HOUSE . . . . . No. 4617

Text of a still still further amendment, offered by Mr. Michlewitz of Boston, to the Senate still further amendment of the House Bill to address challenges faced by municipalities and state authorities resulting from COVID-19 (House, No. 4598). April 2, 2020.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

By striking out all after the enacting clause (inserted by still further amendment by the Senate) and inserting in place thereof the following:–

SECTION 1. Section 9 of chapter 39 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by striking out, in lines 13 to 14, the word "thirtieth" and inserting in place thereof the following words:- 30 except in the event of an emergency that poses an immediate threat to the health or safety of persons or property that prevents the completion of the business of the delayed town meeting on or before June 30 if the governor has declared a state of emergency with respect to such emergency.

SECTION 2. Subsection (a) of section 10A of said chapter 39, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following 2 sentences:- Notwithstanding any general or special law, charter provision or by-law to the contrary, during and for a period of 5 days after the termination of any weather-related, public safety or public health emergency, the town moderator or person designated to perform the duties of town moderator may, in consultation with local public safety or public health officials and the board of selectmen, recess and continue a town meeting previously called pursuant to a warrant issued pursuant to section 10 to a time, date and place certain; provided, however, that

any such recess and continuance period shall not exceed 30 days. The moderator or person designated to perform the duties of town moderator may renew the declaration of recess and continuance period for up to 30 days at a time but not more than 30 days following the date of rescission of a state of emergency declared by the governor. If a town does not have a moderator, the board of selectmen may recess and continue town meeting in accordance with this paragraph.

SECTION 3. Said section 10A of said chapter 39, as so appearing, is hereby further amended by striking out subsection (c).

SECTION 4. Said section 10A of said chapter 39, as so appearing, is hereby further amended by striking out subsection (d) and inserting in place thereof the following subsection:-

(d) Within 10 days after the initial declaration of recess and continuance of a town meeting pursuant to this section, a local public safety or public health official designated by the board of selectmen shall submit a report to the attorney general providing the justification for the declaration.

SECTION 5. The first paragraph of section 31 of chapter 44 of the General Laws, as so appearing, is hereby amended by inserting after the second sentence the following 2 sentences:- If the declared emergency prevents the adoption of an annual budget by a town or district by the June 30 preceding the start of the fiscal year, the board of selectmen, town council or district commissioners shall notify the director and the director may approve expenditures, from any appropriate fund or account, of an amount sufficient for the operations of the town or district during the month of July not less than 1/12 of the total budget approved by the town or district in the most recent fiscal year pursuant to a plan approved by the board of selectmen, town council or district commissioners and such authority shall continue for each successive month while the

emergency continues to prevent the adoption of a budget. The director may promulgate and revise rules or regulations regarding the approval of emergency expenditures described in this section and accounting with regard to such expenditures.

SECTION 6. Notwithstanding any general or special law to the contrary, if the adoption of an annual budget in a city, town or district is delayed beyond June 30, 2020, as a result of the governor’s March 10, 2020 declaration of a state of emergency or the outbreak of the 2019 novel coronavirus, also known as COVID-19, the director of accounts of the department of revenue may authorize the appropriation from the available balance of the city's, town’s or district’s undesignated fund balance or “free cash” certified by the director under section 23 of chapter 59 of the General Laws as of July 1, 2019, as a funding source for the city's, town’s or district’s fiscal year 2021 expenditures, including, but not limited to, any such undesignated fund balance in an enterprise fund or special revenue account. The director of accounts may promulgate and revise rules or regulations regarding the implementation of this section.

SECTION 7. Notwithstanding section 31 of chapter 44 of the General Laws, section 23 of chapter 59 of the General Laws or any other general or special law to the contrary, a city, town or district may amortize over fiscal years 2021 to 2023, inclusive, in equal installments or more rapidly, the amount of its fiscal year 2020 deficit resulting from the outbreak of the 2019 novel coronavirus, also known as COVID-19, as described in the governor’s March 10, 2020 declaration of a state of emergency, including, but not limited to, any such deficit in an enterprise fund or special revenue account. The local appropriating authority as defined in section 21C of said chapter 59 and, in the case of a district, the prudential committee or commissioners, or as otherwise defined in the General Laws, shall adopt a deficit amortization schedule in accordance with the preceding sentence before setting the city’s, town’s or district’s fiscal year 2021 tax rate.

The commissioner of revenue may issue guidelines or instructions for reporting the amortization of deficits authorized by this section.

SECTION 8. Notwithstanding any general or special law to the contrary, as a result of the outbreak of the 2019 novel coronavirus, also known as COVID-19, and the governor's March 10, 2020 declaration of a state of emergency, for fiscal year 2021, a city or town may expend from each revolving fund, established under section 53E1/2 of chapter 44 of the General Laws an amount not to exceed the amount authorized to be expended in fiscal year 2020 until the city or town adopts an annual budget for fiscal year 2021 at which time, the legislative body of the city or town shall also vote on the total amount that may be expended from each revolving fund in fiscal year 2021.

SECTION 9. Notwithstanding section 8 of chapter 61 of the General Laws, section 14 of chapter 61A of the General Laws, section 9 of chapter 61B of the General Laws or any other general or special law, charter provision, ordinance or by-law to the contrary, during and for a period of 90 days after the termination of the governor's March 10, 2020 declaration of a state of emergency, all time periods within which any municipality is required to act, respond, effectuate or exercise an option to purchase shall be suspended.

SECTION 10. (a) Notwithstanding any general or special law to the contrary, as a result of the outbreak of the 2019 novel coronavirus, also known as COVID-19, and the governor's March 10, 2020 declaration of a state of emergency, for fiscal year 2020, the chief executive officer of a city or town, as defined in clause Fifth B of section 7 of chapter 4 of the General Laws, or a district may extend:

(i) for the purposes of the first paragraph of section 57 of chapter 59 of the General Laws, the date May 1 to a date not later than June 1, 2020;

(ii) for the purposes of the seventh and eighth paragraphs and the tenth and eleventh paragraphs of section 57C of said chapter 59, the date May 1 to a date not later than June 1, 2020;

(iii) for the purposes of the seventh paragraph of said section 57C of said chapter 59, the date April 1 to a date not later than June 1, 2020; and

(iv) for the purposes of the third paragraph of said section 59 of said chapter 59, the date April 1 to a date not later than June 1, 2020.

(b) Notwithstanding said sections 57, 57C and 59 of said chapter 59 or any other general or special law to the contrary, if municipal offices are closed as a result of the outbreak of the 2019 novel coronavirus, also known as COVID-19, or the governor's March 10, 2020 declaration of a state of emergency on the date that a tax payment, abatement or exemption application is due, the due dates shall not be extended except pursuant to this section.

SECTION 11. Notwithstanding section 57, 57A and 57C of chapter 59 of the General Laws, section 2 of chapter 60A of the General Laws or any other general or special law to the contrary, as a result of the outbreak of the 2019 novel coronavirus, also known as COVID-19, or the governor's March 10, 2020 declaration of a state of emergency, the chief executive officer of a city or town, as defined in clause Fifth B of section 7 of chapter 4 of the General Laws, or the prudential committee or commissioners of a district may waive the payment of interest and other penalty in the event of late payment of any excise, tax, betterment assessment or apportionment thereof, water rate or annual sewer use or other charge added to a tax for any payments with a

due date on or after March 10, 2020 and made after its respective due date but before June 30, 2020. Notwithstanding the forgoing, a city or town shall not terminate an essential service of a resident, including, but not limited to, water, trash collection or electricity, for nonpayment of taxes or fees with a due date on or after March 10, 2020, made after its respective due date but before June 30, 2020, if the nonpayment resulted from a demonstrated inability to pay due to circumstances related to the outbreak of COVID-19 or the governor's March 10, 2020 declaration of a state of emergency; provided that the inability to pay shall include a demonstrated financial hardship of a resident, which may include, but not be limited to, loss of employment, serious illness of someone within the home or death of someone within the home.

SECTION 12. Notwithstanding chapter 62C of the General Laws, all returns and payments for the 2019 calendar year otherwise due on April 15, 2020, under section 6 of said chapter 62C, shall be due on July 15, 2020.

SECTION 13. Notwithstanding any general or special law to the contrary, during the governor's March 10, 2020 declaration of a state of emergency, an establishment licensed to sell alcoholic beverages or only wines and malt beverages on-premises may sell wine or malt beverages only for off-premises consumption subject to the following conditions: (i) the wine or malt beverage shall not be sold to a person under 21 years of age; provided, however, that any delivery of wine or malt beverages for off-premises consumption shall not be made without verification that the person receiving the order has attained 21 years of age; (ii) the wine shall be sold in its original, sealed container and the malt beverage shall be sold in a sealed container; (iii) the wine or malt beverage shall be sold as part of the same transaction as the purchase of food; provided, however, that any order that includes wine or malt beverages shall be placed not later than the hour of which the establishment is licensed to sell alcohol or 12:00 midnight, whichever

time is earlier; and (iv) a customer shall be limited to 192 ounces of malt beverage and 1.5 liters of wine per transaction.

SECTION 14. (a) Notwithstanding any general or special law to the contrary, subsections (b) and (c) of section 91 of chapter 32 of the General Laws shall not apply in calendar year 2020 to the following 2 categories of persons for hours worked and earnings received during the governor's March 10, 2020 state of emergency:

(i) any person who has been retired and who is receiving a pension or retirement allowance, pursuant to said chapter 32 or any other general or special law, from the commonwealth or a county, city, town, district or authority; or

(ii) any person whose employment in the service of the commonwealth or a county, city, town, district or authority has been terminated, pursuant to said chapter 32 or any other general or special law, by reason of having attained an age specified in said general or special law or by the rules and regulations of any department or agency of the commonwealth or a county, city, town, district or authority without being entitled to any pension or retirement allowance.

These 2 categories of persons may, during the state of emergency and subject to all other laws, rules and regulations governing the employment of persons in the commonwealth or a county, city, town, district or authority, be employed in the service of the commonwealth or a county, city, town, district or authority, including as a consultant or independent contractor or as a person whose regular duties require that such person's time be devoted to the service of the commonwealth, county, city, town, district or authority during regular business hours.

(b) This section shall not apply to individuals retired under a general or special law on disability.

SECTION 15. Notwithstanding section 7.08 of chapter 156D of the General Laws or any other general or special law to the contrary, as a result of the outbreak of the 2019 novel coronavirus, also known as COVID-19 and the declaration of a state of emergency issued on March 10, 2020, for the duration of said state of emergency and 60 days thereafter, a public corporation, as referenced in said section 7.08 of said chapter 156D and otherwise consistent with the other provisions of said section, may conduct an annual or special meeting of the shareholders solely by means of remote communication.

SECTION 16. Notwithstanding any general or special law or any bylaw of the corporation to the contrary, for the duration of the governor's March 10, 2020 state of emergency and 60 days thereafter and unless the articles of organization provide otherwise, the board of directors of a corporation defined in section 2 of chapter 180 of the General Laws may: (i) provide notice of a meeting of the board of directors: (A) only to those directors it is practicable to reach; and (B) in any practicable manner; (ii) cancel a meeting of the members, as defined in section 2 of said chapter 180, with notice of cancellation given in any practicable manner; (iii) allow a director or officer to continue to serve during the governor's March 10, 2020 state of emergency and until the director's or officer's successor is elected, appointed or designated; provided that directors and officers whose term is extended pursuant to this section shall continue to serve until the director's or officer's successor takes office, despite the expiration of a director's or officer's term; (iv) allow a director to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating are able to simultaneously communicate with each other during the meeting; (v) allow members at a meeting of the members to vote in person or by proxy; provided that any member voting by proxy shall be considered present at the meeting for purposes of any

quorum requirement; (vi) appoint successors to any of the officers, directors, employees or agents; (vii) relocate the principal office or designate alternative offices; and (viii) allow members to participate in any meeting of members by remote participation, even if not physically present at the meeting. Participation by remote communication at any meeting of the members shall constitute presence at such meeting only if: (i) reasonable measures are implemented to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a member or proxyholder; (ii) reasonable measures are implemented to provide such members and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear to the proceedings of the meeting substantially concurrently with such proceedings, pose questions and make comments, regardless of whether the members can simultaneously communicate with each other during the meeting; and (iii) if any member or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

Directors who participate in a meeting of the board of directors pursuant to this section shall constitute a quorum. In a corporation with members, the corporation shall notify the members, as soon as reasonably practicable, of any action taken by the board of directors pursuant to this section.

SECTION 17. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Permit", a permit, variance, special permit, license, amendment, extension, or other approval issued by a permit granting authority pursuant to a statute, ordinance, bylaw, rule or regulation, whether ministerial or discretionary.

"Permit granting authority", a local, district, county or regional official or a local, district, county or regional multi-member body that is authorized to issue a permit.

(b) Notwithstanding any general or special law, rule, regulation, charter, ordinance or by-law to the contrary, during the governor's March 10, 2020 declaration of a state of emergency:

(i) an application for a permit shall be deemed duly filed and accepted as of the date of the filing by the applicant if filed with and certified as received by the city or town clerk if a municipality, or with the secretary or other official established by law to receive such applications if a county or regional entity. Notwithstanding the foregoing, a permit granting authority may contest the completeness of an application at the time of filing if the application is ultimately denied by the permitting board on other grounds or if the permit is ultimately appealed by the applicant. An application for a permit may be filed electronically, through an electronic submission website established by the permit granting authority or through attachment of the requisite forms and supplemental materials to electronic mail sent to the clerk, secretary or official. Certification of receipt for purposes of this paragraph may be provided electronically to the applicant and shall be provided electronically if the permit application is submitted electronically and electronic certification of receipt is requested by the applicant;

(ii) a requirement of a statute, ordinance, bylaw, rule or regulation that a hearing commence within a specific period of time after the filing of an application or request for approval of a permit shall be suspended as of March 10, 2020; provided, however, that the

applicable period shall resume 45 days after the termination of the state of emergency, or by a date otherwise prescribed by law, whichever is later;

(iii) a permit in effect or existence as of March 10, 2020, including any deadlines or conditions of the permit, shall not lapse or otherwise expire and the expiration date of the permit, or time period for meeting a deadline or for performance of a condition of the permit, shall toll during the state of emergency;

(iv) no permit shall be considered granted, approved or denied, constructively or otherwise, due to a failure of the permit granting authority to act within the time required by a statute, ordinance, bylaw, rule or regulation; provided, however, that the permit granting authority acts within 45 days of the termination of the state of emergency or by a date otherwise prescribed by law, whichever is later; provided further, that the applicant and permit granting authority may agree to alternative timing in writing;

(v) notwithstanding the time periods by which a permit is to be heard or acted upon, a permit granting authority may, by a declaration of its chair, schedule or reschedule on 1 or more occasions the hearing or decision deadlines on a permit application; provided, however, that the chair may make such declaration whether or not a quorum is present to vote on such matter; provided further, that no such date or deadline is rescheduled for more than 45 days after the termination of the state of emergency or after a date otherwise prescribed by law, whichever is later. The chair shall provide written notice of any applicable rescheduled dates or deadlines to the applicant at the applicant's address and to the general public by posting electronically on the website of the city or town clerk or the website of the county or regional entity;

(vi) if a permit is required to be recorded with the registry of deeds or filed with registry district of the land court, as applicable, for the county or district in which the property subject to the permit is located, within a certain period of time after its issuance in order to remain in force and effect or as a condition to exercising the permit: (A) the period of time for recording the permit shall be suspended during such time that the relevant registry of deeds or registry district of the land court is closed or subject to rules and procedures restricting public in-person access; and (B) the failure to record the permit shall not preclude the permit holder from applying for, obtaining and commencing construction activities pursuant to other required permits and approvals, including, but not limited to, a building permit; provided, however, that such a building permit may be issued and, if issued, shall be considered duly issued pursuant to section 6 of chapter 40A of the General Laws; and

(vii) a hearing on a pending application for a permit opened by a permit granting authority before March 10, 2020, which has not been concluded as of March 10, 2020 or has been continued by the permit granting authority as of March 10, 2020, shall be automatically tolled and continued to the first hearing date of the permit granting authority following the termination of the state of emergency or to a date otherwise prescribed by law, whichever is later; provided, however, that the date is not later than 45 days from of the termination of the state of emergency or the date otherwise prescribed by law, whichever is later.

(c) Nothing in this section shall affect the ability of a permit granting authority, subject to applicable notice and hearing requirements, to revoke or modify a permit if that permit or the law or regulation under which the permit was issued authorizes the modification or revocation thereof; provided, however, that the permit granting authority shall not revoke or modify the permit where the permit holder fails as a result of the state of emergency to exercise or otherwise

commence work pursuant to the permit or where such work commenced on or before March 10, 2020 but has stopped as a result of the state of emergency or actions taken by an agency or political subdivision of the commonwealth in reliance thereon. The limitations set forth in this subsection shall apply as long as the state of emergency is in effect and for a period of 60 days following the termination of the state of emergency; provided, however, that a permit holder shall be entitled to a further extension of reasonable length to exercise or otherwise commence work pursuant to the permit at the discretion of the permit granting authority for good cause shown; provided further, that the chair of any permit granting authority may grant such further extension whether or not a quorum is present to vote on the matter.

(d) Notwithstanding section 20 of chapter 30A of the General Laws, a permit granting authority, during the state of emergency, may conduct meetings and public hearings remotely, consistent with the governor's March 12, 2020 order entitled, "Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, § 20", as the order may be amended, supplemented or replaced.

(e) Nothing in this section shall preclude or prohibit a permit granting authority from issuing decisions on permit applications for which duly held public hearings or meetings have been held or preclude or prohibit any building commissioner, inspector of buildings or other permit granting official, as applicable, from issuing permits, including, but not limited to, demolition or building permits.

(f) Notwithstanding any general or special law to the contrary and without limiting the foregoing, this section shall apply to the conduct of public meetings, public hearings or other actions taken in a quasi-judicial capacity by all local boards and commissions.

SECTION 18. Nothing in this act shall be construed or implemented in such a way as to modify a requirement of law necessary to retain federal delegation to, or assumption by, the commonwealth of the authority to implement a federal law or program.

SECTION 19. Sections 2 to 4, inclusive, shall take effect as of March 10, 2020.