment or law, hereinafter designated as the measure which is proposed by the petition.

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ALM Constitution Amend. Art. XLVIII, c. II, § 2

Constitution text current through the November 2023 Election

Section 2. Excluded Matters.

No measure that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal, recall or compensation of judges; or to the reversal of a judicial decision; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that makes a specific appropriation of money from the treasury of the commonwealth, shall be proposed by an initiative petition; but if a law approved by the people is not repealed, the general court shall raise by taxation or otherwise and shall appropriate such money as may be necessary to carry such law into effect.

Neither the eighteenth amendment of the constitution, as approved and ratified to take effect on the first day of October in the year nineteen hundred and eighteen, nor this provision for its protection, shall be the subject of an initiative amendment.

No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition: The right to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice; the right of trial by jury; protection from unreasonable search, unreasonable bail and the law martial; freedom of the press; freedom of speech; freedom of elections; and the right of peaceable assembly.

No part of the constitution specifically excluding any matter from the operation of the popular initiative and referendum shall be the subject of an initiative petition; nor shall this section be the subject of such a petition.

The limitations on the legislative power of the general court in the constitution shall extend to the legislative power of the people as exercised hereunder.

Annotated Constitution of Massachusetts
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ALM Constitution Amend. Art. XLVIII, c. II, § 3

Constitution text current through the November 2023 Election

Section 3. Mode of Originating.

Such petition shall first be signed by ten qualified voters of the commonwealth and shall be submitted to the attorney general not later than the first Wednesday of the August before the assembling of the general court into which it is to be introduced, and if he shall certify that the measure and the title thereof are in proper form for submission to the people, and that the measure is not, either affirmatively or negatively, substantially the same as any measure which has been qualified for submission or submitted to the people at either of the two preceding biennial state elections, and that is contains only subjects not excluded from the popular initiative and which are related or which are mutually dependent, it may then be filed with the secretary of the commonwealth. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary, as determined by the attorney general, of the proposed measure as such summary will appear on the ballot together with the names and residences of the first ten signers. All initiative petitions, with the first ten signatures attached, shall be filed with the secretary of the commonwealth not earlier than the first Wednesday of the September before the assembling of the general court into which they are to be introduced, and the remainder of the required signatures shall be filed not later than the first Wednesday of the following December.

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ALM Constitution Amend. Art. XLVIII, c. II, § 4

Constitution text current through the November 2023 Election

Section 4. Transmission to the General Court.

If an initiative petition, signed by the required number of qualified voters, has been filed as aforesaid, the secretary of the commonwealth shall, upon the assembling of the general court, transmit it to the clerk of the house of representatives, and the proposed measure shall then be deemed to be introduced and pending.

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ALM Constitution Amend. Art. XLVIII, c. III, § 1

Constitution text current through the November 2023 Election

Annotated Constitution of Massachusetts > A CONSTITUTION OR FORM OF GOVERNMENT > ARTICLES OF AMENDMENT > Art. XLVIII. Initiative and Referendum > The Initiative > III. Legislative Action; General Provisions

Section 1. Reference to Committee.

If a measure is introduced into the general court by initiative petition, it shall be referred to a committee thereof, and the petitioners and all parties in interest shall be heard, and the measure shall be considered and reported upon to the general court with the committee's recommendations, and the reasons therefor, in writing. Majority and minority reports shall be signed by the members of said committee.

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ALM Constitution Amend. Art. XLVIII, c. III, § 2

Constitution text current through the November 2023 Election

Section 2. Legislative Substitutes.

The general court may, by resolution passed by yea and nay vote, either by the two houses separately, or in the case of a constitutional amendment by a majority of those voting thereon in joint session in each of two years as hereinafter provided, submit to the people a substitute for any measure introduced by initiative petition, such substitute to be designated on the ballot as the legislative substitute for such an initiative measure and to be grouped with it as an alternative therefor.

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ALM Constitution Amend. Art. XLVIII, c. IV, § 1

Constitution text current through the November 2023 Election

Annotated Constitution of Massachusetts > A CONSTITUTION OR FORM OF GOVERNMENT > ARTICLES OF AMENDMENT > Art. XLVIII. Initiative and Referendum > The Initiative > IV. Legislative Action on Proposed Constitutional Amendments

Section 1. Definition.

A proposal for amendment to the constitution introduced into the general court by initiative petition shall be designated an initiative amendment, and an amendment introduced by a member of either house shall be designated a legislative substitute or a legislative amendment.

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ALM Constitution Amend. Art. XLVIII, c. IV, § 2

Constitution text current through the November 2023 Election

Section 2. Joint Session.

If a proposal for a specific amendment of the constitution is introduced into the general court by initiative petition signed in the aggregate by not less than such number of voters as will equal three per cent of the entire vote cast for governor at the preceding biennial state election, or if in case of a proposal for amendment introduced into the general court by a member of either house, consideration thereof in joint session is called for by vote of either house, such proposal shall, not later than the second Wednesday in May, be laid before a joint session of the two houses, at which the president of the senate shall preside, and if the two houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the governor shall call such joint session or continuance thereof.

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ALM Constitution Amend. Art. XLVIII, c. IV, § 3

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Annotated Constitution of Massachusetts > A CONSTITUTION OR FORM OF GOVERNMENT > ARTICLES OF AMENDMENT > Art. XLVIII. Initiative and Referendum > The Initiative > IV. Legislative Action on Proposed Constitutional Amendments

Section 3. Amendment of Proposed Amendments.

A proposal for an amendment to the constitution introduced by initiative petition shall be voted upon in the form in which it was introduced, unless such amendment is amended by vote of three–fourths of the members voting thereon in joint session, which vote shall be taken by call of the yeas and nays if called for by any member.

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ALM Constitution Amend. Art. XLVIII, c. IV, § 4

Constitution text current through the November 2023 Election

Section 4. Legislative Action.

Final legislative action in the joint session upon any amendment shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two houses; and an unfavorable vote at any stage preceding final action shall be verified by call of the yeas and nays, to be entered in like manner. At such joint session a legislative amendment receiving the affirmative votes of a majority of all the members elected, or an initiative amendment receiving the affirmative votes of not less than one–fourth of all the members elected, shall be referred to the next general court.

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ALM Constitution Amend. Art. XLVIII, c. IV, § 5

Constitution text current through the November 2023 Election

Section 5. Submission to the People.

If in the next general court a legislative amendment shall again be agreed to in joint session by a majority of all the members elected, or if an initiative amendment or a legislative substitute shall again receive the affirmative votes of at least one–fourth of all the members elected, such fact shall be certified by the clerk of such joint session to the secretary of the commonwealth, who shall submit the amendment to the people at the next state election. Such amendment shall become part of the constitution if approved, in the case of a legislative amendment, by a majority of the voters voting thereon, or if approved, in the case of an initiative amendment or a legislative substitute, by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such amendment.

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ALM Constitution Amend. Art. XLVIII, c. V, § 1

Constitution text current through the November 2023 Election

Section 1. Legislative Procedure.

If an initiative petition for a law is introduced into the general court, signed in the aggregate by not less than such number of voters as will equal three per cent of the entire vote cast for governor at the preceding biennial state election, a vote shall be taken by yeas and nays in both houses before the first Wednesday of May upon the enactment of such law in the form in which it stands in such petition. If the general court fails to enact such law before the first Wednesday of May, and if such petition is completed by filing with the secretary of the commonwealth, not earlier than the first Wednesday of the following June nor later than the first Wednesday of the following July, a number of signatures of qualified voters equal in number to not less than one half of one per cent of the entire vote cast for governor at the preceding biennial state election, in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of May aforesaid, then the secretary of the commonwealth shall submit such proposed law to the people at the next state election. If it shall be approved by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such law, it shall become law, and shall take effect in thirty days after such state election or at such time after such election as may be provided in such law.

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ALM Constitution Amend. Art. XLVIII, c. V, § 2

Constitution text current through the November 2023 Election

Section 2. Amendment by Petitioners.

If the general court fails to pass a proposed law before the first Wednesday of May, a majority of the first ten signers of the initiative petition therefor shall have the right, subject to certification by the attorney–general filed as hereinafter provided, to amend the measure which is the subject of such petition. An amendment so made shall not invalidate any signature attached to the petition. If the measure so amended, signed by a majority of the first ten signers, is filed with the secretary of the commonwealth before the first Wednesday of the following June, together with a certificate signed by the attorney–general to the effect that the amendment made by such proposers is in his opinion perfecting in its nature and does not materially change the substance of the measure, and if such petition is completed by filing with the secretary of the commonwealth, not earlier than the first Wednesday of the following June nor later than the first Wednesday of the following July, a number of signatures of qualified voters equal in number to not less than one half of one per cent of the entire vote cast for governor at the preceding biennial state election in addition to those signing such initiative petition, which signatures must have been obtained after the first Wednesday of May aforesaid, then the secretary of the commonwealth shall submit the measure to the people in its amended form.

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ALM Constitution Amend. Art. XLVIII, c. VI

Constitution text current through the November 2023 Election

VI. Conflicting and Alternative Measures

If in any judicial proceeding, provisions of constitutional amendments or of laws approved by the people at the same election are held to be in conflict, then the provisions contained in the measure that received the largest number of affirmative votes at such election shall govern.

A constitutional amendment approved at any election shall govern any law approved at the same election.

The general court, by resolution passed as hereinbefore set forth, may provide for grouping and designating upon the ballot as conflicting measures or as alternative measures, only one of which is to be adopted, any two or more proposed constitutional amendments or laws which have been or may be passed or qualified for submission to the people at any one election: provided, that a proposed constitutional amendment and a proposed law shall not be so grouped, and that the ballot shall afford an opportunity to the voter to vote for each of the measures or for only one of the measures, as may be provided in said resolution, or against each of the measures so grouped as conflicting or as alternative. In case more than one of the measures so grouped shall receive the vote required for its approval as herein provided, only that one for which the largest affirmative vote was cast shall be deemed to be approved.

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ALM Constitution Amend. Art. XLVIII, c. I

Constitution text current through the November 2023 Election

I. When Statutes Shall Take Effect

No law passed by the general court shall take effect earlier than ninety days after it has become a law, excepting laws declared to be emergency laws and laws which may not be made the subject of a referendum petition, as herein provided.

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ALM Constitution Amend. Art. XLVIII, c. II

Constitution text current through the November 2023 Election

II. Emergency Measures

A law declared to be an emergency law shall contain a preamble setting forth the facts constituting the emergency, and shall contain the statement that such law is necessary for the immediate preservation of the public peace, health, safety or convenience. A separate vote, which shall be recorded, shall be taken on the preamble, and unless the preamble is adopted by two–thirds of the members of each House voting thereon, the law shall not be an emergency law. Upon the request of two members of the Senate or of five members of the House of Representatives, the vote on the preamble in such branch shall be taken by call of the yeas and nays. But if the governor, at any time before the election at which it is to be submitted to the people on referendum, files with the secretary of the commonwealth a statement declaring that in his opinion the immediate preservation of the public peace, health, safety or convenience requires that such law should take effect forthwith and that it is an emergency law and setting forth the facts constituting the emergency, then such law, if not previously suspended as hereinafter provided, shall take effect without suspension, or if such law has been so suspended such suspension shall thereupon terminate and such law shall thereupon take effect: but no grant of any franchise or amendment thereof, or renewal or extension thereof for more than one year shall be declared to be an emergency law.

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ALM Constitution Amend. Art. XLVIII, c. III, § 1

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Annotated Constitution of Massachusetts > ***A CONSTITUTION OR FORM OF GOVERNMENT*** > ***ARTICLES OF AMENDMENT*** > ***Art. XLVIII. Initiative and Referendum*** > ***The Referendum*** > ***III. Referendum Petitions***

Section 1. Contents.

A referendum petition may ask for a referendum to the people upon any law enacted by the general court which is not herein expressly excluded.

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ALM Constitution Amend. Art. XLVIII, c. III, § 2

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Annotated Constitution of Massachusetts > A CONSTITUTION OR FORM OF GOVERNMENT > ARTICLES OF AMENDMENT > Art. XLVIII. Initiative and Referendum > The Referendum > III. Referendum Petitions

Section 2. Excluded Matters.

No law that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal or compensation of judges; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that appropriates money for the current or ordinary expenses of the commonwealth or for any of its departments, boards, commissions or institutions shall be the subject of a referendum petition.

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ALM Constitution Amend. Art. XLVIII, c. III, § 3

Constitution text current through the November 2023 Election

Section 3. Mode of Petitioning for the Suspension of a Law and a Referendum Thereon.

A petition asking for a referendum on a law, and requesting that the operation of such law be suspended, shall first be signed by ten qualified voters and shall then be filed with the secretary of the commonwealth not later than thirty days after the law that is the subject of the petition has become law. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary of the proposed law as such summary will appear on the ballot together with the names and residences of the first ten signers. If such petition is completed by filing with the secretary of the commonwealth not later than ninety days after the law which is the subject of the petition has become law a number of signatures of qualified voters equal in number to not less than two per cent of the entire vote cast for governor at the preceding biennial state election, then the operation of such law shall be suspended, and the secretary of the commonwealth shall submit such law to the people at the next state election, if sixty days intervene between the date when such petition is filed with the secretary of the commonwealth and the date for holding such state election; if sixty days do not so intervene, then such law shall be submitted to the people at the next following state election, unless in the meantime it shall have been repealed, and if it shall be approved by a majority of the qualified voters voting thereon, such law shall, subject to the provisions of the constitution, take effect in thirty days after such election, or at such time after such election as may be provided in such law; if not so approved such law shall be null and void; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such state election.

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ALM Constitution Amend. Art. XLVIII, c. III, § 4

Constitution text current through the November 2023 Election

Section 4. Petitions for Referendum on an Emergency Law or a Law the Suspension of Which is not Asked for.

A referendum petition may ask for the repeal of an emergency law or of a law which takes effect because the referendum petition does not contain a request for suspension, as aforesaid. Such petition shall first be signed by ten qualified voters of the commonwealth, and shall then be filed with the secretary of the commonwealth not later than thirty days after the law which is the subject of the petition has become law. The secretary of the commonwealth shall provide blanks for the use of subsequent signers, and shall print at the top of each blank a fair, concise summary of the proposed law as such summary will appear on the ballot together with the names and residences of the first ten signers. If such petition filed as aforesaid is completed by filing with the secretary of the commonwealth not later than ninety days after the law which is the subject of the petition has become law a number of signatures of qualified voters equal in number to not less than one and one half per cent of the entire vote cast for governor at the preceding biennial state election protesting against such law and asking for a referendum thereon, then the secretary of the commonwealth shall submit such law to the people at the next state election, if sixty days intervene between the date when such petition is filed with the secretary of the commonwealth and the date for holding such state election. If sixty days do not so intervene, then it shall be submitted to the people at the next following state election, unless in the meantime it shall have been repealed; and if it shall not be approved by a majority of the qualified voters voting thereon, it shall, at the expiration of thirty days after such election, be thereby repealed; but no such law shall be held to be disapproved if the negative vote is less than thirty per cent of the total number of ballots cast at such state election.

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ALM Constitution Amend. Art. XLVIII, c. I

Constitution text current through the November 2023 Election

I. Identification and Certification of Signatures

Provision shall be made by law for the proper identification and certification of signatures to the petitions hereinbefore referred to, and for penalties for signing any such petition, or refusing to sign it, for money or other valuable consideration, and for the forgery of signatures thereto. Pending the passage of such legislation all provisions of law relating to the identification and certification of signatures to petitions for the nomination of candidates for state offices or to penalties for the forgery of such signatures shall apply to the signatures to the petitions herein referred to. The general court may provide by law that no copartnership or corporation shall undertake for hire or reward to circulate petitions, may require individuals who circulate petitions for hire or reward to be licensed, and may make other reasonable regulations to prevent abuses arising from the circulation of petitions for hire or reward.

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ALM Constitution Amend. Art. XLVIII, c. II

Constitution text current through the November 2023 Election

II. Limitation on Signatures

Not more than one–fourth of the certified signatures on any petition shall be those of registered voters of any one county.

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ALM Constitution Amend. Art. XLVIII, c. III

Constitution text current through the November 2023 Election

III. Form of Ballot

A fair, concise summary, as determined by the attorney general, subject to such provision as may be made by law, of each proposed amendment to the constitution, and each law submitted to the people, shall be printed on the ballot, and the secretary of the commonwealth shall give each question a number and cause such question, except as otherwise authorized herein, to be printed on the ballot in the following form:–

> In the case of an amendment to the constitution: Do you approve of the adoption of an amendment to the constitution summarized below (here state, in distinctive type, whether approved or disapproved by the general court, and by what vote thereon)?

ALM Constitution Amend. Art. XLVIII, c. IV

Constitution text current through the November 2023 Election

IV. Information for Voters

The secretary of the commonwealth shall cause to be printed and sent to each person eligible to vote in the commonwealth or to each residence of one or more persons eligible to vote in the commonwealth the full text of every measure to be submitted to the people, together with a copy of the legislative committee's majority and minority reports, if there be such, with the names of the majority and minority members thereon, a statement of the votes of the general court on the measure, and a fair, concise summary of the measure as such summary will appear on the ballot; and shall, in such manner as may be provided by law, cause to be prepared and sent other information and arguments for and against the measure.

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ALM Constitution Amend. Art. XLVIII, c. V

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V. The Veto Power of the Governor

The veto power of the governor shall not extend to measures approved by the people.

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ALM Constitution Amend. Art. XLVIII, c. VI

Constitution text current through the November 2023 Election

VI. The General Court's Power of Repeal

Subject to the veto power of the governor and to the right of referendum by petition as herein provided, the general court may amend or repeal a law approved by the people.

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ALM Constitution Amend. Art. XLVIII, c. VII

Constitution text current through the November 2023 Election

VII. Amendment Declared to be Self–executing

This article of amendment to the constitution is self–executing, but legislation not inconsistent with anything herein contained may be enacted to facilitate the operation of its provisions.

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ALM Constitution Amend. Art. XLVIII, c. VIII

Constitution text current through the November 2023 Election

VIII. Articles IX and LXII of Amendments of the Constitution Annulled

Article IX and Article XLII of the amendments of the constitution are hereby annulled.

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MASSACHUSETTS ELECTIONS STATISTICS

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Public Document No. 43

MASSACHUSETTS ELECTIONS STATISTICS *1994*

In accordance with the provisions of the Massachusetts General Laws, Chapter 54, Section 133

The Elections Division
Office of the
Massachusetts Secretary of the Commonwealth
William Francis Galvin

The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth

To the Reader:

I am happy to present this publication of election results, which takes advantage of printing techniques involving computerized type setting and the continued combination of primary and election results on the same page.



In addition to the 1994 state primary and general election results, this book contains combined tables of enrollment, registration, and turnout for each community in the Commonwealth, as well as percentage calculations for state-wide offices and state-wide ballot questions.

After the primary and election each community sends to the Secretary of the Commonwealth an official report detailing how many votes were cast for each candidate for each office and every question on the ballot. This publication is then prepared from these results.

Write-in and sticker votes are consolidated and listed under "all others." Only those candidates who won or made significant impact are listed by name.

I'm always looking for ideas to improve the way elections are conducted and the manner results are reported in Massachusetts, including the format of this publication. I'd be happy to have any suggestions you may wish to offer. I hope that this volume will be easy for you to use.

Sincerely,

William Francis Galvin

William Francis Galvin
Secretary of the Commonwealth

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rent control for a six month period, after which compliance by property owners would be voluntary.

The proposed law would prohibit any city or town from enacting, maintaining or enforcing any law that requires below-market rents for residential properties. It would also prohibit the regulation of occupancy, services, evictions, condominium conversion, or the removal of the unit from rent control, if such

rent and the fair market rent. After six m
would not be required to comply with the
such regulation that the city or town m

The proposed law would take effect
states that if any of its provisions were de
remain in effect.

	Yes	%	No	%	Blan
Aggregate of Votes					
Barnstable	**42,705**	**45.48%**	**44,213**	**47.09%**	**6,9**
Berkshire	**17,281**	**34.58%**	**26,120**	**52.27%**	**6,5**
Bristol	**69,273**	**41.76%**	**74,594**	**44.97%**	**21,9**
Dukes	**2,317**	**38.55%**	**3,025**	**50.33%**	**6**
Essex	**123,649**	**47.22%**	**110,855**	**42.34%**	**27,3**
Franklin	**12,776**	**46.68%**	**12,356**	**45.14%**	**2,2**
Hampden	**59,394**	**39.25%**	**73,168**	**48.35%**	**18,7**
Hampshire	**19,049**	**34.85%**	**30,943**	**56.62%**	**4,6**
Middlesex	**280,810**	**50.54%**	**232,126**	**41.78%**	**42,0**
Nantucket	**1,271**	**42.44%**	**1,376**	**45.94%**	**3**
Norfolk	**133,749**	**49.57%**	**116,487**	**43.17%**	**19,5**
Plymouth	**83,494**	**49.75%**	**68,981**	**41.11%**	**15,3**
Suffolk	**71,429**	**40.89%**	**76,255**	**43.65%**	**26,9**
Worcester	**117,402**	**46.89%**	**110,237**	**44.03%**	**22,7**
TOTALS	**1,034,599**	**46.35%**	**980,736**	**43.94%**	**216,8**

THE MASSACHUSETTS
CONSTITUTIONAL CONVENTION
OF 1917

Its Causes, Forces and Factions; Its Conflicts and Consequences; Mention of Every Proposed Amendment; Primary Votes for Elected and Defeated Candidates; the Campaigns for Ratification of the Anti-Aid and the I. & R. Amendments; Events Leading to the Supreme Court's Decision that the Re-arranged Constitution Is Not the Real Constitution, Including Arguments of Counsel and the Main Points of the Decision; Valuable History Outside of Official Record

BY

RAYMOND L. BRIDGMAN

Author of "Ten Years of Massachusetts," "Biennial Elections," "World Organization," and "The First Book of World Law."

PUBLISHED BY THE AUTHOR
BOSTON, MASS.
1923

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second amendment. The reasons are obvious. This amendment will be voted upon at the state election, November 6, 1917. We shall never have a better chance to win. 'A bird in the hand is worth two in the bush.' Do it now! The question will be on the official ballot as follows: [Here the question was quoted.] Be sure and vote *Yes* on the amendment. Rally all friends of the amendment to vote.

"Massachusetts Federation of Patriotic Societies and Good Government Clubs, 948 Tremont Building, Boston, Mass.

"DANIEL L. OULTON, Secretary,
20 Birch Street, Everett, Mass."

Sixty-five thousand copies of that document were sent all over the state, and it must be presumed that they played a material part in the casting of the large majority by which the amendment was adopted.

In the *Boston Transcript* of Monday, November 5, 1917, the day following the cardinal's address, was this statement:

"The following card was given out Sunday morning at all the Catholic churches to every voter:

"'Vote *No* on the anti-aid amendment next Tuesday.

"'It is amendment No. 2 on the ballot.

"'It is the long-worded amendment sandwiched in between the others.

"'The anti-aid amendment is a concession to hatred, because it officially repudiates religion; ignorance, because it officially repudiates higher education; cruelty, because it officially repudiates private benevolent institutions.

"'Religion, education and benevolence are the foundation stones of the state. Remove them and the state will fall. Vote *No* and save the state.'"

The *Boston Pilot*, the Catholic organ, said:

"The future welfare of the state depends on the rejection of this pernicious measure which would mark the first step towards recognized agnosticism or absolute atheism."

Professor Frederick L. Anderson of Newton, foremost worker for the amendment, delivered an earnest plea for it in Worcester on the Sunday before the election. Under such excitement and strenuous appeals by the opposing sides, the vote was taken at the state election on Tuesday, November 6, 1917. The official state-

ment of the vote was 206,329 yes, and 130,357 no, and the total number of persons who voted at the election was returned as 394,070. That is, in spite of 57,384 blanks on the amendment, there was 52 plus per cent. of all who went to the polls who voted yes; only 33 plus per cent. voted no. So the people settled nominally and for the time the century-long vexed problem.

Home Insurance Costs Surged 34% in Last Five Years. Texas, Colorado Lead Growth

By **Paul Centopani** *Reviewed By* **Aleksandra Kadzielawski**

May 15, 2024 - 2 min read

Spiking home insurance costs

The rising prominence of **climate change impacts** and natural disaster frequency are causing rapid growth in home insurance rates.

Across the U.S., home insurance costs jumped by 33.8% from 2018 to 2023, going as high as 60% in certain places, according to Realtor.com.

See which states saw the largest and smallest increases in home insurance rates over the past five years.

Check your home buying options. Start here (Mar 10th, 2026)

Where home insurance rates grew rapidly

With natural disasters becoming more extreme, **home insurance premiums are soaring** and insurers are even dropping their coverages in places deemed too prone to environmental property damage, like **California**, **Florida**, and **Louisiana**.

More alarming still, billion-dollar weather events are following **a rapidly progressing uptrend**, according to the National Oceanic and Atmospheric Administration. Adjusted for inflation, a combined 37 of these events took place from 2004 to 2008, before stepping up to 55 from 2009 to 2013, 71 from 2014 to 2018, and 102 from 2019 to 2023. Last year (2023) also broke the single-year record with 28 events.

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Loan Originations (2024): 361,071
Turn home equity you've earned into cash
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Get preapproved anytime, anywhere
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Receive dedicated support from VA specialists
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Home Purchase, Refinance, Home Equity & 2nd Mortgages
Low Rates: Quick Quote & Approval
Rate Lock Protection, Lock Now Before Rates Go Up
Over 100 Billion Funded. In Business since 2002
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Loan Originations (2024): 15,596
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*Source: Lender Loan Originations from 2024 Home Mortgage Disclosure Act data via **CFPB.***

A 44.8% of U.S. homes, valued at about $22 trillion, face at least one type of severe or extreme climate risk (flood, wind, wildfire, heat, or air quality), according to Realtor.com's **2024 Housing and Climate Risk Report**. As the **escalating effects of global warming** increase and spread, housing insurance costs are following suit.

Realtor.com analyzed S&P Global Market Intelligence homeowner rate filings submitted to the Department of Insurance for 10 largest homeowners insurance underwriters in each state from 2018 to 2023. It found overall insurance costs in the U.S. shot up 33.8% in that timeframe.

Broken down by state, Texas saw the largest growth, spiking 59.9% in those five years. Colorado came next at 57.9%, followed by 52.9% in Arizona, 51.9% in Utah, and 48.6% in Nebraska.

Check what interest rates you qualify for here (Mar 10th, 2026)

On the opposite end of the spectrum, Vermont had the smallest gains at 5.8%. Alaska trailed at 6.4%, then West Virginia, South Carolina and Maine rounded out the bottom five with increases of 8.8%, 9.2% and 11.7%, respectively.

"Climate risk is a big deal. It can impact home values, insurance costs, and the overall stability of a housing market," said Jiayi Xu, economist at Realtor.com. "The issues are whether you can get access to affordable insurance and how much the costs will increase. In areas with high climate risk and lower home prices, people are tolerating these risks in exchange for more affordable housing."

The table below shows the growth percentage in home insurance rates in every state between 2018 and 2023, according to Realtor.com.

State	% Change from 2018 to 2023	State	% Change from 2018 to 2023
Alabama	22.0%	Montana	34.1%
Alaska	6.4%	Nebraska	48.6%
Arizona	52.9%	Nevada	21.0%
Arkansas	32.5%	New Hampshire	17.9%
California	43.7%	New Jersey	15.4%
Colorado	57.9%	New Mexico	35.5%
Connecticut	23.4%	New York	19.0%
Delaware	17.5%	North Carolina	36.5%
Florida	43.2%	North Dakota	16.6%
Georgia	27.0%	Ohio	22.4%
Hawaii	12.6%	Oklahoma	42.2%
Idaho	29.6%	Oregon	44.8%
Illinois	45.8%	Pennsylvania	16.9%
Indiana	25.1%	Rhode Island	33.7%
Iowa	34.7%	South Carolina	9.2%
Kansas	27.3%	South Dakota	41.0%
Kentucky	18.5%	Tennessee	23.2%
Louisiana	24.9%	Texas	59.9%
Maine	11.7%	Utah	51.9%
Maryland	32.1%	Vermont	5.8%
Massachusetts	22.8%	Virginia	33.9%
Michigan	19.2%	Washington	30.4%
Minnesota	39.1%	West Virginia	8.8%
Mississippi	14.7%	Wisconsin	21.4%
Missouri	28.6%	Wyoming	N/A

Check your home buying options. Start here (Mar 10th, 2026)

Advice for home buyers

As the impacts of climate risks increase, the price of home insurance will likely grow alongside them.

But just like mortgage rates, you should **shop around and negotiate** when locking in **your homeowners insurance**. You may need to purchase additional coverage depending on the risks your property faces, so be sure you cover everything you need when comparing policies. Homeowners in high climate risk areas also have distinct **things to consider** and **ways to mitigate potential damages**.

If you're ready to become a homeowner, reach out to a local mortgage lender to get started.

Time to make a move? Let us find the right mortgage for you (Mar 10th, 2026)



Authored By: Paul Centopani
The Mortgage Reports Editor

Paul Centopani is a writer and editor who started covering the lending and housing markets in 2018. Previous to joining The Mortgage Reports, he was a reporter for National Mortgage News. Paul grew up in Connecticut, graduated from Binghamton University and now lives in Chicago after a decade in New York and the D.C. area.



Reviewed By: Aleksandra Kadzielawski
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Aleksandra is an editor, finance writer, and licensed Realtor with deep roots in the mortgage and real estate world. Based in Arizona, she brings over a decade of experience helping consumers navigate their financial journeys with confidence.

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By refinancing an existing loan, the total finance charges incurred may be higher over the life of the loan.

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FY2025 Tax Levies, Assessed Values and Tax Rates

This article provides an analysis of Fiscal Year 2025 property levies, assessed values and tax rates. It compares FY2024 and FY2025 tax levies and assessed values and then provides FY2025 statistics. It also identifies communities close to their FY2025 levy limits and ceilings. Finally, it reports on tax rates and shifts between property classes.

Author: Tom Guilfoyle - Bureau of Accounts

This article reviews property tax levies and assessed values for all 351 communities from FY2015 to FY2024. For 343 communities with FY2025 tax rates approved by the Division of Local Services' (DLS) **Bureau of Accounts** (/accounting-guidance-and-oversight) as of December 24, 2024, the article compares FY2024 and FY2025 tax levies and assessed values and then provides some quick FY2025 stats. It then reviews whether communities are close to their FY2025 levy limits and ceilings. Finally, it reports on tax rates and shifts between property classes. For a variety of trainings and informational resources about property taxes and related content, please visit the **Property Taxes and Proposition 2½ Training and Resources** (/info-details/property-taxes-and-proposition-2-12-training-and-resources) page. In addition, visit the **report center** (/collections/DLS-databank-reports) for the raw data associated with this article and other data sets.

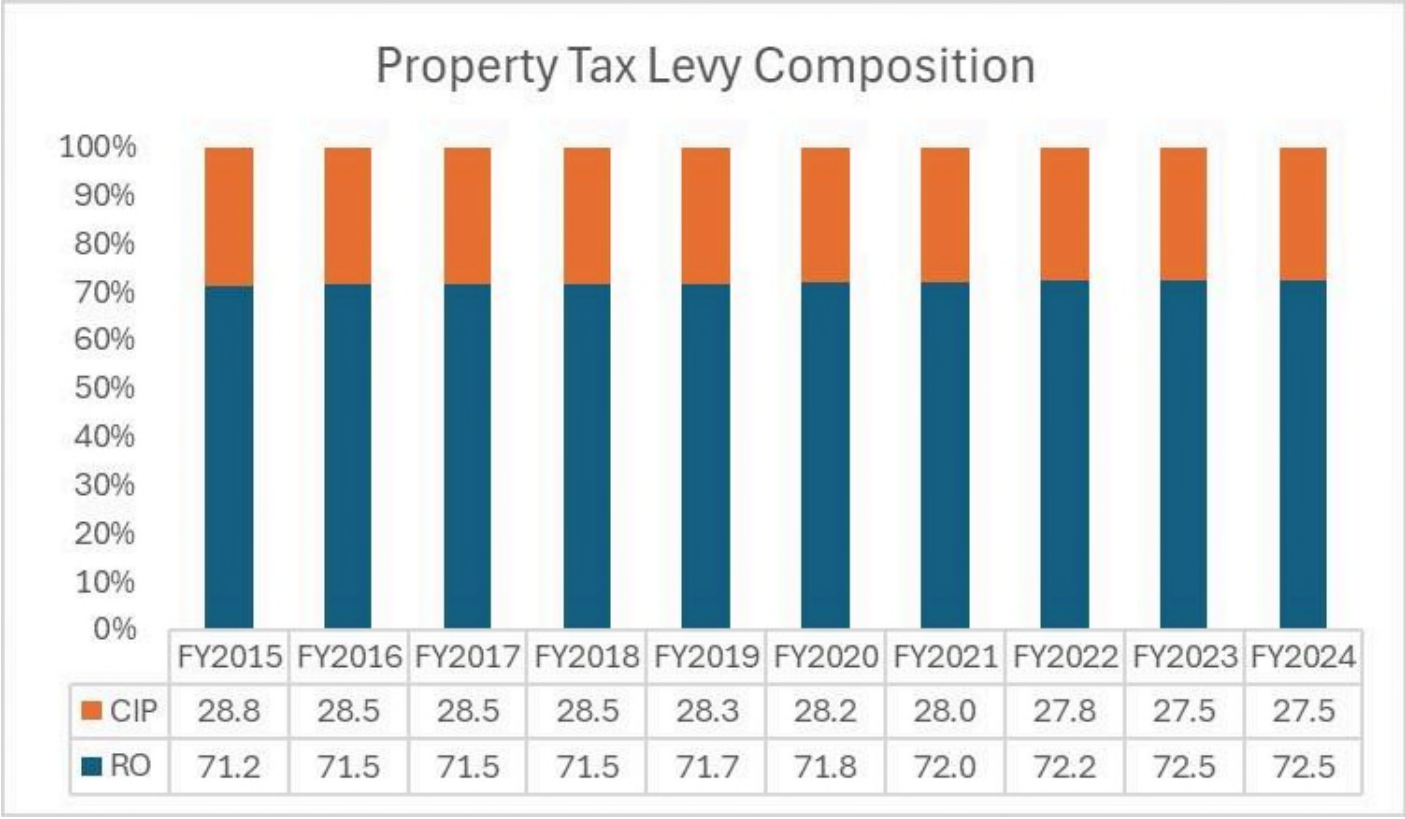
Tax Levies

The property tax levy is the annual amount of taxes assessed upon real and personal propertyin the community. For most communities, the property tax levy is the largest revenue source. Along with other revenue sources such as estimated receipts and available reserves, these revenues balance the spending needs voted in the omnibus budget. Since FY1982, the property tax levy has been subject to the limits of Prop 2½.

The graph below shows property tax levies for residential and open space (RO) classes as well as commercial, industrial and personal property (CIP) classes for FY2015 to FY2024. Tax levies grew by 49.5% ($7.2 billion) from $14.6 billion to $21.8 billion over this time.

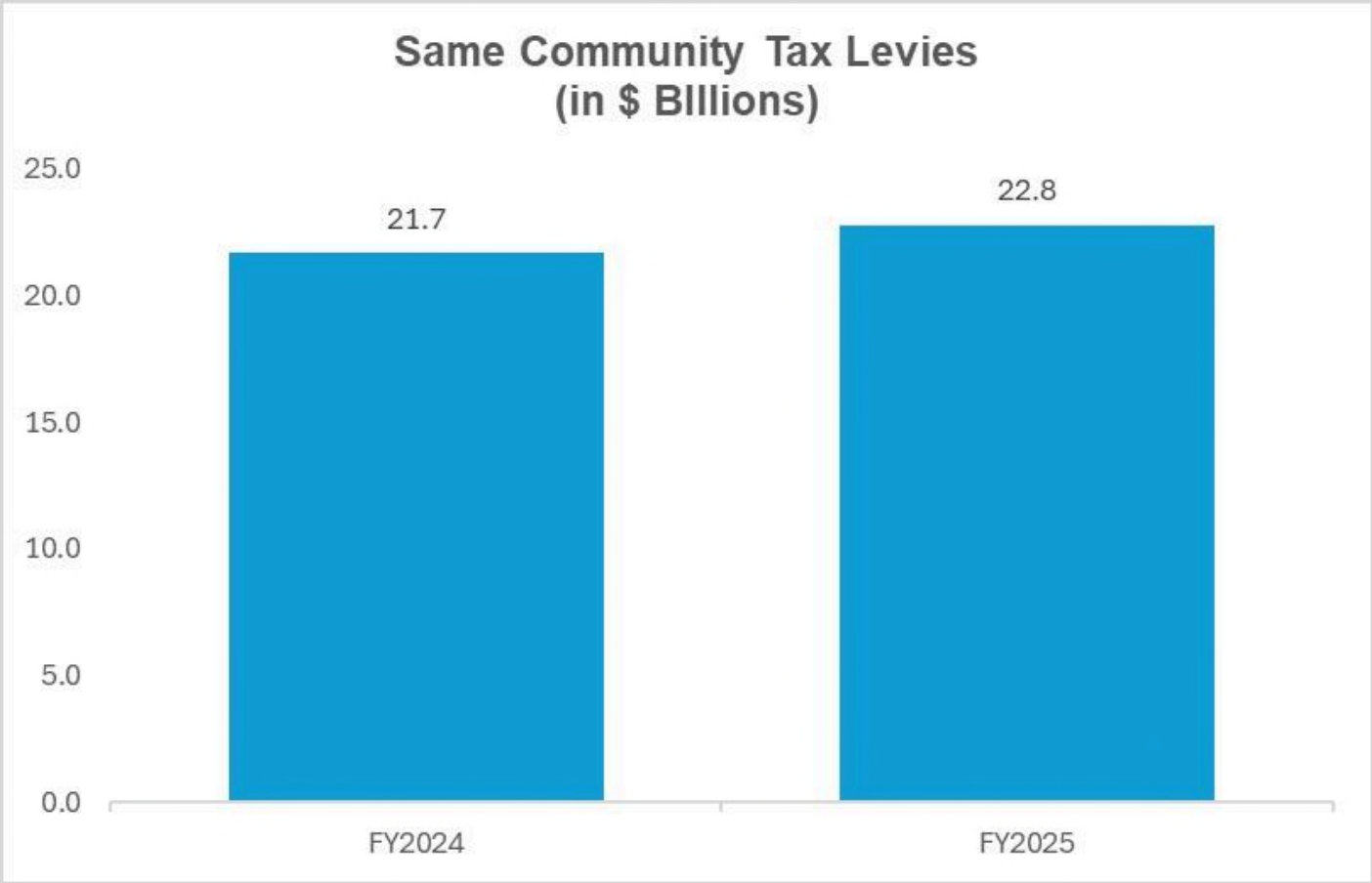


Overall percentages of the tax levy by the respective class groupings from FY2015 to FY2024 are seen in the following chart.



	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024
CIP	28.8	28.5	28.5	28.5	28.3	28.2	28.0	27.8	27.5	27.5
RO	71.2	71.5	71.5	71.5	71.7	71.8	72.0	72.2	72.5	72.5

The graph below shows that in total for the 343 communities with certified FY2025 tax rates, tax levies increased from FY2024 to FY2025 by 5.1% ($1.1 billion) from $21.7 billion to $22.8 billion.

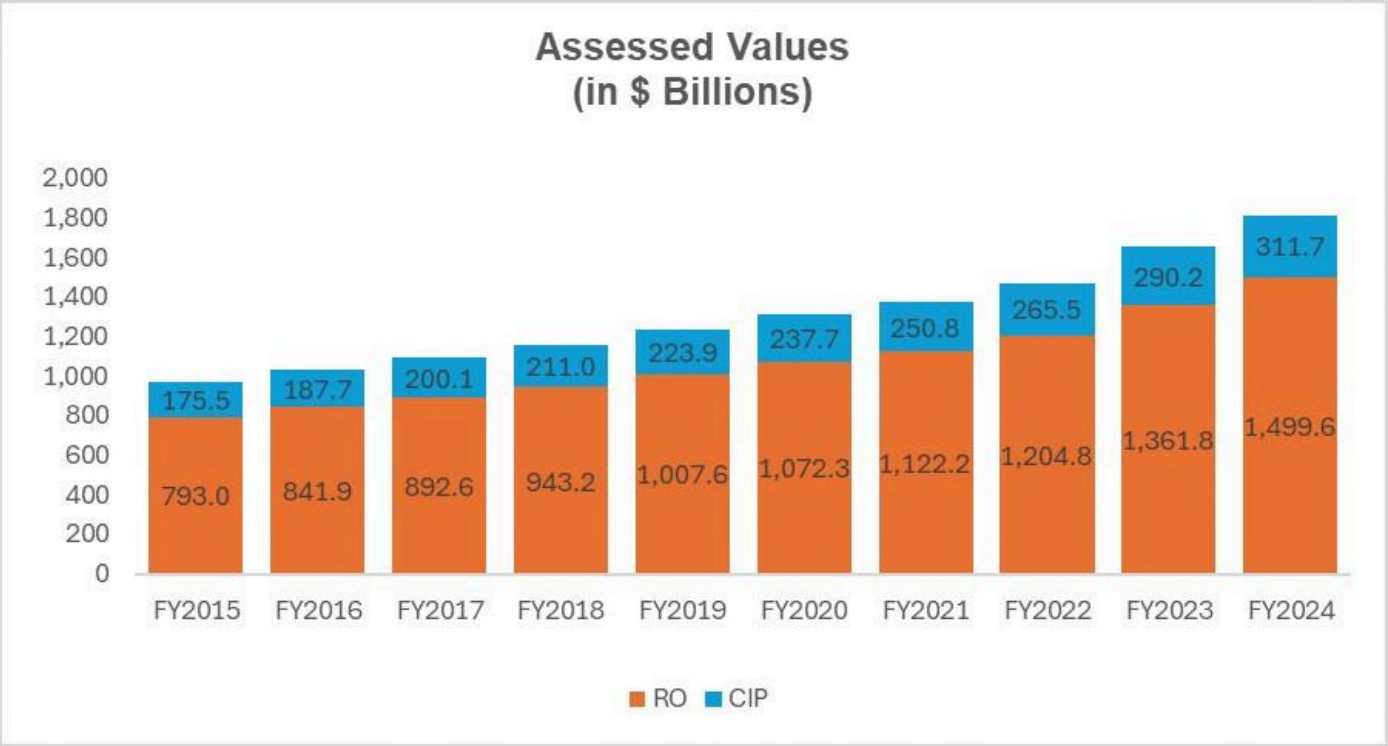


Details reveal that the tax levy increased in 334 communities and decreased in nine communities. The median percentage increase was 4.3%. The largest percentage increase was in Savoy (29.3%) and largest decrease was in New Ashford (-21%).

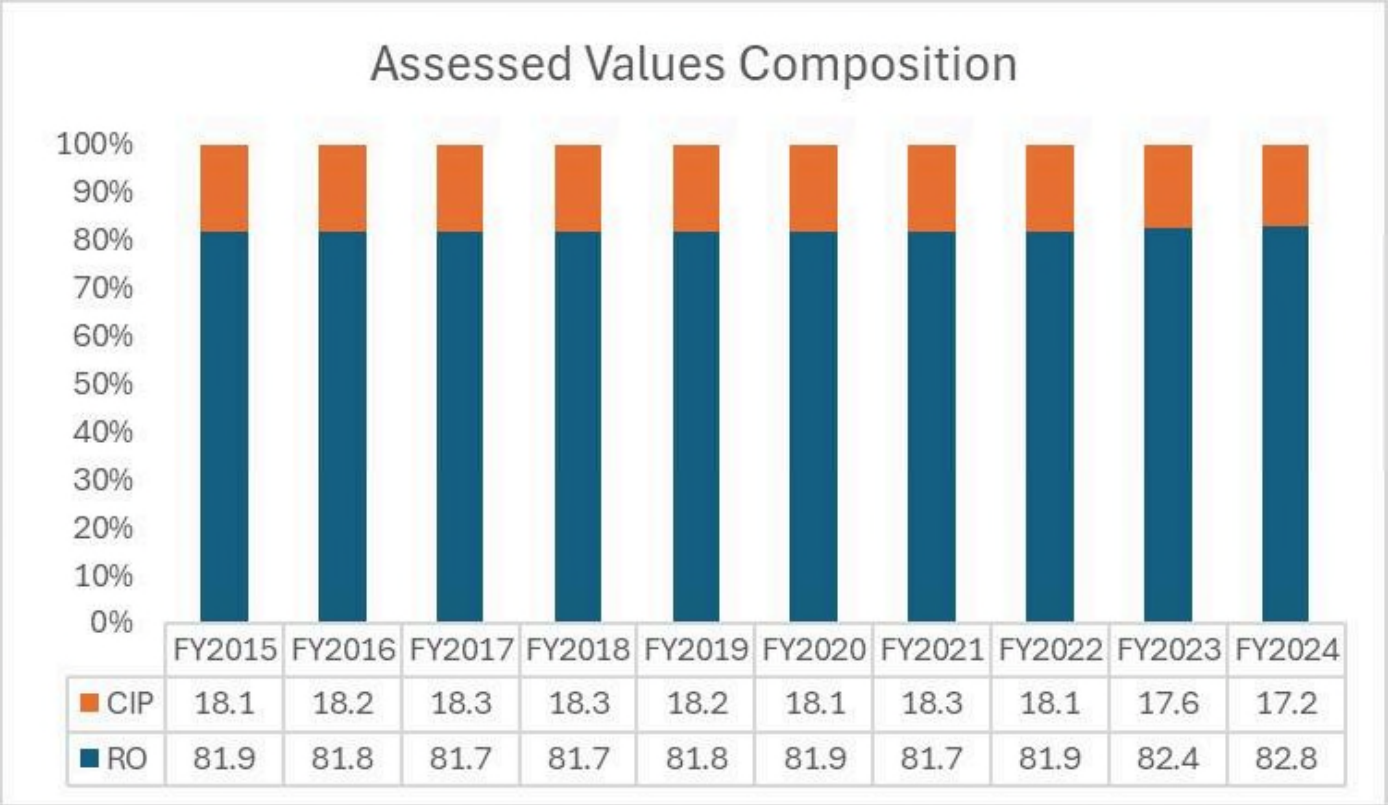
Assessed Values

The tax levy is distributed among taxpayers based on the assessed value (AV) of their properties as determined by the local assessors. **Bureau of Local Assessment** (/property-assessment-valuation-guidance) staff reviews and certifies the assessors' estimates every five years to ensure that they comply with legal standards. Interim year adjustments to reflect changes in market conditions must also meet legal standards, although they are not certified.

The next graph shows total AV from FY2015 to FY2024. Values rose by 87%, or $842.9 billion, from $968.5 billion to $1.811 trillion. In FY2016, AV first grew to over $1 trillion.



Overall percentages of AV by the respective class groupings from FY2015 to FY2024 are seen in the following chart.



	FY2015	FY2016	FY2017	FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024
CIP	18.1	18.2	18.3	18.3	18.2	18.1	18.3	18.1	17.6	17.2
RO	81.9	81.8	81.7	81.7	81.8	81.9	81.7	81.9	82.4	82.8

This next graph shows that in total for the 343 communities with tax rates approved for FY2025, AV increased from FY2024 to FY2025 by 5.5% ($98.8 billion) from $1.804.5 trillion to $1.903.3 trillion.



Details reveal that AV increased in 340 communities and decreased in three. The median percentage for increases was 6.2%. The largest percentage increase was in Plainfield (24.1%) while the decrease was in Warwick (2.1%).

The Levy Limit

Prop 2½ (https://www.youtube.com/playlist?list=PLWDTtSs7wOIlM3_6oschrXyP8ClyFoKv8) places limits on the amount of property taxes a community can levy. One limit is a tax levy ceiling which limits the property tax levy to 2.5% of the full and fair cash value of all taxable real and personal property in the community without specific further community action. Once the 2.5% level has been reached, the levy limit is said to have "hit the ceiling."

A levy ceiling is one of two types of tax levy restrictions imposed by **G.L. c. 59** (https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter59/Section21c)

§ 21C (https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter59/Section21c) (Proposition 2½). It states that in any year, the real and personal property taxes imposed may not exceed 2.5% of the total full and fair cash value of all taxable property. A levy limit is the other of the two types of tax levy restrictions imposed by G.L. c. 59 § 21C. It states that the real and personal property taxes imposed by a city or town may only grow each year by 2.5% of the prior year's levy limit, plus new growth and any overrides or exclusions. The levy limit can exceed the levy ceiling only if the community passes a debt exclusion, capital expenditure exclusion or special exclusion.

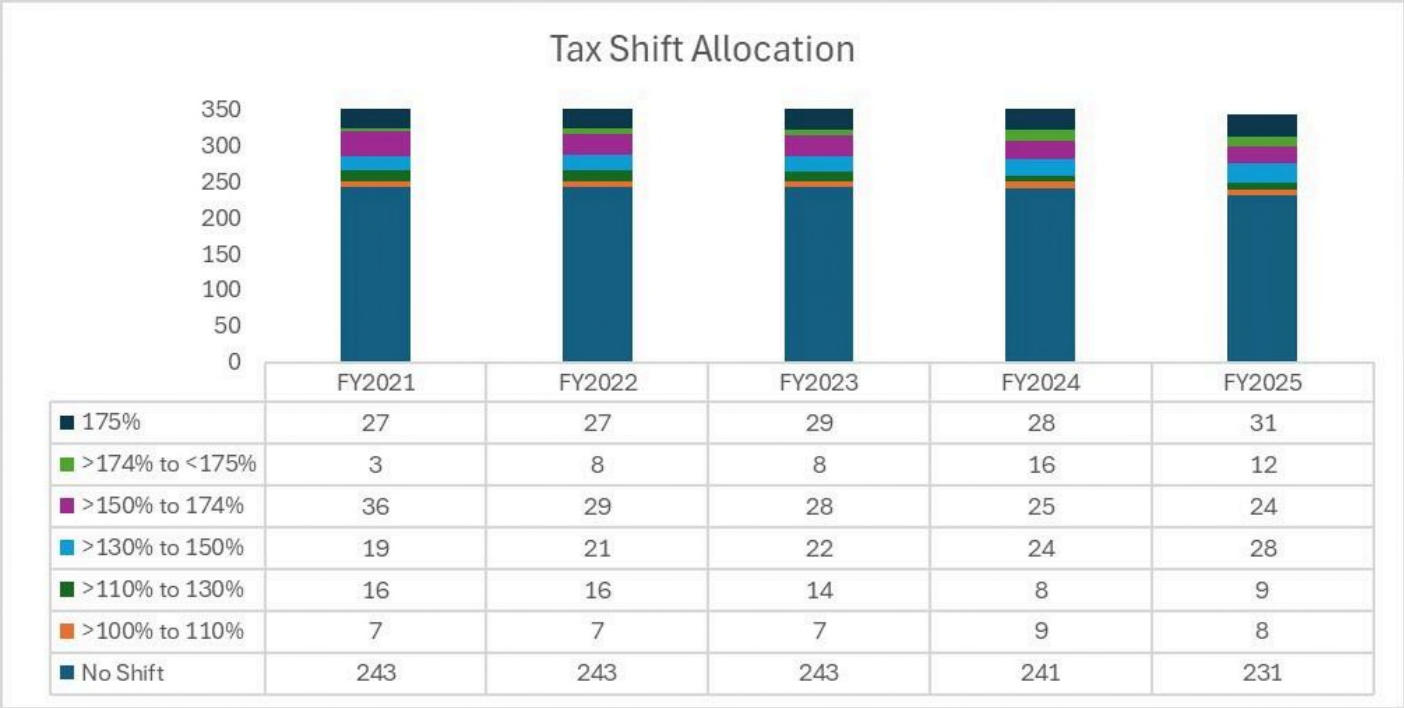
An incremental levy limit or tax levy that is within 90% to 99% of a levy ceiling can be referred to as "approaching the levy ceiling." Of the 343 communities that have set an FY2025 tax rate as of the date of this writing, none had levy limits that approached their levy ceilings and none had tax levies that approached their levy ceilings. As the incremental lower limit of Prop 2½ continues to increase, the extent to which future changes to the real estate market, either locally or statewide, affect the FY2025 results remains to be seen.

Tax Shift

At the annual classification hearing, mayors, city/town councils and boards of selectmen decide how to further distribute the tax levy. These boards may decide within certain legal limits upon a single tax rate structure which distributes the tax levy in proportion to the share that their property class bears to the total assessed valuationvaluation of the community, or a multiple tax rate structure which shifts some of the taxes that would be paid by RO taxpayers under a single tax rate structure onto CIP taxpayers. These boards and councils may also decide to grant a residential exemptionexemption, an open space class discount and/or a small commercial exemption.

Most communities do not shift the tax burden from the residential and open space classes to the other classes of real and personal property. Generally, the communities that do so have done so for many years. The chart below shows complete data for FY2021 to FY2024 and for 343 FY2025 communities. For the

eight tax rates yet to be certified, one (Florida) of eight shifted the burden in FY2024.



	FY2021	FY2022	FY2023	FY2024	FY2025
175%	27	27	29	28	31
>174% to <175%	3	8	8	16	12
>150% to 174%	36	29	28	25	24
>130% to 150%	19	21	22	24	28
>110% to 130%	16	16	14	8	9
>100% to 110%	7	7	7	9	8
No Shift	243	243	243	241	231

Tax Rates

The **calculation of the annual tax rate** (/info-details/tax-rate-setting) involves the efforts of many local officials as well as the citizenry. Timely tax rate setting is an important key to a successful financial operation and helps avert a cash shortfall, temporary borrowing costs and work-flow disruption in city and town hall financial offices.

Across the Commonwealth, residential tax rates increased in 115 communities and decreased in 225 communities. The highest FY2025 residential tax rate is Longmeadow ($21.12), while the lowest is Edgartown ($2.65). The greatest dollar increase from FY2024 in a residential tax rate is Savoy ($3.38), while the greatest dollar decrease from FY2024 is Plainfield ($2.94). Commercial tax rates increased in 119 communities and decreased in 222 communities. The highest FY2025 commercial tax rate is Holyoke ($38.55) and the lowest is Edgartown ($2.65). The greatest dollar increase from FY2024 in a commercial tax rate is Sandisfield ($4.69), while the greatest dollar decrease is Needham ($3.66).

We hope that you found this article informative. Data compiled for all the charts and graphs in this article can be found on the **DLS website** (/collections/DLS-databank-reports). **Additional information, trainings and resources on this and a variety of other municipal finance subjects** (/municipal-finance-training-and-resource-center) are also available.

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Why this commercial real estate investor turned bearish on Boston

bostonglobe.com/2026/03/01/business/boston-commercial-real-estate-investor

By Shirley Leung Globe Columnist, Updated March 2, 2026, 8:39 a.m. Save an Article Print this Article View Comments 283

March 1, 2026



National Real Estate Investors was a major funder of One Congress and The Sudbury, two of the tallest towers to go up in downtown Boston in recent years. Now the firm says it's taking its money to other markets.David L. Ryan/Globe Staff

For close to two decades, Jeff Kanne has invested several billions of dollars into real estate projects around Greater Boston. But with Mayor Michelle Wu entering a second term and statewiderent control on the ballot in November, Kanne sayshe's hitting the pause button.

That's because investors like him have choices. As chief executive of National Real Estate Advisors, which manages about $10 billion for roughly 120 institutional clients, Kanne is constantly weighing opportunities in some 20 markets across the country from Charlotte, N.C., to San Francisco. Sure, there's incredible demand for new housing in Boston, but it's too hard to get a return on his investment here.

“If the officials in Boston want investors like us to say, ‘Hey, I can’t wait to get to Boston,’ they need to roll out the red carpet and say, ‘Hey, come here. This is what we’re going to do for you,’” he said. “Because, unlike the common perception of real estate development, there’s as many people who lose money ... as there are who make money. It’s risky.”

Perhaps Kanne is a bit more cautious than most because he’s not some private equity guy or high-flying Wall Street type. He manages pension money, notably retirement funds of the International Brotherhood of Electrical Workers and the National Electrical Contractors Association. Kanne selects investment opportunities based on financial returns first, and those projects often create jobs and strengthen communities. Investments have ranged from downtown towers like One Greenway and Bulfinch Crossing to Chestnut Hill’s 300 Boylston St. complex.

FEATURED VIDEO



About a decade ago, 300 Boylston in Chestnut Hill was converted from a shopping center into medical offices and a large fitness center.Lane Turner

Related

‘Something’s got to give’: Boston’s Mayor Michelle Wu says she supports rent control ballot measureWhy some lawmakers hope a divisive ballot measure will force Beacon Hill to finally address rent control

So if investors like Kanne aren’t deploying capital into Boston, developers whorely on that capital can’tbuild their projects.

Kanne also feels reticent about New York City, ever since it became clear last year that Zohran Mamdani would become mayor and work to deliver on a campaign promise to freeze rents in the Big Apple.

At the time, Kanne was eyeing an investment in Manhattan. But he held off.

“We liked it a lot,” he recalled, but “we decided we needed to wait ... we just don’t know what’s going to happen.”

On top of uncertainty, Kanne weighs a city’s regulatory climate, from how long it takes to get projects through the approval process to the number of requirements, such as energy efficiency standards and affordable housing set-asides.

“I’m not suggesting that none of those things are good,” he said, “but what I can say is without a doubt, the fewer restrictions you have, the more likely it is that a project is going to pencil, and the more likely it is that capital providers like me will choose your city to put their money because there’s a lot less risk.”



Jeff Kanne is chief executive of the National Real Estate Advisors. He's putting the brakes on investing in Boston development projects. (Courtesy of National Real Estate Advisors) National Real Estate Advisors

But City Hall views these regulations differently. They exist for a reason — to build a Boston that's better for the environment and more affordable for the people who live here. And the city's notoriously drawn-out process ensures residents get a voice in development, too.

Wu's policies shouldn't be a barrier with current projects since many were permitted before her more stringent energyand affordable housing requirements went into place. The issue, City Hall has argued,isn't the mayor so much as global market conditions.

I tried to get Wu's planning chief Kairos Shen on the phone to talk more about this, but best I could do is a long statement from spokesperson Brittany Comak.

"We are in constant conversations with developers trying to identify ways that the City can be a helpful partner in getting projects into the ground," said Comak. "Sometimes the City is able to help developers close the gap, other times the level of support they would require would not justify expending so many taxpayer dollars on a market rate private project."

But interest rates and materials costs are pretty much the same everywhere. And Kanne is investing elsewhere.Over the last year, he's put capital in cities like Washington, D.C., and Atlanta, funding projects ranging from medical buildings to data centers.



One Congress in the background of cranes building an expansion of Massachusetts General Hospital in 2024.David L. Ryan/Globe Staff

Even San Francisco — which fell into a post-pandemic urban doom loop — is seeing a resurgence, thanks to theboom in artificial intelligence. Real estate investors are once again circlingthe Bay Arealooking for deals. Kanne said what's helped is the attitude of the new mayor, philanthropist Daniel Lurie, who has "put out the welcoming mat to businesses and capital."

Kanne said Boston used to be that way under previous mayors, Tom Menino and Marty Walsh, and whileperhaps local developers have no choice but to tolerate that shift, national-level investors like him don't have to.

"If I live in Boston and that's where my business is, well, I have to cope with that," he said. "But I don't, and my capital can go anywhere in the United States."

These days, Kanne is not only closing the door to Boston but potentially all of Massachusetts if the effort to pass rent control passes on the November ballot. If approved, that would limit annual rent increases statewide to the Consumer Price Index or 5 percent, whichever is lower.

He cites numbers crunched by housing economist Jay Parsons about what's happened in Montgomery County, an affluent pocket of Maryland suburbia that borders Washington and enacted rent control in 2024.

In the first eight months of that year before rent control took effect, the county issued building permits for 2,093 multifamily units, on pace with other Maryland counties. In the first eight months of 2025, Montgomery County issued just54 building permits, while the rest of the state kept building at a steady clip.

Parsons and Kanne came to the same conclusion.

"If you want to kill housing production, put rent control in place," said Kanne, "and you'll lose investors like me who will go somewhere else."

Not that long ago, investing in office towers or luxury condo buildings in Boston felt like a sure thing. Not anymore. Some predict it could be another decade before we see another construction boom.

That's a long time to wait out market conditions. Or we could try to control our own fate.

Shirley Leung is a Business columnist. She can be reached at shirley.leung@globe.com.

Initiative and Referendum in the 21st Century

Final Report and Recommendations of the NCSL I&R Task Force



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PREFACE AND ACKNOWLEDGMENTS

The NCSL Initiative and Referendum Task Force assumed a difficult task in addressing such a complicated and highly controversial issue. Thanks to the committed leadership of Senator DiAnna Schimek, the task force was able to quickly focus on the most important issues and eventually come to consensus on a set of recommendations. NCSL is indebted to each one of the task force members who contributed their expertise for this project.

The task force was a diverse, bipartisan group representing seven of the 24 initiative states and the District of Columbia. Its makeup was unique in that it also included industry members. The following legislators, legislative staff, and industry representatives served on the task force:

Honorable DiAnna Schimek, State Senator, Nebraska, Task Force Chair
Chris Badgley, Vice President of State Government Affairs, PhRMA, Washington, D.C.
Jerry Barnett, Ph.D., Principal, Thomas-Huntington Ltd., Missouri
Honorable Jim Costa, State Senator, California
Sharon Eubanks, Senior Attorney for Administration, Office of Legislative Legal Services, Colorado
Honorable Marilyn Jarrett, State Senator, Arizona
Patrick Kelly, Director of State Government Relations, Biotechnology Industry Organization, Washington, D.C.
Tracy Mihas, Manager of I&R and Corporate Issues, Philip Morris Companies, Washington, D.C.
Frank H. Plescia, Senior Director of U.S. State Government Affairs, Monsanto Company, Missouri
Honorable Lane Shetterly, House Speaker Pro Tem, Oregon
Michael Stewart, Senior Research Analyst, Legislative Counsel Bureau, Nevada

The task force was fortunate to gain the insight of many individuals who took the time to appear before the group and share their expertise. The task force is grateful to the following witnesses who contributed their time:

David Broder, *Washington Post,* Washington, D.C.
Lois Court, Save Our Constitution, Colorado
Neal Erickson, Office of the Secretary of State, Nebraska
Wayne Pacelle, Humane Society of the United States, Washington, D.C.
John Perez, Speaker's Commission on the California Initiative Process, California
Honorable Joe Pickens, State Representative, Florida

Larry Sokol, Speaker's Commission on the California Initiative Process, California
M. Dane Waters, Initiative and Referendum Institute, Washington, D.C.
Joseph F. Zimmerman, State University of New York-Albany, New York

Many others helped in the creation of this report, including legislative staff and election officials in initiative states who shared valuable data and took the time to review and confirm information about their states' laws and procedures. Their assistance is greatly appreciated; it contributed to the quality and accuracy of the information in this report.

A number of NCSL staff supported the task force in its work, including Jennie Drage Bowser and Kate Rooney in NCSL's Denver office. Leann Stelzer of the NCSL publications department helped edit and prepare the report for publication, and Scott Liddell of NCSL formatted the report.

EXECUTIVE SUMMARY

On December 7, 2001, the National Conference of State Legislatures assembled a task force to review the growing use of initiatives and referendums around the country and to examine their effect on representative democracy at the state level.

The Initiative and Referendum Task Force found that opportunities for abuse of the process outweigh its advantages and does not recommend that states adopt the initiative process if they currently do not have one.

The task force also developed recommendations that would enable initiative states to make their processes more representative. For states that are intent upon adopting an initiative process, the task force offers a set of guidelines to enhance the process and to avoid many of the pitfalls currently experienced by the initiative states. The task force urges such states to consider giving preference to a process that encourages citizen participation without enacting specific constitutional or statutory language—specifically, the advisory initiative or the general policy initiative.

The 34 recommendations contained in this report acknowledge that the initiative process has outgrown the existing laws that govern it. After listening to expert testimony from a wide variety of witnesses and compiling data from all 50 states, the task force concluded that the initiative has evolved from its early days as a grassroots tool to enhance representative democracy into a tool that too often is exploited by special interests. The initiative lacks critical elements of the legislative process and can have both intended and unintended effects on the ability of the representative democratic process to comprehensively develop policies and priorities.

As a result, the task force suggests that initiative states reform drafting, certification, signature-gathering and financial disclosure statutes; adhere to single subject rules; and improve practices regarding voter education. It also recommends that initiatives be allowed only on general election ballots.

It is the task force's intent that the discussion and adoption of the reforms in this report lead to a more thoughtful lawmaking process, improve interaction between initiative proponents and legislatures, and ultimately produce better public policy and reinforce representative democracy.

TASK FORCE RECOMMENDATIONS

The following 34 recommendations were adopted unanimously at the final meeting of the NCSL Initiative and Referendum Task Force in Denver, Colorado, on April 26-27, 2002.

The task force does not recommend that states that currently do not have an initiative process adopt one. The task force believes that representative democracy is more desirable than the initiative. The disadvantages of the initiative as a tool for policymaking are many, and the opportunities for abuse of the process outweigh its advantages. However, if a state is intent upon adopting an initiative process, the first four recommendations lay out the task force's view of an effectively structured process.

The remaining recommendations deal with specific elements of the initiative process and are intended as guidelines to improve existing procedures. The task force believes that the adoption of these recommendations will improve the initiative process to the benefit of both state government and voters and will result in improved public policy making via the initiative.

General Recommendations Regarding the Initiative Process

Recommendation 1.1: States that are considering adopting an initiative process should give preference to one that encourages citizen participation without enacting specific constitutional or statutory language. Specifically, states should consider:

A. First, adopting the advisory initiative; or
B. In the alternative, adopting the general policy initiative.

Recommendation 1.2: If states wish to adopt an initiative process and neither the advisory initiative nor the general policy initiative are adopted, they should adopt an indirect initiative process.

Recommendation 1.3: If states adopt a direct initiative process, they should adopt only a statutory initiative process, not a constitutional amendment initiative process.

Recommendation 1.4: If states adopt a constitutional amendment initiative process, they also should adopt a statutory initiative process.

Involving the Legislature in the Initiative Process

Recommendation 2.1: States that currently have a direct initiative process should consider adopting an indirect process as well, and provide incentives to encourage its use.

Recommendation 2.2: After a specified percentage of signatures has been gathered for an initiative petition, the legislature should provide for public hearings on the initiative proposal.

Recommendation 2.3: When appropriate, the legislature should place an alternative legislative referral on the ballot with an initiative that appears on the ballot.

The Subject Matter of Initiatives

Recommendation 3.1: States should encourage the sponsors of initiatives to propose them as statutory initiatives when possible, rather than as constitutional amendments.

Recommendation 3.2: States should adopt the single subject rule to enhance clarity and transparency in the initiative process.

Recommendation 3.3: If an initiative measure is rejected by voters, states should prohibit an identical or substantially similar initiative measure from appearing on the ballot for a specified period of time.

The Drafting and Certification Phase

Recommendation 4.1: States should require a review of proposed initiative language by either the legislature or a state agency. The review should include non-binding suggestions for improving the initiative's technical format and content, and should be considered public information.

Recommendation 4.2: States should require the drafting and certification of a ballot title and summary for each initiative proposal. Ballot titles must identify the principal effect of the proposed initiative and must be unbiased, clear, accurate, and written so that a "yes" vote changes current law.

Recommendation 4.3: States should require the drafting of a fiscal impact statement for each initiative proposal. The statement should appear on the petition, in the voter information pamphlet, and on the ballot.

Recommendation 4.4: States should establish a review process and an opportunity for public challenge of technical matters, including adherence to single subject rules, and ballot title, summary and fiscal note sufficiency, to be made prior to the signature-gathering phase.

The Signature Gathering Phase

Recommendation 5.1: States should require that initiative proponents file a statement of organization as a ballot measure committee prior to collecting signatures. States should void any signature that is gathered before a statement of organization is filed.

Recommendation 5.2: States should provide for safeguards against fraud during the signature gathering process. Safeguards should include:

A. Prohibiting the giving or accepting of money or anything else of value to sign or not sign a petition.
B. Requiring a signed oath by circulators, stating that the circulator witnessed each signature on the petition and that to the best of the circulator's knowledge, the signatures are valid.
C. Requiring circulators to disclose whether they are paid or volunteer.

Recommendation 5.3: States should provide for an adequate but limited time period for gathering signatures. The deadline for submission should allow a reasonable time for verification of signatures before the ballot must be certified.

Recommendation 5.4: States should establish a limit on the length of time that verified signatures are valid.

Recommendation 5.5: States should require a higher number of signatures for constitutional amendments than is required for statutory initiatives.

Recommendation 5.6: To achieve geographical representation, states should require that signatures be gathered from more than one area of the state.

Recommendation 5.7: Each state should establish a uniform process for verifying that the required number of valid signatures has been gathered.

Voter Education

Recommendation 6.1: States should provide to the public a manual describing the initiative and referendum process.

Recommendation 6.2: States should encourage public education and discussion about measures on the ballot.

Recommendation 6.3: States should produce and distribute a voter information pamphlet containing information about each measure certified for the ballot.

Recommendation 6.4: In addition to a printed voter information pamphlet, states should consider alternative methods of providing information on ballot measures, such as the Internet, video and audio tapes, toll-free phone numbers, and publication in newspapers.

Financial Disclosure

Recommendation 7.1: States should require financial disclosure by any individual or organization that spends or collects money over a threshold amount for or against a ballot measure.

Recommendation 7.2: After a title has been certified for an initiative measure, states should require that proponents and opponents of the initiative measure file a statement of organization as a ballot measure committee prior to accepting contributions or making expenditures.

Recommendation 7.3: States should make the disclosure requirements for initiative campaigns consistent with the disclosure requirements for candidate campaigns.

Recommendation 7.4: States should prohibit the use of public funds or resources to support or oppose an initiative measure. This should not preclude elected public officials from making statements advocating their position on an initiative measure.

Voting on Initiatives

Recommendation 8.1: States should allow initiatives only on general election ballots.

Recommendation 8.2: States should adopt a requirement that creates a higher vote threshold for passage of a constitutional amendment initiative than for passage of a statutory initiative.

Recommendation 8.3: States should require that any initiative measure that imposes a special vote requirement for the passage of future measures must itself be adopted by the same special vote requirement.

Recommendation 8.4: States should ensure that statutory initiative measures require the same vote threshold for passage that is required of the legislature to enact the same type of statute.

Recommendation 8.5: States should adopt a procedure for determining which initiative measure prevails when two or more initiative measures approved by voters are in conflict.

INTRODUCTION

Initiative and referendum operated quietly in the background of state politics for much of the 20th century, but during the last decade, it has come back into vogue. More initiatives are circulated, more make it to the ballot, and more money is spent in the process than ever before. Consider the numbers: 183 statewide votes on initiatives in the 1970s, 253 in the 1980s, and 383 in the 1990s, more than double the total from the 1970s. California alone accounts for 130 of the total 819 measures during that 30-year period; Oregon can claim 107. Between them, these two states account for nearly 30 percent of all initiatives from 1970 to 1999. It is no wonder that people in California and Oregon are beginning to voice concerns about the initiative process.

Initiative advocates say the resurgence of the initiative is good for states—it means citizens are using it as a tool to implement new laws and reforms that the legislature is unable or unwilling to enact. Besides accomplishing policy change, supporters also say that initiatives increase citizen involvement with government—people are not only more aware of state policy issues, but they are also more likely to vote. For these reasons, movements have begun to establish an initiative process in some of the states that currently do not have such a process.

However, in some states where the initiative is heavily used, there is growing public frustration with initiatives, and some people are beginning to speak out against the process. Legislatures are struggling to find ways to prevent fraud in the signature-gathering process; disclose information about who pays for initiative campaigns; and add flexibility to the process to accommodate more debate, deliberation and compromise than presently exists. Equally concerning to many is the disadvantage that, unlike our legislatures' process of representative government, decisions made through the initiative process do not provide an opportunity to accommodate minority interests. Most importantly, initiatives ask voters to make simple yes-no decisions about complex issues without subjecting the issue to detailed expert analysis and without asking voters to balance competing needs with limited resources. In short, the initiative affects the ability of representative democracy to develop policies and priorities in a comprehensive and balanced manner.

The problems with the initiative process are not easy to solve for a number of reasons. The courts have made it difficult to regulate both petition circulators and initiative campaign finance, and almost any reform can be a difficult political issue because proponents of the initiative generally are hostile to legislative attempts to change the process.

The initiative is a vital and popular part of democracy in half the states (refer to appendix A for a list of initiative states), but it is clear that the initiative has outgrown the existing state laws governing it. NCSL's Initiative and Referendum Task Force set out to first gather the facts and data necessary to paint an accurate picture of how the initiative process works in each state. It identified and focused on problems in the process, then considered ways that the process might be made more open and flexible. The task force feels strongly that the changes it recommends in the initiative process would equally benefit both voters and the legislative process, and that, in the end, a reformed initiative process might produce better public policy.

The task force met three times during a five-month period. Meetings were held on:

- December 7-8, 2001, in Washington, D.C.;
- February 8-9, 2002, in Washington, D.C.; and
- April 26-27, 2002, in Denver, Colorado.

The task force took great care to ensure that it heard testimony from experts and activists on a wide array of issues and from as many points of view as possible. Presenters included both supporters and critics of the initiative process, citizens who use the initiative process, and election administrators. The experts who testified before the task force were:

David Broder, *Washington Post*, Washington, D.C.;
Lois Court, Save our Constitution, Colorado;
Neal Erickson, Office of the Secretary of State, Nebraska;
Wayne Pacelle, Humane Society of the United States, Washington, D.C.;
John Perez, Speaker's Commission on the California Initiative Process, California;
Honorable Joe Pickens, State Representative, Florida;
Larry Sokol, Speaker's Commission on the California Initiative Process, California;
M. Dane Waters, Initiative and Referendum Institute, Washington, D.C.; and
Joseph F. Zimmerman, State University of New York-Albany, New York.

In addition to the experts who testified before the task force, the task force members themselves are experts on the initiative process. The perspectives and suggestions that each member brought to the table contributed to the extensive body of knowledge the task force developed about how the initiative works around the country. Finally, the task force also relied on a wide array of written materials on the initiative process. These include reports from earlier initiative reform commissions and task forces, and the many books and academic papers that are listed in appendix B and in the reference section of this report.

The task force adopted 30 recommendations for legislatures in the initiative states that are seeking guidance on how their initiative process might be improved. Four additional recommendations are meant for states that may be thinking about adopting an initiative process. Although the task force does not recommend that non-initiative states adopt such a procedure, these four recommendations are offered for those states that have, nonetheless, made the decision to go forward.

All the recommendations were based on a set of observations and conclusions about representative and direct democracy that were adopted by the task force at its first meeting. These principles reflect the task force members' belief that it is important to carefully balance the pure democratic impulse of the initiative with the deliberative, consensus-

building practices of representative democracy. It also is the belief of task force members that the adoption of this set of recommended reforms by initiative states will lead to a more thoughtful lawmaking process, improved interaction between initiative proponents and legislatures, and ultimately, better public policy.

Observations and Conclusions About Representative and Direct Democracy

Adopted by the NCSL I&R Task Force on April 27, 2002

We offer in the following observations regarding representative and direct democracy.

1. Representative democracy is the foundation of America's system of government.

2. Representative democracy has provided a stable and flexible system of government that has served America well for more than 200 years.

3. Direct democracy, as envisioned in the initiative and referendum system, was first instituted as a check on representative democracy. It was meant to enhance representative government, not to supercede or abolish it.

4. As intended by its founders, the initiative and referendum process was meant to give citizens a tool to break what they perceived as the hold of special interests over some state legislatures.

5. In most of the 24 states where it exists, the initiative is a popular part of the lawmaking process.

6. The initiative brings to the fore issues that may not receive legislative attention or final action and engages citizens in a debate of important public policy issues.

Based on these observations, we draw the following conclusions about direct democracy.

1. The initiative has evolved from its early days as a grassroots tool to enhance representative government. Today, it is often a tool of special interests.

2. The initiative process, as it exists today, lacks some of the critical elements of the representative system of government, including debate, deliberation, flexibility, compromise and transparency.

3. The initiative process does not involve all the checks and balances that representative government does.

4. The initiative can affect the ability of representative democracy to develop policies and priorities in a comprehensive and balanced manner.

5. As the initiative process and the way it is used have evolved over time, a review of the laws governing it is merited.

1. General Recommendations Regarding the Initiative Process

Recommendations

The task force does not recommend that states that currently do not have an initiative process should adopt one. However, if a state is intent upon adopting an initiative process, the following four recommendations lay out the task force's view of how an effective process might be structured.

Recommendation 1.1: States that are considering adopting an initiative process should give preference to one that encourages citizen participation without enacting specific constitutional or statutory language. Specifically, states should consider:

A. First, adopting the advisory initiative; or
B. In the alternative, adopting the general policy initiative.

Recommendation 1.2: If states wish to adopt an initiative process and neither the advisory initiative nor the general policy initiative are adopted, they should adopt an indirect initiative process.

Recommendation 1.3: If states adopt a direct initiative process, they should adopt only a statutory initiative process, not a constitutional amendment initiative process.

Recommendation 1.4: If states adopt a constitutional amendment initiative process, they also should adopt a statutory initiative process.

Overview

The task force does not recommend that non-initiative states adopt an initiative process. However, should a state choose to do so, the recommendations in this chapter outline what the task force considers to be an ideally structured initiative process.

The Advisory Initiative

An advisory initiative process provides citizens with a formal means of presenting to the legislature the views of the majority on a particular issue, but stops short of the actual enactment of laws. It permits public input in the decision-making process, and allows the legislature to weigh public opinion in determining the appropriate implementation. In short, the advisory initiative uses a more deliberative lawmaking process than the direct initiative. Another advantage of the advisory initiative over the binding direct initiative is that, with the direct initiative, a slim majority might enact a binding policy measure, but a close vote on an advisory initiative simply indicates a lack of consensus.

Recommendation 1.1(A): States that are considering adopting an initiative process should give preference to one that encourages citizen participation without enacting specific constitutional or statutory language. Specifically, states should first consider adopting the advisory initiative.

Several states use the advisory referendum, whereby the legislature or even the governor may place a question on the ballot, asking voters their opinion on an issue. In 2000, for example, the governor of Rhode Island placed an advisory question on the statewide ballot, asking voters if they favored co-equal branches of government. It is much rarer for states to permit citizens to initiate an advisory question.

The General Policy Initiative

A general policy initiative is similar to the advisory initiative discussed above, except that it is binding upon the legislature. If the voters pass a citizen initiative of a general sort—for instance, expressing their desire that the state use tobacco settlement revenues for improving health care—it is up to the legislature to enact the specific laws required to implement that general policy. Like the advisory initiative, the general policy initiative permits direct public input to the policymaking process but uses a more deliberative approach to crafting detailed policy. The general policy initiative offers citizens the opportunity to put their policy ideas before the voters, but offers legislatures more flexibility in implementing voter-mandated policy than does the initiative process currently offered in 24 states.

> Recommendation 1.1(B): States that are considering adopting an initiative process should give preference to one that encourages citizen participation without enacting specific constitutional or statutory language. Specifically, as an alternative to the advisory initiative, states should consider adopting the general policy initiative.

The Indirect Initiative

The indirect initiative is frequently offered as an improvement over the direct initiative because it allows for legislative analysis, committee hearings and floor debate. Legislative deliberation and debate on the issue itself and its effect on other existing policies may result in an improved initiative proposal because unintended consequences and errors may come to light.

Pitfalls exist in the indirect initiative process, however, which prevent it from being a panacea to the problems of the initiative. The main argument against the indirect initiative is that, where the process is currently offered, legislatures rarely take up the initiative proposal and, when they do, they almost always reject initiative proposals. Rarely do they engage in negotiation with initiative proponents and seek to craft a compromise. Most often, indirect initiatives are rejected by the legislature and end up on the ballot for a popular vote; the indirect process has done little but protract the initiative process.

In spite of its pitfalls, the indirect initiative process is more desirable than the direct initiative process because it allows for more public debate and deliberation, and it involves the legislature, with its professional research and bill drafting staff, in the process.

> Recommendation 1.2: If states wish to adopt an initiative process and neither the advisory initiative nor the general policy initiative are adopted, they should adopt an indirect initiative process.

Eight states currently offer an indirect initiative process. In the indirect initiative process, a proposed initiative is referred to the legislature after proponents have gathered the required number of signatures. The legislature has the option to enact, defeat or amend the measure. Depending on the legislature's action, the proponents may continue to pursue placement on the ballot for a popular vote. In three states (Massachusetts, Ohio and Utah), proponents must gather additional signatures to place the measure on the ballot; in the others, it automatically goes to the ballot.

Table 1. States with an Indirect Initiative Process		
	Constitutional Amendments	Statutory Initiatives
Maine		✔
Massachusetts	✔	✔
Michigan		✔
Mississippi	✔	
Nevada		✔
Ohio		✔
Utah*		✔
Washington*		✔

*State also has a direct initiative process; proponents may select the direct or indirect route.
Note that the table does not represent all forms of the initiative process available in each state; only the indirect processes are represented.
Source: National Conference of State Legislatures, January 2002.

In several states (Maine, Massachusetts, Michigan, Nevada and Washington), it is specifically provided for in law that the legislature may place an alternate proposition on the ballot with the initiative. Voters may vote for one or the other or for neither.

Alaska's and Wyoming's initiative processes are sometimes cited as indirect. However, instead of requiring that an initiative be submitted to the legislature for action, they require only that an initiative cannot be placed on the ballot until after a legislative session has convened and adjourned, thus providing the legislature with the opportunity to address the issue if it so chooses.

Two states—Utah and Washington—offer both the direct and indirect initiative process; proponents have the option of choosing either. In Utah, the initial signature requirement is lower for the indirect process. This serves as an incentive to proponents to choose the indirect route and thus incorporate the legislature into the process. Qualifying an initiative directly to the ballot requires signatures equal to 10 percent of the votes cast for governor in the last election; presenting an indirect initiative to the Legislature requires signatures equal to 5 percent of the votes cast for governor in the last election. However, if the indirect initiative is rejected by the Legislature, proponents must gather additional signatures equal to 10 percent of the votes cast for governor, creating a total signature threshold for indirect initiatives that is higher than that for direct initiatives. As a consequence, use of Utah's indirect initiative is significantly lower than use of the direct method.

California had an indirect initiative process until 1966. It was available in addition to the direct process, and proponents were permitted to choose the process they would use. The indirect option was rarely used, and voters approved its abolition in 1966.

Nevada currently has an indirect process for statutory initiatives. At one time, it also had the indirect process for initiative constitutional amendments, but it abolished this option in 1962. Voters approved a constitutional amendment referred by the Legislature that abolished the indirect process for constitutional amendments and at the same time imposed the requirement that any constitutional amendment be approved by a majority vote in two successive elections.

Adopting an indirect initiative process has been suggested as a significant reform by the following individuals and groups.

Professor Joseph Zimmerman, SUNY-Albany (in testimony before the task force in February 2002),
Speaker's Commission on the California Initiative Process (2002),
David Broder, *Washington Post* (in testimony before the task force on Dec. 7, 2001),
Dane Waters, I&R Institute (in testimony before the task force on Dec. 8, 2001),
California League of Women Voters (1999),
City Club of Portland, Oregon (1996),
Citizens' Commission on Ballot Initiatives (California, 1994),
Florida's Citizen Initiative Process Report (1994), and
California Commission on Campaign Financing (1992).

Case Studies: The Indirect Initiative

Switzerland

Switzerland's initiative process, which has long been cited as a model of a successful initiative process and heavily influenced the early development of the initiative in the United States, is an indirect process. When an initiative is submitted to the legislature in a Swiss canton, the legislature has four years to deliberate and act on the measure before it is referred to the ballot. When it does go to the ballot, the legislature often submits a statement of its position on the measure and has the option of placing a competing measure on the ballot. Most important, however, is the fact that many initiatives are withdrawn from the legislature before they reach the ballot. According to Richard Ellis in *Democratic Delusions: The Initiative Process in America*, the most common reason for this is that the legislature has promised or taken action that satisfies the proponents. Ellis writes that:

> "The initiative in Switzerland is thus an integral part of the legislative process and is often used as a spur to get a majority in the legislature to heed the concerns of minority groups that have previously been thwarted in the assembly. Unlike in the United States, where the initiative process is a badly confrontational, zero-sum game, in Switzerland it is often employed to arrive at a consensus by facilitating legislative deliberation and compromise."[1]

Massachusetts

The indirect initiative process used for constitutional amendments in Massachusetts is unique because a citizen-initiated constitutional amendment cannot gain ballot access without first passing the legislature. An initiated constitutional amendment must be approved in two consecutive legislative sessions before it can go on the ballot. In the first session, it may be amended by the legislature with a three-fourths vote, and must be approved by one-fourth of the legislature in a joint session in order to advance to the second legislative session. In the second session, the proposal must again be approved by one-fourth of the legislature in a joint session in order to advance to the ballot. The legislature may not amend the proposal at this point in the process, but it may place a substitute measure on the ballot together with the initiative proposal. Few initiated constitutional amendments survive this process and ultimately land on the ballot (three in the history of the state), but many initiatives that fail to pass the legislature and advance to the ballot succeed in prodding the legislature to take action on the issue.

The process for statutory initiatives in Massachusetts, although still indirect, is less rigorous than the process for constitutional initiatives. A statutory initiative must be

heard by the committee to which it is referred, and the committee must issue a report. If the legislature fails to enact the proposal, proponents may gather a small number of additional signatures to place it on the ballot. The legislature may place its own substitute proposal on the ballot together with the initiative proposal.

The advantages of the Massachusetts indirect initiative are that 1) the legislature is incorporated into the process, resulting in public consideration and debate, and 2) it gives the legislature the opportunity and an adequate period of time to respond to a proposal presented in an initiative. By making the constitutional process more difficult to use, it also directs more proposals toward the statutory initiative instead of the constitutional initiative. Its disadvantage is that it allows the legislature to block an initiative constitutional amendment from reaching the ballot, something that initiative advocates find too restrictive.

1. Richard Ellis, *Democratic Delusions: The Initiative Process in America* (Lawrence, Kan.: University Press of Kansas, 2002, 140-1.

Initiated Statutes vs. Constitutional Amendments

Constitutions are the foundations of state laws and governments. They are sacrosanct and should not be amended hastily or at the whim of a narrow segment of society. In offering an initiative constitutional amendment process, a state runs the risk of accumulating material in its constitution that is statutory in nature, since initiative proponents are left with no other tool to initiate policy.

> Recommendation 1.3: If states adopt a direct initiative process, they should adopt only a statutory initiative process, not a constitutional amendment initiative process.

Offering a statutory initiative process in addition to a constitutional amendment initiative process also can help avoid this problem. Some initiative proponents will choose the statutory process if it is available to them, especially if incentives are offered to encourage the use of the statutory process over the constitutional process.

> Recommendation 1.4: If states adopt a constitutional amendment initiative process, they also should adopt a statutory initiative process.

Other Ideas for Reform

Limits on the Legislature's Power to Amend and Repeal Initiated Statutes

Limiting the legislature's power to amend and/or repeal a statute enacted through the initiative may be an incentive to encourage the use of the statutory initiative over the constitutional initiative. Very often, initiative proponents elect to use the constitutional initiative in order to prevent the legislature from amending or repealing their proposal. If proponents were assured that the legislature's ability to amend and/or repeal statutory initiatives was limited, perhaps they would be more inclined to avail themselves of the statutory initiative process.

Currently, the legislature's power to amend and/or repeal a statute passed by the initiative is restricted in 10 states, and in California, it is expressly prohibited. In these states, a supermajority vote of the legislature is required to amend or repeal an initiated measure, or the legislature may be prohibited from acting on an initiated measure for a specified period of time. In the other 14 states, the legislature is free to amend or repeal an initiated measure at any time.

Table 2. Legislative Amendment and Repeal of Initiated Measures

	Restriction
Alaska	No repeal within two years; amendment by majority vote anytime
Arizona	No repeal; 3/4 vote to amend; amending legislation must "further the purpose" of the measure
Arkansas	2/3 vote of the members of each house to amend or repeal
California	No amendment or repeal of an initiative statute by the Legislature unless the initiative specifically permits it
Michigan	3/4 vote to amend or repeal
Nevada	No amendment or repeal within three years of enactment
North Dakota	2/3 vote required to amend or repeal within seven years of effective date
Oregon	2/3 vote required to amend or repeal within two years of enactment
Washington	2/3 vote required to amend or repeal within two years of enactment
Wyoming	No repeal within two years of effective date; amendment by majority vote any time

Source: National Conference of State Legislatures, January 2002.

Recent Legislative Action

In the period of 1999-2002, 17 non-initiative states saw legislation proposing the adoption of an initiative process. In Minnesota, an initiative bill passed the House twice in recent years. In fact, Minnesota voters have voted against adopting the initiative three times since 1913. However, the vote has been close, and the idea of adopting the initiative process continues to have strong support in Minnesota. In New York, Governor Pataki urged the adoption of the initiative in his 2002 state-of-the-state address. Several initiative bills currently are pending in the New York Legislature, one of which has passed the Senate.

Florida, which has had an initiative process for constitutional amendments since 1972, considered a bill in 2002 that would have provided for citizen initiatives to amend the statutes, as well. The bill would have modified the constitutional initiative process at the same time, changing the vote requirement from a simple majority to a two-thirds vote and requiring economic impact statements for all initiatives. The bill passed the House but failed to pass the Senate.

2. Involving the Legislature in the Initiative Process

Recommendations

Recommendation 2.1: States that currently have a direct initiative process should consider adopting an indirect process as well, and provide incentives to encourage its use.

Recommendation 2.2: After a specified percentage of signatures has been gathered for an initiative petition, the legislature should provide for public hearings on the initiative proposal.

Recommendation 2.3: When appropriate, the legislature should place an alternative legislative referral on the ballot with an initiative that appears on the ballot.

Overview

Further integrating the legislature into the initiative process would result in improved policymaking in the initiative states. Initiatives often tie the hands of the legislature, preventing state legislatures from developing broad, cohesive state policies. Improving the adversarial nature of the relationship between initiative advocates and state legislatures would be beneficial to legislatures and initiative proponents alike—initiative proponents would be more likely to see the legislature enact the policies they advocate, and legislatures would face fewer voter-mandated policies that restrict their flexibility and discretion in the lawmaking process.

Furthermore, increasing legislative involvement in the initiative process enhances the debate that surrounds initiative proposals and provides more opportunity for public access and input to the initiative process.

The Indirect Initiative

As discussed in chapter one, the indirect initiative process is more desirable than the direct process. In Utah and Washington, however, which have both types of processes, the indirect variety is rarely used. If states provided incentives—such as creating a lower signature threshold and a longer circulation period for indirect measures, or requiring the legislature to hold hearings on all indirect initiatives submitted—to proponents to use the indirect process, perhaps more proponents would be drawn to the indirect process. The benefits of such incentives also might include a significant monetary savings for proponents if they are able to reach a compromise with the legislature and thus avoid a campaign, and an improved end product, thanks to the legislative hearing process. No matter how a state chooses to structure an indirect initiative process, the legislature must actively interact and negotiate in good faith with initiative proponents if the process is to be effective.

Recommendation 2.1: States that currently have a direct initiative process should consider adopting an indirect process as well, and provide incentives to encourage its use.

Public Hearings on Initiatives

Public hearings provide a forum for expert testimony, staff research and analysis, and debate by opposing sides. They also establish a public record of the proponents' intent, which could be useful to voters, to both sides in a campaign, and also in later court challenges, should they arise. Public hearings could be handled in several ways. The legislature itself could hold hearings on measures that have gathered a specified minimum percentage of the required signatures or on measures that have qualified for the ballot. As an alternative, the secretary of state could be required to hold public hearings on initiatives.

Recommendation 2.2: After a specified percentage of signatures has been gathered for an initiative petition, the legislature should provide for public hearings on the initiative proposal.

The organizations and individuals recommending public hearings for initiatives include:

Dane Waters of the I&R Institute (in testimony before the task force in December 2001),
California League of Women Voters (1999),
City Club of Portland, Oregon (1996),
Nebraska Petition Process Task Force (1995),
California Post Commission (1994), and
California Commission on Campaign Financing (1992).

Case Studies: Public Hearings on Initiatives

California's Senate Bill 384, proposed in the 1999-2000 legislative session, would have triggered public hearings for any initiative that obtained 15 percent of the required signatures. After the hearing, proponents would be permitted to make non-substantive technical changes—such as correcting drafting errors or making stylistic changes—then could continue to gather the remaining required signatures.

Oregon's House Bill 3487 from the 1999 legislative session would have created a 12-member citizen initiative review committee appointed by the governor, the president of the Senate, and the speaker of the House. After holding hearings on a proposal, the committee would be required to issue a report to the public and the news media, identifying issues raised by the proposal and including a fiscal impact estimate and summaries of all public testimony received at hearings. Proponents would be permitted to make non-substantive amendments to the initiative, subject to attorney general approval, after the report was issued.

Referring Legislative Alternatives to Initiative Proposals

If the legislature feels that an initiative measure is flawed, it should exercise its right to place an alternative measure on the ballot. When the legislature's proposal is placed on the ballot together with an initiative, voters are offered more than a simple yes/no vote—they

are offered policy choices. The presence of similar but competing measures on the ballot also can prompt public debate and analysis of the proposals, resulting in more thorough attention to the perceived problem and potential solutions the measures address.

> Recommendation 2.3: When appropriate, the legislature should place an alternative legislative referral on the ballot with an initiative that appears on the ballot.

Support for this reform has been expressed by Professor Joseph Zimmerman (in testimony before the task force in February 2002) and the California Post Commission (1994).

Case Studies: Legislative Alternatives to Initiatives

In at least five states (Maine, Massachusetts, Michigan, Nevada and Washington), the legislature is specifically granted the power to place alternatives to initiatives on the ballot. In most other states, the legislature is neither specifically granted nor denied that power. The Maine Legislature frequently chooses to exercise this right. In 1996, for example, Question 2A appeared on the ballot. It was a citizen initiative that sought to ban the timber harvesting practice of clearcutting in the state. The Legislature placed Question 2B on the ballot, a more moderate proposal. Voters also were offered Question 2C, which was a vote for neither 2A nor 2B. Question 2B, the Legislature's alternative to the initiative, passed.

Recent Legislative Action

California, Oregon and Utah considered bills that would permit the legislature to make certain amendments to proposed initiatives before they are placed on the ballot. Utah passed HB 143 in 1999, which allows the Legislature to make technical corrections to indirect initiatives submitted to the Legislature and to prepare a legislative review note and fiscal note for indirect initiatives. Four states considered requiring legislative review and comment on proposed initiatives.

3. The Subject Matter of Initiatives

Overview

It is common for states to prohibit the use of the initiative for certain subjects. In Massachusetts and Mississippi, for instance, the initiative cannot be used to modify or repeal the rights of individuals, and several states prohibit initiatives that deal with the judiciary. These are fundamental matters of law, and it is appropriate that some states should choose to remove them from the purview of the initiative process. Some scholars and reformers argue that the same argument extends to state constitutions—that they are the foundations of state law, and changing them should not be entered into lightly.

Recommendations

Recommendation 3.1: States should encourage the sponsors of initiatives to propose them as statutory initiatives when possible, rather than as constitutional amendments.

Recommendation 3.2: States should adopt the single subject rule to enhance clarity and transparency in the initiative process.

Recommendation 3.3: If an initiative measure is rejected by voters, states should prohibit an identical or substantially similar initiative measure from appearing on the ballot for a specified period of time.

Constitutional vs. Statutory Initiatives

In many initiative states, constitutions are becoming cluttered with matter that is more appropriate for the state's statutes. Initiative proponents often use the constitutional amendment rather than the statutory initiative because they fear the legislature might amend or repeal their initiative if they place it in statute. They are further encouraged to use the constitutional amendment because it is rarely more difficult or costly to pass than a statutory initiative. States could implement reforms that provide incentives for using the statutory process, such as lower signature thresholds and increased circulation periods. They can also reassure proponents by enacting time limits during which the legislature may only amend an initiated statute with a supermajority vote. This subject is also discussed on page 10 in chapter one.

> Recommendation 3.1: States should encourage the sponsors of initiatives to propose them as statutory initiatives when possible, rather than as constitutional amendments.

The City Club of Portland made a similar recommendation in 1996. Their recommendation states that the process for amending the Oregon Constitution should be substantially more difficult than adopting, amending or repealing a statute.

Single Subject Rules

Single subject rules require that an initiative address only one question or issue. Such rules benefit the initiative process because they make initiatives simpler and easier to understand. There is a danger in permitting a popular vote on a measure that addresses multiple, distinct subjects. How might a voter express his support of one subject but his rejection of another in such a situation? The lack of a single subject rule also leaves the door open to proponents who might try to make an unpopular idea more palatable by pairing it with a popular idea in a single initiative. In such cases, it is impossible to determine the majority's viewpoint on an issue.

> Recommendation 3.2: States should adopt the single subject rule to enhance clarity and transparency in the initiative process.

Single subject rules also are common in legislatures—41 states have constitutional provisions stipulating that bills may address only one subject, and several others have chamber rules for single-subject bills.

Among the groups that express support for single subject rules are:

Speaker's Commission on the California Initiative Process (2002),
Professor Joseph Zimmerman (in testimony before the task force, February 2002),
California League of Women Voters (1999),
Nebraska Petition Process Task Force (1995),
California Policy Seminar (1991), and
Los Angeles Times (1990).

Currently, the following 12 initiative states require that initiatives address no more than one subject. Wide variation exists in how these states define "single subject" and in how courts have interpreted the definitions.

Alaska	Florida	Oklahoma
Arizona	Missouri	Oregon
California	Montana	Washington
Colorado	Nebraska	Wyoming

Banning Similar Measures from the Ballot for a Specified Period of Time

Banning the same or a substantially similar measure from reappearing on the ballot for a specified period of time helps to reduce the number of measures on the ballot.

> Recommendation 3.3: If an initiative measure is rejected by voters, states should prohibit an identical or substantially similar initiative measure from appearing on the ballot for a specified period of time.

Five states currently prohibit the same or a substantially similar measure from reappearing on the ballot for a specified period of time after it is rejected by voters. Time periods range from two years in Mississippi to five years in Wyoming. If an initiative is found to be the same or substantially similar to an initiative that appeared on the ballot within the specified time frame, state election officials deny the proponent's initiative application.

In none of these states are the terms "same" and "substantially similar" defined in statute or the constitution. The decision about whether a measure is the "same" or "substantially similar" is left to a state official, generally the state's chief election officer or, ultimately, the courts.

Table 3. States with Bans on Same/Substantially Similar Initiatives

	Language of the Ban	Time Period
Massachusetts	A measure cannot be substantially the same as any measure that has been qualified for submission or appeared on the ballot at either of the two preceding biennial state elections.	Six years (banned from next two biennial state elections)
Mississippi	If an initiative is rejected, no initiative petition proposing the same or substantially the same amendment shall be submitted to the electors.	Two years
Nebraska	The same measure, either in form or in essential substance, shall not be submitted by initiative petition more often than once in three years.	Three years
Oklahoma	Any initiative measure rejected by the people cannot be again proposed by initiative within three years by less than 25 percent of the legal voters.	Three years
Wyoming	An initiative petition may not be filed for a measure substantially the same as that defeated by an initiative election within the preceding five years.	Five years

Source: National Conference of State Legislatures, April 2002.

In many states, a similar restriction is imposed on the legislature, prohibiting bills that have been defeated (or bills that are substantially the same as ones defeated) from being reintroduced—either as a bill or an amendment—during the same legislative biennium. Florida, Mississippi, Ohio and Wyoming are examples of initiative states with such rules for their legislatures.

Table 4 summarizes all initiative subject restrictions.

Table 4. Initiative Subject Restrictions

	Single Subject?	Other Subject Restrictions
Alaska	Yes	No revenue measures No appropriations No acts affecting the judiciary No local or special legislation
Arizona	Yes	None
Arkansas	No	None
California	Yes	May not include or exclude any political subdivision of the state from application or effect. May not contain alternative or cumulative provisions wherein one or more of those provisions would become law, depending upon the casting of a specified percentage of votes for or against the measure.

Table 4. Initiative Subject Restrictions (continued)		
	Single Subject?	Other Subject Restrictions
Colorado	Yes	None
Florida	Yes	May not include limitations on the power of government to raise revenue.
Idaho	No	None
Illinois	Yes	Allowed only for amendment of constitutional Article IV, relating to structural and procedural subjects concerning the legislative branch.
Maine	No	Any measure providing for an expenditure of funds in excess of those appropriated becomes inoperative 45 days after the legislature convenes.
Massachusetts	No*	No measures relating to: • Religion • The judiciary • Specific appropriations • Local or special legislation • The 18th amendment of the constitution • Anything inconsistent with the rights of individuals as enumerated in the constitution A measure cannot be substantially the same as any measure that has been qualified for the ballot or appeared on the ballot in either of two preceding general elections.
Michigan	No	The initiative power extends only to laws that the Legislature may enact.
Mississippi	No	The initiative cannot be used to amend/repeal the: • Bill of Rights • Public employees' retirement system • Right-to-work provision • Initiative process Only first five certified measures may go on ballot If a measure is rejected by voters, no identical or substantially similar measure may go on ballot for a minimum of two years. If an initiative requires a reduction in government revenue or a reallocation from currently funded programs, the initiative text must identify the program or programs whose funding must be reduced or eliminated to implement the initiative.
Missouri	Yes	No appropriations of money other than new revenues created and provided for by the initiative. Cannot be used for any purpose prohibited by the state's constitution
Montana	Yes	No appropriations No local or special laws
Nebraska	Yes	Limited to matters that can be enacted by legislation and cannot interfere with Legislature's ability to direct taxation for state and governmental subdivisions. The same measure cannot be initiated more often than once in three years.
Nevada	No	No appropriations Cannot require an expenditure of money unless a sufficient tax is provided as part of the initiative proposal.

National Conference of State Legislatures

Table 4. Initiative Subject Restrictions (continued)

	Single Subject?	Other Subject Restrictions
North Dakota	No	No emergency measures No appropriation measures for the support and maintenance of state departments and institutions
Ohio	No	May not be used to pass a law: • Authorizing any classification of property for the purpose of levying different rates of taxation thereon • Authorizing the levy of any single tax on land, land values or land sites at a higher rate or by a different rule than is applied to improvements thereon or to personal property
Oklahoma	Yes	Initiatives rejected by the voters cannot be proposed again for three years by less than 25 percent of the state's legal voters
Oregon	Yes	None
South Dakota	No	No private or special laws
Utah	No	None
Washington	Yes	None
Wyoming	Yes	Cannot be used to: • Dedicate revenues • Make or repeal appropriations • Create courts • Define the jurisdiction of courts • Prescribe court rules • Enact local or special legislation • Enact legislation prohibited by the Wyoming constitution The same measure cannot be initiated more often than once in five years.

*In interviews conducted in May 2002, election officials in Massachusetts said that although that state does not have a single subject rule, it does have a requirement that an initiative contain only subjects that are related or mutually dependent. Courts have interpreted relatedness to mean that "… one can identify a common purpose to which each subject of [the] initiative petition can reasonably be said to be germane."
Source: National Conference of State Legislatures, January 2002.

Other Ideas for Reform

Restrictions on the Dedication of Revenue

Initiative measures that mandate the expenditures of large amounts of public revenue without including a new dedicated revenue source (such as taxes or fees) can make it difficult for the legislature to continue to fund existing state services and programs. In addition, initiatives that increase or create new taxes to fund new or existing programs negatively affect the legislature's ability to impose reasonable taxes to fund necessary programs for citizens. Although the task force agreed that initiatives limiting or dedicating revenue or otherwise imposing fiscal policies can be a significant problem—perhaps even the most serious problem—in the initiative process, members were unable to agree on a specific recommendation to address the issue.

The City Club of Portland recommended in 1996 that Oregon's initiative process be changed so that initiatives that dedicate revenue or require appropriations in excess of $500,000 per year should be required to provide new revenues.

Eleven states currently have restrictions on the use of the initiative with regard to appropriations and funding mechanisms.

Table 5. Restrictions on Imposing Fiscal Policies Via the Initiative

	Restriction
Alaska	No dedication of revenues or making or repealing appropriations.
Florida	Tax or fee increases require a 2/3 vote to pass.
Maine	Expenditures in an amount in excess of available and unappropriated state funds remain inoperative until 45 days after the regular legislative session, unless the measure provides for raising new revenues adequate for its operation.
Massachusetts	May not be used to make a specific appropriation from the treasury. However, if such a law, approved by the people, is not repealed, the legislature must raise by taxation or otherwise and appropriate such money as may be necessary to carry such law into effect.
Mississippi	Sponsor must identify in the text of the initiative the amount and source of revenue required to implement the initiative. Initiatives requiring a reduction in government revenue or a reallocation from currently funded programs must identify the program(s) whose funding must be reduced or eliminated to implement the initiative.
Missouri	May not appropriate money other than new revenues created and provided for by the initiative.
Montana	May not appropriate money.
Nebraska	No measure that interferes with the Legislature's ability to direct taxation of necessary revenues for the state and its governmental subdivisions.
Nevada	No appropriations or other expenditures of money, unless such statute or amendment also imposes a sufficient tax or otherwise constitutionally provides for raising the necessary revenue.
North Dakota	No appropriations for the support and maintenance of state departments and institutions.
Wyoming	No dedication of revenues or making or repealing appropriations.

Source: National Conference of State Legislatures, April 2002.

Recent Legislative Action

A total of 29 bills dealing with initiative subject matter were introduced in 14 states between 1999 and 2002. None have passed to date. Among the most common subjects were:

- Prohibiting or restricting appropriations and reductions in state revenue via an initiative (considered in Arizona, Mississippi and Washington); a bill is pending in Michigan that would prohibit using the popular referendum for acts whose primary purpose is to make appropriations or meet deficiencies in state funds.

- Strengthening and providing for interpretation of single subject rules (pending in California; also considered in Oklahoma).

- Making it more difficult to propose and pass wildlife measures (considered in Alaska, Massachusetts, Oklahoma and Washington).

- Banning a measure that is failed by voters from returning to the ballot for a specified period of time (considered in Maine and Oregon).

Other measures that address initiative subjects included a 1999 bill in Arizona that would have established a four-year sunset provision for initiatives that establish the functions or activities of a state agency; a 1999 Oregon bill that would have prohibited initiatives that result in the taking of private property; and a pending bill to enact an initiative procedure in New Jersey that would be limited to campaign finance, lobbying, government ethics and election procedures. A failed 1999 bill in Oregon would have limited initiative amendments to the constitution to the structure and powers of government and the rights of people with respect to their government, and would have prohibited initiated constitutional amendments that dedicated or appropriated revenue, repealed appropriations, or required expenditures in excess of $500,000 per year.

4. The Drafting and Certification Phase

Recommendations

Recommendation 4.1: States should require a review of proposed initiative language by either the legislature or a state agency. The review should include non-binding suggestions for improving the initiative's technical format and content, and should be public information.

Recommendation 4.2: States should require the drafting and certification of a ballot title and summary for each initiative proposal. Ballot titles must identify the principal effect of the proposed initiative and must be unbiased, clear, accurate and written so that a "yes" vote changes current law.

Recommendation 4.3: States should require the drafting of a fiscal impact statement for each initiative proposal. The statement should appear on the petition, in the voter information pamphlet, and on the ballot.

Recommendation 4.4: States should establish a review process and an opportunity for public challenge of technical matters, including adherence to single subject rules, and ballot title, summary and fiscal note sufficiency, to be made prior to the signature-gathering phase.

Overview

Certifying an initiative for signature collection is an involved process with many steps and deadlines. No two states have exactly the same certification requirements. Generally, however, the process includes these steps:

1) Drafting the initiative proposal;
2) Preparation of a ballot title and summary;
3) In some states, preparation of a fiscal analysis; and
4) Technical challenges to ballot titles, summaries and fiscal analyses.

Drafting the Initiative Proposal

Often, initiatives are drafted by citizens who have little or no legal background or expertise. Making the legislature's professional bill drafting staff available to proponents may help to prevent errors in drafting and ensure that a proposal's language is in the proper form and harmonizes with other constitutional or statutory language. Advice from the legislature's legal experts also may help initiative proponents recognize constitutional flaws and unintended consequences of their proposal. Correcting such problems early in the process can help proponents avoid costly court battles later in the process. In short, assistance and advice from legislative bill drafting staff may help improve the quality and consistency of initiative measures. Making public the comments and recommendations of such a review process is important because it can draw attention to issues that otherwise might escape public notice.

> Recommendation 4.1: States should require a review of proposed initiative language by either the legislature or a state agency. The review should include non-binding suggestions for improving the initiative's technical format and content, and should be considered public information.

Similar reforms have been proposed by the following:

California League of Women Voters (1999),
City Club of Portland, Oregon (1996), and
Nebraska Petition Reform Task Force (1995).

Presently, some states offer no assistance or advice to initiative proponents on the draft of their proposed law. The states that do offer assistance generally have one of two basic levels of review, which may be provided either prior to filing the initiative or upon filing. In some states, the review is purely technical; the proposal is reviewed to ensure it meets the legal requirements for format and style and adheres to drafting conventions. However, 11 states go further and offer some sort of drafting assistance in order to improve the quality and consistency of initiative proposals. In these states, sponsors may take a draft or even just an idea to a legislative office for assistance with the form and content of the initiative before submitting the proposal to the appropriate state official. Sponsors' acceptance of any recommendations made is optional. Table 6 contains a list of technical and content-oriented state agency review.

Table 6. State Agency Review

	Technical	Content	Who Reviews
Alaska	No	Optional	Department of Law
Arizona	Mandatory*	No	Secretary of State
Arkansas	Mandatory	No	Secretary of State
California	Optional	Optional	Legislative Counsel
Colorado	Mandatory	Mandatory	Legislative Council and Legal Services
Florida	Mandatory	No	Division of Elections
Idaho	Mandatory	Mandatory	Attorney General
Illinois	No	No	N/A
Maine	Mandatory	No	Secretary of State
Massachusetts	Mandatory	Mandatory	Attorney General
Michigan	Optional	No	Bureau of Elections
Mississippi	Mandatory	Mandatory	Revisor of Statutes
Missouri	Mandatory	No	Secretary of State and Attorney General
Montana	Mandatory	Mandatory	Legislative Services Division and Attorney General
Nebraska	Mandatory	No	Revisor of Statutes
Nevada	Mandatory	No	Secretary of State
North Dakota	Mandatory	No	Secretary of State and Attorney General
Ohio	No	No	N/A
Oklahoma	Mandatory	No	Attorney General and Secretary of State
Oregon	Optional	Optional	Legislative Counsel and State Treasurer
South Dakota	Mandatory	No	Director of Legislative Research Council
Utah	Mandatory	Mandatory	Lieutenant Governor
Washington	Optional	Optional	Assistant Code Revisor
Wyoming	Mandatory	Mandatory	Secretary of State; Legislative Service Office and executive agencies may render assistance

* In all states, the designation "Mandatory" indicates that the review process is mandatory, not that adherence to the recommendations made as a result of the review process is mandatory.
Source: National Conference of State Legislatures, April 2002.

Of the 11 states that offer some sort of drafting assistance, a wide range of services is offered. In at least four states—California, Massachusetts, Montana, and Oregon—initiative sponsors may take a draft or just an idea to drafters in their state for assistance. California serves as an example of a state that offers extensive assistance to proponents during the drafting

process. There, an initiative sponsor may take an idea to the Legislative Counsel, and a staff member will draft the language of the initiative for the sponsor.

Case Study: Initiative Drafting and State Agency Review

Colorado's Review and Comment Process

In Colorado, the Legislative Council staff and Legislative Legal Services conduct a public hearing to present their review and comments on proposed initiatives. The comments are intended to help proponents clarify their proposal, but they are not required to accept any suggestions offered by legislative staff. The meeting, held in the Capitol, is open to the public and although people who may oppose a measure are welcome to attend, no testimony or comments are accepted from anyone other than the proponents. The meeting is taped and becomes public record. Proponents are required to go through this process before they can move on to the next step of setting a title.

Preparation of a Ballot Title and Summary

The ballot title and summary are arguably the most important part of an initiative in terms of voter education. Many voters never read more than the title and summary of the text of initiative proposals. Therefore, it is of critical importance that titles and summaries be concise, accurate and impartial.

> Recommendation 4.2: States should require the drafting and certification of a ballot title and summary for each initiative proposal. Ballot titles must identify the principal effect of the proposed initiative and must be unbiased, clear, accurate, and written so that a "yes" vote changes current law.

Presently, a wide range of procedures exists in states for ballot title setting. In Colorado there is a special Ballot Title Board. Initiative proponents must appear before the board, which assigns a title, before the sponsor is authorized to gather signatures. In some states, the title is written by the sponsor, subject to the approval of a state official. In other states, the ballot title is written either by the attorney general, secretary of state or lieutenant governor. Table 7 contains a detailed list of who drafts ballot titles.

Table 7. Drafting the Initiative Title

	Party Responsible for Drafting Title		Where to File Challenge
	Petition	Ballot	
Alaska	Proponent (approved by Lt. Governor)	Lt. Governor and Attorney General	Superior Court
Arizona	Proponent	Proponent (approved by Attorney General)	Superior Court
Arkansas	Proponent (approved by Attorney General)	Proponent (approved by Attorney General)	Supreme Court
California	Attorney General	Attorney General	Sacramento County District Court
Colorado	Secretary of State and Ballot Title Board	Secretary of State and Ballot Title Board	Supreme Court
Florida	Proponent (approved by Secretary of State)	Proponent (approved by Secretary of State)	Supreme Court
Idaho	Attorney General	Attorney General	Supreme Court
Illinois	Proponent (approved by Board of Elections)	Proponent (approved by Board of Elections)	Not specified in law

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Table 7. Drafting the Initiative Title (continued)

	Party Responsible for Drafting Title		Where to File Challenge
	Petition	Ballot	
Maine	Secretary of State	Secretary of State	Superior Court
Massachusetts	Proponent (approved by Attorney General)	Secretary of State (approved by Attorney General)	Supreme Judicial Court
Michigan	Proponent	Director of Elections with the approval of the Board of State Canvassers	State District Court
Mississippi	Attorney General	Attorney General	Circuit Court of 1st Judicial District of Hinds County
Missouri	Secretary of State	Secretary of State	Circuit Court of Cole County, appeal to Supreme Court
Montana	Attorney General	Attorney General	District Court in Lewis and Clark County
Nebraska	Same as summary by proponent	Attorney General	District Court
Nevada	None (Full text only)	None (summary only)	N/A
North Dakota	Secretary of State and Attorney General	Secretary of State and Attorney General	Supreme Court
Ohio	Proponent (approved by Attorney General)	Proponent (approved by Attorney General)	Not specified in law
Oklahoma	No separate title; summary serves as title	Proponent (approved by Secretary of State and Attorney General)	Supreme Court
Oregon	Attorney General	Attorney General	Supreme Court
South Dakota	None required	Attorney General	Circuit Court
Utah	None required	Office of Legislative Research and General Counsel (approved by Lt. Governor)	Supreme Court
Washington	Attorney General	Attorney General	Thurston County Superior Court
Wyoming	Proponent	Secretary of State	District Court of Laramie County

Source: National Conference of State Legislatures, January 2002.

At the time the ballot title is drafted, the title-setting entity often includes a statement of what the result of a "yes" vote means if the measure is passed and what the result of a "no" vote means if the measure is defeated. In Oregon, this statement is drafted by the attorney general and may not exceed 25 words. In Washington, the ballot title, drafted by the attorney general, consists of three parts: a statement of the subject of the petition in 10 words or less, a concise summary in 30 words or less, and a question crafted in a way that clearly defines what a "yes" and a "no" vote mean.

Two types of summaries are drafted for initiatives. The first is the summary that appears on the petition; it is usually drafted by the same person or agency that drafts the ballot title. The other summary appears in the voter information pamphlet, which is discussed further in chapter six. In all states, the summary, whether drafted by proponents, the attorney general, secretary of state, or another state agency, is a concise statement of the main points of the proposed measure. Proposed initiative summaries in all states are required to be impartial and non-argumentative. The number of words usually is limited; in Washington, it is limited to 75 words written by the attorney general, and in Florida, it also is

limited to 75 words written by the sponsor, with the approval of the secretary of state. See table 8 for a detailed description of state procedures for drafting summaries.

Table 8. Drafting the Initiative Summary

	Party Responsible for Drafting Title		Where to File Challenge
	Petition	Ballot	
Alaska	Lt. Governor and Attorney General	Proponent (approved by Lt. Governor	Superior Court
Arizona	None	Secretary of State (approved by Attorney General)	Superior Court
Arkansas	Proponent (approved by Attorney General)	Proponent (approved by Attorney General)	Supreme Court
California	Attorney General	Attorney General	Sacramento County District Court
Colorado	None	Secretary of State and Ballot Title Board	Supreme Court
Florida	Proponent (approved by Secretary of State)	Proponent (approved by Secretary of State)	Supreme Court
Idaho	Attorney General	Attorney General	Supreme Court
Illinois	Proponent (approved by Board of Elections)	Proponent (approved by Board of Elections)	Not specified in law
Maine	Revisor of Statutes, approved by Secretary of State	Revisor of Statutes (approved by Secretary of State)	Superior Court
Massachusetts	Secretary of State	Secretary of State	Supreme Judicial Court
	(approved by Attorney General)	(approved by Attorney General)	
Michigan	None	Director of Elections (approved by Board of State Canvassers	State District Court
Mississippi	Attorney General	Attorney General	Circuit Court of 1st Judicial District of Hinds County
Missouri	None	Attorney General	Circuit Court of Cole County, appeal to Supreme Court
Montana	Attorney General	Attorney General	District Court in and for the County of Lewis and Clark
Nebraska	Proponent	Attorney General	District Court
Nevada	None	Secretary of State and Attorney General	Not specified in law
North Dakota	Secretary of State (approved by Attorney General)	Secretary of State (approved by Attorney General)	Supreme Court
Ohio	Proponent (approved by Attorney General)	Proponent (approved by Attorney General)	Not specified in law
Oklahoma	Proponent (approved by Secretary of State and Attorney General)	Proponent (approved by Secretary of State and Attorney General)	Supreme Court
Oregon	Attorney General	Attorney General	Supreme Court
South Dakota	None	Attorney General	Circuit Court
Utah	None	Attorney General	Supreme Court
Washington	Attorney General	Attorney General	Thurston County Superior Court
Wyoming	None	Secretary of State	District Court of Laramie County

Source: National Conference of State Legislatures, January 2002.

National Conference of State Legislatures

Preparation of a Fiscal Analysis

Fiscal impact statements are an important component of voter education on initiative proposals. Voters often do not have the budgetary perspective necessary to make an informed decision about an initiative. Often, they enact a measure and it is left to the legislature to determine where the money will come from, which can mean redirecting funds from other programs.

> Recommendation 4.3: States should require the drafting of a fiscal impact statement for each initiative proposal. The statement should appear on the petition, in the voter information pamphlet, and on the ballot.

It is currently the law in 12 states that, if a proposed initiative will have a monetary effect on the state's budget, a fiscal impact statement must be drafted (see table 9). A legislative fiscal agency generally writes it, and it appears on the petition, in the voter info pamphlet, and/or on the ballot.

Table 9. Fiscal Impact Statements

	Who Prepares It	Where It Is Published
Arizona	Joint Legislative Budget Cmte. (after measure qualifies for ballot)	Voter information pamphlet
California	Dept. of Finance, Joint Legislative Budget Cmte., and Attorney General	Petition, voter information pamphlet, and ballot (included in title prepared by Attorney General)
Colorado	Director of Research of the Legislative Council	Voter information pamphlet
Mississippi	Legislative Chief Budget Officer	Petition, voter information pamphlet, and ballot (included in text)
Missouri	State Auditor and Attorney General	Petition, voter information pamphlet, and ballot (included in title)
Montana	Budget Director	Petition, ballot and voter pamphlet
Nevada	Secretary of State, in consultation with the Fiscal Analysis Division of the Legislative Counsel Bureau	Ballot, voter information pamphlet
Ohio	Tax Commissioner	Voter information pamphlet
Oregon	Secretary of State, Treasurer, Director of Dept. of Administrative Services, and Director of Dept. of Revenue	Voter information pamphlet, ballot
Utah	Office of Legislative Research	Voter information pamphlet
Washington	Office of Financial Management, in consultation with the Secretary of State, Attorney General, and any other appropriate state or local agency	Voter information pamphlet, Secretary of State Web site
Wyoming	Secretary of State and/or initiative sponsors*	A newspaper of general circulation in state and ballot

*If the final estimated fiscal impact by the Secretary of State and the final estimated fiscal impact by the committee of sponsors differ by more than twenty-five thousand dollars ($25,000.00), the Secretary of State's comments under this section and the ballot proposition (published in newspaper and ballot) shall contain an estimated range of fiscal impact reflecting both estimates.
Source: National Conference of State Legislatures, April 2002.

One may argue that, even if voters have fiscal information, it is meaningless unless the public knows how big the budget is. Simply attaching a dollar amount to a measure may not provide enough information. To make a fiscal statement meaningful, it must be considered in the context of the fiscal resources of the state. Suggestions include printing pie charts or graphs to illustrate the fiscal impact of the proposed measure in the context of

state resources. The City Club of Portland, Ore., recommended in 1996 that the Secretary of State be required to prepare a general statement in the Voters' Pamphlet that lists the estimated financial effects of each ballot measure upon the general fund and the combined effect if all were to be approved.

Case Study: Fiscal Analysis

California

If the Attorney General determines that the initiative measure requires a fiscal analysis, the Department of Finance and the Joint Legislative Budget Committee are required to prepare an analysis within 25 working days from the date they receive the final version of the proposed initiative measure. The fiscal analysis includes either the estimate of the amount of any increase or decrease in revenues or costs to state or local governments, or any opinion as to whether a substantial net change in state or local finances would result if the proposed initiative measure is adopted. The fiscal analysis is part of the measure's title prepared by the Attorney General, which appears both on petitions and on the ballot. It is also included in the voter information pamphlet.

Technical Challenges: Ballot Titles, Summaries and Fiscal Notes

If a sponsor or other qualified voter is dissatisfied with a title, summary or fiscal analysis, most states have a procedure for challenging and petitioning to change it. In some cases, however, the outcome of challenges is not decided until after the election, often after an initiative has been passed by the voters. Proponents have expended a great deal of effort—and often a great deal of money, as well—to gather signatures and qualify an initiative, and are justified in judging it unfair when a measure is stricken by the court for a technical reason after it has passed.

Although building a time period and a process for technical challenges into the certification process cannot prevent post-election challenges entirely, it can encourage such challenges at an early stage in the process.

> Recommendation 4.4: States should establish a review process and an opportunity for public challenge of technical matters, including adherence to single subject rules, and ballot title, summary and fiscal note sufficiency, to be made prior to the signature-gathering phase.

Similar reforms have been advocated by the following:

Wayne Pacelle, Humane Society of the United States (in testimony before the task force, February 2002),
M. Dane Waters, I&R Institute (in testimony before the task force, December 2001), and Citizens' Commission on Ballot Initiatives (California, 1994).

Nebraska's challenge process, similar to other states', serves as an example for how the process generally works. Any person dissatisfied with the title provided by the Attorney General may file a petition with the district court, asking for a different title and setting forth the reasons why the title prepared by the Attorney General is insufficient or unfair. The challenge must be filed within 10 days of the Attorney General's decision. The dis-

trict court then examines the measure, hears arguments, and certifies to the Secretary of State a ballot title for the measure in accord with the intent of the proposed initiative.

In most states, any challenges to the title or summary of a ballot measure must take place during the certification process; that is, before signature collection. However, in at least two states, ballot titles are reviewed after signature collection.

In Arkansas, the state Supreme Court hears challenges to ballot titles only after the signature-gathering phase is complete and a measure is certified for the ballot. In considering titles, the court either allows or disallows the initiative; it makes no attempt to rewrite the title. If a title is disallowed, the measure is stricken from the ballot and proponents must start over.

In Florida, petitioners gather at least 10 percent of required signatures, then submit the ballot title for approval. Proponents write their own title, which includes a 15-word caption and a 75-word explanatory statement. The Attorney General must submit the initiative to the state Supreme Court for single-subject review and to ascertain that the ballot title and summary comply with requirements for clarity and common language. The court cannot rewrite the title, and if it disallows the title, all signatures gathered to date are invalidated and proponents must start over. The court's strict application of the single-subject rule since 1994 has resulted in a steep drop in the number of initiatives that appear on the ballot in Florida. This pre-election judicial review, mandatory for all initiatives in Florida, is the only instance of a mandatory pre-election judicial review among all 24 initiative states.

The timing of title and summary challenges in Arkansas and Florida is highly controversial, and most initiative proponents regard it as unfair. Initiative proponents are forced to circulate a petition with a title that may later be ruled invalid, thus disqualifying their initiative. Proponents may have spent large sums of money in the qualification phase, and thus are resentful of last-minute court rulings that remove their otherwise qualified measure from the ballot.

Case Study: Technical Challenges

Washington, D.C.

In Washington, D.C., a time period and process for technical challenges are built into the certification process, thereby reducing instances of post-election technical challenges. The Board of Elections and Ethics drafts for each proposed initiative measure a short title (not more than 15 words), a true and impartial summary statement (not more than 100 words), and the proper legislative form of the measure. These are formally adopted by the board at a public meeting, and the initiative sponsor must be notified of the exact language within five days of adoption. Also within five days of adoption, the board must publish the exact language in the *District of Columbia Register*. Any registered voter in the district who objects to the title, summary or legislative form may seek review in the Superior Court of the District of Columbia within 10 days of the publication of the language. The court is required to expedite consideration. If no review is sought during this time period, the title, summary and legislative form are deemed to be accepted by the board.

Single-subject challenges also are encouraged during the certification process in Washington, D.C. The board may refuse to accept an initiative measure submitted if it determines that the measure is not a proper subject of the initiative. When that occurs, the person submitting the measure has 10 days after the board's refusal to apply to the Superior Court of the District of Columbia to compel the board to accept the measure.

Other Ideas for Reform

Post-Election Court Challenges

The number of initiatives challenged post-election in the courts has risen steadily in recent decades. One study of initiatives passed in four states over a 40-year period found that about half the initiatives passed during that time were challenged in court and more than half of those challenged are held unconstitutional, at least in part.

Initiative proponents look to the courts routinely when they feel the initiative process itself is in jeopardy. For example, consider the suit pending over whether petitioners can gather signatures on U.S. Postal Service property (*Initiative & Referendum Institute vs. United States Postal Service* [U.S. District Court for the District of Columbia 1:00CV01246]). The suit seeks to overturn the Postal Service's regulation prohibiting citizens from collecting signatures on initiative petitions on postal property.

Opponents of initiatives look to the courts just as often as proponents, however. When they fail to achieve their political aim at the ballot box, they frequently take the fight to the courts.

Another reason initiatives often end up in court after they are passed is that they are technically flawed. Initiatives are drafted in private, often without the benefit of expert analysis from legislative bill drafters. They are not subject to committee hearings, where testimony may be offered both in support and in opposition to them. They do not go through the process of consideration and amendment by two bodies before their final approval. In summary, initiatives are not forced through the same process of dissection and refinement that a bill must endure before it becomes law. As a result, the initiatives that the public votes on often contain errors, unintended consequences, conflicting sections, or unconstitutional provisions.

Critics of the initiative system believe that post-election court challenges are dangerous to the U.S. system of government. Challenges anger citizens, who often may assume that an initiative would not have made it to the ballot if it were not constitutional, and they force judges to make political decisions that are more appropriately made by the legislature.

Oregon provides a recent example of how judicial involvement in the initiative process can rapidly grow. An initiative was recently challenged in Oregon on the grounds that it violated the state's single subject requirement. The state's Supreme Court agreed that it did, and declared the measure unconstitutional. That case spurred other single-subject challenges, most notably a successful challenge to the state's term limits law. Term limits proponents, angered by the fact that term limits were declared unconstitutional because they violated the single-subject rule, have vowed to search Oregon's initiative history and challenge as many as they can find on single-subject grounds, which could wreak havoc on Oregon's laws and its judicial system.

Recent reform proposals addressing the proliferation of post-election court challenges have been suggested in Nebraska and Washington. House Bill 1732 from Washington's 2001 legislative session would have formed a three-member ballot measure review committee. The Secretary of State would be permitted to request an opinion as to the constitutionality of any proposed initiative measure from this committee. After reviewing a measure, the committee would issue a report, including a summary of 100 words or less, stating its opinion on the measure's constitutionality. The summary would appear in the voter information pamphlet. A proponent dissatisfied with the committee's opinion would be permitted to petition a review by the state Supreme Court. The court would consider whether the committee's report is fair and reasonable, and may either permit the publication of the summary, enjoin its publication, or rewrite it. The committee's reports could not be cited or construed in other cases as decisions on constitutionality, and the judicial review provided for in this measure would not preclude any court from subsequent consideration of the constitutionality of a measure. Rather, the review process might give early warning to initiative proponents of potential problems in their proposal. At a bare minimum, the review process would simply generate more information for voters to consider as they cast their votes. The California Policy Seminar made a similar recommendation in 1991.

The Nebraska Legislature passed a similar proposal in the 1999-2000 biennium, but it was not approved by the governor. LB 729 would have permitted the Secretary of State to reject any petition that was constitutionally suspect. That would have enabled proponents to take it to court for an expedited hearing. Under this plan, the constitutionality of many initiative measures could be determined early in the process, before initiative proponents have spent large amounts of time and money in the signature-gathering and campaigning stages of the process.

Recent Legislative Action

Nine states introduced 59 bills regarding pre-circulation requirements—which include drafting measures, ballot titles, summaries and fiscal impact statements—between 1999 and 2002. Highlights include the following:

- In Oregon, the deadlines for the Secretary of State to send ballot title comments to the Attorney General, the time period for Attorney General to revise draft ballot title, and the deadline for a person seeking review of a ballot title have been modified.

- In Utah, title naming conventions were established for ballot propositions submitted to the voters, and the standard of review in writing and judicially reviewing initiative and referendum ballot titles was clarified.

- In 2002, Washington passed SB 6571, requiring that a fiscal impact statement be drafted by the Office of Financial Management for all initiatives that appear on the ballot, legislative alternatives to initiatives on the ballot, and referenda, including those referred to the ballot by the legislature. The new law requires the Secretary of State to make the statement available online and include it in the state voters' pamphlet.

- In 2000 and 2001, Colorado passed bills that require fiscal impact statements on all initiative measures and specify the content of the statements.

- A failed 2001 bill in Arizona would have created an eight-member Citizen Ballot Measure Committee and transferred the responsibility for drafting analyses of initiative proposals from the Legislative Council to the new committee. The committee members would have been appointed by the House and Senate majority and minority leadership.

5. THE SIGNATURE GATHERING PHASE

Overview

Signature gathering is the most fundamental part of the initiative process, and the most thoroughly populist and grassroots part. The purpose of signature requirements is to demonstrate that an initiative has a certain level of public support before it goes to the ballot.

Statement of Organization

In some states, the campaign finance disclosure requirements do not take effect until a petition is qualified for the ballot. The task force believes that the money spent earlier in the process, particularly the money and sources of money spent on gathering signatures, is of equal importance to money spent on campaigning. Citizens should have access to information about who is circulating a petition before they decide to sign it.

> Recommendation 5.1: States should require that initiative proponents file a statement of organization as a ballot measure committee prior to collecting signatures. States should void any signature that is gathered before a statement of organization is filed.

Fraud in the Signature Gathering Process

Paid vs. Volunteer Petitioners

Professional signature gathering has long been a part of initiative politics. Paid signature gatherers were common in both California and Oregon in the early 1900s. Banning paid signature gatherers, an early idea, was seen as a way to stop wealthy individuals or groups from buying their way onto the ballot. Ohio, South Dakota and Washington passed bans on paid signature gatherers in 1913 and 1914. Oregon passed a ban in 1935, Colorado in 1941, and Idaho and Nebraska in 1988. Until the 1980s,

Recommendations

Recommendation 5.1: States should require that initiative proponents file a statement of organization as a ballot measure committee prior to collecting signatures. States should void any signature that is gathered before a statement of organization is filed.

Recommendation 5.2: States should provide for safeguards against fraud during the signature-gathering process. Safeguards should include:

A. Prohibiting the giving or accepting of money or anything else of value to sign or not sign a petition.
B. Requiring a signed oath by circulators, stating that the circulator witnessed each signature on the petition and that, to the best of the circulator's knowledge, the signatures are valid.
C. Requiring circulators to disclose whether they are paid or volunteer.

Recommendation 5.3: States should provide for an adequate but limited time period for gathering signatures. The deadline for submission should allow a reasonable time for verification of signatures before the ballot must be certified.

Recommendation 5.4: States should establish a limit on the length of time that verified signatures are valid.

Recommendation 5.5: States should require a higher number of signatures for constitutional amendments than is required for statutory initiatives.

Recommendation 5.6: To achieve geographical representation, states should require that signatures be gathered from more than one area of the state.

Recommendation 5.7: Each state should establish a uniform process for verifying that the required number of valid signatures has been gathered.

courts upheld bans on paid signature gatherers. That changed in 1988, when the U.S. Supreme Court invalidated Colorado's ban in the *Meyer vs. Grant*, 486 U.S. 414 (1988) decision.

Five states—Maine, Mississippi, North Dakota, Washington and Wyoming—tried to ban payment per signature, but to permit payment on a salary or hourly basis. All but North Dakota's and Wyoming's have been invalidated by courts.

Today, the vast majority of petition campaigns use paid circulators, who are paid between $1 and $3 per signature. Very few campaigns attempt to qualify an initiative petition with volunteer circulators, and even fewer do so successfully. Paid drives, on the other hand, are much more successful. A campaign that has adequate funds to pay circulators has a nearly 100 percent chance of qualifying for the ballot in many states.

The increase in reliance on paid circulators has increased the cost of qualifying an initiative. In California, it now costs more than $1 million. In Oregon, costs for qualifying ballot measures for the 2000 election ranged from $65,000 to $400,000, with most spending in the neighborhood of $100,000 to $150,000. Average costs in other states generally range between $70,000 and $100,000.

Oregon has tried a new idea for regulating paid circulators. The state defines paid circulators as employees (in other states they generally are defined as independent contractors), making them eligible for unemployment benefits. Signature collection firms now must pay payroll taxes and unemployment insurance premiums and must meet minimum wage requirements.

The U.S. Supreme Court's opinions on petition circulators have made the prevention of fraud in the signature gathering process very difficult for states. Since the 1988 *Meyer vs. Grant* decision invalidated state bans on paid signature gatherers, it has become more difficult to regulate the signature gathering process. The argument that payment for signatures promotes fraud has met with mixed reactions in courts around the country. A federal judge in North Dakota agreed, and upheld North Dakota's ban on payment-per-signature (hourly or salaried payments are permissible in North Dakota). Federal judges in Maine and Washington, however, disagreed, and found no evidence of fraud among paid signature gatherers. A more worthy argument that is less often cited is that prohibiting payment for signatures protects the integrity of the initiative process by encouraging grassroots efforts that can succeed on nothing more than popular support and discourages signature gathering efforts that can succeed only with large sums of money. Nevertheless, the U.S. Supreme Court has removed the ban on paid signature gatherers from initiative reformers' agendas.

Registered Voter and Residency Requirements

In 1999, the U.S. Supreme Court struck down a Colorado law stipulating that only Colorado registered voters could circulate initiative petitions in *Victoria Buckley vs. American Constitutional Law Foundation*, 119 S. Ct. 636 (1999). Colorado argued that it should be able to limit the ability to circulate petitions to those who are also qualified to vote on them. At least 13 other states were affected by *Buckley vs. ACLF* because they had similar laws. Other states, including Mississippi, North Dakota and Oklahoma, require that circulators be residents of the state. Many of the states that previously had registered voter requirements changed their laws to require that circulators be residents, including Arizona, California, Idaho, Maine, Missouri, Utah and Wyoming. This requirement has fared bet-

ter in the courts than the registered voter requirement, with federal courts upholding Maine's and Mississippi's residency requirements.

If states cannot ban paid signature gatherers and they cannot require that signature gatherers be registered voters in the state, what can they do to ensure the integrity of the petition process and protect it from fraud? They can enact laws that specifically address and prohibit clear instances of fraud in the petition process.

Recommendation 5.2: States should provide for safeguards against fraud during the signature-gathering process. Safeguards should include:

A. Prohibiting the giving or accepting of money or anything else of value to sign or not sign a petition.
B. Requiring a signed oath by circulators, stating that the circulator witnessed each signature on the petition and that, to the best of the circulator's knowledge, the signatures are valid.
C. Requiring circulators to disclose whether they are paid or volunteer.

At least 10 states prohibit the giving or accepting of money or anything else of value to sign or not sign a petition. Those states are:

Arizona	Mississippi
California	Nebraska
Colorado	Ohio
Idaho	Washington
Maine	Wyoming

Sixteen states currently require that petition circulators witness the placing of signatures on the petition, and that they sign an oath affirming that to the best of their knowledge, each signature is valid. Such an oath can discourage the kind of fraud some states have witnessed. For example, in 1998 in Arkansas, it was discovered that a circulator had forged several hundred signatures on a petition to do away with property taxes. Other circulators turned in petitions with signatures they had not witnessed, thus invalidating those signatures. The petition eventually was stricken from the ballot after numerous instances of fraud in the petitioning process were proven.

At least 10 states currently require circulators to disclose whether they are paid or volunteer, most often on the petition form itself.

Table 10. Paid/Volunteer Status Must be Disclosed

	Where Disclosed
Alaska	On the petition
Arizona	On the petition
Colorado	On a name tag
Idaho	On the petition
Missouri	Must file a form with the Secretary of State
Nebraska	On the petition
North Dakota	Disclosed on registration form filed with the Secretary of State
Ohio	On the Circulator's Compensation Statement (part of the petition)
Oregon	On the petition
Wyoming	On the petition

Source: National Conference of State Legislatures, February 2002.

Circulation Periods

In most states, petitioners have a limited period of time during which to gather the requisite signatures. The limits range from 60 days (Massachusetts) to four years (Florida). In 17 of the 24 initiative states, circulators have a year or more to gather signatures. In Arkansas, Ohio and Utah, no time limits are set for circulating petitions. Table 11 summarizes circulation periods in the initiative states.

Table 11. Circulation Periods

	Circulation Period	Submission Deadline
Alaska	1 year	Prior to the date the Legislature convenes (January)
Arizona	2 years	120 days before the election
Arkansas	Unlimited	120 days before the election
California	150 days	150 days after issuance of official summary; will be placed on the ballot in the next election that is at least 131 days after it is submitted
Colorado	6 months	3 months before the election
Florida	4 years	91 days before the general election
Idaho	18 months or until April 30 in an election year, whichever occurs earlier	May 1 in the year an election on the initiative will be held, or 18 months from the date the petitioner receives the official ballot title from the Secretary of State, whichever is earlier
Illinois	2 years	
Maine	1 year	On or before the 50th day after the convening of the Legislature in first regular session: on or before the 25th day after the date of convening of the Legislature in the second regular session
Massachusetts	60 days to submit to legislature; 42 days if legislature fails to act	14 days before the first Wednesday in December
Michigan	180 days	Constitutional: 120 days before the election Statutory: 10 days before beginning of a legislative session
Mississippi	1 year	90 days before the first day of the legislative session
Missouri	18 months	6 months prior to the date of the next regular election
Montana	1 year	By the third Friday of the fourth month preceding the election
Nebraska	2 years	4 months prior to the general election
Nevada	Constitutional: 291 days Statutory: 316 days	Constitutional: third Tuesday in June of an even-numbered year Statutory: second Tuesday in November of an even-numbered year
North Dakota	1 year	90 days before the election
Ohio	Unlimited	Constitutional: 90 days prior to the general election Statutory: 10 days prior to legislative session
Oklahoma	90 days	60 days prior to the date of the next general election
Oregon	2 years	120 days prior to the general election
South Dakota	1 year	Constitutional: 1 year before the next general election Statutory: first Tuesday in May in a general election year
Utah	Unlimited	Before June 1
Washington	Direct: 6 months Indirect: 10 months	Direct: 4 months prior to the next state general election Indirect: 10 days before the regular session of the Legislature
Wyoming	18 months	Prior to the date the Legislature convenes for a regular session

Source: National Conference of State Legislatures, May 2002.

Interestingly, longer circulation periods do not necessarily lead to an increased number of initiatives on the ballot. Some of the states with the longest circulation periods—such as Florida and Illinois—have very few measures on the ballot. Some states with the shortest circulation periods—such as California, Colorado and Washington—are among the states with the highest number of initiatives that reach the ballot. Providing more time for gathering signatures, therefore, should not lead to a flood of initiatives on the ballot.

The length of the circulation period is important to volunteer efforts, and increasing the time for gathering signatures may be beneficial. Volunteer efforts are time-consuming because they often are less well-organized and more often are subject to disruptions when volunteers fail to show up. Longer circulation periods clearly benefit volunteer petition drives.

Recommendations 5.3: States should provide for an adequate but limited time period for gathering signatures. The deadline for submission should allow a reasonable time for verification of signatures before the ballot must be certified.

Recommendation 5.4: States should establish a limit on the length of time that verified signatures are valid.

Crafting an appropriate limit on circulation periods is a delicate task. If the period is too short, volunteer efforts will be disadvantaged. However, if the period is too long, there is a risk that voters may have moved between the time they signed the petition and the time it is submitted for verification, thus resulting in a higher percentage of invalid signatures.

Signature Requirements

State signature requirements for ballot access vary widely. Signature requirements usually are based on a percentage of votes cast for a particular office—most often the office of governor—in the most recent election. In a few states, the requirement is based on total votes cast, total registered voters, or total state residents.

In most states that have both a statutory and constitutional initiative process, there is a higher signature threshold to qualify a constitutional initiative. The only exceptions are Colorado, Massachusetts and Nevada. The distinction exists because it is widely believed that amending the constitution should be more difficult than amending the statutes. Some reformers, however, argue that a more effective manner of achieving this goal would be to require a higher vote to approve constitutional initiatives than statutory initiatives. This argument is supported by the fact that the higher signature threshold for constitutional initiatives is rarely a barrier to achieving ballot status, provided proponents have ample funds to pay signature gatherers. Nevertheless, it is the belief of this task force that the sanctity of state constitutions demands that constitutional amendments be held to a higher standard of popular support than statutory initiatives, including signature thresholds for ballot access.

Recommendation 5.5 States should require a higher number of signatures for constitutional amendments than is required for statutory initiatives.

Percentage requirements for signatures on statutory initiatives range from a low of 2 percent of the resident population in North Dakota (12,844 for 2002 ballot access), to a high

of 15 percent of the total number of votes cast in the preceding election in Wyoming (33,253 signatures for 2002 ballot access). However, because Wyoming is a small population state, there are other states where the actual number of signatures that must be gathered is higher. The highest actual signature requirement for 2002 ballot access is California, where 419,260 signatures are required to place a statutory initiative on the 2002 ballot (equal to 5 percent of the votes cast for governor in the last election).

Percentage requirements for signatures on constitutional amendments range from a low of 3 percent of total votes cast for governor in Massachusetts (57,100 for 2002 ballot access), to a high of 15 percent of total votes cast for governor in Arizona (152,643 for 2002 ballot access) and Oklahoma (185,145 for 2002 ballot access). Once again, however, thanks to its large population, California has the highest total actual signature requirement for 2002 ballot access at 670,816 (equal to 8 percent of the votes cast for governor in the last election).

Geographic Distribution Requirements

Many initiative states are primarily rural, with a substantial proportion of their populations centered in a few urban areas. In states that follow this population pattern but that lack a geographic distribution requirement for signatures, it is not only possible but common for initiative proponents to gather all their signatures in the state's largest city. The voters in the largest city, therefore, may decide for the state as a whole what issues make the ballot and what issues do not. Such a system gives urban voters an unfair advantage over rural voters.

> Recommendation 5.6: To achieve geographical representation, states should require that signatures be gathered from more than one area of the state.

Thirteen of the 24 initiative states currently require that signatures be gathered from around the state. Supporters of geographic distribution requirements say they are important because they force initiative proponents to demonstrate that their proposal has support statewide, not just among the citizens of the state's most populous region. Critics say geographic distribution requirements place an unfair burden on initiative proponents, since it is much more difficult to gather signatures in rural areas than it is in urban areas. They also claim that such requirements mean that fewer initiatives qualify for the ballot.

Polling data suggests that voters generally support the idea of requiring initiative proponents to gather their signatures from various parts of the state. In fact, as recently as 1998, voters in Wyoming approved of a legislative proposal to make that state's geographic distribution requirement even more restrictive. A February 1995 poll conducted by the City Club of Portland showed that Oregon voters also supported a geographic distribution requirement. The fact that they later rejected a 2000 constitutional amendment on this very issue may reflect their dissatisfaction with the stringency of that particular proposal, rather than a drop-off in support for the general idea of geographic distribution requirements.

It should be noted that Idaho's geographic distribution requirement was held unconstitutional by a U.S. District Court in December 2001. In addition to a total number of signatures equal to 6 percent of the state's registered voters at the time of the last general election, proponents had to gather signatures from 6 percent of the registered voters in 22 of the state's 44 counties. The decision currently is on appeal in the 9th U.S. Circuit of Appeals, and it is unclear at this time whether this decision, if upheld, would affect geo-

graphic distribution requirements in other states. The 9th Circuit includes Montana and Nevada, which also have geographic distribution requirements.

Tables 12 and 13 summarize the signature requirements for statutory and constitutional initiatives, including geographic distribution requirements.

Table 12. Signature Requirements—Statutory Initiatives

	Statutory Initiatives		
	Signatures	2002 Actual Requirement	Geographic Distribution
Alaska	10% of total votes cast in last general election	22,716	At least one signature by voters resident in each of at least 2/3 of 27 election districts
Arizona	10% of votes cast for governor in last election	101,762	None
Arkansas	8% of votes cast for governor in last election	56,481	Signatures from 4% of registered voters from at least 15 of 75 counties
California	5% of votes cast for governor in last election	419,260	None
Colorado	5% of votes cast for sec. state in last election	80,571	None
Florida	N/A		
Idaho	6% of qualified electors in previous election	43,685	6% of registered voters from each of 22 counties*
Illinois	N/A		
Maine	10% of votes cast for governor in last election	42,101	None
Massachusetts	3% of votes cast for governor in last election	57,100	No more than 25% of signatures may be from one county
Michigan	8% of votes cast for governor in last election	242,168	None
Mississippi	N/A		
Missouri	5% of votes cast for governor in last election	117,342	5% of votes cast for governor in last election from 6 of the 9 congressional districts
Montana	5% of qualified electors in state at large	20,510	At least 5% of voters in at least 34 of the 100 legislative districts
Nebraska	7% of registered voters at the filing deadline	75,969	5% of registered voters in 38 of the 93 counties
Nevada	10% of total votes cast in last general election	61,336	10% of total votes cast in the last general election from at least 13 of the 17 counties
North Dakota	2% of resident population of the state	12,844	None
Ohio	3% of votes cast for governor in last election	100,626	1.5% of total vote cast for governor in last election from 44 of the state's 88 counties
Oklahoma	8% of votes cast in last state election for the office receiving the highest number of votes	98,744	None
Oregon	6% of votes cast for governor in last election	66,786	None
South Dakota	5% of votes cast for governor in last election	13,010	None
Utah	Direct: 10% / Indirect: 5% of votes cast for governor in last election	Direct: 78,458 Indirect: 39,229	Direct: 10% / Indirect: 5% of votes cast in at least 20 of the counties
Washington	8% of votes cast for governor in last election	197,734	None
Wyoming	15% of total votes cast in last general election	33,253	15% of residents in at least 2/3 of the state's 23 counties

* Held unconstitutional by U.S. District Court in December 2001; pending appeal in the 9th U.S. Circuit Court of Appeals.
Source: National Conference of State Legislatures, January 2002.

Table 13. Signature Requirements—Initiated Constitutional Amendments

	Constitutional Initiatives		
	Signatures	2002 Actual Requirement	Geographic Distribution
Alaska	N/A		
Arizona	15% of votes cast for governor in last election	152,643	None
Arkansas	10% of votes cast for governor in last election	70,601	Signatures from 5% of registered voters from at least 15 of 75 counties
California	8% of votes cast for governor in last election	670,816	None
Colorado	5% of votes cast for sec. state in last election	80,571	None
Florida	8% of total votes cast statewide in last presidential election	488,722	8% in at least 12 of the state's 23 congressional districts
Idaho	N/A		
Illinois	8% of total votes cast for governor in previous election	268,693	None
Maine	N/A		
Massachusetts	3% of votes cast for governor in last election	57,100	No more than 25% of signatures may be from one county
Michigan	10% of votes cast for governor in last election	302,710	None
Mississippi	12% of votes cast for governor in last election	91,673	No more than 1/5 total signatures from one congressional district
Missouri	8% of votes cast for governor in last election	187,746	8% of votes cast for governor in last election from 6 of the 9 congressional districts
Montana	10% of qualified electors in state at large	41,020	At least 10% of voters in at least 40 of the 100 legislative districts
Nebraska	10% of registered voters at the filing deadline	108,527	5% of registered voters in 38 of the 93 counties
Nevada	10% of total votes cast in last general election	61,336	10% of total votes cast in the last general election from at least 13 of the 17 counties
North Dakota	4% of resident population of the state	25,688	None
Ohio	10% of votes cast for governor in last election	335,421	None
Oklahoma	15% of votes cast in last state election for the office receiving the highest number of votes	185,145	None
Oregon	8% of votes cast for governor in last election	89,048	None
South Dakota	10% of votes cast for governor in last election	26,019	None
Utah	N/A		
Washington	N/A		
Wyoming	N/A		

Source: National Conference of State Legislatures, January 2002.

Verifying Signatures

Recommendation 5.7: Each state should establish a uniform process for verifying that the required number of valid signatures has been gathered.

States use various methods to verify the number of valid and correct signatures gathered on a petition, and vary in whether signatures are checked at the state or county/local level. In 15 states, verification is conducted by the state's chief election official. In nine states, it is done at the county level and forwarded to the appropriate state official.

The second major area of variation is whether validation is accomplished by counting or verifying each signature or by employing a random sampling formula. Ten states verify signatures using a random sampling method. It is most common in states that use a random sample method that at least 5 percent of the signatures gathered be verified. In Montana, county officials verify all names and signatures and then randomly select signatures to be checked against voter registration records.

North Dakota and Ohio are unique. Since North Dakota does not have voter registration, sponsors must collect signatures of people who legally reside in the state. The Secretary of State is responsible for conducting a representative sampling of signatures using postcards, phone calls and other methods to verify residency. In Ohio, signatures are presumed valid unless otherwise proven. Anyone may file with the board of elections challenging the validity of any signature(s). If a sponsor does not have enough signatures after filing the petition with the Secretary of State, the sponsor is allowed 10 additional days to collect the correct number of signatures.

The timeframe for verifying signatures averages about one month. Most states allow petitioners to observe the verification process. In Arkansas and Ohio, if a petition does not have the required number of valid signatures, an additional time period (30 days in Arkansas and 10 days in Ohio) is allowed to gather the remaining signatures. Most states, however, automatically disqualify a proposed initiative if it does not have enough valid signatures.

Table 14 summarizes the various methods of verifying signatures on initiative petitions.

Table 14. Method of Signature Verification

	Method of Signature Verification
Alaska	Actual; signatures are verified by Lt. Governor until correct number is met
Arizona	Random; 5% of total number of signatures must be verified by county recorders with equal chances for any signature to be chosen
Arkansas	Actual; signatures are verified by the Secretary of State's office, which may contract with various county clerks for assistance
California	Random; Secretary of State verifies total number of signatures, county election officials then conduct random sampling; required to verify 500 signatures or 3% of signatures filed, whichever is greater
Colorado	Random; at least 5% or 4,000 signatures must be verified by Secretary of State
Florida	Actual; every signature is checked by Supervisor of Elections of each county; sponsor must pay $0.10 for each signature checked or the actual cost of checking the signatures to supervisor at the time the petition is submitted; if the sponsor is unable to pay, a statement of undue burden given under oath must be submitted; a sponsor using paid signature gatherers may not submit statement
Idaho	Actual; county clerk verifies each signature, then files petition with Secretary of State
Illinois	Random and actual; state Board of Elections conducts random sampling of signatures and then transmits list to county election officials for individual verification; sampling must include: 10% of the signatures if 5,010 or more signatures are involved; or 500 signatures if more than 500 but less than 5,010 signatures are involved; or all signatures if 500 or less signatures are involved
Maine	Actual; Secretary of State verifies every signature

Table 14. Method of Signature Verification (continued)

	Method of Signature Verification
Massachusetts	Actual; signatures must be verified by a majority (at least three) of the local registrars or election commissioners in the city or town in which the signatures were collected
Michigan	Actual; the board of state canvassers verifies the correct number of signatures and that each signer is a qualified registered voter; the qualified voter file may be used to determine the validity of petition signatures by verifying the registration of signers
Mississippi	Actual; county Circuit Clerk of each county where the petition was circulated verifies every signature, then submits the petition to the Secretary of State
Missouri	Actual or random (at discretion of Secretary of State); if random sampling is used, the method is determined by the Secretary of State and shall include examination of 5% of signatures collected
Montana	Actual and random; county official verifies that each signer is a registered voter and also randomly selects signatures to check against voter registration records
Nebraska	Actual; local election officials verify all signatures using voter registration records; Secretary of State double checks total number of valid signatures
Nevada	Actual and random; county clerks/registrars verify the total number of signatures and forward the number to the Secretary of State, who verifies the raw count and, if the total number of signatures is correct, notifies county clerks/registrars to begin verifying each signature; if there are greater than or equal to 500 signatures, clerk/registrar conducts a random sample of 500 or 5% of signatures
North Dakota	Random; since N.D. does not have voter registration, sponsor must collect signatures of residents; Secretary of State then conducts a representative sampling of signatures using post-cards, phone calls, or other methods to verify signatures
Ohio	Signatures are presumed to be valid unless proved otherwise; if more signatures are needed, sponsors are allowed 10 additional days to file signatures
Oklahoma	Actual; Secretary of State counts and verifies every signature
Oregon	Random; Election Division verifies the number of signatures and randomly selects (using a computer-generated report) samples of signatures to send to county election officials for individual verification
South Dakota	Actual; every signature is verified until the minimum number of signatures is reached
Utah	Actual; county clerks verify every signature
Washington	Actual or random (at discretion of Secretary of State); Secretary of State verifies each signature unless the number of signatures filed is substantially in excess of the minimum needed, in which case the Secretary of State may use a random sampling process to verify signatures
Wyoming	Actual; Secretary of State verifies every signature

Source: National Conference of State Legislatures, January 2002.

Other Ideas for Reform

One suggestion for reform is to decrease the number of signatures needed for qualification. This would reduce the amount of time and money needed to both gather the signatures and to verify them. The task force does not support this reform but, rather, believes that the demonstration of a substantial degree of popular support, represented by signatures on a petition, is an important step in gaining ballot access.

Another suggested reform is to allow petitioners to turn in signatures periodically throughout the circulation phase. This would allow proponents to know how many signatures they still need to gather, and it would help to alleviate the burden of counting a large volume of signatures at one time.

Perhaps the most intriguing suggestion for reforming the signature-gathering process is the establishment of a bifurcated system for signature gathering, such that each signature gathered by a volunteer is worth more than a signature gathered by a paid circulator. Such a

plan would provide an incentive for initiative campaigns to use volunteer circulators, but would not penalize efforts that use paid circulators. An initiative reform task force in Nebraska considered such a plan in 1995, but did not carry it forward due to concerns about its constitutionality. Disagreement exists among scholars as to whether a bifurcated system would pass constitutional muster, and it will be impossible to know for sure until a state adopts it.

Recent Legislative Action

Changing signature requirements, filing deadlines, and regulations on petition circulators were among the most common topics of initiative reform legislation between 1999 and 2002.

- Six states considered changing the filing deadline for initiative petitions. Oregon placed a measure on the March 2000 ballot to change the filing deadline from four months to five months before the election, effectively shortening the circulation period by one month but providing more time for signature verification. Voters passed the measure.

- Thirteen states considered additional regulation of petition circulators. Arizona, California and Idaho established new requirements that petition circulators be state residents. Oregon passed a measure requiring that paid petitioners be identified as such.

- Three states considered bills designed to combat signature fraud.

- Thirteen states looked at changing the number of signatures required to qualify a ballot initiative. None enacted a change.

6. VOTER EDUCATION

Recommendations

Recommendation 6.1: States should provide to the public a manual describing the initiative and referendum process.

Recommendation 6.2: States should encourage public education and discussion about measures on the ballot.

Recommendation 6.3: States should produce and distribute a voter information pamphlet containing information on each measure certified for the ballot.

Recommendation 6.4: In addition to a printed voter information pamphlet, states should consider alternative methods of providing information on ballot measures, such as the Internet, video and audio tapes, toll-free phone numbers, and publication in newspapers.

Overview

An important part of the initiative process is educating voters. Most states prepare voter information pamphlets and post election information on the secretary of state's Web page. In addition, proponents and opponents of initiatives put together their own education campaigns to advertise for and inform voters about initiatives that will appear on the ballot.

Manual on the Initiative Process

Providing citizens with information about how to use the initiative process and the rules and laws that apply is a valuable voter education effort. It helps citizens organize their efforts early in the process and also may help to reduce problems and disputes at later stages of the process.

> Recommendation 6.1: States should provide to the public a manual describing the initiative and referendum process.

This recommendation was also made by the Nebraska Petition Process Task Force in 1995.

Public Education and Discussion of Initiative Measures

Clearly, one of the most serious criticisms of the initiative process is that voters do not always fully understand the contents of the initiatives on which they are asked to vote. This is due partly to the increasing number of measures on the ballot, resulting in such a large volume of information that it is not reasonable to expect all voters to thoroughly study and understand all issues. Furthermore, many initiative measures are lengthy and complicated and often may be so poorly drafted as to be incomprehensible.

> Recommendation 6.2: States should encourage public education and discussion about measures on the ballot.

Recommendation 6.4: In addition to a printed voter information pamphlet, states should consider alternative methods of providing information on ballot measures, such as the Internet, video and audio tapes, toll-free phone numbers, and publication in newspapers.

States have a responsibility to educate voters about measures on the ballot. Better educating voters will lead to improved decision making and, ultimately, to better policy making in the state. In addition to producing a voter information pamphlet (discussed in detail below), states should explore new and innovative ways of conveying information to voters. This might include posting information on the Internet, providing chat rooms for discussion and debate of initiative proposals, holding public hearings and town hall meetings, and providing debates and information on public access television. Each of these venues gives proponents and opponents an opportunity to speak and also provides an event that the media can cover. Media coverage will extend the debate and informational content of state-sponsored voter education efforts to an even broader audience.

Other individuals, commissions and task forces that have recommended public and/or legislative hearings on initiatives include:

M. Dane Waters, I&R Institute (in testimony before the task force on Dec. 8, 2001),
California League of Women Voters (1999),
Nebraska Petition Process Task Force (1995),
Citizens' Commission on Ballot Initiatives (California, 1994), and
California Commission on Campaign Financing (1992).

Case Study: Public Hearings on Initiatives

Mississippi

Mississippi holds public hearings in each congressional district for every initiative measure that is certified for the ballot. At the hearing, a representative from the Secretary of State's office summarizes the measure for the audience, and the proponents and opponents have the opportunity to speak about the initiative. Although public hearings clearly provide a useful forum for debate, discussion and voter education, their value must be weighed in contrast with their cost. In some states—such as Nebraska—that hold public hearings for initiatives, the hearings rarely draw significant participation or media coverage.

Voter Information Pamphlets

One of the most commonly used tools for voter education is the voter information pamphlet. These pamphlets provide a great deal of information about ballot issues—and sometimes about candidates, as well. Voters may peruse the pamphlet at their leisure, and may even take it with them into the voting booth. Clearly, voter information pamphlets are a worthy voter education effort.

Recommendation 6.3: States should produce and distribute a voter information pamphlet containing information on each measure certified for the ballot.

Voter information pamphlets should be user-friendly. They should group related measures, and should use charts and other graphic elements to facilitate comparisons. The information provided for each ballot measure should include the ballot title, an impartial summary, fiscal analysis, arguments for and against each measure, and the text of the proposed law. Some states also include in their ballot pamphlets statements that point out conflicting measures, explaining what will happen if both are adopted. Other states' ballot pamphlets list programs or services that a measure containing an appropriation would take money away from.

Voter information pamphlets are required by statute in 14 of the initiative states. In most states, the pamphlets are printed by the state's chief election official and generally include the text of the measure, an impartial analysis or summary, a fiscal impact statement, and arguments for and against the proposed initiative. In Colorado, the Legislative Council is responsible for writing and assembling the pamphlet, which includes a detailed, impartial analysis of each proposed measure and arguments for and against. Table 15 contains detailed information about the production and contents of voter information pamphlets in the initiative states.

Table 15. Voter Information Pamphlets

	Who Prepares and Distributes	Contents of Pamphlet
Alaska	Lt. Governor	Full text Ballot title and summary from petition Neutral summary prepared by Legislative Affairs Agency Statements for and against (limited to 500 words each) *Also published in full on Lt. Governor's homepage www.gov.state.ak.us/ltgov/elections/homepage.html
Arizona	Secretary of State prepares; county boards of supervisors distribute	Title Text Arguments for and against Analysis (prepared by Legislative Council). Summary of fiscal impact statement *Also published in full on Secretary of State's homepage http://www.sosaz.com/election
Arkansas	N/A	Text of measures published online at http://sosweb.state.ar.us/elect.html
California	Secretary of State	Text Copy of specific constitutional or statutory provision that would be repealed or revised Arguments and rebuttals for and against Analysis (prepared by Legislative Analyst) Fiscal impact estimate Art work, graphics and other materials that the Secretary of State determines will make pamphlet easier to understand *Also published in full on Secretary of State's homepage http://www.ss.ca.gov/elections/elections.htm

Table 15. Voter Information Pamphlets (continued)

	Who Prepares and Distributes	Contents of Pamphlet
Colorado	Legislative Council	Title Text Impartial analysis, including description of major provisions of proposal and comments on proposal's application and effect (Legislative Council prepares) Summary of major arguments for and against (Legislative Council prepares) Fiscal impact statement *Also published on the Legislative Council's Web page, and hyperlinked from the Secretary of State's page http://www.sos.state.co.us/pubs/elections/main.htm
Florida	Up to individual counties to prepare if they choose	Varies from county to county Information also available online at http://election.dos.state.fl.us/initiatives/initiativelist.asp
Idaho	Secretary of State	Title Text Ballot number Arguments and rebuttals for and against *Also published in full on Secretary of State's homepage http://www.idsos.state.id.us/elect/eleindex.htm
Illinois	None	N/A
Maine	Secretary of State	Title Text Summary of intent and content Explanation of significance of a "yes" or "no" vote *Text of measures published in full on Secretary of State's Web site http://www.state.me.us/sos/cec/elec/
Massachusetts	Secretary of Commonwealth	Title Text Summary prepared by Attorney General Fair and neutral one-sentence statement of the effects of a "yes" or "no" vote (prepared by Attorney General and Secretary of Commonwealth) Arguments for and against. *Also published in full at Secretary of Commonwealth's homepage www.state.ma.us/sec/ele/eleidx.htm
Michigan	N/A	Text of each proposal is published online at www.sos.state.mi.us/election/elecadmin/index.html
Mississippi	Secretary of State	Text Ballot title (Attorney General drafts) Ballot summary (Attorney General drafts) 300-word argument for and 300-word argument against Fiscal analysis (drafted by Legislature's chief budget officer) *Text of proposals are published online at www.sos.state.ms.us/elections/elections.html
Missouri	Secretary of State	Text "Plain language" explanation Fiscal impact statement (State Auditor drafts) *Also published in one newspaper in each county and online at www.sos.state.mo.us

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Table 15. Voter Information Pamphlets (continued)

	Who Prepares and Distributes	Contents of Pamphlet
Montana	Secretary of State prepares; county officials distribute	Title Text Impartial summary prepared by Secretary of State Fiscal impact estimate Proponent and opponent arguments and rebuttals *Also published online at sos.state.mt.us/css/ELB/Contents.asp
Nebraska	Secretary of State prepares; county clerks distribute	Title Text Arguments for and against (Secretary of State drafts) General Election Voter Information Pamphlet published on Secretary of State's Web site at www.sos.state.ne.us/elections/election.htm
Nevada	Secretary of State publishes; county clerks distribute	Title Text Summary Arguments for and against Fiscal impact statement *Also published online by Secretary of State at sos.state.nv.us/nvelection/
North Dakota	N/A	Text of proposals are published online at www.state.nd.us/sec/Elections/Elections.htm
Ohio	Secretary of State	Ballot title Impartial statement (prepared by Secretary of State) Explanation (prepared by Ohio Ballot Board) Arguments for and against Information also available online at www.state.oh.us/sos/
Oklahoma	House Research, Legal and Fiscal Divisions	Ballot title Background Text
Oregon	Secretary of State	Title Text Fiscal impact estimate Explanatory statement (written by committee of five citizens—two members from opponents selected by Secretary of State, two members appointed by proponent's committee, fifth member selected by other four) Arguments for and against *Also published in full on Secretary of State's homepage at www.sos.state.or.us/elections/other.info/irr.htm
South Dakota	Secretary of State	Ballot title Text Explanation and effect (prepared by Attorney General) Arguments pro and con *Also published in full on Secretary of State's homepage at www.state.sd.us/sos/sos.htm
Utah	Lt. Governor	Ballot number Ballot title Final vote cast by Legislature if it is a measure submitted by the Legislature Fiscal impact estimate Impartial analysis (prepared by Office of Legislative Research and General Counsel) Arguments and rebuttals in favor of and against Text *Also published online at elections.utah.gov/

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Table 15. Voter Information Pamphlets (continued)		
	Who Prepares and Distributes	Contents of Pamphlet
Washington	Secretary of State	Ballot number Official title Brief statement of law as it presently exists Brief statement explaining effect of proposed law (Attorney General prepares) Total votes for and against by House and Senate if measure has been passed by Legislature Arguments for and against Names and addresses of those writing arguments Full text of each measure *Also published in full on Secretary of State's homepage at www.secstate.wa.gov/elections/
Wyoming	N/A	Text of proposals published in full online at soswy.state.wy.us/election/election.htm

Source: National Conference of State Legislatures, May 2002.

Costs associated with the production, printing and distribution of voter information pamphlets vary from year to year (see table 16). Much of the cost depends upon how many pages are in the pamphlet, whether there is a need to print a supplemental ballot pamphlet (sometimes the case in California), and whether the pamphlet must be available in languages other than English.

Table 16. Costs of Voter Information Pamphlets (Selected States)				
	Printing	Postage	Total Printed/Mailed	Sent to
Arizona (00)	$443,376	$190,000	1.3 million/1.1 million	Every registered voter household; county offices
California (02)*	$4.3 million	$2.7 million	12.8 million/10.9 million	See summary
Colorado (00)	$283,000	$192,000	1.6 million/1.6 million	Every registered voter household; county offices
Colorado (01)	$96,000	$209,000	1.6 million/1.6 million	Every registered voter household; county offices
Nebraska (02)	$165 to $250	$335 to $750	500/500	Each county office
Oregon (00)	$1.9 million	$870,417	1.6 million/1.6 million	Every residential household

* California amounts are per election (they have initiatives in both the primary and general elections).
Source: National Conference of State Legislatures, April 2002.

Each state requires the inclusion of different material, such as title, summary, and text of measures; arguments pro and con; and candidate information. In Nebraska, for instance, the ballot pamphlet contains information only about measures—candidates are not included. In Oregon, information about both measures and candidates is included, as well as voter registration materials (which qualified the pamphlet for nonprofit postage status and saved the state $750,000 in postage). The Oregon ballot pamphlet for the November 2000 election comprised two volumes and more than 400 pages.

Postage costs are determined by state requirements for the distribution of pamphlets. The pamphlet is mailed only to county offices in Nebraska. In Colorado, it is mailed to each registered voter household. California also mails a pamphlet to each registered voter household, and to all city election officials, each member of the Legislature, the proponents of each ballot measure, public libraries, high schools, and institutions of higher learning.

In Colorado and Nebraska, the text and title of each measure also must be published in a newspaper. This is a significant expense in Nebraska, where the publication cost per measure is $75,000.

Arizona, California and Colorado are required to print voter information pamphlets in languages other than English. California currently prints in five languages in addition to English, and Colorado and Arizona in two additional languages. Translation costs in Arizona for the November 2000 election were $20,000, which included audio tapes in Navajo. In Colorado, translation costs for 2000 were $25,000. California directly mails 278,519 translated versions of the voter information guide.

Virtually every commission that has studied the initiative process has recommended improved voter information pamphlets. Some of the specific recommendations include the following:

- Analyses of initiative measures should be written for the reading level of the average citizen (California League of Women Voters, 1999).
- The ballot pamphlet should clearly indicate the effect of a "yes" vote and a "no" vote (California League of Women Voters, 1999; Citizens' Commission on Ballot Initiatives, California, 1994).
- Related initiatives should be grouped together in the ballot pamphlet, and comparison charts should be used to facilitate voter comparison of similarities and differences (Citizens' Commission on Ballot Initiatives, California, 1994).
- The state should provide the citizens with readily accessible, in-depth information regarding the various issues surrounding each proposed constitutional amendment (Florida's Citizen Initiative Process, November 1994).

Case Study: Voter Information Pamphlets

Oregon

Oregon charges a fee of $500 for the submission of arguments for or against initiative measures to be printed in the voters' pamphlet. This helps fund the printing and postage costs associated with the pamphlet. Note that it is possible to bypass the $500 fee by submitting a petition bearing the signatures of 1,000 people who are eligible to vote on the measure.

Oregon also has an innovative manner of drafting the explanatory statement that is printed in the voters' pamphlet with each measure. A committee is created, made up of the following:

- Two people appointed by the chief proponents (in the case of a legislative referendum, one person is appointed by the president of the Senate and one by the speaker of the House)
- Two opponents are appointed by the Secretary of State

- A fifth member, selected by the two proponent and two opponent members of the committee

The committee prepares a simple, impartial and understandable explanatory statement of no more than 500 words. The statement must be approved by at least three members of the committee.

The Secretary of State holds a public hearing to receive comments and suggested changes to the explanatory statement. The committee considers testimony at the hearing, and also considers written suggestions and comments, and issues a final explanatory statement no later than 90 days before the election. If the committee fails to issue a statement by the deadline, a statement drafted by the Legislative Counsel Committee is used instead. Any person who offered testimony at the public hearing may petition the Oregon Supreme Court to seek a different explanatory statement.

Voter Education on the Internet

All states except two provide online information about measures on the ballot and other initiative information. It also is becoming more common for states to list initiatives that were put on the ballot in past years and the outcome of each. Many states publish the voter information pamphlet in full online, including the title and text of each measure and arguments and rebuttals for and against the measure, an impartial summary of the measure, and a fiscal impact estimate.

The Media's Role in Voter Education

Scholarly research has shown that most people get their information about election issues from friends, family, special interest groups with which they identify, and the media. So, while voter information pamphlets printed by the state offer the most comprehensive and objective information, paid advertising and news media coverage of campaigns may have an equal or even stronger influence on voters. Others argue that the quality of the information available to voters is directly related to the integrity of the initiative process. Therefore, less comprehensive, shorter, purposefully inflammatory and potentially exaggerated media sources of election information could pose a threat to the initiative process.

Finally, some people argue that the use of media sources to educate voters unnecessarily increases the costs of running an initiative campaign. The process no longer is grassroots in nature but is, rather, a high-powered advertising campaign. Also, without disclosure requirements, it may be unclear to voters who is behind or sponsoring the advertising, leading to biased or only partially informed voter opinions.

Whatever one believes about the value and influence of paid campaign advertisements, however, the news media bears a responsibility to provide adequate and balanced coverage of initiative proposals.

Other Ideas for Reform

Some reform advocates have suggested that a list of individual and organizational endorsements included in the voter information pamphlet would be useful to voters, since they often use such cues to make their decisions about ballot measures. The Citizens' Commis-

sion on Ballot Initiatives (California, 1994) recommended this reform. Listing the position of legislators and the governor also has been suggested, for the same reason.

Recent Legislative Action

During the period of 1999 through 2002, legislatures in 11 states considered 39 bills addressing voter education on initiatives.

- Montana passed a bill that clarifies the contents of arguments prepared on ballot measures for inclusion in the voter information pamphlet.

- At the November 2002 election, Florida voters will decide if they want to add language to the state's constitution requiring the Legislature to draft a statute to require economic impact estimates on initiative constitutional amendments. Presently, Florida has no requirement for fiscal analysis of constitutional amendments.

7. Financial Disclosure

Overview

The role of money in the initiative process has grown dramatically during the past decade. Although large contributions to initiative campaigns are not new and date to the turn of the last century, they are even larger and more common today than ever before. The I&R Institute reported in 1998 that issue committees nationwide spent almost $400 million to support and oppose ballot measures. California led the way in 1998. According to the secretary of state, California committees spent just under $193 million to support and oppose the 12 general election ballot measures. Combined spending for 214 statewide and legislative candidates in the 1998 general election totaled just under $136 million for the general election, or about 70 percent of the spending on ballot measures.

Recommendations

Recommendation 7.1: States should require financial disclosure by any individual or organization that spends or collects money over a threshold amount for or against a ballot measure.

Recommendation 7.2: After a title has been certified for an initiative measure, states should require that proponents and opponents of the initiative measure file a statement of organization as a ballot measure committee prior to accepting contributions or making expenditures.

Recommendation 7.3: States should make the disclosure requirements for initiative campaigns consistent with the disclosure requirements for candidate campaigns.

Recommendation 7.4: States should prohibit the use of public funds or resources to support or oppose an initiative measure. This should not preclude elected public officials from making statements advocating their position on an initiative measure.

Even more concerning than the extraordinary amounts of money raised and spent in initiative campaigns is the fact that such large sums of money come from so few sources. Large contributions overwhelmingly dominate initiative campaigns, and small, grassroots contributions make up a small percentage of the total money spent. Of course, whether that is a problem in and of itself is debatable; nevertheless, voters deserve to know who is funding initiative campaigns. If a measure qualifies for the ballot because one or two wealthy individuals or corporations underwrote the costs, voters should be able to consider that fact as they decide how to vote on the measure.

Unlike candidate campaigns in most states, in which contributions are limited, it is not uncommon for large contributions from a small handful of contributors to fund an initiative, from the drafting and signature-gathering phases through the campaign. A series of U.S. Supreme Court rulings, *Buckley vs. Valeo*, 424 U.S. 1 (1976), *National Bank of Boston vs. Bellotti*, 435 U.S. 1 (1978), and *Citizens Against Rent Control vs. City of Berkeley*, 454 U.S. 290 (1981) have clearly established the Court's view that limiting contributions and expenditures in initiative campaigns is an impermissible violation of First Amendment rights. The rationale behind the Court's rulings is that, although it is possible that a candidate could be corrupted by large contributions, it is impossible to corrupt an issue.

In spite of the Court's reluctance to limit money in initiative campaigns, voters have consistently supported the idea. About half the states have at some time in their history attempted to limit spending in initiative campaigns, and voters have supported spending restrictions on initiative campaigns in at least two states—California and Alaska. Such limits have failed to stand up to judicial scrutiny, however.

Initiative Financial Disclosure Requirements

With contribution and expenditure limits out of the question, states are left with only one avenue of regulating money in initiative campaigns: disclosure. States have a responsibility to ensure that voters receive high-quality, transparent information about the sponsorship and financial support of initiative proponents and opponents. Such information not only minimizes abuse and manipulation of the initiative process, but also provides voters with key tools necessary for deciphering the sometimes veiled motives of initiative proponents. Voters cannot make a fully informed decision without campaign finance information about initiatives.

Recommendation 7.1: States should require financial disclosure by any individual or organization that spends or collects money over a threshold amount for or against a ballot measure.

Recommendation 7.2: After a title has been certified for an initiative measure, states should require that proponents and opponents of the initiative measure file a statement of organization as a ballot measure committee prior to accepting contributions or making expenditures.

Recommendation 7.3: States should make the disclosure requirements for initiative campaigns consistent with the disclosure requirements for candidate campaigns.

Recommendation 7.4: States should prohibit the use of public funds or resources to support or oppose an initiative measure. This should not preclude elected public officials from making statements advocating their position on an initiative measure.

The following commissions, individuals and organizations have recommended increasing disclosure requirements for initiative supporters and opponents:

Speaker's Commission on the California Initiative Process (2002),
David Broder, *Washington Post* (in testimony before the task force on Dec. 7, 2001),
California League of Women Voters (1999),
City Club of Portland, Oregon (1996),
Citizens' Commission on Ballot Initiatives (California, 1994),
Sacramento Bee (1994), and
Los Angeles Times (1990).

States use disclosure requirements in various phases of the initiative campaign. In some states, sponsors must disclose the amount of money they pay to petition circulators. In most states, initiative campaign committees are required to disclose their contributions and expenditures. They also are often required to disclose the names of contributors who give more than a threshold amount. A few states also require that initiative committees

identify out-of-state contributors, and at least 11 states require reporting by people or groups that make independent expenditures in support of or opposition to an initiative. Presently, no state requires that expenditures be reported for pre-certification activities, such as polling and drafting.

Every initiative state requires some degree of disclosure of contributions and expenditures by initiative campaigns; states vary in the degree of detail required in such reports and the frequency of reporting. In many states, the information is posted for the public on a Web site (usually the secretary of state's).

Effectiveness of Initiative Campaign Spending

Recent scholarly research suggests that high-spending campaigns often are no more successful in passing an initiative than are low-spending campaigns. Money is instrumental in changing voter opinion, however, when it is spent in opposition to a measure. Research suggests that high spending by opponents can be effective in defeating initiatives by creating a climate of confusion and uncertainty, under which most voters vote "no."

Recent Legislative Action

There has been significant legislative activity in the area of initiative campaign finance reform, as states scramble to equalize the disclosure requirements for initiative campaigns with those imposed on candidate campaigns. During the period of 1999 through 2002, legislatures in 15 states considered 34 bills addressing the issue of money in initiative campaigns. Highlights include the following.

- In 2001, Arizona passed HB 2389, requiring that committees that support or oppose ballot measures register before distributing campaign literature or running advertisements, that literature and ads disclose the political committee that funds them, and that ballot measure committees report contributions of $10,000 or more within 24 hours of receiving them.

- Montana passed HB 468 in 1999, requiring the people who employ paid signature gatherers to file financial disclosure reports. The report must include the amount they pay to each signature gatherer. Utah also passed a similar measure in 1999.

- In 2001, North Dakota passed a pair of bills that tightened financial disclosure requirements for petition sponsors and extended the requirements for last-minute contributions to initiative campaigns to include contributions from political parties to initiative campaigns.

- Oregon passed a bill in 2001 that added a new report requirement prior to the May primary, and up to two additional reports if aggregate contributions or expenditures exceed $2,000. Under prior law, proponents had to file just one report two weeks after the July deadline for turning in signatures.

- A 1999 bill passed in Arkansas requires that the use of state funds to support or oppose a ballot measure be reported to the Legislative Council if the expenditure exceeds $100.

- A bill pending in Massachusetts would test the U.S. Supreme Court's ruling that prohibited limiting contributions to initiative campaigns. HB 3862 proposes limiting to $100 contributions made for the promotion or defeat of ballot questions.

- A bill passed in 2002 in Arizona voids any signatures gathered before the proponents filed a statement of organization. It also requires that committees include their name, the serial number for the petition, and their support or opposition of a measure in their statement of organization. The bill is SB 1285.

- A failed bill in Oklahoma would have swept initiative campaigns into the existing campaign finance disclosure requirements by changing the definitions of "contribution" and "expenditure" to include any communication that clearly advocates the passage or defeat of a ballot measure.

8. VOTING ON INITIATIVES

Overview

In most states, present law permits the passage of an initiated law or constitutional amendment with a simple majority vote. Some states have implemented higher vote standards in an effort to ensure that initiatives truly have popular support before they are enacted.

When Initiatives Can Appear on the Ballot

In a handful of states, initiatives may appear on primary or special election ballots. Alaska, California, North Dakota and Oklahoma permit initiatives on primary and special election ballots. Six states also permit initiatives on odd-year ballots: Colorado (only revenue measures), Maine, Mississippi (note, however, that Mississippi's legislative elections also are held in odd years), Ohio, Oklahoma and Washington. Voter turnout typically is significantly lower at primary, odd-year and special elections than at regular general elections. When initiatives appear on those ballots, it means a small percentage of registered voters are permitted to dictate policy for the majority. It is preferable that initiatives be voted on by as many people as possible.

Recommendations

Recommendation 8.1: States should allow initiatives only on general election ballots.

Recommendation 8.2: States should adopt a requirement that creates a higher vote threshold for passage of a constitutional amendment initiative than for passage of a statutory initiative.

Recommendation 8.3: States should require that any initiative measure that imposes a special vote requirement for the passage of future measures must itself be adopted by the same special vote requirement.

Recommendation 8.4: States should ensure that statutory initiative measures require the same vote threshold for passage that is required of the legislature to enact the same type of statute.

Recommendation 8.5: States should adopt a procedure for determining which initiative measure prevails when two or more initiative measures approved by voters are in conflict.

> Recommendation 8.1: States should allow initiatives only on general election ballots.

This reform also was recommended by the California League of Women Voters in 1999, and the California Constitution Revision Commission in 1996.

Supermajority Vote Requirements for Constitutional Amendments

Most states require a simple majority vote to pass an initiative measure, whether statutory or constitutional in nature. By contrast, a supermajority vote of the legislature is necessary in almost all states to refer to the voters a measure to amend the constitution. All states except Delaware also require a vote of the people to pass a constitutional amendment. Supermajorities are intended to prevent a "tyranny of the minority," and also encourage

deliberation and compromise as proponents attempt to gather enough votes to reach a supermajority. Supermajorities in the legislature often are required for constitutional amendments because of the belief that constitutions should not be amended without careful deliberation. Many states also require a supermajority vote of the legislature to increase taxes.

In most states, however, the initiative constitutional amendment process is not subject to the same supermajority vote requirement as the legislature. Some experts question why supermajorities are required of the legislature but not of the people. They point out that the initiative process lacks checks found in the legislature that promote compromise and consensus and suggest that a supermajority vote requirement might help to prevent the passage of initiatives that are supported only by a narrow majority.

> Recommendation 8.2: States should adopt a requirement that creates a higher vote threshold for passage of a constitutional amendment initiative than for passage of a statutory initiative.

Requiring a supermajority vote to amend the constitution also was recommended by the City Club of Portland (1996).

Wyoming's supermajority requirement was challenged in 1997 by the proponents of an initiative that received a simple majority but failed to reach the supermajority requirement (*Brady vs. Ohman*, 105 F.3d 726 (1998)). The 10th Circuit Court of Appeals rejected the challenge and wrote that Wyoming had the right to prevent "… abuse of the initiated process and make it difficult for a relatively small special-interest group to enact its views into law." The case was appealed to the U.S. Supreme Court, which upheld the Circuit Court ruling.

According to Richard Ellis in *Democratic Delusions: The Initiative Process in America*, the effect of a supermajority passage requirement would have dramatic consequences. He analyzed the passage rates of initiatives in the five most active initiative states—Arizona, California, Colorado, Oregon and Washington—between 1980 and 2000, and found that an average of 60 percent of the initiatives on the ballot would have passed under a 55 percent supermajority requirement, 45 percent under a three-fifths requirement, and only 20 percent under a two-thirds requirement (pp. 128-9).

Table 17 summarizes supermajority requirements for passing initiative measures.

Table 17. Supermajority Initiative Passage Requirements

	Passage Requirement	Applies to
Florida	Any measure imposing a tax or fee not in place in November 1994 must receive a 2/3 vote in order to pass	Constitutional amendments
Illinois	Passage by 3/5 of those voting on the measure, or a majority of those voting in the election	Constitutional amendments
Massachusetts	Majority vote, provided that the total number of votes cast on the initiative equals at least 30% of the total votes cast in the election	Statutory initiatives and constitutional amendments
Mississippi	Majority vote, provided that the total number of votes cast on the initiative equals at least 40% of the total votes cast in the election.	Constitutional amendments

Table 17. Supermajority Initiative Passage Requirements (continued)		
	Passage Requirement	Applies to
Nebraska	Majority vote, provided that the total number of votes cast on the initiative equals at least 35% of the total votes cast in the election	Statutory initiatives and constitutional amendments
Nevada	An initiative constitutional amendment must receive a majority vote in two successive general elections in order to pass	Constitutional amendments
Oregon	Any measure that includes any proposed requirement for more than a majority of votes cast by the electorate to approve any change in law or government action must be approved by at least the same percentage of voters specified in the proposed voting requirement	Statutory initiatives
Washington	Majority vote, provided that the vote cast upon the measure equals at least one-third of the total votes cast at such election	Statutory initiatives
Wyoming	Majority vote, provided that an amount in excess of 50% of those voting in the preceding general election must cast votes on an initiative or the initiative fails	Statutory initiatives
Source: National Conference of State Legislatures, January 2002.		

Special Vote Requirements

In Oregon, any measure that includes any proposed requirement for more than a majority of votes cast by the electorate to approve any change in law or government action must be approved by at least the same percentage of voters specified in the proposed voting requirement. For instance, if an initiative proposes that all future tax increases must receive a 60 percent supermajority to pass, then that same initiative also must receive a 60 percent supermajority to pass. The Citizens' Commission on Ballot Initiatives (California, 1994) recommended this reform for California.

> Recommendation 8.3: States should require that any initiative measure that imposes a special vote requirement for the passage of future measures must itself be adopted by the same special vote requirement.

In many states, legislatures must assemble a supermajority vote to pass certain types of statutory measures, in particular tax and fee increases. Such requirements are imposed because legislators and citizens feel that certain sections of law deserve special protection, and should not be easily or hastily changed. That assumption should extend to the initiative process as well.

> Recommendation 8.4: States should ensure that statutory initiative measures require the same vote threshold for passage that is required of the legislature to enact the same type of statute.

A similar reform was proposed by the California Policy Seminar in 1991.

Case Study: Passage and Ratification of Constitutional Amendments

Nevada

Nevada's passage requirement for constitutional amendments has received attention recently. Since 1962, Nevada has required that a constitutional amendment be passed by a majority of the voters in two successive general elections. This is not an uncommon requirement to be placed on legislatures—Nevada requires its own Legislature to pass a constitutional amendment in two consecutive sessions before putting it on the ballot, as does Massachusetts. Ten other states also require the legislature to pass an amendment twice before it goes to the ballot, and 33 require either a single supermajority vote or a majority vote in two legislative sessions.

The advantage of the double-vote requirement is that it allows more time for voters to learn about and consider the measure. It also gives the legislature a chance to act on an issue if a measure receives substantial support in its first election. Most amendments in Nevada that receive a majority "yes" vote in the first election also pass the second election. However, at least three measures—two tax measures and a term limits measure—that passed in the first election but failed in the second.

Conflicting Measures

It has become a common technique for initiative proponents to qualify multiple or competing measures that address the same subject. Often, the motive for this is to confuse voters, ensuring that a particular measure—or all of the competing measures—will fail. It is important that states have a standard for determining how to respond when conflicting measures are passed by voters. A state without such a standard may someday find itself in a complicated and expensive court battle to sort out conflicting measures.

> Recommendation 8.5: States should adopt a procedure for determining which initiative measure prevails when two or more initiative measures approved by voters are in conflict.

Legislatures have a variety of ways for dealing with the passage of laws that conflict with each other. It is common for a state to provide the code revisor with authority to rectify certain problems without requiring further action. Commonly, revisors may not alter the sense, meaning or effect of an act, but may renumber and rearrange sections, transfer or divide sections, change capitalization, correct manifest typographical and grammatical errors, and make other such minor changes. States also may provide a series of rules to help resolve conflicts. For instance, if amendments to the same statute are enacted without reference to one another, they often are harmonized to give effect to each, to the extent possible. If conflicting amendments or statutes are irreconcilable, the most recently enacted amendment or statute generally prevails.

Other Ideas for Reform

Sunset Provisions

Many states currently use a sunset process. In these states, some laws contain an automatic termination provision, meaning the law automatically terminates unless it is reauthorized.

It is even more common for states to subject certain agencies to termination unless they are reauthorized. No state currently requires a sunset provision for initiative measures.

It has been suggested that requiring a sunset provision on initiative measures would provide an opportunity and a formal venue for the legislature and others to publicly discuss the effects of an initiative. If an initiative had unintended consequences, they would come up during the sunset process, and the legislature might have the opportunity to show voters why the initiated law needed amendment. Arizona has considered bills that would impose a sunset provision on initiated laws, and it was recommended by the California League of Women Voters in its 1999 position statement on the initiative process.

Supermajorities

Several states require a particular type of supermajority vote for ballot measures (see Table 17). In these states, not only must a majority of votes cast on the measure be affirmative, but a certain percentage of votes cast in the election must be in favor of the measure. For instance, in Massachusetts, an initiative must receive a simple majority, and the votes in favor of the initiative must be equal to at least 30 percent of the total votes cast in the election. Such restrictions are intended to address the problem of voters who choose not to cast a vote on an initiative. In effect, such restrictions count the lack of any vote as a "no" vote. They presume that a non-vote is an indication of the voter's preference to maintain the status quo in favor of any change. Opponents of this idea say that it creates a disadvantage for measures that appear later on the ballot, and that it is unfair because the same requirement is not imposed on candidate elections.

Recent Legislative Action

Eight states have considered changing the passage requirements for initiative measures since 1999. Proposals that were considered but not enacted include the following.

- Requiring a two-thirds vote to pass an initiative that changes state revenues and for constitutional amendments (considered in Arizona, California).
- Requiring a 60 percent vote on initiatives resulting in a loss of state revenues of more than $100 million (considered in Mississippi).
- Requiring a two-thirds vote on conservation initiatives (considered in Missouri).
- Requiring that constitutional amendments be passed at two consecutive general elections before taking effect (failed on the ballot in 2000 in Nebraska).
- Requiring a three-fifths vote to pass a constitutional amendment (considered in Oregon).
- Requiring that the ballot title for an initiative that contains any supermajority voting requirement also contain a statement indicating that the measure will allow a minority of voters to veto the will of the majority in certain elections (considered in Oregon).

- Establishing a method for the Legislature to determine if an initiative measure has substantial fiscal impact; requiring measures that are determined to have a substantial fiscal impact receive a vote of 60 percent to pass (considered in Washington).

- Requiring a two-thirds vote to pass an initiative that allows, limits or prohibits the taking of wildlife (considered in Wyoming).

APPENDIX A. THE INITIATIVE STATES

	Statutory Initiative	Constitutional Initiative
Alaska	D*	None
Arizona	D	D
Arkansas	D	D
California	D	D
Colorado	D	D
Florida	None	D
Idaho	D	None
Illinois	None	D
Maine	I	None
Massachusetts	I	I
Michigan	I	D
Mississippi	None	I
Missouri	D	D
Montana	D	D
Nebraska	D	D
Nevada	I	D
North Dakota	D	D
Ohio	I	D
Oklahoma	D	D
Oregon	D	D
South Dakota	D	D
Utah	D&I	None
Washington	D&I	None
Wyoming	D*	None

D—*Direct Initiative*: proposals that qualify go directly on the ballot.
I—*Indirect Initiative*: proposals are submitted to the legislature, which has an opportunity to act on the proposed legislation. Depending on the state, the initiative question may go on the ballot if the legislature rejects it, submits a different proposal or takes no action.
D*—Alaska and Wyoming's initiative processes exhibit characteristics of both the direct and indirect initiative. Instead of requiring that an initiative be submitted to the legislature for action (as in the indirect process), they require only that an initiative cannot be placed on the ballot until after a legislative session has convened and adjourned. The intent is to give the legislature an opportunity to address the issue in the proposed initiative, should it choose to do so. The initiative is not formally submitted to the legislature.
Source: National Conference of State Legislatures, January 2002.

APPENDIX B. OTHER INITIATIVE REFORM COMMISSIONS

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GLOSSARY

Advisory Initiative—A non-binding proposed statute and/or constitutional amendment that is initiated by citizens and placed on the ballot for a popular vote after a petition process.

Direct Initiative—A proposed statute and/or constitutional amendment initiated by citizens and placed on the ballot for a popular vote after a petition process. If passed by the voters, the statute or constitutional amendment takes effect without legislative or gubernatorial action.

General Policy Initiative—A citizen-initiated proposal for a statute and/or constitutional amendment that is general in nature, and does not contain specific constitutional or statutory language. If voters pass a general policy initiative, the legislature is required to take action to develop and implement the policy.

Indirect Initiative—A citizen-initiated proposal for a statute and/or constitutional amendment that is first submitted to the legislature, which has an opportunity to act on the proposed legislation. The initiative question may be placed on the ballot if the legislature rejects it, submits a different proposal or takes no action.

Legislative Referendum/Referral—A proposed or newly enacted law or proposed constitutional amendment placed on the ballot by the legislature for voter approval.

Popular Referendum—A process by which voters may petition to place a recent enactment of the legislature on the ballot for approval or rejection by the people.

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SUMMARY OF NO. 25-09

The proposed law would change the type and amount of marijuana that may legally be possessed in Massachusetts by repealing the laws that legalize, regulate, and tax the retail sale of adult recreational use marijuana in Massachusetts. The proposed law would also permit persons 21 years of age and older to possess 1 ounce or less of marijuana including no more than 5 grams in the form of concentrate, and to gift or transfer to another person 21 years of age and older 1 ounce or less of marijuana including no more than 5 grams in the form of concentrate. The proposed law would also impose a civil penalty of $100 and forfeiture of the marijuana for the possession of marijuana between the weight of 1 and 2 ounces.

For persons 21 years of age and younger, the proposed law would make the possession of 2 ounces or less of marijuana a civil infraction subject to a $100 fine, forfeiture of the marijuana, completion of a drug awareness program and community service, and notification to their parents or legal guardian of the offense and penalties.

The proposed law would impose new potency limitations on medical marijuana products that may legally be sold in Massachusetts, prohibiting: marijuana flower with potency in excess of 30% tetrahydrocannabinol ("THC"); marijuana concentrates intended for inhalation following vaporization or

combustion that exceed 5 mg of THC per metered serving, or with potency exceeding 60%; concentrated forms of medical use marijuana products that fail to clearly provide metered, or otherwise measured, standard delivered servings of 5 mg of THC; and packages of marijuana concentrate that exceed 20 metered or measured servings of 5 mg of THC.

The proposed law would allow currently licensed adult recreational marijuana businesses to apply on an expedited basis to become a licensed medical marijuana dispensary and to sell their remaining inventory of adult recreational marijuana to medical marijuana dispensaries. The proposed law would retain the Cannabis Control Commission but modify its authority so it would regulate only the medical marijuana market.

The proposed law states that, if any of its parts were declared invalid, the other parts would stay in effect.

The proposed law would take effect on January 1, 2028.

SUMMARY OF NO. 25-32

This proposed law would eliminate the requirement that cities and towns defined by law as "MBTA communities" permit multi-family housing in at least one zoning district of reasonable size that is located not more than .5 miles from a commuter rail station, subway station, ferry terminal, or bus station. This proposed law would also eliminate any zoning district that had been adopted by a city or town pursuant to that requirement. This proposed law would also prohibit penalizing any city or town based upon whether or not it had adopted a zoning district pursuant to that requirement, and would repeal any law that permits any such penalty.

SUMMARY OF NO. 25-42

This proposed law would require electric and gas distribution companies to obtain a ratepayer's affirmative, written consent for charges not directly related to the physical delivery of gas or electricity, defined as any charges not directly and exclusively related to the operation and maintenance of the infrastructure necessary to deliver gas or electricity.

The proposed law would prohibit the Department of Public Utilities from authorizing utilities to charge ratepayers for costs associated with net metering, renewable energy incentives, clean energy programs, tariff structures supporting such programs, or funding for renewable energy project development, unless the ratepayer has opted in to those costs in writing.

The proposed law would limit non-delivery-related charges to no more than five percent of a ratepayer's total monthly bill.

The proposed law would eliminate the utilities' ability to recover costs for net metering credits, renewable energy incentives, clean energy programs, demand-side management, and related tariffs from ratepayers without consent. It would also eliminate required charges to ratepayers for certain energy efficiency programs, and would require that ratepayers opt in to these charges. Prior written consent would be required for

certain utility surcharges, including charges for local distribution adjustment clauses, distribution adjustment, environmental remediation, pension or benefit recovery, and infrastructure enhancement plans. The proposed law would eliminate any existing regulations by which the Department of Public Utilities approves utility companies' use of cost recovery mechanisms.

The proposed law would establish that, for any ratepayer who has not affirmatively opted in, total non-delivery-related charges may not exceed five percent of that ratepayer's total monthly bill.

Utility bills would be required to present delivery charges in a separate group from all other charges, with each delivery charge showing its statutory or regulatory basis, the administering agency or program, the amount for the current billing period, and the cumulative total paid year-to-date.

The Department of Public Utilities would be required to adopt regulations to verify the required consent to charges and to prevent unauthorized or bundled enrollment in utility programs.

The proposed law states that, if any of its parts were declared invalid, the other parts would stay in effect.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the
Massachusetts Rules of Appellate Procedure

I, Edmund P. Daley III, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 16 (a)(13) (addendum);
Mass. R. A. P. 16 (e) (references to the record);
Mass. R. A. P. 18 (appendix to the briefs);
Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents); and

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the proportional font Times New Roman at size 14, and contains **10,520**, total non-excluded words as counted using the word count feature of Microsoft Word.

CERTIFICATE OF SERVICE

Pursuant to Mass. R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on March 10, 2026, I have made service of this Brief and Record Appendix upon the attorney of record for each party by the Court's Electronic Filing System and e-mail on:

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