

Dispelling the Myth of Home Rule

Local Power in Greater Boston

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NOTES

CHAPTER 1

1. Mass. Const. art. LXXXIX (amended 1966) (amending Mass. Const. amend. art. II, § 2).
2. **Mass. Gen. Laws** ch. 43B (2003).
3. John W. Lemega, *State and Municipal Government: Home Rule*, in **1967 Annual Survey of Massachusetts Law**, § 16.2, at 264 (quoting Governor Volpe). See also *Bloom v. City of Worcester*, 363 Mass. 136, 143, 293 N.E.2d 268, 273 (1973) (describing the history of the Home Rule Amendment).
4. Mass. Const. art. LXXXIX, § 1.
5. State law prohibits any municipality with less than 12,000 residents from classifying itself as a city. *Id.* at § 2. It also prohibits any municipality with less than 6,000 residents from using the representative town meeting form of local government, in which the town meeting acts through representatives elected by town residents. *Id.*
6. The issue is not entirely free of complication. Although Massachusetts law specifically states that “by-laws” require the approval of the Attorney General, **Mass. Gen. Laws** ch.40, § 32 (2003), the Massachusetts Supreme Judicial Court explained that this statute was equally applicable to city ordinances. See *Forbes v. Woburn*, 306 Mass. 67, 69, 27 N.E.2d 733, 734 (1940) (noting that “towns” and “by-laws” are to be treated synonymously with “city” and “ordinances” respectively “unless such construction would be repugnant to the provision of any act, especially relating to such cities or districts.”); see also **Mass. Gen. Laws** ch. 40, § 1 (2003) (“Except as otherwise expressly provided . . . all laws relative to towns shall apply to cities.”); **Mass. Gen. Laws** ch. 4, § 7(22) (“‘Ordinance’, as applied to cities, shall be synonymous with by-law.”). Nevertheless, the court found that Woburn, the city in question, was not bound by the approval requirement for two reasons. First, the court noted that a separate provision of the general laws granting mayors veto power over ordinances states that if there is no objection to an ordinance by the mayor within ten days, or if the veto is overturned by a two-thirds vote of the local legislative authority, then the ordinance “shall be in force.” See *Forbes*, 306 Mass. at 71–72 (quoting **Mass. Gen. Laws** ch. 39, § 4). The court noted that the subsequent statute regarding the mayoral veto power impliedly did away with the Attorney General approval requirement since there is no time for an approval if the ordinance is “in force” immediately upon the absence of a veto within ten days or the veto being overturned. *Id.* Second, the court found that city charters adopted by almost all cities adopt, alter, or reject the veto power provision of section 4 of chapter 39 for ordinances passed by a single legislative body. See *id.* at 71–73. And in doing so, Woburn, along with possibly all other cities that took such action in their charters, also dispensed with the Attorney General approval requirement by indirectly stating when laws would come into effect and foreclosing the opportunity for an approval by the state official. Although the court explained that their “review of legislation shows that it is impossible, without examining every city charter, to be sure that there is no city to which” the Attorney General approval requirement is

applicable, analysis indicates that this may indeed be the case. *Id.* at 74.

The court's decision in 1940 reflected the legal structure then in place. Since city charters at that time were all special legislative acts passed by the state, it made sense to conclude that provisions in a charter could trump requirements set forth in a general state statute. Nevertheless, considering that, under the Home Rule Amendment, charters can be adopted locally without state participation, it is not clear whether cities can still include language in their charter to avoid the approval requirement of chapter 40, section 32. Indeed, it can be argued that any home rule charter that includes language similar to that which exempted Woburn from the approval requirement would be invalid for conflicting with existing state law, which means that existing state law would have to prevail. *See* Home Rule Procedures Act, **Mass. Gen. Laws** ch. 43B, § 9(b) (requiring the Attorney General to file a report documenting any conflicts between the Charter and the state constitution or existing state law).

7. **Mass. Gen. Laws** ch. 43. The sections in this chapter describe six model city governments that can be adopted—labeled “A” through “F.” The Home Rule Procedures Act places an effective “freeze” on the adoption of these model governments according to the procedures outlined in chapter 43 after 1966. *See* Home Rule Procedures Act, **Mass. Gen. Laws** ch.43B, § 18.
8. Massachusetts Municipal Association, *Ask the MMA*, at http://mma.org/local_government/ask_mma/change_government.html (last visited November, 6, 2001) and copy on file with authors.
9. The Home Rule Charter does not eliminate a locality's ability to petition the state legislature for a special act to accomplish the same ends. In *Bd. of Selectmen of Braintree v. Town Clerk of Braintree*, the court ruled that there was no evidence to indicate that section 4 of the Home Rule Amendment, which outlines the charter amendment procedure, is a limitation on, or exception to, a municipality's power to petition the general court for the same result through the state legislature as outlined in section 8. 370 Mass. 114, 117–18, 345 N.E.2d 699, 701 (1976). Indeed, the Home Rule Amendment reserves for the state the power to pass acts “for the incorporation or dissolution of cities and towns as corporate entities.” Home Rule Amendment, Mass. Const. art. LXXXIX, § 8.
10. Sections 2, 3, and 4 of the Home Rule Amendment, along with the Home Rule Procedures Act, outline the requirements for adopting, revising, or amending a home rule charter. *See* Home Rule Amendment, Mass. Const. art. LXXXIX, §§ 2–4; Home Rule Procedures Act, **Mass. Gen. Laws** ch. 43B (2003). Any municipality can adopt a home rule charter by first having fifteen percent of its registered voters sign a petition putting the question of electing a charter commission on the ballot. *See* Home Rule Procedures Act, **Mass. Gen. Laws** ch. 43B, § 3. If the charter commission is approved, it will then be responsible for drafting a new charter, which will be voted upon again by the electorate. The only role the state plays in this process is a legal review of the new charter by the state Attorney General to make sure that there is no conflict with existing state law. *Id.* at § 10(c). If the charter is approved, it is recorded and effective on the date specified in the charter.
11. *See* Massachusetts Department of Housing and Community Development, *Home Rule Amendment and the Home Rule Procedures Act—Summary*, 12 (2000), at <http://www.state.ma.us/dhcd/publications/hrapscc.pdf> (last visited August 21, 2003) [Hereinafter DHCD Home Rule Summary].

12. *See id.*
13. *See id.* at 7.
14. *See id.* at 1.
15. *Id.* at 12.
16. *See* Home Rule Amendment, Mass. Const. art. LXXXIX, § 3 (“The vote on the question [of whether to adopt or amend a Home Rule Charter] and the election of the charter commission shall take place at the same time. If the vote on the question submitted is in the affirmative, the nine candidates receiving the highest number of votes shall be declared elected.”).
17. *See* DHCD Home Rule Summary, *supra* note **Error! Bookmark not defined.**, at 12.
18. *See* Home Rule Procedures Act, **Mass. Gen. Laws** ch. 43B, § 8(a)
19. *See id.* at § 9(c); *see also* Home Rule Amendment, Mass. Const. art. LXXXIX, § 3.
20. Once the final report for the adoption of revision of a charter is submitted by the charter commission, the question of whether to adopt the proposed charter is “submitted to the voters as a single question unless the charter commission provides for the separate submission of proposed revisions.” Home Rule Procedures Act, **Mass. Gen. Laws** ch. 43B, § 11. Therefore, even though multiple proposals may be presented to the electorate, whether there are alternatives at all, or what forms those alternatives take, are decided entirely and independently by the charter commission. Furthermore, if the charter commission recommends that a home rule charter not be adopted or revised, then the process is also terminated without any opportunity for the municipal government or the voters to intervene. *See id.* (“[A] charter commission report which does not recommend the adoption or revision of a charter shall not be submitted to the voters.”).
21. A charter proposal that has been denied by the electorate, but managed to receive thirty-five percent of the affirmative vote, can be resubmitted through a petition by the voters. *See id.* at §12A. Nevertheless, there is no authority in this section that allows any party to alter or amend the charter proposal for resubmission. The only changes that can be made are to the dates in the original charter proposal. *Id.*
22. *See* DHCD Home Rule Summary, *supra* note 10, at 7. The municipalities in the Boston region that have received special act charters after the passage of the Home Rule Amendment are Burlington, Duxbury, Framingham, Hull, Needham, Lexington, Stoneham, and Weymouth. *See id.*
23. Indeed, some municipalities with home rule charters continue to petition for special acts to amend their charter even though they have the power to change it locally. For example, the town of Acton has a home rule charter, which allows it to amend its charter to change the position of police chief to an appointed position. *See* Mass Const. amend. art. 2, § 4 (describing the procedure for amending a city or town charter). Municipalities in general are also enabled to do the same thing through a local referendum according to the Massachusetts General Laws. *See* **Mass. Gen. Laws** ch. 41, § 1B (2003). Nonetheless, Acton petitioned for and received a special legislation to convert the police chief position to an appointed office in 1998. It is not entirely clear why it petitioned for special legislation to enact this amendment, but there are two possible reasons. First, the police chief position in Acton was actually governed by previous special act legislation passed in 1938. The Home Rule Procedures Act does allow municipalities to amend or repeal special act legislation affecting only their municipality, but only if the special act legislation does not state otherwise and was enacted subsequent to the passage of the Home Rule

Amendment. See Home Rule Procedures Act, **Mass. Gen. Laws** ch. 43B, § 19. Since the special act legislation was passed prior to the Home Rule Amendment, arguably only another act of special legislation could alter it. Indeed, the specific language of the 1998 Acton special legislation simply stated that it repealed a previous act. Second, even if the special legislation could have been altered through the process outlined in the Home Rule Procedures Act or pursuant to the more specific authority granted by Chapter 41, § 1B of the general laws, both of those provisions require referendum approval, which is arguably more time- and resources-consuming than simply asking for a stamp of approval by the state, especially when the proposed change is relatively minor.

24. See, e.g., **Mass. Gen. Laws** ch. 41, § 1B (allowing all towns to change certain elected positions to appointed positions through referendum); **Mass. Gen. Laws** ch. 41, § 21 (allowing all towns to either allow their selectmen to act as certain officers or empower them to appoint those positions through referendum).
25. See Home Rule Procedures Act, **Mass. Gen. Laws** ch. 43B, § 11 (“Upon submission of the final report of a charter commission under section nine, the city council or board of selectmen shall order the proposed charter or charter revision to be submitted to the voters”); see also Massachusetts Department of Housing and Community Development, *The Home Rule Amendment and The Home Rule Procedures Act 4 (2001)* (“The city council or board of selectmen upon receipt of the final charter commission report *must* order the charter proposal or charter revision to appear on the ballot” (emphasis in original)).
26. See Home Rule Procedures Act, **Mass. Gen. Laws** ch. 43B, § 10(c) (“If the attorney general reports that the proposed amendment conflicts with the constitution or laws of the commonwealth, the order proposing such amendment shall not take effect”).
27. See *Beard v. Town of Salisbury*, 378 Mass. 435, 441, 392 N.E.2d 832, 836 (1979).
28. *Powers v. Secretary of Administration*, 412 Mass. 119, 129, 587 N.E.2d 744, 750 (1992).
29. *Id.* (citing *Opinion of the Justices*, 368 Mass. 849, 854, 332 N.E.2d 896 (1975)).
30. See *Boston Gas Company v. City of Somerville*, 420 Mass. 702, 704–05, 652 N.E.2d 132, 134 (1995) (finding state regulation on manufacture and sale of gas and electricity by public utilities to be so comprehensive as to preempt localities from regulating in this area).
31. See *Town of Wendell v. Attorney General*, 394 Mass. 518, 476 N.E.2d 585 (1985).
32. **Mass. Gen. Laws** ch. 40C (“Historical Districts”).
33. **Mass. Gen. Laws** ch. 40A (“Zoning”).
34. See Home Rule Amendment, Mass. Const. art. LXXXIX, § 8. Without the local government’s consent, the state can pass special legislation by a two-thirds vote following a recommendation by the governor. *Id.*
35. See *Belin v. Secretary of the Commonwealth*, 362 Mass. 530, 534–35, 288 N.E.2d 287, 289 (1972) (holding legislation affecting municipalities with proportional representation voting void because Cambridge was the only municipality that fits that classification).
36. See, e.g., 2003 Mass. Acts 10 (special legislation removing the town of Oak Bluffs from the Martha’s Vineyard commission upon ballot approval by the voters); 2002 Mass. Acts 20 (special legislation amending charter to establish a director of finance

in Dedham, requiring ballot approval by the electorate); 2002 Mass. Acts 331 (special legislation expanding the Board of Selectmen in Canton requiring ballot approval).

CHAPTER 2

1. Property taxes are consistently the single largest contributor to a locality's revenues. In 2001 property taxes accounted for 49.64 percent of the total revenue of all Massachusetts municipalities. See Department of Revenue, Division of Local Services, *FY01 Municipal Revenue Components, City and Town*, May 2001, at 3. State aid and other local receipts trailed behind at 27.88 percent and 17.26 percent respectively. *Id.* Although 49.64 percent was the average contribution of property taxes relative to total municipal revenues, for some municipalities such as Hamilton, Medfield, and Concord, the percentage was as high as 75–80 percent. See *id.* at 4–5.
2. **Mass. Gen. Laws** ch. 59, § 21C. This initiative was originally passed in 1980. Mass. Acts 580.
3. The yearly levy limit is determined by applying (1) an automatic 2.5 percent increase over the prior fiscal year, (2) adding increases in total local property valuations resulting from growth, and (3) adding amounts authorized by limit override referendums. See **Massachusetts Department of Revenue, Division of Local Services, Levy Limits: A Primer on Proposition 2½** 5–6 (2001), available at <http://www.dls.state.ma.us/PUBL/MISC/levylimits.pdf> (last visited August 24, 2003) [hereinafter *Levy Limits*].
4. Certain limited capital projects costs can be added directly onto the levy limit by the local legislature without referendum approval. These include debts from water and sewer project and capital outlays for municipal loans to assist homeowners with the costs of repairs or replacements of faulty septic systems and the costs of removing underground fuel storage tanks and dangerous levels of lead paint in order to meet public health and safety code requirements. See *id.* at 12; **Mass. Gen. Laws** ch. 59, § 21C(n).
5. See *Levy Limits*, *supra* note 39, at 9–10; see also **Mass. Gen. Laws** ch. 59, § 21C(g) (overrides); **Mass. Gen. Laws** ch. 59, § 21C(i1/2) (capital exclusions); **Mass. Gen. Laws** ch. 59, § 21C(k) (debt exclusions).
6. See Jerome Saltzman & Brenda Buote, *Cities, Towns Keep Turning to Property Tax Overrides*, **Boston Globe**, July 2, 2003, at A1.
7. The success rate of Proposition 2½ referenda overrides vary from year to year, but averaged approximately 60 percent for the years 1993–2001. During that time, debt exclusions were the most successful category of overrides with a 73.7 percent success rate. General overrides, probably due to their compounding effects, were the least likely to be approved, with only 39.7 percent successful. See Department of Revenue, Division of Local Services, *Proposition 2 1/2 Referenda Trends, City and Town*, Nov./Dec. 2001, at 4–5.
8. See **Mass. Gen. Laws** ch. 40, § 56; see also **Charles K. Cobb, Tax Law in Massachusetts 1629–2000: A Primer for Taxpayers, Legislators and Lawyers** 81 (1999) (“Under present law cities and towns must revalue real and personal property every three years on a staggered schedule and have their revaluations approved

- by the Commissioner of Revenue.”); **Massachusetts Department of Revenue, Division of Local Services, A Guide to Financial Management for Town Officials** § 6.4, at 28 (2001) (“To ensure full and fair cash value assessments, the Department of Revenue certifies that a community’s property valuations are at full value every three years through a certification process.”).
9. See **Mass. Gen. Laws** ch. 59, § 23 (“No city, town or district tax rate for any fiscal year shall be fixed by the assessors until such rate has been approved by the commissioner.”).
 10. See **Massachusetts Department of Revenue**, *supra* note 44, § 6.1, at 27 (“The Department must approve the annual levy growth, Tax Recap Sheet, and set the tax rate before a community can issue its tax bills.”).
 11. There is a local option statute, made more generous in 2002, that authorizes municipalities to grant certain qualifying senior citizens an exemption from their property taxes. For a discussion of this provision and its parameters, see Kathleen Colleary, *Senior Property Tax Relief, City & Town, City and Town*, Nov./Dec. 2002, at 3, available at http://www.dls.state.ma.us/PUBL/CT/2002/nov_dec.pdf.
 12. Rick Klein, *Fee Hikes Eyed to Aid Cities, Towns*, **Boston Globe**, July 8, 2003, page A-1.
 13. See *Greater Franklin Developers v. Town of Franklin*, 49 Mass.App.Ct. 500, 505, 730 N.E.2d 900, 904 (2000).
 14. See *FY01 Municipal Revenue Components*, *supra* note 37, at 3. These figures do not take into account state aid disbursements to regional school districts.
 15. See *id.* at 4.
 16. Massachusetts Department of Revenue, Division of Local Services, *Proposition 2 1/2—A Look Back, City and Town*, Nov./Dec. 2001, at 1, available at http://www.dls.state.ma.us/PUBL/CT/2001/Nov_Dec2.pdf.
 17. The level of specificity and detail in chapter 40 extends to more than just regulating the type of funds that a municipality can create. For example, three provisions expressly permit localities to buy uniforms for local officials. Section 6B empowers municipalities to buy uniforms for the police and fire department and allows them to establish a clothing allowance fund for those departments. Section 6J extends uniform procurement authority by granting municipalities the power to purchase “stormy weather work clothes” for municipal employees. Section 6K covers uniforms for “public health nurses employed by its board of health.” The state legislature thus empowered the municipalities to buy four different types of uniforms for their employees. Given the way that municipal home rule authority is interpreted, a court could find that these acts preempted an appropriation of funds for any other types of uniforms. See **Mass. Gen. Laws** ch. 40, §§ 6B, 6J, 6K.
 18. **Mass. Gen. Laws** ch. 29, § 27C.
 19. *Town of Lexington v. Commissioner of Educ.*, 393 Mass. 693, 473 N.E.2d 673 (Mass. 1985) (Lexington I).
 20. *School Comm. of Lexington v. Commissioner of Educ.*, 397 Mass. 593, 596, 492 N.E.2d 736, 737 (1986) (Lexington II).
 21. See **Mass. Gen. Laws** ch. 70, §§ 2–3.
 22. See Massachusetts Department of Revenue, Division of Local Services, *Fiscal Year 2002 General Fund Expenditures*, at <http://www.dls.state.ma.us/MDMSTUF/MunicipalActualExpenditures/Expfn02.xls> (last visited August 24, 2003).

Educational expenditures accounted for 48 percent of total municipal expenditures in Massachusetts. *See id.*

23. *See generally* **Mass. Gen. Laws** ch. 71B. Since the special education mandate was enacted prior to the “Local Mandate” provision passed in 1981, it was not subject to the restrictions set forth in **Mass. Gen. Laws** ch.29, § 27C. Nonetheless, Worcester challenged statutory and regulatory changes that were made to the special education mandate after 1981. The court, however, found that the amendment only clarified existing criteria of the mandate and did not impose new mandates. *City of Worcester v. The Governor*, 416 Mass. 751, 755–56, 625 N.E.2d 1337, 1340 (1994).
24. **Mass. Gen. Laws** ch. 71B, § 5A.
25. *See id.* at § 38Q.
26. *See id.* at ch. 15A, § 36.
27. *See* **Mass. Gen. Laws** ch. 149, § 34B (stating that all contracts related to public works and hiring reserve police officers will pay “the prevailing rate of wage paid to regular police officers in such city or town”).
28. *id.* at §§ 26–27.
29. *See Cobb*, *supra* note 44, at 83.

CHAPTER 3

1. *Bd. of Appeals of Hanover v. Hous. Appeals Comm. in Dept. of Cmty. Affairs*, 363 Mass. 339, 359, 294 N.E.2d 393, 409 (1973).
2. *See id.*
3. Court interpretations seem to rely heavily on factual considerations in deciding whether a regulation is considered a “zoning” by-law or ordinance. These include an analysis of whether the municipality has passed similar regulations before as “zoning” regulations, how other municipalities have categorized similar regulations, and categorization of other, traditional types of regulations to which the present one can be analogized. *See, e.g., Rayco Inv. Corp. v. Bd. of Selectmen*, 368 Mass. 385, 393–94, 331 N.E.2d 910, 914 (1975) (holding a municipal by-law limiting the number of licenses that could be issued for trailer parks, and not pertaining to specific a parcel of land, to be a zoning by-law regulated by the Zoning Act); *Lovequist v. Conservation Comm. of Town of Dennis* 379 Mass. 7, 12, 393 N.E.2d 858, 862 (1979) (holding that a municipal wetland protection by-law requiring permission to alter or construct on specified protected wetlands is not a zoning bylaw, but a general bylaw enacted through the general police powers of the locality).
4. Codified in **Mass. Gen. Laws** ch. 41, §§ 81K–81GG.
5. Zoning Reform Working Group, *Some Facts About Land Use Law in Massachusetts*, (2002), at <http://www.massapa.org/legislation.htm> (last visited August 24, 2003).
6. **Mass. Gen. Laws** ch. 40A, § 3 (“No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building . . .”).
7. *See* **Mass. Gen. Laws** ch. 41, § 81L (defining a “subdivision” to exclude those divisions whose lots retain frontage on, among other things, an existing public way); *id.* at § 81P (describing how a “subdivision” plan can acquire “approval not required” status if it can be demonstrated that the subdivision control law does not control).

8. See **Mass. Gen. Laws** ch. 40A, § 3.
9. *City of Medford v. Marinucci Bros. & Co.*, 344 Mass. 50, 54–55, 181 N.E.2d 584, 587 (1962).
10. See *id.* (finding a private party working for state exempt from zoning restriction even when the contract required compliance with all municipal regulations and ordinances).
11. See *New England Power Co. v. Board of Selectmen*, 389 Mass. 69, 77–78, 449 N.E.2d 648, 653 (1983).
12. See *Martorano v Department of Public Utilities*, 401 Mass. 257, 265, 516 N.E.2d 131, 136 (1987). Massachusetts regulations do require state agencies to report alternatives that take into account “applicable Federal, municipal, or regional plan” in their Environmental Impact Report. 301 CMR 11.07(6)(f)(3).
13. Executive Order 385 (“Planning for Growth”).
14. Joel Russel, *Massachusetts Land-Use Law—Time for a Change*, **Land Use and Zoning Digest** Jan. 2002, at 3.
15. See **Mass. Gen. Laws** ch. 40A, § 5.
16. See *id.*
17. See *id.* at § 6.
18. See Russel, *supra* note 79, at 5 n.5.
19. The affordable housing requirements are contained in sections 19–23 of Chapter 40B.
20. Sharon Perlman Krefetz, *The Impact and Evolution of the Massachusetts Comprehensive Permit and Zoning Appeals Act: Thirty Years of Experience with a State Legislative Effort to Overcome Exclusionary Zoning*, 22 W. New Eng. L. Rev. 381, 392–94 (2001).
21. Sam Stonefield, *Affordable Housing in Suburbia: The Importance but Limited Power and Effectiveness of the State Override Tool*, 22 W. New Eng. L. Rev. 323, 327 (2001) (“Further, although the occupancy data is very incomplete, it seems the statutes have fostered little movement from city to suburb by lower-income families and less racial integration.”).
22. *Bd. of Appeals of Hanover v. Hous. Appeals Comm. in the Dep’t of Cmty. Affairs*, 363 Mass. 339, 359–60, 294 N.E.2d 393, 409 (1973).
23. See **Mass. Gen. Laws** ch. 40B, § 21.
24. See *id.* at §§ 22–23.
25. *Bd. of Appeals of Hanover*, 363 Mass. at 367, 294 N.E.2d at 413.
26. Krefetz, *supra* note 84, at 397–38. This includes petitions filed during 1970–1999. See *id.* at 398 n.82.
27. See **Mass. Gen. Laws** ch. 40B, § 20 (defining “Low or moderate income housing” as “any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute”).
28. See *id.*
29. A recent Supreme Judicial Court decision, *Zoning Board of Appeals of Wellesley v. Ardmore Apartments*, however, gives the locality a much stronger role in determining the length of time that the units must remain affordable. In *Ardmore*, the Zoning Board of Appeals in Wellesley granted a comprehensive permit for affordable housing construction to Ardmore, which had secured a loan from the state that

- required the units to remain affordable for only fifteen years. 436 Mass. 811, 812–13, 767 N.E.2d 584, 586 (2002). Wellesley sued when Ardmore tried to covert these affordable units to market price. The court found that “where a comprehensive permit itself does not specify for how long housing units must remain below market, the Act requires an owner to maintain the units as affordable for as long as the housing is not in compliance with local zoning requirements, regardless of the terms of any attendant construction subsidy agreements.” *Id.* at 586, 813. The court also noted the importance of local autonomy when balanced with the interests of the state for affordable units: “We see nothing in the Act to suggest that the Legislature intended to override local zoning autonomy only to create a fleeting increase in affordable housing stock, leaving cities and towns vulnerable to successive zoning overrides, and the issuance of a never-ending series of comprehensive permits.” *Id.*
30. See Krefetz, *supra* note 84, at 409.
 31. *Marshal House v. Rent Review and Grievance Board of Brookline*, 357 Mass. 709, 718, 260 N.E.2d 200, 207 (1976).
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 33. *Flynn v. City of Cambridge*, 383 Mass. 152, 159, 418 N.E.2d 335, 339 (1981).
 34. *Steinbergh v. Rent Control Bd. of Cambridge*, 406 Mass. 147, 151–52, 546 N.E.2d 169, 172 (1989).
 35. See 1994 Mass. Acts 282 (codified in **Mass. Gen. Laws** ch. 40P).
 36. *Greater Boston Real Estate Board v. City of Boston*, 428 Mass. 797, 800–01, 705 N.E.2d 256, 258 (1999).
 37. See *Bannerman v. City of Fall River*, 391 Mass. 328, 330–31, 461 N.E.2d 793, 795 (1984); *CHR General, Inc. v. City of Newton*, 387 Mass. 351, 354, 439 N.E.2d 788, 790 (1982).
 38. *Middlesex & Boston Street Ry. Co. v. Bd. of Aldermen of Newton*, 371 Mass. 849, 856–57, 359 N.E.2d 1279, 1283 (1977).
 39. See *Id.* at 858, 1284.
 40. **Mass. Gen. Laws** ch. 40A, § 9.
 41. See **Mass. Gen. Laws** ch. 44B.
 42. See *id.* at § 10.
 43. State-wide spending under the Community Preservation Act from 2002 to 2003 saw a significant increase in the funds directed towards affordable housing. Much of this increase, however, is due to housing projects in the City of Cambridge. Spending on affordable housing was 28 percent, and open space was 54 percent, of total state-wide spending in 2002. In 2003, the tables were essentially turned, with affordable housing accounting for 50 percent of total spending and open space accounting for 25 percent. If the City of Cambridge, which had just adopted the Act, is excluded from the equation, only 36 percent of total expenditures in 2003 went to affordable housing, while the open space percentage jumps to 34 percent. See Community Preservation Act Coalition, *CPA Projects in 2002 and 2003*, at <http://www.communitypreservation.org/CPAProjectlist.htm> (last checked September 25, 2003). Furthermore, out of the current Community Preservation projects underway, 286 units of affordable housing are being developed compared to 1,616 acres of open space acquisitions. See *id.*
 44. The Community Preservation Act is only available to municipalities that accept it through a ballot question. See **Mass. Gen. Laws** ch. 44B, § 3.

45. See Trust for Public Land, *Status of Community Preservation Act Implementation*, at http://www.tpl.org/content_documents/CPA_votes_as_of_5-20-03.xls (last modified May 20, 2003). In several communities, the final action is still pending. See *id.*

CHAPTER 4

1. The Massachusetts Comprehensive Assessment System is a state-wide testing requirement administered to students which determines grade advancement and ultimately whether a student can graduate with a high school diploma. It was instituted along with the Massachusetts Education Reform Act. See **Mass. Gen. Laws** ch. 69, § 1I; **Mass. Regs.** Code tit. 603, § 30.00 (2002).
2. Michele Kurtz, *MCAS Part of Deciding on a Town*, **Boston Globe**, September, 24, 2002, at B.1.
3. **Massachusetts Education Reform Review Commission, 2002 Annual Report on the Progress of Education Reform in Massachusetts, Executive Summary**, at v [Hereafter 2002 Annual Report].
4. **Myron Orfield et al., Boston Metropatterns: A Regional Agenda for Community and Stability in Greater Boston** 16 (2001).
5. *Id.*
6. The powers, duties, and responsibilities of school committees are outlined in **Mass. Gen. Laws** ch. 71, §§ 35–67. Special concerns relating to regional school committees are addressed by *id.* at § 16A.
7. *Leonard v. School Comm. of the City of Springfield*, 241 Mass. 325, 329, 135 N.E. 459, 461 (1922). School committees are generally “not subject to the review by any other board of tribunal,” but they are not exempt from challenges from their constituents. A school committee decision may be rescinded by referendum. See *Moore v. School Comm. of Newton*, 375 Mass. 443, 447, 378 N.E.2d 47, 50 (1978).
8. This circumstance does not necessarily have to be the case, though state law helps to assure that it is the norm. **Mass. Gen. Laws** ch. 71, § 37M allows municipalities, upon the consent of the majority vote of both the school committee and the municipal legislature, to consolidate the “administrative functions . . . of the school committee with the city or town.” None of the municipalities interviewed reported having done so in their community, perhaps in part because the state statutes gives the school committee power to veto a municipal government’s attempt to diminish its independence.
9. **Mass. Gen. Laws** ch. 71, § 34. In regional school districts, the regional school committee proposes the general operating budget, which is then apportioned to the individual localities in a manner determined by their initial agreement. All participating municipalities must approve that apportionment. If they do not, the regional school district has to submit another proposal that reapportions the budget to all the municipalities involved. Options are also provided for situations where a participating municipality continues to reject a proposal. If there are only two participating municipality, the school committee can call a district wide meeting and attempt to get a majority vote of all participating registered voters. Impasses involving school districts with more than two municipalities allow the Department of Education to set its own budget determination and assume the operation of the schools, deducting the appropriate amount from all the municipality’s local aid distribution. See *id.* at §16B.

10. The statute that created the new Boston School Committee is 1991 Mass. Acts 108.
11. See *McDuffy v. Sec’y of the Executive Office of Ed.*, 415 Mass. 545, 606, 615 N.E.2d 516, 548 (1993).
12. This foundation level is only a minimum. Local districts are entitled to add to this amount, with their ability to do so very much influenced by their property tax rate. As the 2002 Report puts it, “the level of effort is lowest for the highest-income category and highest for the second-lowest income category.” 2002 Annual Report, *supra* note 113, at vi.
13. See **Mass. Gen. Laws** ch. 69, §§ 1D, 1E. The Current frameworks can be found at <http://www.doe.mass.edu/frameworks/current.html>.
14. **Mass. Gen. Laws** ch. 71, §§ 2, 3.
15. **Mass. Gen. Laws** ch. 69, §§ 1G, 1J.
16. 20 U.S.C. § 6301 (2002).
17. **Mass. Gen. Laws** ch.69, § 1I.
18. Brenda J. Buote, *MCAS at Critical Juncture: Local Schools Face Graduation Decision*, **Boston Globe (Globe North)**, Sept. 12, 2002, at 1.
19. *Id.* (internal quotation marks omitted).
20. Criticisms of the MCAS range from its failure to address inadequate school preparation, its disparate impact on students from families of limited means and on racial minorities, and the structure and subject matters of the test itself. See, e.g., Anand Vaishnav, *Lawsuit to allege MCAS is Widely Discriminatory*, **Boston Globe**, Sept. 19, 2002, at A1. Commentators have also criticized the test for discouraging students and increasing school drop-outs at earlier grades. See, e.g., Clive McFarlane, *Rising dropout rate blurs MCAS figures; Failing students may have given up*, **Telegram & Gazette (Worcester, MA)**, Sept. 16, 2002, at A1. *But see* Michele Kurtz, *State Says MCAS Produced no Jump in Dropout Rates*, **Boston Globe**, Aug. 27, 2002, at A1.
21. The funds are conditioned upon approval by the State Board of Education pursuant to certain established criteria. See generally **Mass. Gen. Laws** ch. 70B. Nevertheless, there has been criticism that Massachusetts’ complex bidding statute dealing with public construction projects adds costs to school construction projects without producing significant gains in construction quality. See **Mass. Gen. Laws** ch. 149, §§ 44A–44H.
22. See Cambridge Public School District, Controlled Choice Plan (Superintendent Recommendation #01–168), December 18, 2001, available at <http://204.167.95.13/NewFiles/final.pdf>; Steve LeBlanc, *Cambridge, Massachusetts, to desegregate schools based on economics instead of race*, Associated Press, Jan. 11, 2002. The desegregation plan applies only to Cambridge’s elementary school students. See *id.*
23. See **Mass. Gen. Laws** ch. 76, § 12B. School committees are allowed, after a public hearing, to decide not to accept out-of-district students. See *id.*
24. See 2002 Annual Report, *supra* note 113, at ii.
25. Charter schools are governed by **Mass. Gen. Laws** ch. 71, § 89.
26. See *id.* at § 89(a)
27. See *id.* at § 89(b). A recent statutory amendment now permits one school committee member to sit on the board of trustees for a Horace Mann charter school. See *id.*

28. At the same time, charter school advocates have complained that the current funding formula does little to assist them in raising the start-up capital needed to create the infrastructure for a new school.
29. See *id.* at § 89(ff).
30. *Id.* at § 89(kk).

CHAPTER 5

1. Metropolitan Area Planning Council, *Metro Area*, at http://www.mapc.org/metro_area.html (last visited August 25, 2003).
2. See **Mass. Gen. Laws** ch. 71, § 15.
3. See, e.g., **Mass. Gen. Laws** ch. 40N, § 25 (regional water and sewer district commission); *id.* at ch. 71, § 15 (regional school districts); *id.* at ch. 41, § 99C (regional police district); *id.* at ch. 161B, § 3 (regional transit authority); *id.* at ch. 34B, § 20 (regional charter commission).
4. Telecom City was not the first project to receive special state legislation empowering multiple municipalities to form a commission and collectively decide how to develop a specific parcel of land. Prior to Telecom City, two such commissions were formed to handle the redevelopment of decommissioned military installations in Massachusetts. See 1993 Mass. Acts 498 (redevelopment of Fort Devens); 1998 Mass. Acts 301 (redevelopment of South Weymouth Naval Air Station).
5. Home Rule Amendment, Mass. Const. art. LXXXIX, § 8.