

# OFFICE OF THE STATE AUDITOR



*Making Government Work Better*

**Presentation to the Massachusetts Collectors and Treasurers Association**

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# Auditor Bump's Priorities

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- Retooling the Office of the State Auditor for the 21st century:
  - ▣ New employees with appropriate credentials.
  - ▣ A diverse workforce that reflects the Commonwealth's residents.
  - ▣ A diversity of experiences, to meet Auditor Bump's goals for auditing.
  
- A focus on different kinds of audits:
  - ▣ Performance audits
  - ▣ Tax expenditure audit
  
- Audits that help make government work better:
  - ▣ For example, the recent audit of district courts and the new probation fees.

# State Audits

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- OSA audits state agencies, including: institutions of higher education; health and human service agencies; constitutional offices; and other state government executive offices, functions, and programs.
- Partners with a major accounting firm in performing the Single Audit of the Commonwealth, a comprehensive annual financial and compliance audit of the Commonwealth as a whole that encompasses the accounts and activities of all state agencies.
- Oversees state agencies' responsibilities under the Commonwealth's Internal Control Statute, including investigating referrals of variances, thefts, etc.
- Educates, guides, and assists state agencies on the importance of internal controls in order to mitigate risk.

# Authority and Vendor Audits

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- OSA audits quasi-public authorities such as Massport, MassDOT, and local housing authorities.
  
- Auditor Bump is enhancing the office's work in auditing the Commonwealth's vendors:
  - ▣ Her goal is to identify funds that are misappropriated by vendors through waste, fraud, and abuse.
  
  - ▣ She is also focused on assisting vendors and potential vendors in understanding the financial and internal control requirements that must be adhered to in order to receive state contracts.

# Municipal Audits

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- M.G.L. c. 11, § 12:
  - In a town following a majority vote by the board of selectmen or school committee, ratified by a special or annual town meeting, or in a regional school district following a two-thirds vote of the regional school district committee members, or in a city following a majority vote of the city council and approval by the mayor . . .
  - OSA may make an audit of the accounts, programs, activities, and other public functions of the town, district, regional school district, city or county to the extent determined necessary by the State Auditor . . .
  - Provided that the expenses for any such audit shall be borne by the city, town or regional school district and the state auditor may charge for the cost of the audit.

# Auditor Bump's Other Responsibilities

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- Bureau of Special Investigations
- Municipal Finance Oversight Board
- Division of Local Mandates



# Municipal Finance Oversight Board

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- Auditor Bump chairs the Municipal Finance Oversight Board (MFOB), which also includes the DOR's Director of the Division of Accounts and designees of the Attorney General and the State Treasurer.
- Cities and towns may, upon the approval of the majority of the members of the MFOB, incur debt under the Qualified Bond Act (M.G.L. c. 44A).
- Under the Qualified Bond Act, municipalities are able to incur debt under the Commonwealth's more favorable bond rating, with debt payments guaranteed by local aid payments.

# Emergency Borrowing

- Massachusetts law – M.G.L. c. 44, § 8(9) -- allows municipalities, upon approval by the MFOB, to incur debt outside the limit of indebtedness prescribed M.G.L. c. 44, § 10 for emergency appropriations, defined as:
  - A sudden, unavoidable event or series of events which could not reasonably have been foreseen or anticipated at the time of submission of the annual budget for approval. Emergency shall not be deemed to include the funding of collective bargaining agreements or such items as were previously disapproved by the appropriating authority for the fiscal year in which such borrowing is sought.

# Emergency Borrowing

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- The Supplemental Budget which is working its way through the legislature would streamline the process by:
  - ▣ eliminating the requirement of a vote by the municipal appropriating body, and
  - ▣ allowing the emergency borrowing for up to two years to be approved by the DOR's Director of Accounts instead of the full MFOB.
- Borrowing for emergency capital projects for longer than two years would still require MFOB approval.

# Division of Local Mandates

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- M.G.L. c. 29, § 27C -- Any state law, rule, or regulation that imposes more than incidental administrative expenses upon any city or town must meet one of two standards:
  - it must be fully funded by the Commonwealth; or
  - it must be subject to local acceptance.



# Unfunded Mandate Issues

- Subject matter jurisdiction – Article 115 of the Amendments to the Massachusetts Constitution:
  - ▣ Any law regulating the terms of municipal employment must be fully funded by the Commonwealth, unless subject to local acceptance or enacted by 2/3 vote of each branch of the Legislature.
  - ▣ DLM has no authority to review or determine the cost of any Article 115 mandate.
- Consult your local counsel if you have an Article 115 concern.

# Unfunded Mandate Issues

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## □ Legislative Intent:



- Because the Local Mandates Law is just that, a law, the Legislature is free to override or repeal it, just like any other law.
- Not difficult to do – “notwithstanding any general or special law to the contrary.”

# Unfunded Mandate Issues

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- Has to be a state law, rule, or regulation:
  - ▣ Applies to anything that meets the definition of regulation in M.G.L. c. 30A, § 1(5) – a “requirement of general application and future effect.”
  - ▣ Does not apply to departmental orders specific to one community.
  - ▣ Does not apply to unwritten policies.

# Unfunded Mandate Issues

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- Has to take effect on or after 1/1/1981:
  - ▣ That is when the law went into effect.
  - ▣ No state duty to fund pre-1981 mandates.
  - ▣ Also must be a new law changing existing law, not merely a clarification of existing law.



# Unfunded Mandate Issues

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- Has to be imposed enacted or promulgated, directly or indirectly, by the General Court:
  - ▣ Does not apply to costs imposed upon cities and towns by court decisions, or laws or regulations enacted as a direct result of court decisions.
  - ▣ Does not apply to federal mandates adopted by Congress or Federal agencies, or to state laws that merely codify Federal requirements in state law.
  - ▣ DLM's position is that the LML does not apply to laws adopted by citizens initiative petitions.

# Unfunded Mandate Issues

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- Has to impose a new cost or service obligation:
  - ▣ Has to be a cost that is not voluntarily assumed – has to be no choice but to comply.
  - ▣ A subsequent amendment to a local option law may be deemed to be voluntary.
  - ▣ The cost is not imposed as a condition of state aid.
  - ▣ The law or regulations does not provide for fees or other charges to cover the cost.

# Unfunded Mandate Issues

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- The cost must be greater than incidental administrative expenses -- SJC decision – *Worcester v. The Governor*
  - 1986 special education regulation requiring additional parental notification for children who had been screened but determined not to need special education.
  - DLM had certified costs in excess of \$114,000.
  - The Court found that this was a relatively minor expense, the subordinate consequence of the primary pre-1981 obligation to identify children with special needs.

# Unfunded Mandate Issues

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- The cost must be imposed upon a city, town, regional school district, or educational collaborative.
- Does not apply to costs imposed by the state upon other entities such as counties, municipal light departments, and special purpose districts.
- Swansea Water District decision

# Unfunded Mandate Issues

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- The Commonwealth is determined to assume the cost only if there is a specific state budget appropriation.
- Unearmarked increases in local aid do not satisfy that funding requirement.



# Unfunded Mandate Issues

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- Examples:
  - ▣ Extended polling hours costs
  - ▣ Special U.S. Senate election



# Unfunded Mandate Exercise

- Section 5 of Chapter 131 of the Acts of 2010 changed the definition of legal holiday:
  - "Legal holiday" shall also include, with respect to Suffolk county only, Evacuation Day, on March 17th, and Bunker Hill Day, on June 17th . . . provided, however, that all state and municipal agencies, authorities, quasi-public entities or other offices located in Suffolk county shall be open for business and appropriately staffed on Evacuation Day, on March 17th, and Bunker Hill Day, on June 17th.

# Unfunded Mandate Exercise

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- Analysis:
  - Subject matter – regulation of employment?
  - Legislative intent?
  - State law, rule, or regulation?
  - Take effect after 1/1/1981?
  - Imposed by the General Court?
  - Impose a new cost or service obligation?
  - Incidental administrative expense?
  - Imposed upon a city, town, regional school district?

# Laws with Significant Financial Impacts

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- M.G.L. c. 11, § 6B -- DLM has the authority to review any law or regulation that has a significant financial impact at the local level of government.
  
- Report on the Massachusetts Dam Safety Law in January 2011
  
- 2004 Report on the Massachusetts Municipal Medicaid Program – millions of dollars in reimbursable special education costs uncollected each year.
  
- Your ideas?

# More information . . .

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□ Auditor's Website – [www.mass.gov/sao/](http://www.mass.gov/sao/)

□ MFOB – 617-727-2075

□ DLM – 617-727-0980



□ Waste, fraud, and abuse – call 617-727-6771, or e-mail [infoline@sao.state.ma.us](mailto:infoline@sao.state.ma.us)