

GENERAL COURT DELIBERATING NEW EMERGENCY ACT REGARDING CONDUCT OF TOWN MEETINGS AND CITY BUDGET PROCEDURES

On May 4, the Massachusetts Senate passed a bill, currently known as Senate Bill 2680, that, if enacted in its current form, would have significant impacts on how Annual Town Meetings might be conducted while the COVID-19 virus health crisis continues under the Commonwealth's state of emergency. It would also provide a procedure for cities to utilize to approve their FY21 annual budgets where virus-related delays have prevented a timely budget process from proceeding. The Bill has moved to the House of Representatives, which meets next on May 6, 2020, tomorrow. The Bill may yet undergo changes before reaching the Governor's desk, but we want our municipal clients to be aware of the important issues being discussed. Below is a brief summary of the major elements of the Bill. We will, of course, provide further advice if or when the Bill becomes law. If you have questions or concerns about the issues below, or any issues that were omitted, you may contact your local Senate and House delegation before the House takes up this Bill.

The information contained herein is current as of the date of issuance. Where the state and federal governments are regularly enacting new or updated laws, regulations, and guidance in response to the COVID-19 crisis, we recommend that you consult with counsel regularly to ensure that you have the most up-to-date information.

SUBJECTS ADDRESSED BY BILL

Open Town Meetings – Reduction of Quorum

- **Quorum.** Many towns with Open Town Meetings have adopted a minimum quorum, whether by charter or bylaw, for conducting the business of Town Meeting. The Bill would authorize a Select Board, in consultation with, and with the approval of, the Moderator, to reduce the quorum, subject to several procedural requirements. The revised quorum could not be less than 10% of the current fixed quorum.
- **Subject matter for action when quorum is reduced.** The Bill provides that an Open Town Meeting operating with a reduced quorum "shall take up only those matters related to their budget or necessary to meet a federal deadline" as voted by the Select Board. This should allow, for example, any town with an impending FEMA flood map deadline to adopt the maps as required by FEMA.

Representative Town Meetings - Remote Town Meeting

- **Remote Participation.** The Moderator may request that the Select Board authorize the Town Meeting to be conducted through remote participation. The Moderator's request must include that (a) the Moderator has determined that the normal meeting process cannot be conducted safely, (b) there is a

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“video or telephone conferencing platform” that will allow all representatives and other interested voters to participate in the proceedings [there would be no quorum reduction], (c) the local Disabilities Commission or ADA Coordinator has been consulted, (d) representatives may be recognized to speak without prior authorization and the proceedings are visible or audible to the public in real time, and (e) the Moderator can conduct a roll call vote.

- Whether to proceed remotely still up to Town Meeting. Before any other vote at an authorized remote Town Meeting, the Moderator must call for a vote of the elected representatives on whether or not to conduct the Meeting remotely. An affirmative vote allows the warrant to be acted upon, but a negative vote would require that a later date be set for a Town Meeting with members physically present.

Meeting Outside Town’s Geographical Limits

- General Laws Chapter 39 prohibits a Town Meeting from being held outside the town’s borders (absent a charter, special act or bylaw expressly allowing it). The Bill would temporarily suspend that limitation, however, if the Select Board and Moderator determine that there is no available location in town that would ensure health and safety. This would apply to both open and representative town meetings, but, expressly, excludes the conduct of elections.

City Budgets

- General Laws Chapter 44, §32 provides a timeline for a Mayor to submit a proposed budget to the City Council, with a procedure for the Council to prepare its own budget if the Mayor has not submitted one. The Bill would postpone this deadline if the Mayor has been unable to submit a budget this spring due to the state of emergency. The Bill also authorizes a Mayor to propose a month-by-month budget for up to three months if the FY21 budget is not approved by June 20, 2020.

Service Contracts with Schools

- The Bill contains sections for both single municipality and regional school districts, stating that the cities, towns and districts “may approve a payment for the period beginning on or after March 10, 2020 through the remainder of fiscal year 2020” regarding existing service contracts for “school or education-related services,” if the contractor was unable to perform due to COVID-19 issues. This would apply to school bus contracts but other contracts could be covered as well. The contractor must certify whether it received any grants, discounted loans or other financial support due to COVID-19, and such support would be deducted from any amounts owed by the school district.

SUBJECTS NOT ADDRESSED BY PENDING BILL

It should also be noted what subjects this Bill does not address.

- **Timing and Conduct of Local Elections.** It makes no changes to the timing or conduct of local elections and caucuses, which issues were dealt with previously by Chapter 45 of the Acts of 2020, as enacted on March 23, 2020. Thus, if a municipality had their election scheduled originally for the month of June, no changes have been made allowing any delay.
- **Polling Hours Set by Charter/Bylaw.** Note, further, that the Bill does not allow a municipality whose voting hours are set by bylaw or charter to reduce the number of hours that the polls must be open.
- **Reduction of Quorum of Representative Town Meeting.** The Bill does not allow a Representative Town Meeting to reduce the quorum set by bylaw or charter.
- **Process for Postponing Town Meeting/Approval of 1/12th Budget in Towns.** Finally, the bill does not address the mechanics of postponing a Town Meeting and late adoption of a Town's annual budget, which matters are as set forth in Chapter 53 of the Acts of 2020, as enacted on April 3, 2020.

There are other provisions in the Bill, but assuming this legislation is approved in one form or another, we will provide a more detailed analysis of the contents at that time.

We will continue to keep you updated on additional developments in the face of this rapidly evolving pandemic. A reminder that we have established a Coronavirus "hotline", at coronavirusinfo@k-plaw.com. A dedicated team of our attorneys is available through this "hotline" e-mail address to answer the most frequently-asked legal questions arising from COVID-19. One of these designated attorneys will respond promptly to your inquiries. You may also contact Lauren F. Goldberg (lgoldberg@k-plaw.com) or Brian W. Riley (briley@k-plaw.com) at (617) 556-0007 with any questions on elections.

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