

SENATE No. 790

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to municipal management.

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

1 SECTION 1. Chapter 71 of the General Laws is hereby amended by striking Section 37M
2 and replacing it with the following:-

3 “Section 37M. (a) Notwithstanding the provisions of chapter forty-one or chapter
4 seventy-one or any other special or general law to the contrary, any city or town which accepts
5 the provisions of this section may consolidate administrative functions, including but not limited
6 to financial, personnel, and maintenance functions, of the school committee with those of the city
7 or town; provided, however, that such consolidation may occur only upon a majority vote of the
8 local appropriating authority.

9 (b) Notwithstanding any general or special law to the contrary, a decision to consolidate
10 functions pursuant to paragraph (a) of this section may be revoked by a majority vote of the local
11 appropriating authority”.

12 SECTION 2. There is hereby established a special commission for the purpose of
13 investigating potential options for the modification of the means by which municipal entities are

14 permitted to join the State Group Insurance Commission, the impacts of such options, the
15 feasibility of such options, and their relative advantages and disadvantages.

16 Such commission shall consist of the Secretary of Administration and Finance or a
17 designee who shall chair the commission, the executive director of the Group Insurance
18 Commission, three representatives of municipal governments currently serving in an elected or
19 appointed capacity and selected from a list provided by the Massachusetts Municipal Association
20 by the governor, three representatives of public employee unions appointed by the governor, one
21 member appointed by the governor, with actuarial experience in health insurance and three
22 additional members appointed by the governor, one of whom shall represent the Massachusetts
23 Taxpayers Foundation and two of whom shall represent the citizens of the Commonwealth.

24 Said Commission shall report its findings, together with legislative recommendations for
25 changes and/or modifications, to the clerks of the House and Senate not later than six months
26 following the passage of this act.

27 SECTION 3. (a) Methodology - Notwithstanding any general or special law to the
28 contrary, the Secretary of Health and Human Services is hereby authorized and directed to, in
29 consultation with the University of Massachusetts, change the methodology by which the
30 Commonwealth seeks reimbursement from the federal Medicaid program for students educated
31 pursuant to Chapter 71B of the General Laws from the current “per diem” format, so-called, to a
32 “fee-for-service” format, so-called.

33 (b) Certification of Increased Reimbursement – Not later than thirty days following the
34 initial receipt of funds pursuant to the “fee-for-service” methodology and in periods of not more
35 than ninety days thereafter, the Secretary shall certify the amount by which reimbursement

36 received using this methodology exceeds the amount which would have otherwise been received,
37 taking into account inflation and any other relevant factors. Such excess amount shall be
38 deposited into the Special Education Assistance Fund established herein.

39 (c) There shall be established and set up on the books of the Commonwealth the Special
40 Education Assistance Fund, into which shall be deposited sums resulting from federal Medicaid
41 reimbursement pursuant to subsection (b) of this section.

42 Not less than sixty percent of the total amount in said fund shall be appropriated annually
43 for the purposes of assisting municipalities and regional school districts with the cost of
44 transportation of students provided pursuant to Chapter 71B of the General Laws. Said
45 appropriation shall be made in a form designed to ensure equity among students and local
46 educational authorities by utilizing a methodology based on a uniform percentage of eligible
47 transportation costs to be compensated.

48 The remainder of said fund shall be available for appropriation in the form of grants of
49 assistance to private institutions providing educational services pursuant to Chapter 766 of the
50 Acts of 1972 and its implementing regulations.

51 (d) The Secretary of Health and Human Services, the Secretary of Administration and
52 finance and the Commissioner of the Department of Education, in consultation with the
53 University of Massachusetts, shall develop a system of acquiring from municipalities and
54 regional school districts the information necessary to utilize a fee-for-service method of
55 reimbursement from the federal Medicaid system following the passage of this act and prior to a
56 request for a change in reimbursement methodology to the federal government.

57 Said system shall be designed to maximize efficiency and minimize the cost and burden
58 of compliance for municipalities and regional school districts.

59 SECTION 4. Section 44A of Chapter 149 of the General Laws is hereby amended by
60 striking Section 2 and replacing it with the following:-

61 “(2)(A) Every contract for the construction, reconstruction, installation, demolition,
62 maintenance or repair of any building by a public agency estimated to cost less than \$5,000 shall
63 conform to sound business practices.

64 (B) Every contract for the construction, reconstruction, installation, demolition,
65 maintenance or repair of any building by a public agency estimated to cost not less than \$5,000
66 but not more than \$10,000 shall be awarded to the responsible person offering to perform the
67 contract at the lowest price quotation; provided, however, that the public agency shall seek
68 written price quotations from no fewer than 3 persons customarily providing the work for which
69 the contract is being made available. When seeking written quotations the public agency shall
70 make and keep a record of the names and addresses of all persons from whom price quotations
71 were sought, the names of the persons submitting price quotations and the date and amount of
72 each price quotation.

73 (C) Every contract for the construction, reconstruction, installation, demolition,
74 maintenance or repair of any building estimated to cost more than \$10,000 but not more than
75 \$25,000 shall be awarded to the responsible person offering to perform the contract at the lowest
76 price. The public agency shall make public notification of the contract and shall seek written
77 responses from persons who customarily perform such work. The public notification shall
78 include a scope of work statement that defines the work to be performed and provides potential

79 responders with sufficient information regarding the objectives and requirements of the public
80 agency and the time period within which the work is to be completed. For purposes of this
81 subsection “public notification” shall include, but not necessarily be limited to, posting, no less
82 than 2 weeks before the time specified in the notification for the receipt of responses, the
83 contract and scope of work statement on the website of the public agency, on the COMPASS
84 system, so-called, or in the central register established under section 20A of chapter 9, and in a
85 conspicuous place in or near the primary office of the public agency.

86 (D) Every contract for the construction, reconstruction, installation, demolition,
87 maintenance or repair of any building by a public agency estimated to cost more than \$25,000
88 but not more than \$100,000, except for a pumping station to be constructed as an integral part of
89 a sewer construction or water construction project bid under the provisions of section 39M of
90 chapter 30, shall be awarded to the lowest responsible and eligible bidder on the basis of
91 competitive bids publicly opened and read in accordance with the procedure set forth in said
92 section 39M of said chapter 30. The term “pumping station” as used in this section shall mean a
93 building or other structure which houses solely pumps and appurtenant electrical and plumbing
94 fixtures.

95 (E) Every contract for the construction, reconstruction, installation, demolition,
96 maintenance or repair of any building by a public agency estimated to cost more than \$100,000,
97 except for a pumping station to be constructed as an integral part of a sewer construction or
98 water construction project bid under the provisions of section 39M of chapter 30, shall be
99 awarded to the lowest responsible and eligible general bidder on the basis of competitive bids in
100 accordance with the procedure set forth in section 44A to 44H, inclusive.

101 (F) When the general court has approved the use of an alternative mode of procurement
102 of construction for a project pursuant to section 7E of chapter 29, the awarding authority
103 responsible for procuring construction services for the project shall follow the policies and
104 procedures of this section and of section 44B to 44H, inclusive, to the extent compatible with the
105 mode of construction procurement selected.

106 (G) Notwithstanding paragraph (E), a public agency may undertake the procurement of
107 modular buildings, in accordance with section 44E. A public agency may procure site work for
108 modular buildings, including but not limited to, construction of foundations, installations, and
109 attachment to external utilities, or any portion of site work, either in combination with the
110 procurement of modular buildings pursuant to section 44E or on the basis of competitive bids
111 pursuant to the paragraph (E). Notwithstanding the paragraph (E), a public agency may procure
112 energy management services in accordance with section 11C of chapter 25A and regulations
113 promulgated thereunder.”

114 SECTION 7. (a) Section 2 of Chapter 30B of the General Laws, as so appearing, is
115 hereby amended, after line 36 by inserting the following:-

116 "Electric bidding", the electronic solicitation and receipt of offers to contract for supplies
117 and services. Offers may be accepted and contracts may be entered by use of electronic bidding.

118 (b) Section 2 of Chapter 30B of the General Laws, as 50 appearing, is hereby amended,
119 after line 90 by inserting the following:-

120 "Reverse auction", a competitive online solicitation process for supplies and services in
121 which vendors compete against each other online in real time in an open and interactive
122 environment.

123 (c) Chapter 30B of the General Laws, as so appearing, is hereby amended by adding after
124 Section 6 the following new section:-

125 “6A. (a) A chief procurement officer may enter into procurement contracts in the amount
126 of \$25,000 or more utilizing reverse auctions for the acquisition of supplies and services. The
127 reverse auction process shall include a specification of an opening date and time when real-time
128 electronic bids may be accepted, and provide that the procedure shall remain open until the
129 designated closing date and time.

130 (b) All bids on reverse auctions shall be posted electronically on the Internet, updated on
131 a real-time basis, and shall allow registered bidders to lower the price of their bid below the
132 lowest bid on the Internet.

133 (c) The chief procurement officer shall require vendors to register before the reverse
134 auction opening date and time, and as part of the registration, agree to any terms and conditions
135 and other requirements of the solicitation. The chief procurement officer may require vendors to
136 be pre-qualified prior to placing bids in a reverse auction. The pre-qualification criteria shall
137 include, but not be limited to statements of vendors: financial stability, past performances and
138 professional references. The statement of qualifications shall be signed under pains and penalties
139 of perjury.”

140 (d) Any mechanism, including but not limited to software, developed by the Operational
141 Services Division for the purpose of conducting reverse auctions by the Commonwealth, shall
142 provide for the utilization of such mechanism by municipalities.

143 (e) The Operational Services Division may assess any municipality utilizing such reverse
144 auction mechanism a reasonable fee, calculated to compensate for any increased cost attributable
145 to such utilization, which shall be credited to the general fund.