Chapter 19: State and Municipal Government

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A. State Government Functions

§19.1. Organization of state government: Introduction. Since 1960, Massachusetts has substantially revised the theory underlying the organization and structure of the state government. In particular, the revisions have strengthened the role of the Governor in terms of executive authority, political responsibility, and administrative and technical support. Beginning with the establishment of the Executive Office for Administration and Finance,1 a series of statutory reorganizations and constitutional amendments have liberated the office of Governor from the more onerous checks and balances which traditionally had limited the power and relative status of the chief executive. Not until 1967, however, will the Commonwealth realize the full impact of these changes upon its political institutions—in that year the four-year term for constitutional officers becomes effective.

It is instructive and encouraging to review the recent history of these developments. The 1960 reorganization transformed the prior Commission on Administration and Finance from a loose and unwieldy alliance of housekeeping agencies into an integrated control agency for financial and administrative management. The Commissioner and the Deputy Commissioners were made effectively subject to the Governor's control, and the improved staffing of the subordinate bureaus and offices provides a continuous source of technical support to the Governor.

The controversial and autonomous Department of Public Works was reorganized under Acts of 1963, Chapter 821. A five-member Public Works Commission, of which the chairman is the Commissioner of Public Works, supplanted the previous three-member Commission. The members serve for overlapping five-year terms, and the Governor designates the Commissioner from among the members. The Commissioner is the executive head of the department and the appointing officer; he assigns the other members of the Commission to direct

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the five statutory divisions: administrative sources, highway engineering, highway construction, highway maintenance, and waterways. The Commissioner may assign and reassign the duties of subordinate administrative units, officials, and employees. The Public Works Commission approves contracts, serves as a board of contract appeals, and exercises limited rule-making powers. Until the 1964 repeal of the statutory powers of the Executive Council, the members of the Public Works Commission were appointed by the Governor with the approval of the Council.

During 1964, the effective authority of the Governor was enhanced even further by additional reorganizations, by enlargement of the sources of expert advice available to the Governor, and by the constitutional amendment providing a four-year term that should supply much-needed administrative continuity and freedom from preoccupation with biennial elections.

Political scientists frequently have noted the positive correlation between a strong executive and effective state government. The relative weakness of state governments has contributed to the pre-eminence of the national government in many areas of public policy once considered the exclusive province of the states. A common opinion was that the states were interesting historical phenomena whose utility was long-since superseded by the need for more effective instruments of government. The opening of direct federal-urban channels was regarded as the inevitable result of outmoded state government. Lately, however, state government has aroused a more sympathetic concern, as students have rediscovered the validity of the political and legal institutions of the American federal system. This revival of concern has accompanied the multiplication of federal-state programs designed to serve the social and economic needs of citizens and cities.

The trend toward infusing state agencies with enhanced administrative flexibility and responsiveness to the direction of the Governor is expected to continue, as incumbent Governors exercise the greater political leverage now available to that office. Moreover, this trend accords belated recognition to the restoration of the importance of state government in the federal system. Revisions in organization and structure also reflect both the increasing range and complexity of federally-sponsored intergovernmental programs and the mounting legislative concern with the urban problems and economic future of Massachusetts. The demand for more efficient and more sophisticated administration of state government is inescapable.

Among the measures anticipated for future enactment is the so-called “reorganization plan procedure.” Under this proposal, the Governor could reorganize or consolidate any state agency or group of agencies by submitting a reorganization plan to the General Court. Such a reorganization would have the force of law, unless it were disapproved within sixty days by a majority vote of the members of either of the two branches. Another constitutional amendment likely to be advanced would provide for the election of the Governor and Lieutenant
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Governor jointly as members of the same party. The changes achieved to date are a promise of more to come.

§19.2. Constitutional amendments: Four-year terms. Perhaps the most significant innovation is the four-year term for constitutional officers, adopted as Question No. 1 on the ballot for the state election on November 3, 1964. Amendment LXXXII annuls Article LXIV of the Amendments to the Constitution of the Commonwealth, as amended by Article LXXX of the Amendments, by instituting a four-year term for the six constitutional officers: Governor, Lieutenant Governor, Secretary of the Commonwealth, Treasurer and Receiver General, Attorney General, and Auditor. These terms will take effect as to officers elected in the state election in November, 1966. Thereafter, these officials will be elected “quadriennially on the Tuesday next after the first Monday in November.” The election of legislators and executive councillors will take place without change every two years, and the General Court will assemble every year on the first Wednesday in January.

§19.3. Constitutional amendments: Continuity of government. Adopted as Question No. 2 on the November 3, 1964, ballot was the desirable amendment, Article LXXXIII, authorizing the General Court to provide for prompt and temporary succession to any public office, state or local, which becomes vacant as the result of enemy attack. The language of the amendment applies broadly to public offices “of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying out the powers and duties of such offices. . . .” In addition, the amendment confers on the General Court the power “to adopt such other measures as may be necessary and proper for insuring the continuity of the government of the Commonwealth and the governments of its political subdivisions.”

§19.4. Constitutional amendments: Advisory opinions required of the Supreme Judicial Court. Authority is granted separately to the Governor and to the Governor’s Council, in addition to each branch of the General Court, to require advisory opinions of the Supreme Judicial Court by the adoption of Question No. 4 on the November 3, 1964, ballot as Amendment LXXXV. Article II of Chapter III of the Constitution of the Commonwealth is thereby amended.

§19.5. Constitutional amendments: Repeal of statutory powers of the Governor’s Council. The power of initiative petition was exercised through Question No. 5 on the November 3, 1964, state ballot to divest the Governor’s Council of most of the powers conferred on it by statute. Appointments and removals in the executive branch no longer require the approval of the Governor’s Council, with the exception of appointments to five quasi-judicial agencies: Youth Service Board, Industrial Accident Board, Commission of the Department of Public Utilities, Parole Board, and Appellate Tax Board. Removals from the Youth Service Board continue to require the advice and
consent of the Council. If the Council fails to act on such appoint­ments or removals within thirty calendar days, the appointments or removals shall be deemed effective “as if such advice and consent had been given.” Appointments in the executive department by an officer other than the Governor that formerly required Council approval now require the approval of the Governor.

Significantly, it is provided in Section 3, paragraph (3), that “[a]t any time within fifteen days after the making of any such appoint­ment which heretofore required the advice and consent of the Council the Governor may, without cause, remove the person so appointed.” In addition, so much of any provision of the General Laws or of any special law requiring the advice and consent of the Council “with respect to any action or omission to act by the Governor, or any officer, agency or instrumentality of the executive department” is repealed. These are enumerated to include the fixing of any salary or other compensation for services rendered, any deposit, borrowing, loan, investment, endorsement, validation, surety or bond, or any lease, license, purchase, acquisition, sale, conveyance, disposition or transfer, or any contract or other agreement, or any permit or license, or any rules or regulations. The Governor, however, “remains free to seek the advice and consent of the Executive Council on any matter.”

§19.6. Department of Commerce and Development. The most far-reaching reorganization of state agencies in many years was accomplished through Acts of 1964, Chapter 636, which established the Department of Commerce and Development. Five organizational units were abolished through consolidation into the new department: the Department of Commerce, the State Housing Board, the Massachusetts Commission on Atomic Energy, the Massa­chusetts Transportation Commission, and the Division of Urban and Industrial Renewal. This functional integration brings together under direct administra­tive control a complex of state government responsibilities, dealing with economic development and promotion, urban renewal, public housing, and regional and local planning. Thus the new department parallels closely various proposals for a federal, cabinet-level depart­ment of housing and urban affairs.

A single Commissioner, appointed by the Governor to serve at his pleasure, directs the department. Five Deputy Commissioners are appointed by the Commissioner, with the approval of the Governor. Similarly, each Deputy Commissioner is subject to removal by the Commissioner with the approval of the Governor. The Department is organized into five operating divisions, each of which is under the charge of a Deputy Commissioner “subject to the direction, control and supervision” of the Commissioner. The divisions are Economic Development, Tourism, Housing, Urban Renewal, and Planning. One or more bureaus are specified in each division, and the Commissioner may establish, consolidate, or abolish additional bureaus and other offices. In turn, each bureau is under the charge of a director appointed by the Commissioner with the approval of the
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Governor, but removable only for cause. The administrative structure of the Department is intended to differentiate the policy-sensitive and senior technical levels of its hierarchy. Regrettably, the legislature did not adopt a salary schedule commensurate with the organizational concept.

It would appear that amendments are needed, however, in order to fix clearly the responsibility for findings and approvals required for urban renewal and public housing projects under Chapter 121 of the General Laws. At present, the authority formerly exercised by the State Housing Board and the Director of the Division of Urban and Industrial Renewal has been transferred "to the department of commerce and development." Perhaps the General Court will complete its unfinished business in this area by recodifying the statutory patchwork regulating such projects.

§19.7. Board of Economic Advisors. A less dramatic, but also much-needed source of professional economic advice has been given to the state government and its chief executive through Acts of 1964, Chapter 641, which established a three-member Board of Economic Advisors. Modeled on the President's Council of Economic Advisors, this Board is charged with responsibility for maintaining a continuous appraisal of the Massachusetts economy. The members of the Board must "be experts in the field of economics." Although technically in, but not subject to, the Executive Office for Administration and Finance, the members are appointed by and serve at the pleasure of the Governor. As part-time public servants, the economic advisors are empowered to appoint and remove technical and other employees, who are not to be subject to Chapter 31 of the General Laws (civil service). The Commissioner designates a secretary to the Board from among his staff.

The principal function of the Board is to submit an annual report to the Governor and General Court on the state of the economy of the Commonwealth. It is further required to furnish reports to the Governor and advice to the Commissioner of Administration on any problems presented for its consideration. The introduction into the executive branch of a systematic capacity for the disinterested analysis of the economic impact of political decisions is a major step toward the ideal of responsible state government.

§19.8. Massachusetts Bay Transportation Authority. The Gothic history of public transportation in Metropolitan Boston recalls the imagery of Matthew Arnold:

Swept with confused alarms of struggle and flight,
Where ignorant armies clash by night.

Acts of 1964, Chapter 563, opened a new chapter in that history, while adding new Chapter 161A to the General Laws. This comprehensive legislation abolished the Massachusetts Transit Authority in favor of a new Massachusetts Bay Transportation Authority, encompassing seventy-eight cities and towns in the Metropolitan Boston
region. It also provided for substantial state aid to both the MBTA district and the "transportation areas" organized outside the MBTA district according to the provisions of Chapter 161 of the General Laws. To finance state aid for transportation, an additional two-cent tax on cigarettes was imposed as of January 1, 1965.

A detailed analysis of Chapter 563 is beyond the scope of this chapter, but certain highlights will be mentioned. As proposed by Governor Peabody, the essential ingredients of the MBTA concept were derived from the conclusions of the federally assisted demonstration program conducted by the Mass Transportation Commission. In addition to aiding public transit facilities, state aid is also available to assist in financing contract service from privately operated transportation companies. The Bureau of Transportation Planning and Development has been established within the Department of Public Works for the purpose of planning and constructing transportation facilities. Communities contiguous to the MBTA district may vote to join the district at any biennial or regular or special municipal election.

§19.9. Service Corps Commission: Massachusetts Service Corps. Massachusetts anticipated President Johnson's war on poverty, the Economic Opportunity Act of 1964, by establishing the Commonwealth Service Corps.¹ A seven-member Service Corps Commission is empowered to appoint a director and seven associate directors who are exempt from civil service² and veterans' tenure.³ The Commission members are appointed to overlapping three-year terms. The director, with the approval of Commission, appoints all other employees.

The Service Corps assignment is to recruit men and women for limited periods for projects dealing with "the critical human needs of the Commonwealth." Among these needs are the health, education, care, and rehabilitation of the elderly, disabled, mentally ill, mentally retarded, depressed and slum area residents, and persons in the charge of correctional agencies. The Commission will seek to induce people to volunteer for community service and will provide increased opportunities for such service. The Commission is also to aid communities and their governing bodies and private agencies by providing voluntary personnel for worthwhile public service projects. In addition, the Governor has designated the Service Corps as the state agency for coordinating the participation of Massachusetts in the national anti-poverty program.


² G.L., c. 31.
³ Id., c. 30, §9A.
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B. OTHER DEVELOPMENTS IN STATE AND LOCAL LAW

§19.11. In general. Little legislation of importance was enacted in 1964 on other topics coming within the scope of this chapter. Significant decisions were concerned only incidentally with state and municipal government while resolving questions in the areas of administrative law, civil procedure, contracts, criminal law, evidence, taxation, and torts.

No discernible trends emerged, with the exception of some statutory adjustments made in response to the opportunities and demands of federal aid programs. Otherwise, the large number of statutory revisions and extensions mainly represented technical changes and clarifying amendments to established public policies. A few of these are treated in the sections which follow.

§19.12. Municipal powers and functions. Acts of 1964, Chapter 736, amends Section 8 of Chapter 44 of the General Laws to authorize thirty-year bonds in such amounts as are approved by the Emergency Finance Board for the construction of sewage treatment and disposal facilities, provided that such facilities are approved by the state Department of Public Health. It also amends Chapter 83 of the General Laws prescribing the conditions under which a municipality may regulate the use of sewerage systems and defining the procedure for apportioning the costs of constructing sewerage systems and applying betterment assessments.

Acts of 1964, Chapter 564, establishes a Municipal Police Training Council by amending Chapter 6 of the General Laws. The council is empowered generally to approve and regulate municipal police training schools. As of January 1, 1966, newly appointed, permanent police officers in any city or town with a population over five thousand must be assigned to and must attend and complete the prescribed course of study in an approved police training school. While attending the school, a police officer is entitled to his full wages and to reimbursement of his reasonable expenses. The training assignment must be made within one year of the date of the initial appointment.

Acts of 1964, Chapter 195, amends Section 23A of Chapter 39 of the General Laws to require voice or roll-call votes by municipal or district boards and to prohibit secret or written ballots. Acts of 1964, Chapter 502, further defines the procedures governing the defining and operation of regional planning districts. Acts of 1964, Chapter 502, revises the procedures governing the organization and operation of regional incinerator districts.

In an advisory opinion of the Supreme Judicial Court given to the House of Representatives the Court expressed the opinion that pro-

posed legislation which would require that a town meeting called by a justice of the peace under Section 12 of Chapter 39 of the General Laws be conducted as a representative town meeting in towns having that form of government would be constitutional. Subsequently, Acts of 1964, Chapter 193, establishing this requirement, in towns operating under a representative form of town meeting, was enacted.

§19.13. Elections. A number of revisions to the General Laws regulating elections were adopted in 1964. None, however, involved fundamental changes. Among the topics affected by the Acts of 1964 are unauthorized endorsements and false statements, Chapter 147; judicial review and the state Ballot Law Commission, Chapter 259; election officers, Chapter 186; nomination papers, Chapter 175; delegates to state conventions, Chapter 399; state primaries, Chapter 388; primary nomination papers, Chapter 260; primary ballots, Chapter 76; voting lists, Chapter 72; absentee voter ballots, Chapter 266; placing questions on the ballot, Chapter 256; and ballots and municipal officers, Chapter 55.

§19.14. Finance. Voters approved Question No. 3 on the state ballot in November, thereby amending Section 1 of Article LXII of the Amendments to the Constitution to require a two-thirds vote by each house of the General Court in order to give, loan, or pledge the credit of the Commonwealth. The purpose of this amendment is to close the loophole through which the legislature was able to pledge the credit of the state to contingent obligations with a majority vote, even though a two-thirds vote is required by Article LXII of the Amendments for bond issues of the Commonwealth itself. Adoption of the amendment may cloud the financing of such functions as the MBTA.

Once again the electorate, by referendum, rejected an increase in the salaries and travel and other expense allowances to members of the General Court. The negative vote on Question No. 6 on the state ballot repealed Acts of 1963, Chapter 506, which had provided for such increases.

Acts of 1964, Chapter 234, amends clause 51 of Section 5 of Chapter 40 of the General Laws, to authorize appropriations by cities and towns for the purpose of maintaining conservation commissions and developing natural resources. Money so appropriated may be placed in a conservation fund and allowed to accumulate from year to year and may be expended by the conservation commission. Municipalities are authorized to appropriate funds for the in-service training of employees under Acts of 1964, Chapter 248, amending clause 34 of Section 5 of Chapter 40 of the General Laws.

A more flexible procedure for fixing the maximum terms of loans by municipalities, counties, and districts for federally aided public works projects is provided by Acts of 1964, Chapter 15. The Emer-
Emergency Finance Board is accorded broad discretion to establish such terms in accordance with federal laws and regulations.

Acts of 1964, Chapter 99, amends Chapter 44 of the General Laws by inserting Section 53A, liberalizing the rules which govern the expenditures of grants and gifts from federal and other sources to cities, towns, and districts. Any officer or department may accept such a gift which shall be deposited with the treasurer and held for expenditure without further appropriation. The principal limitation imposed is a requirement that the board of selectmen, mayor, or city manager and city council, district commissioners, or school committee must approve the expenditure. Acts of 1954, Chapter 138, adds Section 23 to Chapter 34 of the General Laws, authorizing counties to accept and disburse federal grants in a similar manner.

Acts of 1964, Chapter 267, continued the traditional legislative policy of raising the costs of local government without providing compensatory revenue. It increased the mandatory minimum salary for school teachers from $4500 to $5000 by amending Section 40 of Chapter 71 of the General Laws.

§19.15. **Public officers and employees.** The problems of official misconduct and conflict of interest attracted some additional legislative attention. Acts of 1964, Chapter 444, adds Section 6A to General Laws, Chapter 268, imposing a penalty not to exceed a fine of one thousand dollars or imprisonment for one year or both on any public officer or employee who "executes, files or publishes any false written report, minutes or statement, knowing the same to be false in a material matter. . . ." The conflict of interest law¹ was amended four times. Acts of 1964, Chapter 287, amends Section 2, clause (d), to bar any person convicted of seeking or receiving a bribe from holding any state, county, or municipal office. Acts of 1964, Chapter 314, adds Section 8A, which declares that no member of a state commission or board is eligible to hold any office or position under the supervision of that board or commission; however, a former member of such commission or board becomes eligible for appointment to such offices or positions thirty days after the termination of his services. Acts of 1964, Chapter 389, provides a more stringent limitation on trustees of public institutions of higher education by enacting Section 23A, which prohibits the appointment of a trustee to any office or position in such an institution until three years after the termination of his service as a trustee. Town counsels and city solicitors must file their opinions on conflict of interest questions in writing with the city or town clerk; such opinions are "a matter of public record" by an amendment to Section 22 inserted by Acts of 1964, Chapter 408.

The Governor's inability to suspend a state officer or employee indicted for misconduct in some other elective or appointive office was remedied by Acts of 1964, Chapter 528, which amends General Laws, Chapter 30, Section 59. Such suspension does not require the consent of the Council.

§19.15. ¹ G.L., c. 268A.
Acts of 1964, Chapter 63, inserts a new provision in General Laws, Chapter 41, Section 107, requiring that every elected and appointed town officer shall be sworn to the faithful performance of official duties "before entering upon" said duties.

§19.16 Education. Of the numerous enactments affecting education and the public schools of the Commonwealth, the following have particular significance in terms of public policy.

Acts of 1964, Chapter 66, amends General Laws, Chapter 69, by adding Section 31A, which prohibits the awarding of degrees by any educational institution within the Commonwealth except by authorization of the Commonwealth. A new state agency, the Higher Education Facilities Commission, was established by Acts of 1964, Chapter 388. This Commission is authorized to prepare and administer a state plan for higher education facilities, as required by the national Higher Education Facilities Act of 1963, in order to comply with the conditions for federal aid set forth in that program. The unique feature of the Commission's assignment is its responsibility for allocating federal funds among both public and private colleges. The General Court ordered a branch of the University of Massachusetts to be located in or near the City of Boston by Acts of 1964, Chapter 562. The Board of Commissioners of the Massachusetts Maritime Academy was abolished by Acts of 1964, Chapter 561, which transferred the Academy to the Division of State Colleges in the Department of Education, under the jurisdiction of the Board of Trustees of the State Colleges. Two state institutions of higher education, Bradford Durfee College of Technology and the New Bedford Institute of Technology, were consolidated into the Southeastern Massachusetts Technological Institute on July 1, 1964, under the provisions of Acts of 1964, Chapter 495. "Freedom bills" were enacted for the Southeastern Massachusetts Technological Institute and the Massachusetts Board of Regional Community Colleges by Acts of 1964, Chapter 582, for the former and Acts of 1964, Chapter 737 for the latter. These institutions have been accorded the same general discretion in financial and personnel matters as was granted previously to the University of Massachusetts and Lowell Technological Institute.

State aid on a matching basis for approved special programs for both academically talented and educationally disadvantaged children was authorized in companion statutes: Acts of 1964, Chapter 650, for disadvantaged children, and Acts of 1964, Chapter 651, for academically talented children. Each enactment allows regional and local school committees to submit plans for such programs in accordance with standards and regulations promulgated by the Department of Education. The Commonwealth, and each city, town, and regional school district participating in the program, is authorized to accept and disburse grants and gifts from the federal government and other sources for the purposes stated in the chapters.