

SENATE No. 2673

The Commonwealth of Massachusetts

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

SENATE, May 4, 2020.

The committee on Senate Ways and Means to whom was referred the House Bill relative to host community agreements (House, No. 4398), - reported, in part, a "Bill relative to municipal governance during the COVID-19 emergency" (Senate, No. 2673).

For the committee,
Michael J. Rodrigues

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An Act relative to municipal governance during the COVID-19 emergency.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect forthwith both public health and the viability of town meetings in the face of the state, national and global public health emergencies existing as a result of the COVID-19 pandemic, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience.

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. (a) Notwithstanding section 13 of chapter 39 of the General Laws or any
2 other general or special law, charter provision or by-law to the contrary, a town not having a
3 representative town meeting form of government may act by vote of its select board, in
4 consultation and with the approval of the town moderator, to prescribe the number of voters
5 necessary to constitute a quorum at any town meeting held from the governor's March 10, 2020
6 declaration of a state of emergency until 30 days after the termination of the state of emergency
7 at a number that is less than the number that would otherwise be required by law, town by-law or
8 town charter; provided, however, that the number of voters necessary to constitute a quorum
9 shall not be less than 10 per cent of the number that would otherwise be required.

(b) The select board shall publish notice of its intention to consider an adjustment of town meeting quorum requirements under this section not less than 7 days before the vote of the select board. The select board shall provide for adequate means of public access that will allow interested members of the public to clearly follow the deliberations of the select board on making a quorum adjustment as those deliberations are occurring.

(c) Not less than 10 days after a vote of the select board to adjust the quorum requirement under this section, the town clerk shall notify the attorney general of the adjusted quorum requirement.

(d) A town meeting held pursuant to this section shall take up only those matters related to their budget or necessary to meet a federal deadline and shall not include warrant articles other than those adopted by the select board.

(e) All actions taken pursuant to this section are hereby ratified, validated and confirmed to the same extent as if the town meeting had been conducted in accordance with all other applicable laws, charter provisions, ordinances and by-laws.

SECTION 2. (a) Notwithstanding any general or special law, charter provision, ordinance or by-law to the contrary, during the governor's March 10, 2020 declaration of a state of emergency, if the moderator in a town having a representative town meeting form of government determines that it is not possible to safely assemble the town meeting members and interested members of the public in a common location while complying with any applicable state or local orders, directives or guidance concerning public assemblies, the moderator may request that the select board of the town call for a representative town meeting to be held through remote participation, including, but not limited to, by means of a video or telephone conferencing

platform. Such a request by the moderator to the select board shall be in writing and shall include, but not be limited to: (i) the moderator's determination and request to hold a town meeting through remote participation in accordance with this section; (ii) the video or telephone conferencing platform the moderator has determined to use to hold the town meeting; and (iii) a certification that by the moderator that: (A) the moderator has tested the video or telephone conferencing platform; and (B) the platform satisfactorily enables the town meeting to be conducted in substantially the same manner as if the meeting occurred in person at a physical location and in accordance with the operational and functional requirements set forth in this section.

A video or telephone conference platform used by a town meeting for remote participation under this section shall, at minimum, provide for: (i) the moderator, town meeting members, town officials and any other interested members of the public to identify and hear the moderator and each town meeting member who attends and participates in the remotely-held town meeting, as well as any other individuals who participate in the remotely-held town meeting; (ii) the ability to determine whether a quorum is present; (iii) a town meeting member, town official or other individual to request recognition by the moderator without prior authorization; provided, however, that the request is visible or audible to the public in real time and upon review of the recording of the town meeting proceedings, preserved according to subsection (h); (iv) the moderator to determine when a town meeting member wishes to be recognized to speak, make a motion, raise a point of order or object to a request for unanimous consent; (v) the moderator to recognize a town meeting member, town official or other individual to speak and to enable that person to speak; (vi) the ability to conduct a roll call vote; (vii) any interested members of the public to access the meeting remotely for purposes of

witnessing the deliberations and actions taken at the town meeting; and (viii) the town meeting to be recorded. Registered voters residing in the town wishing to participate in a remote town meeting conducted pursuant to this section shall submit a request to participate to the town clerk not less than 48 hours in advance of the town meeting. Upon receipt of the request and verification of the requester's voter registration status, the clerk shall provide to the requester instructions for participating in the remote town meeting.

(b) Not later than 10 business days following receipt of a written request by the moderator under subsection (a), the select board shall vote to determine if the town meeting shall be held remotely by means of the video or telephone conferencing platform requested by the moderator.

(c) If the select board votes to approve the request of the moderator for remote participation at a town meeting and the select board has already issued a warrant calling a town meeting to be held not later than June 30, 2020, the select board shall, at the same meeting of the board, approve and issue, in consultation with the moderator, a notice that expressly states: (i) that the town meeting shall be held remotely by means of the video or telephone conferencing platform requested by the moderator; (ii) the date and time of the meeting; and (iii) any information necessary for the moderator, town meeting members, town officials and interested members of the public to access and attend the town meeting remotely.

The notice issued by the select board shall be: (i) accompanied by the written request of the moderator submitted to the select board under subsection (a); (ii) filed and posted in accordance with the requirements of subsection (b) of section 10A of chapter 39 of the General Laws; (iii) distributed to each town meeting member; and (iv) publicly posted not less than 10

77 days before the scheduled date of the remote town meeting. The notice may include a date, time
78 and place for the town meeting to be resumed if the town meeting does not vote to continue the
79 town meeting remotely as required under subsection (f).

80 (d) If the select board votes to approve the request of the moderator for remote
81 participation at a town meeting and the select board has not yet issued a warrant for a town
82 meeting, the select board shall approve and issue a warrant for the town meeting that expressly
83 states: (i) that the town meeting shall be held remotely by means of the video or telephone
84 conferencing platform requested by the moderator; (ii) the date and time of the meeting; and (iii)
85 any information necessary for the moderator, town meeting members, town officials and
86 interested members of the public to access and attend the town meeting remotely.

87 The warrant issued by the select board shall be: (i) accompanied by the written request of
88 the moderator submitted to the select board under subsection (a); and (ii) filed in accordance
89 with section 10 of chapter 39 of the General Laws, all other applicable laws and any relevant
90 provision of the town charter or by-laws. The warrant may include a date, time and place for the
91 town meeting to be resumed if the town meeting does not vote to continue the town meeting
92 remotely as required under subsection (f).

93 (e) Not later than 5 business days after a vote of the select board to approve the
94 request of the moderator to hold a town meeting remotely pursuant to subsection (c) or (d), the
95 town clerk shall submit a certified copy of the vote of the select board and of the written request
96 of the moderator to the attorney general.

97 (f) Before taking any other vote at a representative town meeting held through remote
98 participation under this section, the town meeting members present and voting at the meeting

99 shall vote on whether or not to continue conducting the town meeting remotely by means of the
100 chosen video or telephone conferencing platform. If the town meeting votes to continue
101 conducting the town meeting remotely, then the town meeting shall proceed by remote
102 participation to address the articles included in the warrant. If the town meeting does not vote to
103 continue conducting the town meeting remotely, then the town meeting shall be adjourned to the
104 date, time and place specified in the notice or warrant under subsection (c) or (d). If no date, time
105 and place has been specified in the notice or warrant, the town meeting shall immediately be
106 dissolved without taking any votes on any other matters and the select board may call the town
107 meeting pursuant to a new warrant that provides for the town meeting to be held in person at a
108 physical location in accordance with section 10 of chapter 39 of the General Laws, all other
109 applicable laws and provisions of the town charter and by-laws.

110 (g) A vote taken at a representative town meeting held through remote participation
111 pursuant to this section shall be taken by any means that the moderator determines accurately
112 and securely records the votes of those entitled to vote at the meeting, including, but not limited
113 to, a roll call vote, electronic voting, voting by ballot, voting by phone or any combination
114 thereof. The vote of each town meeting member on a roll call vote shall be recorded and kept
115 with the minutes of the town meeting.

116 (h) A representative town meeting held remotely pursuant to this section shall be
117 recorded and the recording shall be preserved and made publicly available on the town's website
118 for not less than 90 days after the conclusion of the town meeting.

(i) All actions taken pursuant to this section are hereby ratified, validated and confirmed to the same extent as if the town meeting had been conducted in accordance with all other applicable laws, charter provisions, ordinances and by-laws.

SECTION 3. Notwithstanding section 9 of chapter 39 of the General Laws or any other general or special law, charter provision, ordinance or by-law to the contrary, during the governor's March 10, 2020 declaration of a state of emergency, a select board, in consultation and with the approval of the town moderator, may vote to hold town meeting outside the geographic limits of the town if the board determines that it is not possible to adequately conduct town meeting in a location within the geographic limits of the town in a manner that ensures health and safety; provided, however, that a meeting for the election by ballot of federal, state or other officers or the determination of other matters that are to be determined by ballot at an election shall be held within the geographic limits of the town. The select board shall publicly post notice of the location of town meeting to be held outside the geographic limits of the town not less than 10 days before the date of the meeting. Nothing in this section shall supersede or otherwise affect the validity of any a special law, charter or by-law in place before the governor's March 10, 2020 declaration of a state of emergency that provides for holding town meeting outside the geographic limits of the town.

SECTION 4. Notwithstanding section 32 of chapter 44 of the General Laws or any other general or special law, charter provision or ordinance to the contrary, if the mayor of a city is unable, as a result of the governor's March 10, 2020 declaration of a state of emergency, to submit an annual budget for fiscal year 2021 to the city council within 170 days as required by the first paragraph of said section 32 of said chapter 44, the time periods and deadlines set forth in said section 32 of said chapter 44 for the mayor and city council to act on the annual budget

shall be extended until 60 days after the termination of the declaration of the state of emergency; provided, however, that within 30 days after the termination of the declaration of emergency or on July 31, 2020, whichever is earlier, the mayor shall submit to the city council the annual budget for fiscal year 2021 for the purposes of said section 32 of said chapter 44 and the time periods and deadlines set forth in said section 32 of said chapter 44 shall, if not inconsistent with this section, otherwise thereafter apply; and provided further, that notwithstanding said section 32 of said chapter 44 to the contrary, the mayor may submit to the city council a continuing appropriation budget for the city on a month-by-month basis for a period not to exceed 3 months if the city has not approved an annual budget for fiscal year 2021 by June 30, 2020, as a result of the governor's March 10, 2020 declaration of a state of emergency.

SECTION 5. (a) (1) Notwithstanding sections 52 and 56 of chapter 41 of the General Laws, a city or town may approve a payment for the period beginning on or after March 10, 2020 through the remainder of fiscal year 2020 on an existing service contract for school or education-related services entered into by the school committee or a service contract renegotiated or modified by the school committee in order to maintain the availability of and access to the services secured under the underlying contract between the parties; provided, however, that: (i) the underlying service contract was in effect before March 10, 2020 and the service contractor was unable to perform services under the contract 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; and (ii) there are sufficient unencumbered available funds remaining for such payment in the appropriation for the purpose.

(2) Before any payment, the service contractor shall present to the approving authorities set forth in subsections (b) and (c), a sworn statement reporting grants, discounted loans or other

financial support that the service contractor has received from a state, federal or local government as a result of the COVID-19 outbreak or, if the service contractor has not received any such grants, discounted loans or other financial support, affirming that the service contractor has not received, and shall not receive thereafter, any such grants, discounted loans or other financial support. If the service contractor reports it has received grants, discounted loans or other financial support from a state, federal or local government, the payment to the service contractor shall not exceed the amount to which the service contractor was eligible under the service contract less the amount received in such grants, discounted loans or other financial support and the sworn statement shall include an attestation that the payment is not in excess of that amount.

(b) In a city, the payment set forth in subsection (a) shall be approved by: (i) the school committee; (ii) a city auditor, accountant or other officer having similar duties; and (iii) the chief executive officer of the city as defined in Fifth B of section 7 of chapter 4 of the General Laws.

(c) In a town, the payment set forth in subsection (a) shall be approved by: (i) the school committee; (ii) a town accountant or other officer having similar duties; and (iii) the chief executive officer of the town as defined in Fifth B of section 7 of Chapter 4 of the General Laws.

(d) This section shall not apply to tuitions and rates set by the bureau of purchased services within the operational services division pursuant to section 22N of chapter 7 of the General Laws, which are set and are non-negotiable for fiscal year 2020.

SECTION 6. (a) (1) Notwithstanding sections 52 and 56 of chapter 41 and section 16A of chapter 71 of the General Laws, a regional school district may approve a payment for the period beginning on or after March 10, 2020 through the remainder of fiscal year 2020 on an existing

187 service contract for school or education-related services entered into by the regional school
188 district or a service contract renegotiated or modified by the regional school committee in order
189 to maintain the availability of and access to the services secured under the underlying contract
190 between the parties; provided, however that: (i) the underlying service contract was in effect
191 before March 10, 2020 and the service contractor was unable to perform services under the
192 contract as a result of the governor's March 10, 2020 declaration of a state of emergency or the
193 outbreak of the 2019 novel coronavirus, also known as COVID-19; and (ii) there are sufficient
194 unencumbered available funds remaining for such payment in the appropriation for the purpose.

195 (2) Before any payment, the service contractor shall present to the approving authorities
196 set forth in subsection (b), a sworn statement reporting grants, discounted loans or other financial
197 support that the service contractor has received from a state, federal or local government as a
198 result of the COVID-19 outbreak or, if the service contractor has not received any such grants,
199 discounted loans or other financial support, affirming that the service contractor has not received,
200 and shall not receive thereafter, any such grants, discounted loans or other financial support. If
201 the service contractor reports it has received grants, discounted loans or other financial support
202 from a state, federal or local government, the payment to the service contractor shall not exceed
203 the amount to which the service contractor was eligible under the service contract less the
204 amount the service contractor received in such grants, discounted loans or other financial support
205 and the sworn statement shall include an attestation that the payment is not in excess of that
206 amount.

207 (b) The payment set forth in subsection (a) shall be approved by the regional school
208 committee and a business manager, assistant superintendent for business or other employee with
209 title of similar import and responsibilities as those of a town accountant.

210 (c) This section shall not apply to tuitions and rates set by the bureau of purchased
211 services within the operational services division pursuant to section 22N of chapter 7 of the
212 General Laws, which are set and are non-negotiable for fiscal year 2020.

213 SECTION 7. This act shall expire 35 days after the termination of the governor's March
214 10, 2020 declaration of a state of emergency and such expiration shall not affect the validity of
215 any vote or action taken by a select board or town meeting pursuant to this act.