

# CommonWealth

POLITICS, IDEAS & CIVIC LIFE IN MASSACHUSETTS



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**Legislature,  
judiciary, and even  
governor say they  
are exempt from  
Public Records Law**

**Nothing low-budget  
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# CommonWealth

**EDITOR** Bruce Mohl  
bmohl@massinc.org | 617.742.6800 ext. 105

**EXECUTIVE EDITOR** Michael Jonas  
mjonas@massinc.org | 617.742.6800 ext. 124

**MANAGING EDITOR** Robert David Sullivan  
rsullivan@massinc.org | 617.742.6800 ext. 121

**STAFF WRITER** Gabrielle Gurley  
ggurley@massinc.org | 617.742.6800 ext. 142

**ART DIRECTOR** Heather Hartshorn

**CONTRIBUTING WRITERS** Mary Carey, Christopher Daly, Dave Denison, Ray Hainer, Richard A. Hogarty, James V. Horrigan, Dan Kennedy, Jeffrey Klineman, Neil Miller, Mark Murphy, Laura Pappano, Robert Preer, Phil Primack, B.J. Roche, Ralph Whitehead Jr., Katharine Whittemore

**WASHINGTON CORRESPONDENT** Shawn Zeller

**PROOFREADER** Jessica Murphy

**EDITORIAL ADVISORS** Mickey Edwards, Ed Fouhy, Alex S. Jones, Mary Jo Meisner, Daniel Okrent, Ellen Ruppel Shell, Alan Wolfe

**PUBLISHER** Gregory Torres  
gtorres@massinc.org | 617.742.6800 ext. 103

**SPONSORSHIP AND ADVERTISING** Rob Zaccardi  
rzaccardi@massinc.org | 617.742.6800 ext. 101

**CIRCULATION** Krisela Millios  
kmillios@massinc.org | 617.742.6800 ext. 145

> Full contents, as well as online exclusives, are available at **[www.massinc.org](http://www.massinc.org)**

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## HISTORICAL COMMISSION ALSO HAS SECRET SIDE

In “Preserving Power” (CW, Summer ’08), you raise questions about the lack of transparency in Secretary of State William Galvin’s awarding of tax credits for historic rehabilitation. There should also be questions about Galvin’s oversight of the Massachusetts Historical Commission, which is legally authorized to protect historic properties and districts listed in the State Register of Historic Places. The MHC has used its own ambiguous regulations to expand its purview beyond the properties formally listed in the State Register to the many more properties merely on the Inventory of Historical and Archaeological Assets of the Commonwealth. The Inventory lacks the transparency and certainty of the State Register, and as a result there are no ready means for developers to conduct full due diligence on Inventory properties in the planning stages of projects. Perhaps more importantly, there are no standards for properties to be listed on the Inventory, which has astonishingly broad coverage.

Based on our experience, the MHC is institutionally invested in preserving its ability to subject as many projects as possible to its review and consultation processes—and in using its leverage during the time-sensitive development process to secure costly or project-threatening concessions, even in the absence of statutory authorization for MHC review. Likewise, the MHC’s interventions and subsequent consultations with stakeholders provide a further platform for project opponents to delay and threaten legitimate projects with no impacts on listed State Register properties.

The MHC’s approach is contrary to law and is bad public policy because

it allows the commission to make its own rules as it goes along, rather than allowing developers to know in advance what is expected of them.

*David Begelfer  
CEO, NAIOP Massachusetts  
Needham*

## RECREATIONAL AREAS ARE CPA-WORTHY

They say a picture is worth a thousand words, and so it is with the photograph of children enthusiastically enjoying Newton’s Pellegrini Park (“Moving the Goal Posts”).

The article correctly states that Community Preservation Act spending for open space assets such as parks, playgrounds, and athletic fields is increasing. This spending, however, continues to be dwarfed by spending for open space, historic preservation and affordable housing. Communities are turning to their CPA funds for the creation and preservation of recreational areas because, in many cases, it is the only funding available for these quality-of-life assets in tough times. In addition, in more urban communities like Newton, there is little or no open space left to preserve.

That’s why the Community Preservation Coalition and other groups support the legislation you cite that would, among many other things, more clearly guide recreational spending of CPA funds. The bill would also make it easier for cities, which are underrepresented among adopting communities, to pass CPA. Senate Bill 137 received a favorable recommendation in the Joint Committee on Community Development and Small Business during the last legislative session and will be considered again when the Legislature reconvenes in January.

The fact that citizens in 133 communities have now voted to increase



their property taxes by up to 3 percent is further testimony that the CPA, while in need of some legislative fine-tuning, will continue to be popular in communities where people want some local say in their common destinies.

*Clarissa Rowe  
Chair, Executive Steering Committee  
Community Preservation Coalition  
Boston*

## WHY POLITICIANS WON'T PRIVATIZE THE MASS. PIKE

An omission in Gabrielle Gurley’s story on how to address the state’s transportation finance problem (“Pump It Up”) is any discussion of leasing the Mass. Pike to private operators. A growing number of states and cities have successfully turned to this option to pay off debt and to support other transportation needs, while gaining more efficiently run toll roads. It is no surprise that the traditional transportation interests aren’t interested in this option, since it will put an end to the political leverage over Turnpike jobs and contracts, and also dampen support for a gas tax hike to finance more transportation jobs and contracts. The long-term-lease option helps only taxpayers and toll payers. I guess that’s why it is not even being discussed by policymakers.

*Steve Adams  
Holden*



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# unbound

*The Daily Edition*

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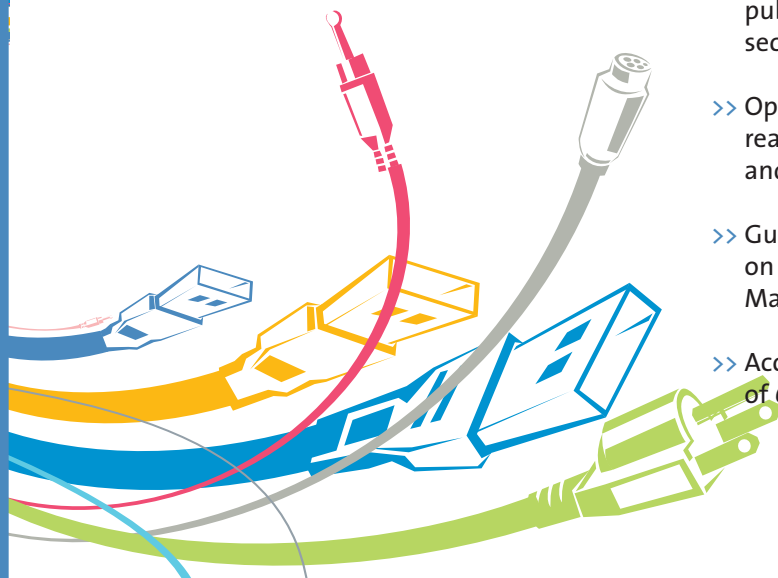
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## Three thoughts

**I FIRST MET** Colman Herman, the author of this issue's cover story on the Massachusetts Public Records Law, years ago when I was a *Boston Globe* reporter. He had asked Attorney General Thomas Reilly to enforce the state's item pricing law. When Reilly did nothing, Herman sought to enforce the law on his own with a lawsuit in small claims court and, later, class action suits that generated millions of dollars in settlements for charities. (None of the money went to Herman.)

Like many who take on government officials, Herman has tried to use the state's Public Records Law to even the playing field. Listening to his stories, I was struck by how ineffective the law often was. Eventually, I asked him to write a piece about the law for *CommonWealth*.

He spent several months sending out public records requests via signature confirmation mail and then waiting to see what came back. The results were disturbing. A number of officials ignored the requests, and very few complied fully with the law. His research also showed how the Legislature, the judiciary, and even the governor view themselves as exempt from the Public Records Law.

Something is out of whack here. It's common sense that a judge's case notes or communications with clerks should be off limits, but why should a court's budgetary information be shielded? The same goes for the Legislature and the governor's office. You should be able to find out how government officials are spending tax dollars no matter what branch of government it is.

On paper, the Public Records Law is a powerful tool, but the reality is it's not working well. It needs a legislative overhaul to give it some teeth.

**SENATE MINORITY LEADER** Richard Tisei, in his article on the ballot question that would repeal the state income tax, says he sympathizes with those who want to vote yes but urges them to vote no. He says Question 1 "would go too far and is even beyond what I can reasonably support."

Tisei instead urges voters to elect more Republicans.

He says a two-party system in Massachusetts would add the checks and balances currently lacking on Beacon Hill, where the House of Representatives has 141 Democrats and 19 Republicans and the Senate has 35 Democrats and five Republicans. The Democrat/Republican split in the House is the most lopsided in the nation.

The problem with Tisei's reasoning is that there aren't many Republicans to vote for in Massachusetts. In his State of the States column, Robert David Sullivan, *CommonWealth's* managing editor, scrutinized election data from every state in the nation and discovered that in the upcoming election cycle Massachusetts has a larger percentage of House seats that are uncontested than any other state in the nation.

According to Sullivan's research, 83 percent of the House races in Massachusetts are uncontested. Most often it's a Democrat facing no Republican opposition, but in 11 instances the Republican faces no Democratic challenger. Only 17 percent of the races, for 27 of the 160 seats, feature a Republican running against a Democrat.

**BILL COSBY**—Bay State resident and proud UMass graduate—has been causing a stir.

It started with a speech castigating lower-income blacks for not seizing on the opportunities created by the civil rights movement, and it's continued as he has barnstormed the country with a powerful message to black audiences: They must take charge of their children, their families, and their communities. Cosby and Harvard professor Alvin Poussaint zero in on these issues and more in their Conversation with executive editor Michael Jonas.

They decry the scandalous dropout rate among black high school students and say many in the black community have forgotten that education is the key to escaping poverty and, often, escaping jail. *CommonWealth* has provided in-depth coverage of education issues, most recently with our special issue on the subject earlier this year. Cosby and Poussaint offer vivid testimony that education reform and school improvements can only do so much.

*Bruce Mohl*

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# inquiries

## E-mails reveal no love for A.G.

The attorney general's office and the governor's insurance commissioner often disagree, but a public records request earlier this year showed that the squabbling gets nasty at times.

Glenn Kaplan, the head of Coakley's Insurance and Financial Services Division, sent a letter of protest to Insurance Commissioner Nonnie Burnes, arguing that she was giving preferential treatment to Progressive Insurance, the nation's third-largest insurer and a new entrant to the Massachusetts market. Burnes fired back that Coakley's office had it all wrong. The dispute might have ended there, but Coakley's aides raised their concerns with Gov. Deval Patrick's office. A flurry of e-mails followed.

Joseph Murphy, the first deputy insurance commissioner, suggested that he took a bullet for his colleagues by meeting with members of the attorney general's staff. "Yes, we spared you the pain," he said in an e-mail. Daniel Crane, the undersecretary of Consumer Affairs and Business Regulation, commiserated with Burnes about the attorney general's end-around, saying "it appears we have embarked on a new era of 'communication' until the next ambush." In another message, Crane complained to Burnes and Dan O'Connell, the secretary of housing and economic development, that first assistant attorney general David Friedman "and his gang at the AG's office" is "trying to drive a wedge between Nonnie and the governor's staff." He even called the timing of another Friedman communication "SNEAKY!!!"

Spokeswomen for the two offices declined comment.

► GABRIELLE GURLEY

## Galvin gets cagier about rehabilitation tax credits

► BY BRUCE MOHL

**SECRETARY OF STATE** William Galvin's sphinx-like administration of a \$50 million-a-year tax credit program is causing confusion among developers and anger among some lawmakers.

Galvin handed out nearly \$16.4 million in historic rehabilitation tax credits in early August. The big winners were the Boston Red Sox, which received \$1.5 million in tax credits for the renovation of Fenway Park and adjacent buildings, and mill projects in Chicopee and Lawrence, which each received \$1 million.

What was unusual about Galvin's "Round 13" awards was the high number of rejections. Galvin, who had previously denied only eight tax credit applications by letter since the program was approved in 2003, turned down 19 in this latest round. Most were rejected because additional information was needed, but three were turned down because Galvin said the projects were complete and no longer qualified for tax credits.

Two of the completed projects were Boott Cotton Mills and Hamilton Manufacturing Co., both in Lowell and both built by Winn Development of Boston. Winn executives have been big contributors to Galvin's political campaign committee, and their company has been the biggest recipient of historic rehabilitation tax credits overall. The third project that Galvin rejected

as being complete was Washington Mills in Lawrence, developed by the nonprofit Architectural Heritage Foundation of Boston.

"We're puzzled by this rejection letter, as are other developers," said Sean McDonnell, president of Architectural Heritage Founda-

tion. He said his lawyers are reviewing the historic rehabilitation tax credit law, but he believes it is silent on the question of whether a completed project can continue to apply for and receive tax credits.

The goal of the tax credit law is to spur economic development by promoting the rehabilitation of historic mills, theaters, and other buildings. Projects that qualify can apply for tax credits of up to 20 percent of rehabilitation expenses. Since the state program is capped at \$50 million, developers must compete for a limited amount of tax credits with no guarantee about how many they will receive.

The program's structure gives Galvin tremendous political leverage. (See "Preserving Power," CW, Summer '08.) Many developers complain the award process is a black box, since Galvin doesn't publicly disclose the list of tax credit recipients or reveal the basis for his awards. *CommonWealth* had to file a public records request to obtain Round 13 data as well as information on

## COMPLETED PROJECTS GOT REJECTIONS.

past rounds.

Galvin's decision not to award tax credits to completed projects appears to be a change in policy. McDonnell, for example, said his Washington Mills project was put into service prior to Round 12, yet Galvin awarded the firm \$500,000 during that round.

Several other projects appear to have received tax credits after being placed in service. The Boston Red Sox have received a total of \$15.1 million in tax credits, even though Fenway Park has been continuously open for business. Developer Richard Friedman received \$1 million in tax credits on October 16 last year even though his project, the Liberty Hotel in Boston, opened for business in early September.

Developers, many of whom agreed to talk only if they would not be named, say Galvin doles out the tax credits to a large number of projects in relatively small amounts, so it's not fair for them to be penalized if their projects come on line before they hit the 20 percent threshold. Some developers say they may have to slow down or delay completion of their projects in the future to avoid losing access to the tax credits.

Galvin's spokesman, Brian McNiff, says the policy on completed projects is not new. He said the Fenway Park and Liberty Hotel rehabilitation projects were not certified as completed when they received their awards. "These projects were not considered in service under the regulations," he says. Asked how the Liberty Hotel could open for business in September and receive \$1 million in tax credits a month later, McNiff said the hotel wasn't issued its completion certificate until November.

Department of Revenue spokesman Robert Bliss says his agency was contacted by Brona Simon, executive director of the Massachusetts Historical Commission and a top Galvin aide, and asked whether the law requires her agency to deny historic rehab tax credits to completed projects. Bliss said the Revenue Department felt Simon's interpretation of the law was reasonable, but stressed that any decision was made by Galvin's office.

"We don't write the rules for the administration of this, and we don't tell the secretary how to administer the program or make decisions on who gets funded," he says.

Controversy over Galvin's handling of the tax credit program is spurring action on Beacon Hill. Some municipal economic development officials and private developers want to see the annual cap on tax credits raised from \$50 million to \$100 million, or eliminated entirely. Others are pushing for other modifications.

Rep. David Torrisi of North Andover, frustrated in his own efforts to gather information on Galvin's tax credit awards, said he intends to file legislation that would move

control of the program out of Galvin's office to an economic development office overseen by the Patrick administration.

"I view the program as an economic development tool rather than a historical preservation tool," he says.

## Lawrence's mill makeover gets a second start

► BY MELISSA DAPONTE KATZ

**MONARCH ON THE** Merrimack, a mill makeover once viewed as a potential linchpin to the revival of Lawrence, is trying to get back on track. The massive redevelopment project, the focus of a *CommonWealth* cover story (see "Thinking Big," *CW*, Summer '07), lost its way last year, the victim of a downturn in the real estate and lending markets and, according to developer Bob Ansin, unfounded



Developer Bob Ansin is trying again.



reports of asbestos in the former mill.

The project, retooled for the times, is now trying to rise from the dead. Originally slated to include 600 “eco-luxury” condominiums in a mixed-use development boasting a private park, cyber-café, and geothermal heating system, today it’s being reworked into a rental project of about 200 units, with monthly rents that will range from \$1,100 for a studio apartment to \$2,500 for a three-bedroom penthouse. The environmentally friendly aspects of

### THE FIRST FIVE YEARS ARE FOR RENTALS.

the project remain intact, along with the retail and entertainment components, but the on-site park has been scrapped. In addition, a portion of the property has

been sold to another developer for use as commercial and office space.

Five years ago, Ansin purchased the former Wood Mill, a 1.3-million-square-foot structure where the famous Bread & Roses strike took place in 1912, for \$4.4 million, and plans for Monarch on the Merrimack began to take shape. In its original form, the project seemed to offer something for everyone: a market-rate, mixed-use, eco-friendly development that would bring hundreds of stakeholders to a city where affordable rental units are the norm. In addition to greatly expanding the municipal tax base by renovating an oversized mill in a prime location, the project was expected to spur the growth of nearby businesses. These, it was believed, would spawn new employment opportunities for local residents.

Construction was well underway last year, and about 60 buyers had made deposits on condos that ranged in price from \$190,000 for a 900-square-foot studio to more than \$500,000 for 2,300 square feet of space in a three-bedroom penthouse. Owner-occupancy of the units was the goal. Buyers needed to sign affidavits promising that only they or immediate family members would occupy their space; the condos could not be rented or sold to investors.

“When we came to Lawrence, we really wanted to uplift the low level of home ownership in the city, which has one of the lowest in the state,” says Ansin. “And I still think home ownership is one of the most effective tools to help a community such as Lawrence to rebound. The reason is hope.”

But when financing fell through, Ansin, who had already invested \$25 million of his own money in the project, says he felt he was out of options because condo projects had lost favor with investors. The stranded buyers were refunded their deposits.

Construction is now scheduled to resume in November, financed through loans as well as state and federal historic redevelopment tax credits. Ansin received \$1 million



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worth of state credits in August, but the credits require him to rent out the units for at least five years. After that he'll be free to convert them to condos, which he says he's open to doing if the market picks up and buyer interest is there.

Ansin also received \$5.8 million for the sale of about 370,000 square feet of the property to developer Sal Lupoli, who owns the Riverwalk, an adjacent development with a mix of more than 200 commercial and office tenants. Ansin says Lupoli has also pledged to purchase an additional 400,000 square feet of the property by early 2009. He says the deal benefits both parties because it was costing him money to carry the unused space, and Lupoli was ready to expand. Ansin will continue to focus on the residential piece—along with about 80,000 square feet of nonresidential space—while Lupoli continues with his current emphasis on commercial and office space.

For his part, Lupoli says the Riverwalk will benefit from being located next to a building that is fully, rather than partially, occupied, and he states that he is now actively showing the space. "What we want is for the building to be leased out as soon as possible," he says.

Dave Abdoo, a Lawrence city councilor who chaired the planning board when Ansin's original project was approved, is one of many offering rounds of praise for the developer's

willingness to bring the project to fruition one way or another, and he cautions against making comparisons to what might have been. In his view, the benefits of the revised plan should be measured against the benefits garnered from the property as it is today. "We'll realize far more tax dollars with rentals than we would have if the place remained what it is now, which is essentially cold storage," he says.

Abdoo also expects that the incoming tenants, whom he envisions as mostly empty-nesters and young professionals looking for a reasonable commute, won't tap much into city services like schools. And since the building's rents will be on the upper end of housing costs in Lawrence, he believes the newcomers will have money to spend on local restaurants and other amenities—a major promise of the original plan. What's more, the project, located directly across from an MBTA station, will fill a vital need in the state, according to Dave Tibbetts, a former director of the state office of economic development and a co-founder of the Merrimack Valley Economic Development Council. That would be the creation of residential units for young professionals, which Tibbetts sees as a kind of workforce housing for commuters.

Still, Abdoo recalls that when he served on the planning

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board, he frequently sat before developers who wished to create rental developments in Lawrence. "I'd ask them, 'Why not homeownership?'" he says. "The problem is that there aren't state incentives to create homeownership [projects], and that's an area where this city needs to make gains. Lawrence is 75 percent rentals, and that's not where we want to be as a community."

## Mentor program brings college option to low-income youths

► BY BETH RILEY

**YAN ZHENG** IS the type of student who typically falls through the cracks in the state's education system. She's a hard worker and a bright student, but she never thought much about going to college. Growing up in Roxbury, safety was often a greater concern for her. "I would turn on the

television and see that gunshots had just been fired a few blocks from my house, and I would wonder if next time it was going to be in *front* of my house," says Zheng.

Yet today the 19-year-old Zheng is an education success story. A student at Northeastern University, she credits her success to a San Francisco-based nonprofit organization called Summer Search, which uses professional mentors and character-challenging summer trips to remote areas to encourage low-income youths to graduate high school, go on to college, and volunteer in their own communities.

Summer Search, which has an office in Boston, is one of a handful of small nonprofits nationwide that have helped students from low-income neighborhoods find educational success. In 2007, Summer Search was working with 231 students from Boston public schools. Summer Search officials say program participants have a 100 percent graduation rate from high school, and 96 percent go on to college.

What's crucial to the program's success is its professional mentors, who typically work with about 35 students at a time. Program officials say the mentors take a strong oversight role in the life of each student, holding them accountable for all aspects of their lives. The students are required to check in with a mentor at least once a week throughout the entire two years in the program; conversations can range

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from school work questions to family issues.

To participate in Summer Search, a student doesn't have to be a straight-A student or class president of their high school. Summer Search officials say they are seeking well-rounded individuals who rate high on the three elements of the organization's so-called RAP program, which stands for resiliency, altruism, and performance.

"Each student must be able to be resilient or bounce back from challenges in their lives; show altruism, whether it is giving back through babysitting a younger sibling or community service; and have some sort of level of success in performance anywhere—academically, athletically, or as an important impact in their home life. It is not directly associated with just academics," says Rachel Scott, a program assistant and mentor at Summer Search in Boston.

Scott says one way Summer Search finds candidates for its program is to ask, "What is it like to be in your shoes?"

Antonio Gutierrez of Boston's South End says it was not an easy question to answer. "I had always been sort of a troublemaker in school, definitely not the best student, but Summer Search really helped me grow stronger as a man and as a leader," says Guterrez, who is currently attending Union College in Schenectady, New York.

Summer Search students also take two summer overnight trips with other students from around the country who are not affiliated with the Summer Search program.

These trips are designed to test their ability to operate in unfamiliar settings with people they don't know.

Christian Tschibelu, who graduated from English High

School in Jamaica Plain and is currently a student at the Boston Architectural College, said a Summer Search hiking trip out of Asheville, North Carolina, forced him out of his comfort zone and changed him as a person.

"My comfort level was my biggest change, and I can now enter new areas or settings and manage to be comfortable within that new space," he says.

The impact of Summer Search is not only changing the individual lives of participants but also the neighborhoods in which they grew up. Community service is not a requirement of the program, says Debbie Krause, the executive director of Summer Search's Boston office, but most participants give back in some way to their home communities.

Summer Search receives the bulk of its funds from private donors. Local firms currently supporting Summer Search include the First Marblehead Foundation for Education; Loomis, Sayles & Company; and the Baupost Group, a Boston-based hedge fund. Officials say it costs about \$13,000 to run a student through its two-year program. **CW**

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# STATISTICALLY SIGNIFICANT

BY ROBERT DAVID SULLIVAN

## COMMUTER TRAINS TO NOWHERE

Increased commuter-rail service is a key component of “smart growth,” but not all train stops allow for car-free living. Some are simply too far from supermarkets, hardware stores, fitness clubs, and the like. According to the website WalkScore, which gives locations “walkability” scores ranging from 0 to 100 based on their distance from services and amenities, a home next to the Waltham stop on the MBTA’s Fitchburg line would put you in a “walkers’ paradise.” By contrast, a place adjacent to the Halifax stop on the Plymouth line would strand you in a carless person’s nightmare, with “virtually no neighborhood destinations within walking range.”

Besides Waltham, the commuter-rail stops of Norwood Central, Roslindale Village, Providence, Salem, and Stoughton had scores above 90. Halifax, nearly two miles from the nearest grocery, got a flat 0, and single-digit scores went to Hastings, Littleton/Route 495, Rowley, Silver Hill, and Westborough. (Mass transit stops themselves are not factored into the calculations.)

Most subway-stop locations are at least considered “very walkable,” but the lowest score went to the Orange Line’s Oak Grove, which scored a 46, or “car-dependent.”



## FRAMINGHAM: THE NEW HUB OF THE BAY STATE?

Next year marks the 60th anniversary of Route 495, the superhighway that has changed everyone’s mental map of Massachusetts and redefined the meaning of “Greater Boston.” (At least, it will be the 60th anniversary of the oldest piece, from Middleborough to Taunton.) The block letter “C” formed by Routes 128 and 495 is now a distinct economic and political region that has steadily grown in population over the years.

The population of the cities and towns between Routes 128 and 495 was 760,000—or 16 percent of the state’s total—in 1950. (For a municipality bisected by one of the two highways, its region is decided by where the town center lies.) The most recent Census figures put the tally at 1.8 million, or 28 percent of the state’s population. Over the same period, several communities that lie between the two highways have become major population centers. Framingham has doubled its size and risen from the state’s 33rd most populous community to the 14th, Plymouth has quadrupled and gone from 66th to 21st, and Billerica has more than tripled its population and upgraded from 78th to 30th.

Meanwhile, the number of people living within Route 128 fell slightly—from just over 2 million to just under 1.9 million—and that region’s share of total population dropped from 44 percent to 30 percent. As for Bay Staters living beyond 128, they have increased from 1.9 million to 2.8 million, or from 40 percent to 43 percent of the Commonwealth’s total population.

### **WAIT UNTIL YOUR MOTHER LEAVES HOME**

There are almost as many women as men trying to get through the morning rush hour, but men generally spend more time at it. Newly released Census data, based on surveys taken last year, showed that 58 percent of Bay State commuters who customarily left the house between 6 and 7:30 a.m. were men, but 57 percent who left between 7:30 and 9 a.m. were women. (The total number of commuters for each time period was just over a million.)

In what is essentially another verse of the same song, the Census Bureau also reported that 55 percent of Massachusetts workers with commutes of less than 10 minutes were women, but 59 percent of those who took at least an hour to get to work were men.



### **CIGARETTES LEAVE GAS TAX IN THE DUST**

This year's sharp increase in the cigarette tax (from \$1 to \$2.51 per pack), combined with Beacon Hill's refusal to entertain a gasoline tax increase, means that the state is now getting more revenue from smokers than from drivers. During the first two months of fiscal year 2009 (July and August), revenue from the gasoline tax dropped by 4.4 percent, to just under \$100 million. Not coincidentally, the US Department of Transportation estimated that traffic on Bay State roads was down by about 4 percent in June (the latest month for which figures are available). Driving less to cut down on fuel costs, it seems, may be good for the air, but it isn't doing the state government any favors.

Fortunately, Massachusetts has more than made up for the shortfall by squeezing cigarette smokers. Thanks to the tax hike, the state's cigarette revenue jumped by 39 percent in the first two months of the fiscal year, going from \$81 million to \$113 million. At the same time, cigarettes zoomed past gasoline pumps to become the fifth-largest source of revenue for the state (behind the income tax, regular sales tax, corporate tax, and meals tax).

During the same two months in 1998, the gasoline tax provided almost three times as much revenue as the cigarette tax—\$99 million vs. \$38 million.

### **THE INTERNAL-COMBUSTION CENSUS**

The town of Chilmark has the most road-ready population in the state, according to new data from the Department of Revenue. There are 1,760 registered cars and light trucks for 963 residents, or 1.8 vehicles for every man, woman, and child. Chilmark is closely followed by Edgartown (also on Martha's Vineyard) and the western town of Plainfield. Among cities, only Newburyport and Woburn have more passenger vehicles than people. At the other extreme, Chelsea has only 0.49 vehicles per person, followed by Amherst and Cambridge.

Island communities may have more cars simply because it's harder to get rid of them. Aquinnah, another town on Martha's Vineyard, ranks first in the average age of its registered vehicles: 14.4 years, well above the state average of 10.1 years. It's followed by one of the more affluent communities in the state (the island of Nantucket) and one of the poorest (Lawrence). The newest fleet is in Sharon, with an average age of 8.0 years, followed by Needham and Southborough.

And light sleepers take note: With 225 two-wheelers for each of its four square miles, Somerville is by far the most motorcycle-saturated community in the state.



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# Free riders

BY ROBERT DAVID SULLIVAN

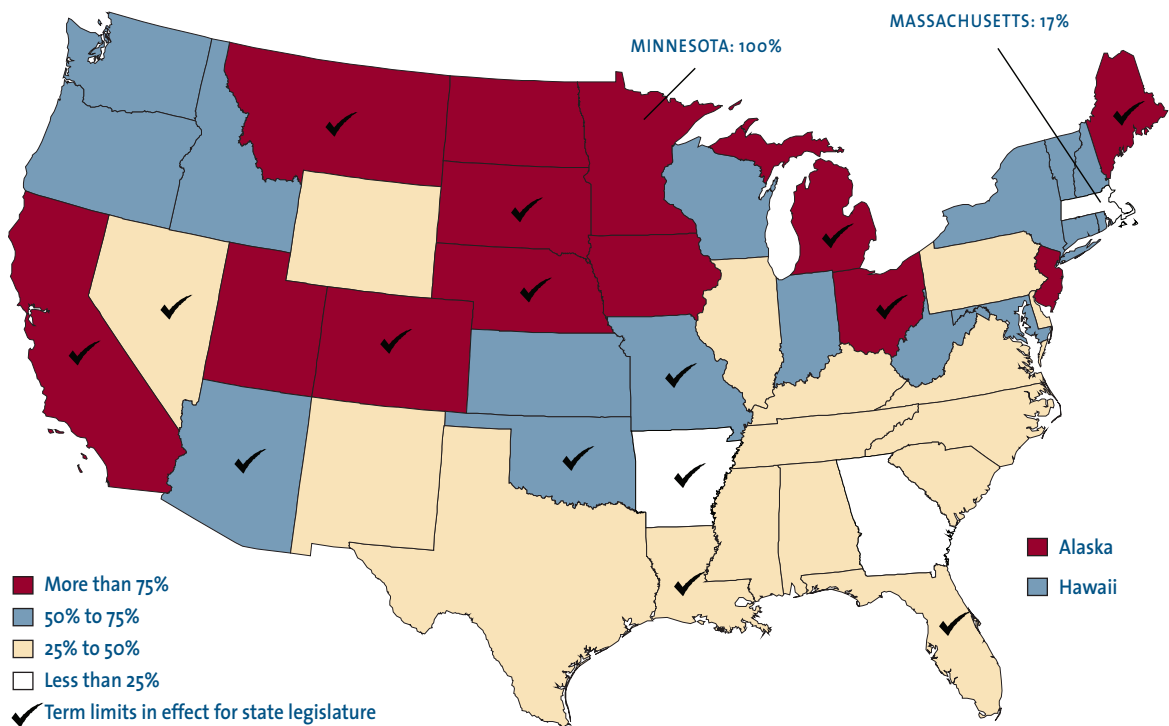
**MASSACHUSETTS, ONCE KNOWN** for its raucous politics, now ranks last in the nation in the percentage of voters with a choice as to who represents them in the State House. There are both Democratic and Republican candidates in only 27 of 160 state representative districts this year. (With contests in five of 40 Senate seats, we also have the lowest contested rate among the 15 states where the entire upper chamber is up for election.) The 17 percent contested rate in the House is not only below the 21 percent in runner-up Georgia, it's down from the 26 percent that the Bay State logged two years ago—and far below the 51 percent in 2004, when then-Gov. Mitt Romney made an unsuccessful attempt to increase the number of Republicans in the Legislature.

What determines whether a state has contested elections? As the map below shows, term limits don't seem to be a deciding factor, since they haven't brought about contested races in Arkansas and haven't been necessary for a 100 percent contested rate in Minnesota. States in which

one party controls the House by only a handful of votes (such as Michigan and Montana) generally have more spirited elections, but Pennsylvania has a mostly empty ballot even though its House is now split 102-101 in favor of the Democrats, and Utah has a nearly full slate despite the GOP's 55-20 advantage there. (With a 7-to-1 advantage for the Democrats, the Massachusetts House is the most lopsided in the nation.)

Voter interest in one election may attract more candidates in the next: Minnesota and South Dakota were the only states in which more than 60 percent of the eligible population voted in 2006, and they have the highest contested rates for 2008. Arkansas and Georgia, meanwhile, had comparatively poor turnouts in 2006 and have few candidates this year. Unfortunately, Massachusetts is a glaring exception to this rule, as its high turnout in 2006 (55 percent vs. the national average of 48 percent) evidently didn't encourage that many people to run for office this time around. **CW**

## LOWER-HOUSE SEATS CONTESTED BY BOTH MAJOR PARTIES, 2008\*



\* For states without legislative races in 2008, data are from the last election year (2007 for Louisiana, Mississippi, New Jersey, and Virginia; 2006 for Alabama and Maryland). For Nebraska, "contested" seats refer to races in its unicameral legislature with more than one candidate.

Sources: Secretary of state's offices (or equivalent) in each state; National Conference of State Legislatures





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# Tax poll

BY ROBERT DAVID SULLIVAN

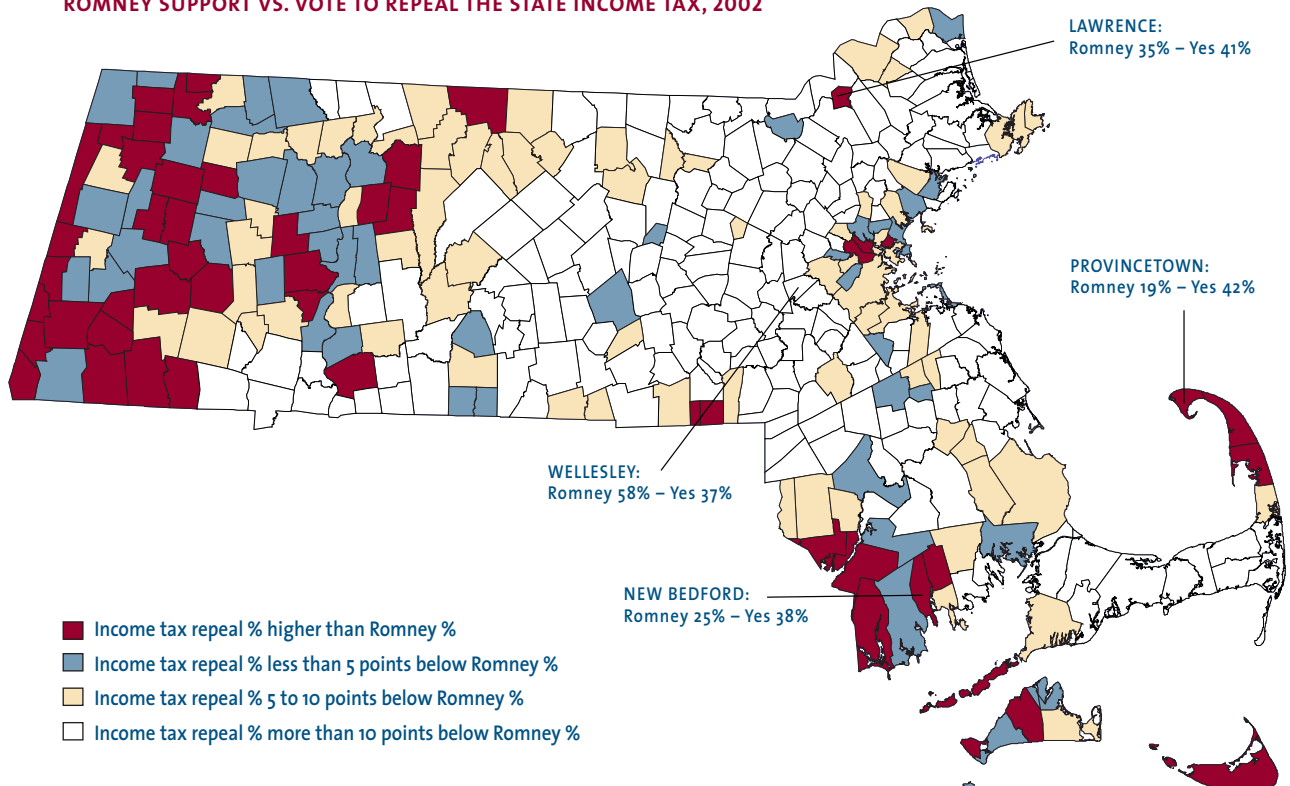
**A PROPOSAL TO** eliminate the state's income tax is back on the ballot this year (see "Voices on Question 1," Page 95), after losing 40 percent to 48 percent, with 12 percent of voters blanking on the question, six years ago. That vote coincided with a gubernatorial election in which Republican Mitt Romney did not endorse the measure but ran a "tough on taxes" campaign against Democrat Shannon O'Brien. Statewide, Romney ran 9 points ahead of the Libertarian Party's bid to end the income tax, but in many affluent suburbs such as Hingham and Wellesley, the anti-tax measure ran more than 20 points behind the winning anti-tax candidate. If the Libertarians are to prevail this year, they need a lot more votes in Republican-leaning towns.

Yet they don't necessarily have to win the votes of everyone supporting Republican John McCain for president. In 2002, the anti-tax measure was *more* popular than Romney in 51 communities, shown in darkest red on the map below, suggesting that there may be a bloc of ticket-splitters ready to vote yes on Question 1 even as they say no to the

Republican Party. Relative to the GOP vote, the anti-tax vote was strongest in two categories: low-income cities, such as Chelsea, Lawrence, and New Bedford; and parts of the state that are the greatest distance from Beacon Hill, including the Berkshires and the islands of Martha's Vineyard and Nantucket.

The fate of Question 1 could also hinge on the distinction between people who vote no and people who don't vote at all. The last time the issue was on the ballot, the liberal bastion of Cambridge cast 24,551 votes for Democrat O'Brien and Green Party candidate Jill Stein, but only 21,049 people voted no (to retain the income tax), with 7,801 voting yes and 3,595 blanks making up the difference. If the "no" votes run significantly behind the tally for Democratic presidential nominee Barack Obama statewide this November, the Libertarians may pull off an upset. A victory would probably be largely symbolic, however, since the Legislature is not likely to get rid of the state's principal source of revenue. **CW**

## ROMNEY SUPPORT VS. VOTE TO REPEAL THE STATE INCOME TAX, 2002



Source: Elections Division, Massachusetts Secretary of State's Office ([www.sec.state.ma.us](http://www.sec.state.ma.us))

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## WASHINGTON NOTEBOOK



## The Bay State goes to K Street

Massachusetts companies, hospitals, and universities are spending big in Washington **BY SHAWN ZELLER**

**LOBBYING IS A** \$3 billion-a-year business in the nation's capital, and Massachusetts-based corporations and nonprofits are active participants. A *CommonWealth* review of lobbying records filed with the House and Senate indicates that 35 Massachusetts companies, universities, and hospitals spent at least \$250,000 each on Washington advocacy in 2007, for a total of more than \$37 million (see sidebar on next page).

The Massachusetts share of the national lobbying pie is 1.2 percent, but that number is somewhat misleading since much of the \$3 billion total is concentrated among trade and interest groups based in Washington. Of the 30 biggest spenders on Washington lobbying, 14 were trade and interest groups; together they accounted for 54 percent of the \$408 million spent by the top 30 on lobbying in 2007. The U.S. Chamber of Commerce and its legal reform division spent nearly \$53 million on lobbying.

Jeffrey Berry, a professor of political science at Tufts University, says Bay State companies invest heavily in Washington lobbying, and for good reason.

"It's entirely rational," he says. "For these companies, especially, it can be well worth their while, and more profitable, to go to Washington to fix a regulation or to get earmarked funding than to create a new product line."

For a defense contractor like Raytheon—No. 1 on *CommonWealth's* list, at \$6.2 million—lobbying can translate into multibillion-dollar contracts with the Defense Department. Pharmaceutical companies and medical device makers, such as Genzyme and Biogen Idec (No. 2 and No. 11, respectively, on *CommonWealth's* list), rely on government approval in order to sell their products, making lobbying essential to their bottom lines. Universities

and hospitals can benefit enormously if Congress directs earmarked funding toward research at their institutions. And Ocean Spray, No. 25 on the list, benefits if the government provides support for its specialty crop, cranberries.

Berry says company lobbyists aren't just "playing offense" in Washington. He says firms also spend significant time and money fighting proposals by opponents, such as labor unions or environmental groups, that can hurt their bottom lines.

Holcim (US) of Waltham, one of the largest suppliers of cement in the United States, reported spending \$530,000 last year in Washington, some of it lobbying on climate change legislation that has the industrial sector worried. The Senate bill, by Republican John Warner of Virginia and independent Joseph Lieberman of Connecticut, would set up a cap-and-trade system, limiting the amount of greenhouse gases industrial facilities can emit but allowing them to sell those pollution rights to other companies for a fee. Senate Republicans blocked an effort to bring the bill up for a vote in June. Holcim indicated on its lobbying disclosure report that it was concerned about provisions dealing with the allocation of emissions credits, compliance obligations, cost containment, and international efforts to combat global warming.

**THE 35 ORGANIZATIONS** on *CommonWealth's* list represent a broad swath of Massachusetts industry. Ten are in the health/science sector: Genzyme, Boston Scientific, Biogen Idec, EMD Serono, Millennium Pharmaceuticals, Sepracor, Partners HealthCare, UMass Memorial Health Care, Momenta Pharmaceuticals, and the Coalition of Boston Teaching Hospitals. Another seven are in finance: Massachusetts Mutual, Liberty Mutual,

## WASHINGTON NOTEBOOK

Fidelity, John Hancock, State Street, Bain Capital, and Beacon Capital. And five are in education: Boston University, Harvard, MIT, Northeastern, and the University of Massachusetts at Dartmouth.

Filling out the list are high-tech and electronics makers (Lilliputian, EMC, Bose, Parametric Technology), government contractors (Raytheon, American Science & Engineering), a utility (National Grid), an engineering firm (Camp, Dresser & McKee), a cement supplier (Holcim), a cranberry grower (Ocean Spray), a clothing store chain (TJX), a gun maker (Smith & Wesson), and even an American Indian tribe (the Mashpee Wampanoags).

The biggest spenders were companies that do business

directly with the government or are in highly regulated industries. They were not necessarily the largest companies in the state or the most profitable. Indeed, of the top 50 Bay State companies as ranked by revenue, only nine of them spent more than \$250,000 on lobbying in the capital.

Yet some companies with big revenues also topped the

## Raytheon spent \$6.2 million on lobbying efforts last year.

lobbying chart. Raytheon, the maker of missile systems and other defense-related products for the Pentagon, is No. 1 on both lists. Its D.C. lobbying office, headed by former Senate Armed Services Committee aide John Barnes,

focuses mostly on government appropriations bills. The Waltham company has also hired 26 lobbying firms to assist its lobbying efforts. Among Raytheon's outside advocates in 2007 were people well versed in government spending bills, such as former House Appropriations Committee Chairman Bob Livingston of Louisiana and James English, a former staff director of the Senate Appropriations Committee.

Barnes did not respond to requests for comment. But the firm's \$6.2 million in 2007 lobbying spending isn't out of line with other big defense contractors. Northrop Grumman of Los Angeles, for example, spent nearly \$11 million on lobbying, and Lockheed Martin of Bethesda, Maryland, spent \$9.8 million.

The reticence of Barnes to speak about his company's work isn't unusual either. Lobbying has never been a subject that corporations have been eager to discuss, but it's an especially touchy subject now given that influence-peddling scandals have led to the indictment of four members of Congress over the last few years—including the longest-serving Republican senator in US history, Ted Stevens of Alaska.

In each of the cases, the officials were charged with taking gifts from a lobbyist and either not reporting them on required financial disclosure forms or providing official acts in return for them. Two of those charged have been convicted and are already serving jail time: former Republican Reps. Randy "Duke" Cunningham of California and Bob Ney of Ohio. The other is Democratic Rep. William Jefferson of Louisiana,

### TOP LOBBYING COMPANIES FROM MASSACHUSETTS, 2007

COMPANY	HEADQUARTERS	LOBBYING EXPENDITURES
1. Raytheon Co.	Waltham	\$6,152,139
2. Genzyme Corp.	Cambridge	\$2,720,000
3. Massachusetts Mutual Life Insurance Co.	Springfield	\$2,700,000
4. Liberty Mutual Holding Co.	Boston	\$1,980,000
5. Boston Scientific Corp.	Natick	\$1,960,000
6. Fidelity Management and Research LLC	Boston	\$1,820,000
7. EMD Serono	Rockland	\$1,780,000
8. National Grid USA	Westborough	\$1,689,213
9. EMC Corp.	Hopkinton	\$1,400,000
10. Millennium Pharmaceuticals	Cambridge	\$1,280,000
11. Biogen Idec	Cambridge	\$1,240,000
12. Sepracor	Marlborough	\$1,214,336
13. John Hancock Financial Services	Boston	\$1,010,000
14. Boston University	Boston	\$960,000
15. Harvard University	Cambridge	\$730,000
16. Bain Capital Partners LLC	Boston	\$720,000
17. Parametric Technology Corp.	Needham	\$630,000
18. State Street Corp.	Boston	\$620,340
19. American Science and Engineering	Billerica	\$616,000
20. Partners HealthCare System	Boston	\$600,000
21. Northeastern University	Boston	\$560,000
21. UMass Memorial Health Care	Worcester	\$560,000
23. Holcim (US)	Waltham	\$530,000
24. Bose Corp.	Framingham	\$365,000
25. Ocean Spray Cranberries	Lakeville	\$360,000
26. Coalition of Boston Teaching Hospitals	Boston	\$340,000
27. Camp Dresser & McKee	Cambridge	\$325,000
28. Smith & Wesson Holding Corp.	Springfield	\$320,000
29. Momenta Pharmaceuticals	Cambridge	\$310,000
30. The TJX Cos.	Framingham	\$300,000
Beacon Capital Partners	Boston	\$300,000
32. Lilliputian Systems	Wilmington	\$280,000
University of Massachusetts	Dartmouth	\$280,000
34. Massachusetts Institute of Technology	Cambridge	\$271,456
35. Mashpee Wampanoag Indian Tribal Council	Mashpee	\$250,000
Total		\$37,173,484

NOTE: TO CREATE THIS LIST, COMMONWEALTH REVIEWED DATA FOR ALL COMPANIES AND NONPROFIT ORGANIZATIONS THAT SPENT MORE THAN \$250,000 LOBBYING LAST YEAR, AS REPORTED BY CONGRESSIONAL QUARTERLY.



## WASHINGTON NOTEBOOK

whom the Justice Department accuses of stowing \$90,000 in bribe money in a freezer.

There is no indication any Massachusetts companies were involved in these cases.

Major companies on *CommonWealth's* list, such as State Street, Boston Scientific, and EMC, either declined to comment on their lobbying activities in Washington or did not respond to requests for comment. One company that did comment, Massachusetts Mutual Life Insurance, e-mailed a statement on its advocacy activities. "We fully disclose the issues we lobby, as well as the candidates we contribute to, in reports that we file periodically that are matters of public record," said spokesman Mark Cybulski.

What's required in the reports isn't very informative. Companies are asked to spell out "specific lobbying issues" but usually only list bills or provide generic descriptions. Rarely do they explain precisely what they lobbied for, or against.

Massachusetts Mutual, for example, reported hiring three outside firms to represent it in Washington—including former Capitol Hill staffers such as Lendell Porterfield, a one-time aide to the top Republican on the Senate Banking Committee, Richard Shelby of Alabama. The firm's disclosures said that it lobbied on data privacy legislation, a variety of bills affecting retirement investments, and estate tax repeal. The disclosures don't reveal precisely what Massachusetts Mutual wanted Congress to do.

The reluctance of companies to speak about their lobbying is no surprise, says Berry, considering the "horrendous image" lobbying has in the public mind. "The average person associates it with unfair practices, if not outright dishonesty. It's just wise public relations not to put it front and center."

Those companies that consented to interviews said that lobbying was essential because of the nature of their industries.

"Our business is increasingly affected by decisions in Washington," says Paul Mattera, senior vice president and chief public affairs officer for Boston-based Liberty Mutual, which came in fourth on *CommonWealth's* list. Mattera says that the firm lobbied Congress hard—and successfully—to reauthorize a post-9/11 law that provides a government-funded backstop to companies offering insurance against terrorist acts. The law makes it possible for insurance companies to offer terrorism insurance at commercially reasonable rates, Mattera says.

Among the outside advocates whom Liberty Mutual hired to help with the campaign: former GOP Rep. Bill Paxon of New York. Former GOP Rep. Bill Archer of Texas, once the chairman of the powerful House Ways and Means Committee, also aided Liberty Mutual's lobbying


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efforts on tax issues related to insurance and workers compensation.

Mattera says that Liberty Mutual has also become a leading advocate of free trade agreements with foreign countries. The agreements are not specifically targeted at the insurance sector, but they can help a company like Liberty Mutual by allowing it to expand its overseas insurance offerings.

Financial services companies like Fidelity Management and Research, No. 6 on *CommonWealth's* list, echo Mattera in explaining their advocacy efforts in Washington. "The financial services industry operates within a complex legal and regulatory environment," says Fidelity spokesman Vin Loporchio. Most of the Boston-based company's products, from 401(k)s to 529 college savings plans and IRAs, are regulated by the government, he says, "so it's very, very important for us to communicate with lawmakers."

Among those doing the communicating for Fidelity was John Green, who had been an aide to Republican Sen. Trent Lott of Mississippi when Lott was Senate majority leader. Green took a leave of absence from his lobbying work earlier this year to become GOP presidential nomi-

nee John McCain's liaison to House and Senate Republicans. In 2007, he helped Fidelity voice its concerns about a bill that would require Fidelity and other mutual fund providers to disclose more about their 401(k) retirement plan fees. The House Committee on Education and Labor approved the bill, by California Democratic Rep. George Miller, in April, but its chances of becoming law in 2008 are small.

Other highly regulated firms, such as those in Massa-

## Genzyme lobbied for a major overhaul of the Food and Drug Administration.

chusetts's burgeoning medical device and pharmaceutical sector, are big lobbying spenders. Genzyme spokesman Bo Piela says his Cambridge-based firm lobbies heavily because of its need to interact with the Food and Drug Administration, the executive branch agency that approves its products.

Among the bills the company lobbied on was a major overhaul of the FDA that President Bush signed into law

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in September 2007. The bill requires that drug and medical device makers pay the FDA fees for expedited reviews of new products. It also permits the FDA to require studies of new drugs after they've been approved, as well as risk-reduction plans for drugs suspected to have potentially dangerous side effects.

Tony Podesta, one of Washington's most prominent lobbyists and a former aide to Massachusetts Sen. Ted Kennedy, was among Genzyme's advocates on the FDA overhaul bill.

"We are in one of the most highly regulated industries," says Piel. "We have very complicated products, and it takes a lot of work to explain what we do and the products that we make and how they benefit patients so that sensible, beneficial policies can be shaped to allow us to do that work," he said.

Notable, too, are the companies that aren't on *CommonWealth's* list. They include some of the biggest firms in Massachusetts, but ones that don't face significant government regulation, such as Framingham-based Staples and BJ's Wholesale Club of Natick.

Massachusetts's educational and hospital sectors make a mark lobbying, but not a huge one. Harvard and Boston Universities each spent under \$1 million in 2007 seeking

earmarked funding for special projects and funding for scientific research from the government. BU was second among universities in lobbying spending, trailing only Johns Hopkins University, which spent \$1 million. Harvard was fourth, behind Johns Hopkins, BU, and Northwestern University. Overall, BU was 14th on *CommonWealth's* list, with Harvard following at 15th place.

Well behind them were Northeastern, MIT, and the University of Massachusetts at Dartmouth. The flagship state college campus at Amherst reported spending \$190,000, while the UMass branch in Lowell spent \$140,000. UMass-Amherst, especially, is well positioned to secure the kind of earmarked funding that universities crave most in Washington since its hometown congressman, John Olver, sits on the House Appropriations Committee.

Boston's renowned medical sector got in the game as well. The parent organization of Massachusetts General Hospital and Brigham and Women's Hospital, Partners HealthCare System Inc., spent \$600,000 on the services of Kip O'Neill, the fourth child of former House Speaker Tip O'Neill, and his lobbying firm. O'Neill's disclosure reports indicate he sought federal appropriations for the hospitals. **CW**



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## Voting made easy

Election Day registration has been a proven winner for both voters and election officers **BY GABRIELLE GURLEY**

**THE YOUNG MAN** in a tattered baseball cap walked up to Sharon Adair's table at the Ward 5 polling place near City Hall in Concord, New Hampshire. Daniel Taylor wasn't on the list of registered voters for the September primary, but that didn't stop him. Adair confirmed that Taylor's driver's license had a current address, helped him fill out the voter registration form, and sent him off to another election official to get a ballot.

Then the 22-year-old stepped into a booth with a red-white-and-blue-striped curtain and voted for the first time. Taylor liked the idea that he could register and vote on the same day, rather than having to register in advance. "It's efficient and allows people not to be inconvenienced by a long, drawn-out process," he said.

New Hampshire is one of a growing number of states that have moved to Election Day registration to make it easier for their residents to vote. It's the biggest no-brainer since 18-year-olds got the right to vote nearly 40 years ago.

The ultimate beneficiaries of Election Day registration are groups that usually get tripped up by traditional registration deadlines, including college students, low-income residents, minorities, and people who have recently moved. It also boosts voter participation and doesn't cost much, even though cost was one of the concerns raised this summer when an Election Day registration bill failed to pass the Massachusetts Legislature for the second time in three years.

In addition to New Hampshire, the states of Idaho, Iowa, Maine, Minnesota, Montana, Wisconsin, and Wyoming allow voters to register on Election Day. North Carolina voters can register and cast a ballot anytime between three and 19 days before an election, while North Dakota doesn't have statewide registration at all. This year, 23 states besides Massachusetts have considered legislation to adopt the practice. And two Democratic US senators, Russ Feingold of Wisconsin and Amy Klobuchar of Minnesota, have introduced a bill that would require all states to offer Election Day registration for residents voting

in federal elections.

One important but little-known benefit of Election Day registration is that signing up voters at the polls does away with provisional voting, which has proven to be a disaster. After widespread voter registration problems during the 2000 presidential election, Congress passed the Help America Vote Act, which mandated provisional voting in the states that did not have Election Day registration. In Massachusetts, that means that if a person's name doesn't show up on a precinct's voting rolls, he or she can vote using a special ballot. The vote is counted later, as long as he or she meets identity and residency requirements.

But the dirty little secret about this cumbersome process is that most votes don't get counted because of various kinds of administrative errors. After the election, municipal election officials re-search a voter's record. If everything is in order, the ballot gets counted. But if a person is registered, but voted in the wrong precinct, for instance, the ballot is not tabulated. During the 2004 presidential election in Massachusetts, for example, 10,060 people cast provisional votes. Only 2,319 were validated.

Under Election Day registration, provisional voting would go away, and that would be a good thing, says Maryann Draine of Attleboro, part of a small group of Bay State municipal officials who observed the New Hampshire process in action. But she was "still not sure" how the switch might affect other issues back home, such as dealing with inactive voters who haven't participated in an election for some time. (In the Bay State, if a voter fails to vote in two consecutive federal elections and does not return a municipal census form, his or her name is stricken from the voter list. That person is still registered to vote but must bring proof of residency to the polls.)

### MIDWEST RULES

In Iowa, Election Day registration was an easy sell to local officials, according to Secretary of State Michael Mauro. The Hawkeye State unveiled the



Under existing law, Massachusetts residents must register to vote 20 days before an election.

new process in January. The administrative work is similar to provisional voting, but gone are the headaches of verifying addresses, deciding which ballots to count or throw out, and possible legal challenges. “You are going to save yourself lots of issues on the back side if you ever run into a race that’s really close,” Mauro says.

Poll workers still check that a voter is in the right precinct, and they scrutinize photo identification and residency documents. A voter also must sign an oath declaring that the information is true and correct. Filing a false registration in Iowa is a felony carrying a five-year maximum prison term and a fine of up to \$7,500.

To protect against fraud, voters who register on Election Day receive notices from their respective counties afterward. (In Iowa, county auditors administer elections in the state’s 99 counties.) If that gets returned, a second forwarded notice goes out. If the county auditor doesn’t receive a response within 14 days, the county attorney and the secretary of state investigate.

New expenses, such as training for election officials, have been minimal. Polk County, which includes Des Moines, hasn’t incurred any additional staff costs, having switched workers who handled provisional voting over to registrations. The \$70,000 to \$80,000 spent on ballots this year for its 260,000 registered voters includes only a few extras for the November general election. Though the real implementation test comes this fall, Iowa’s low-turnout June primary went without a hitch. (Adair, the New Hampshire election official, admitted that registering voters in November can get “crazy.”)

Credit for Iowa’s new registration template goes to its trailblazing northern neighbor. The first state to adopt Election Day registration, in 1973, Minnesota usually leads the country in voter turnout. (Most Election Day registration states have turnout rates that exceed the national average.) With an urban/suburban population that more closely resembles the Bay State than does Maine or New Hampshire, the Land of 10,000 Lakes stands out as a national model of success. “If [people] are eligible to vote, then there shouldn’t be bureaucracy that stands in the way of them voting,” says Gary Poser, Minnesota’s director of elections, who testified at an Election Laws Committee

## Iowa checks up on new voters to prevent fraud.

hearing last year on Beacon Hill in support of the ill-fated Massachusetts legislation.

But there were early hiccups. Minnesota lawmakers originally budgeted about \$125,000 for implementation and ended up spending more than six times that amount, according to an Electionline.org report. During the 1976 presidential election, more than one in five voters registered on Election Day, which meant long lines as officials sorted out problems like voters showing up at the wrong polling place. Critics continue to point to long lines, especially near colleges and large tracts of apartments, as a concern.

But Rachel Smith sees no drawbacks. The election supervisor for Anoka County, an area of suburban and

## WHAT WORKS

rural communities north of Minneapolis, believes that clear and consistent poll worker training is the key to running a smooth election for the region's 185,000 registered voters. She says that mastering the types of voter identification required by the law, particularly for anyone who relocates right before an election, is their biggest challenge. On the other hand, fraud hasn't been a major issue; the one voting irregularity in Anoka County in 2006 involved absentee balloting.

Election Day registration is so ingrained in Minnesotans that they come in for a rude awakening when they relocate elsewhere. Every year, Smith receives more than a few calls from former residents who moved to states with voter registration deadlines. Shocked to learn they've missed the cutoff, they want to know if they can return to vote in Anoka County. They are even more upset when Smith delivers the bad news. "There is nothing I can do," she says.

## FEAR FACTORS

On a cool midsummer evening, the 60 or so supporters of Democratic presidential hopeful Barack Obama were fired up. "Everyone is excited, young and old," shouted state Rep. Gloria Fox to frequent bursts of applause at a Roxbury4Obama organizing meeting at Roxbury Community College. Beneath large posters of Muhammad Ali, Bruce Lee, and other legendary figures in iconic poses, campaign workers outlined the logistics for what they claim will be the largest voter registration drive in the history of Massachusetts.

One thing Democrats and Republicans can agree on in 2008 is signing up new voters. Adam Spang, a John McCain supporter and president of the Northeastern College Republicans, also has been hard at work planning voter registration drives. He argues that allowing people to register and vote on Election Day is the best mechanism to increase voter turnout. "This is definitely going to benefit young people," he says.

Eventually it might, but any Massachusetts resident who hasn't registered by now won't be voting in November: The registration deadline is 20 days before a primary or state election. Allowing registration at the polls would allow more than 225,000 new people to vote in the Bay State, according to Demos, a nonpartisan research group based in New York. Turnout among 18- to 25-year-olds alone would increase almost 10 percent, the group says.

(At press time, Secretary of State William Galvin planned a Hail Mary attempt to introduce a scaled-back Election Day registration proposal that would allow certain individuals whose names do not appear on precinct voting rolls, but who are otherwise eligible, to register and vote. But prospects for passage during informal leg-

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## WHAT WORKS

islative sessions, when all it takes is one lawmaker to block a bill, are slim.)

Fear of change helped scuttle Election Day registration on Beacon Hill. Some lawmakers who had challengers in the September primary believed that a new registration process would benefit their opponents, says Fox, a Boston Democrat and the lead House sponsor. "They felt as though there would be so many of those other people, young people, people of color, black people who would come out, that they would eventually be unseated," says Fox, who declined to name names.

Sen. Edward Augustus echoes her take. "There are a lot of people in this building who are skeptical about having people show up to vote who they can't anticipate," says the retiring Worcester Democrat who championed the bill in the Senate. "Campaigns have evolved away from trying to encourage people to vote and participate." However, fear of the unknown voter doesn't get much credence elsewhere. David Guarino, spokesman for Speaker Sal DiMasi, an Election Day registration proponent, chalks up the failure to the end-of-session logjam of legislation. (Supporters of the measure intend to re-file the bill during the next session.)

Voter fraud is another often-cited black mark against Election Day registration, but a 2003 Caltech/MIT study found that fraud is rare in the Bay State. Local officials interviewed for this article cited the new expenses that could be incurred by cash-strapped municipalities, not fraud, as their top beef. Indeed, the debate in the Legislature degenerated into a tit-for-tat squabble over funding.

Where Secretary of State Galvin saw about \$1 million in statewide expenditures, the Massachusetts Town Clerks' Association saw a price tag of \$4 million to \$5 million. They also claimed that costs, which weren't specifically spelled out in the fiscal 2009 budget, amounted to an unfunded mandate. (Galvin responded that the clerks miscalculated the costs and availability of voting machines for people with disabilities.) Toss in uncertainties about getting the bugs out of new procedures before a major election, and it's not surprising that many clerks turned thumbs down on any changes.

Yet the Legislature opened up an even bigger can of worms by failing to prioritize election reforms going into a presidential election year. The prospect of crowds of people at the polls needing provisional ballots has Bay State election officials worked up. And not in a good way. "We still have a practical problem this November," says Galvin.

In addition, earlier registration changes also designed to make life easier have unintentionally confused some voters. Thanks to the National Voter Registration Act (also known as the Motor Voter Law), Massachusetts residents can sign up to vote at any Registry of Motor Vehicles office. But if an individual files a change-of-address form later



on, he or she must complete another form *in person* at a registry location so that the new address can be forwarded to municipal election officials. Unfortunately, many people forget that step or assume that the changes get made automatically.

Many people legitimately believe that they're registered, only to find out on Election Day that they're not, accord-

ulated, the person never finds out and the error doesn't get cleared up. Anderson senses that Massachusetts is creating a sub-class of voters who regularly vote by provisional ballot and whose votes don't count. "That's troubling to me," she says.

So, in a historic presidential election year when election officials from coast to coast expect record-setting numbers of voters to flock to the polls, the Bay State may end up disenfranchising thousands of voters. Strangely enough, the sentiment on both sides of the debate is that Election Day registration is a question of not if, but when. Whether the lawmakers, the secretary of state, the clerks, and voting rights advocates can reach a consensus on costs and new procedures before the 2010 election, however, is the more pressing dilemma.

"There are issues with implementing change," says Diane Jeffery, president of the League of Women Voters of Massachusetts, who was turned away once from a Cambridge polling place because she hadn't re-registered after she moved from Amherst. "But in every other state that has implemented Election Day registration, the sky hasn't fallen." **CW**

## The national Motor Voter Law may have actually created more confusion.

ing to Malden city clerk Karen Anderson, who favors the change to same-day registration. She says that if a voter has moved to Malden from Springfield, for example, he or she could probably vote if they drove back west. "Which doesn't do them a lot of good," Anderson adds.

Worse, when voters fill out a provisional ballot (a measure that some election officials also use to defuse a confrontation with an angry person over a problem that a provisional ballot won't necessarily solve), they usually don't follow up to check its status. If the ballot wasn't tab-

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## Local ink

Can GateHouse Media stop the shrinkage of community newspapers in the Bay State? **BY DAN KENNEDY**

**IT'S HARD TO** be optimistic about the newspaper business these days, but Kirk Davis is trying. Davis is the president and publisher of GateHouse Media New England, which owns more than 100 newspapers in eastern Massachusetts—and which itself is part of GateHouse Media, a national chain of some 500 papers based near Rochester, New York.

Like all newspaper companies, GateHouse is struggling. But by some measures, it's struggling more than most. Since the company went public in 2006, the price of its stock has fallen by more than 95 percent. At press time, the company was in danger of being delisted by the New York Stock Exchange. Some financial analysts have gone so far as to predict that GateHouse could be broken up at some point in the near future.

Davis, though, says GateHouse is outperforming other newspaper companies. And though its debt is sizable—\$1.2 billion, or about 10 times earnings, according to publicly reported data—he and other company officials say GateHouse has no problems making its payments.

“We feel that community newspapers have a very viable future and, juxtaposed against the trend overall, are performing very well,” says Davis, arguing that small, community newspapers have a competitive advantage over major metros because their locally focused content is not available elsewhere. “I believe in it, and I believe it's going to stay strong.”

For several years now, the newspaper business has been battered by the rise of the Internet and a failure to develop online business models that could offset the loss of circulation and advertising revenue. Large, regional papers such as the *Boston Globe*, the *Miami Herald*, and the *Philadelphia Inquirer* are under assault, as readers looking for national and international news have migrated to the websites of even larger news organizations ranging from the *New York Times* to the BBC. Local papers, with their community-based advertisers, were regarded as less vulnerable to such online phenomena as Monster.com and Craigslist, which have ravaged classified advertising. But

with housing in a slump and the economy slowing, the local advantage has its limits. Consider these developments:

- At the Worcester *Telegram & Gazette*, 36 positions and all zoned editions have been eliminated, leaving the paper with just one edition. The *T&G*, like the *Globe*, is owned by the New York Times Company, whose New England operations lost 24.5 percent of their advertising revenue in July 2008 as compared with the previous July.

- At the *Eagle-Tribune* of North Andover and three affiliated dailies—the *Daily News* of Newburyport, the *Salem News*, and the *Gloucester Daily Times*—52 jobs have been cut by their corporate owner, Birmingham, Alabama-based Community Newspaper Holdings.

- After previously announcing he would sell Ottaway Newspapers, a chain of community papers he acquired when he purchased Dow Jones and the *Wall Street Journal*, Rupert Murdoch pulled them off the market. Cutbacks have been relatively mild at Murdoch's Massachusetts papers, which consist of the *Cape Cod Times*, the *Standard-Times* of New Bedford, and two weeklies. But industry observers concluded that executives at News Corp., Murdoch's company, decided to hold on to Ottaway because they couldn't get the price they were seeking.

Over the past year, GateHouse New England has eliminated positions as well, through layoffs and attrition—the equivalent of about 50 full-time journalists (out of about 535) since July 2007, says Davis, who calls the current period “the worst in my 25 years in the business.”

It's a situation that has GateHouse staffers tense and worried.

“There's a lot of paranoia,” says one GateHouse employee who asked that he be identified only as a manager with knowledge of multiple departments. (Numerous staff members were contacted for this article, and none agreed to be quoted by name.)

“People are very anxious,” he adds. “I wouldn't say there's any kind of a mood of Chicken Little,

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## MASS. MEDIA

people running around and pulling their hair. But people look at the stock price every day.”

**COMMUNITY NEWSPAPERS ARE** a vital part of civic life. From coverage of selectmen’s and planning board meetings to school lunch menus, from obituaries to letters from readers, the content offered by the kinds of newspapers GateHouse owns—weeklies and small and medium-size dailies—serves a need that can’t be met by larger news organizations, and that bind a city or town together perhaps more effectively than any other local institution.

According to audited figures provided by Davis and Rick Daniels, a former *Boston Globe* president who is now GateHouse New England’s chief operating officer, the company’s papers reach some 1.7 million people each week in the region, which goes as far west as Worcester. The chain comprises eight dailies, 114 weeklies, and about 20 specialty publications devoted to topics such as real estate, parenting, and jobs. Its Wicked Local websites draw some 1.7 million unique visitors each month, according to audited figures provided by GateHouse.

GateHouse’s largest papers include such familiar titles as the *Patriot Ledger* of Quincy, the *MetroWest Daily News* of Framingham, and the *Enterprise* of Brockton. Its smallest are weeklies with barely more than 1,000 paid subscribers, such as the *Bolton Common*, the *Norton Mirror*, and the *Georgetown Record*.

Many of GateHouse’s Massachusetts papers are venerable, stretching back several decades or even longer; the *Patriot Ledger* traces its roots to 1837, when the *Quincy Patriot* was founded. Several generations ago, nearly all of these papers had independent owners. The story of how they all came together under GateHouse is a parable of media consolidation.

It began in the 1960s, when enterprising newspaper publishers built about a half-dozen regional chains in Greater Boston. The modern era got under way in the late 1980s and early ’90s, when Fidelity Capital, an arm of the investment giant, assembled many of these regional chains into what became the Community Newspaper Company. CNC, as the company was known, began cutting jobs and expenses almost right from the beginning as its executives—including, toward the end, Kirk Davis, who was the president and publisher—tried to realize the economies of scale that they hoped would come from combining advertising and business operations.

In 2001, Fidelity cashed in by selling CNC for an estimated \$150 million to Pat Purcell, the owner and publisher of the *Boston Herald*. Purcell, perpetually challenged financially, kept cutting, and in 2006 turned around and sold CNC to the company that would become GateHouse for a reported \$225 million. At the same time, GateHouse pur-



chased the one piece of the Massachusetts puzzle that had eluded both Fidelity and Purcell—Enterprise NewsMedia, consisting of the *Patriot Ledger*, the *Enterprise*, and their associated weeklies—for another \$165 million or so. That purchase, in turn, brought Kirk Davis back into the fold, as he had left CNC several months after Purcell had bought it and was running Enterprise NewsMedia.

After 20 years of consolidation, it's fair to ask if corporate ownership of community newspapers makes sense—not just journalistically, but financially. Take Bill Wasserman, who built North Shore Weeklies and sold the group in 1986 to investors who, in turn, sold to Fidelity several years later. Wasserman says the main problem with corporate ownership is a failure to understand that, even in the best of times, community journalism is little more than a break-even proposition.

"I was paid a salary, which was modest," says Wasserman. "The reward was not in the profit. The reward was having a lot of fun putting out a community paper."

Not long after forming GateHouse Media, its execu-

## At best, community papers do little more than break even.

tives decided to convert their chain into a publicly traded company—a move that has brought no end of negative headlines. The stock debuted at a price of \$21.60 per share. This summer, it fell to as little as 40 cents, paralleling similarly sickening plunges by newspapers stocks such as McClatchy and the Journal Register Company.

The stock price collapse and the company's debt burden have led to predictions that GateHouse may not survive in its current form, or any form. Every few weeks, it seems, the trade magazine *Editor & Publisher* runs a story about the latest misfortune at GateHouse.

"GateHouse could conceivably buy itself time. It has a number of assets it could sell off. It could hobble along and could conceivably be here a year from now," says Tom Corbett, an analyst with Morningstar, a financial news service. "But with the current revenue declines, the current profit

declines, and the high fixed cost of the debt obligations, something is going to have to happen."

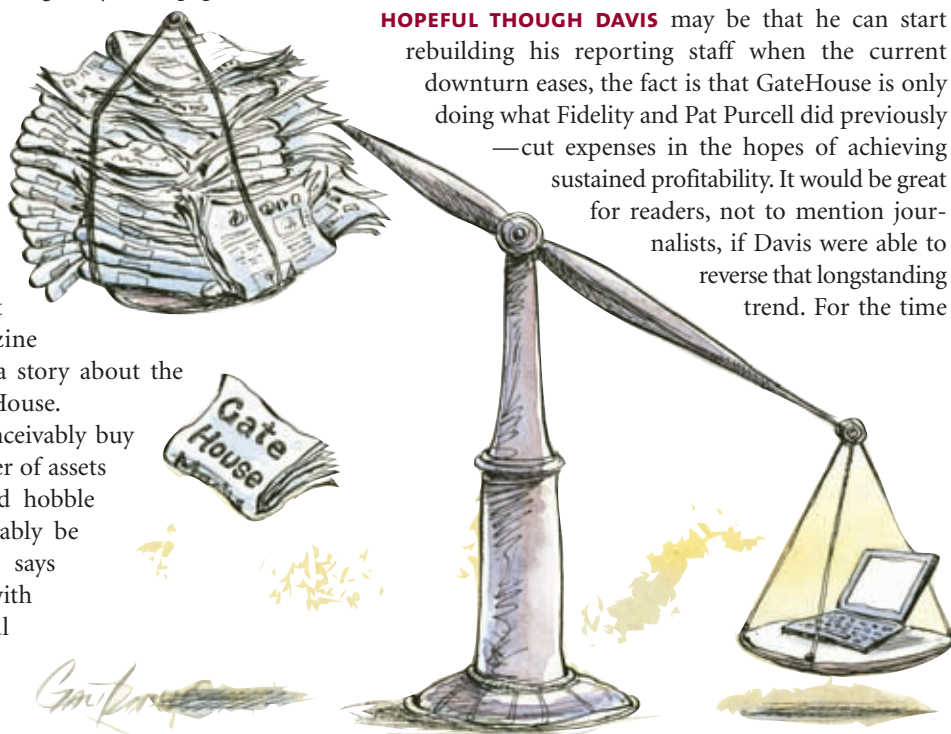
Yet there is another side to the GateHouse story, and it seems equally plausible. In early August, during a conference call to discuss earnings, GateHouse chief executive Michael Reed said the company's revenues—despite a quarterly loss of nearly \$430 billion—were holding up better than in the newspaper industry as a whole. With principal on the debt not due until 2014, Reed insisted, GateHouse has time to find a way out of its current morass. It's a view supported by at least some financial analysts who follow the company.

GateHouse's ownership structure is also unusual, although it's hard to say what effect that may have on its future. More than 24 million GateHouse shares are held by Fortress Investment Group, about two-fifths of the company's outstanding shares. The chairman of the boards of both GateHouse and Fortress Investment is the same person: Wesley Edens. That has led to some speculation that Fortress won't allow GateHouse to fail. (Fun irrelevant

fact: Fortress Investment purchased \$270 million of singer Michael Jackson's loans in 2005.)

Thus, if GateHouse's future isn't exactly secure, it seems reasonable to say it's perhaps not as grim as it's been portrayed. What, then, is the future of community journalism, GateHouse-style?

**HOPEFUL THOUGH DAVIS** may be that he can start rebuilding his reporting staff when the current downturn eases, the fact is that GateHouse is only doing what Fidelity and Pat Purcell did previously—cut expenses in the hopes of achieving sustained profitability. It would be great for readers, not to mention journalists, if Davis were able to reverse that longstanding trend. For the time



being, though, the shrinkage continues.

Though there are GateHouse papers that are adequately staffed, there are small papers in the far suburbs that don't even have a full-time editor; their pages are filled with content from larger papers such as the *MetroWest Daily News*, which themselves are smaller than they used to be. Among those let go in the past year was the *Daily News's* popular cartoonist, Dave Granlund, whose work was shared among a number of GateHouse papers. (Granlund declined to comment.)

Two free weeklies, the *Avon Messenger* and the *Taunton Call*, were shut down this year, although it should be noted that they were barely staffed and operated in the shadow of larger GateHouse papers. Some of the *Enterprise's* operations are being shifted to the *Patriot Ledger*. The *Ledger* itself no longer runs its own printing plant, but is instead printed at the *Boston Globe*. And more consolidation is likely: GateHouse is still beset with oddities such as its ownership of two weeklies in Cambridge, the *Chronicle* and the *Tab* (a holdover from Fidelity's empire-building days in the early '90s). Davis says that and similar situations are likely to get a close look.

Ask veteran editors inside the company whether they can offer the sort of public-service journalism on which

communities depend, and you get a mixed answer: *Yes, but*. That is, yes, but they're not doing what they were doing a few years ago. If an editor is covering three or four towns instead of one or two, then there are that many more local governmental meetings that don't get covered. The editors interviewed for this article are an admirable bunch, hardworking and dedicated to their craft. But they are frustrated that they can't do all they would like to do—a perpetual lament, to be sure, but one that has become more urgent as resources diminish.

"There's a hell of a lot of professional pride. That trumps a lot of things," says a veteran editor. But morale, he says, is "not that great," adding, "I don't get the sense that there's a lot of buy-in that we should be killing ourselves for a company that won't even let ourselves keep up with the price of gas." New reporters, he says, generally earn about \$25,000 a year, and experienced editors make around \$45,000—not unusual for the industry, but nevertheless pretty tough to live on in Greater Boston.

GateHouse has invested considerably in its online presence. Howard Owens, the company's director of digital publishing, has pushed a philosophy of Web-first journalism (that is, getting breaking news online and running it in the print edition later), as well as producing news



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videos with inexpensive cameras and software.

The videos, in particular, have garnered attention. Reporters have made pieces on everything from a Martin Luther King Day event in Danvers to a car crashing into a hospital in Brockton—as well as more notorious fare, such as a Beverly parade this past Fourth of July that featured a giant, water-squirting penis and crude signs mak-

## Some say there's a conflict between more Web content and a quality print edition.

ing fun of the Gloucester teen-pregnancy crisis. That sparked a debate in the community, but GateHouse officials, including Davis and Owens, defend it on the grounds that it was newsworthy.

Owens, who's well-regarded in the industry, hopes to make his next push on Web 2.0 content—that is, finding ways to bring members of the community into the conversation by letting them blog on GateHouse's Wicked Local sites and by commenting on stories. (Some GateHouse papers were deluged with anonymous, offensive

comments when the feature was first offered, but since then a registration system has been instituted.) According to one GateHouse editor, in a few communities, especially those close to Boston, Wicked Local has already succeeding at fostering a new level of civic engagement. "Suddenly we've managed to get several aldermen who communicate regularly there, several school committee members who talk about school issues," he says. "It's leveled the dialogue, because now we've got citizens communicating with public officials."

Owens is also involved in a new model—an online-only virtual newspaper in Batavia, New York, not far from GateHouse's headquarters—that's competing with an established print newspaper. "The overall revenue would be less than what you would get from a print newspaper," he says. But with far lower costs, he adds, the *Batavian* could be a blueprint for what's to come.

Yet though some GateHouse journalists are on board with Owens's Internet philosophy, others say there's a conflict between a corporate mandate for more Web content—including widely ignored quotas—and the long hours needed to put out a quality print edition.

Owens's response: "There are some incredibly talented

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hardworking people in New England who are asked to do an incredible amount of work. There are also slackers, and at some point you have to hold them accountable.”

**IT’S NOONTIME ON** a Tuesday in early September. Kirk Davis and Rick Daniels are talking about their company in a windowless room at GateHouse New England’s Needham headquarters, in an office park right off Route 128.

GateHouse has a reputation for secrecy—Rick Edmonds, who analyzes the newspaper business for the Poynter Institute, says company officials are “very close-mouthed about what they’re doing”—but on this day Davis and Daniels talk for nearly two hours, with not a “no comment” to be heard. Perhaps this is the beginning of a new era.

Davis has always been able to communicate a palpable excitement about the newspaper business, and that excitement hasn’t diminished since his Fidelity days. He points out that between his stints at CNC and Enterprise News-Media, he bought a small weekly in Holden, the *Landmark*, which has since grown into a chain of about seven publications, including *Worcester Magazine*. And he proudly shows a visitor an example of a new type of Web-based advertisement, exactly the sort of narrowly targeted product

newspapers are going to need in order to compete online.

“It’s a very uncertain time. People are very nervous about what they read about the industry,” says Davis, who nevertheless remains the perpetual optimist about GateHouse’s future. “It inspires the hell out of me,” he says.

Davis’s challenge is to transmit that inspiration to his troops—and to back it up with evidence that, at some point, the cuts of the last two decades, under as many as three or four different owners depending on the paper, will finally come to a halt.

One longtime editor who expresses admiration for what Davis is trying to accomplish nevertheless offers a dispiriting assessment.

“I feel like I’ve witnessed the end of the local newspaper,” he says. “It’s become less and less of a factor in the local community. We’re not even trying to do the job that we used to take pretty seriously 20 years ago. That’s probably true everywhere.

“I don’t want to sound like a depressed old dinosaur,” he adds, “but what the hell. It is what it is.” **CW**

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*Dan Kennedy is an assistant professor of journalism at Northeastern University. His blog, Media Nation, is at medianation.blogspot.com, and he can be reached at da.kennedy@neu.edu.*

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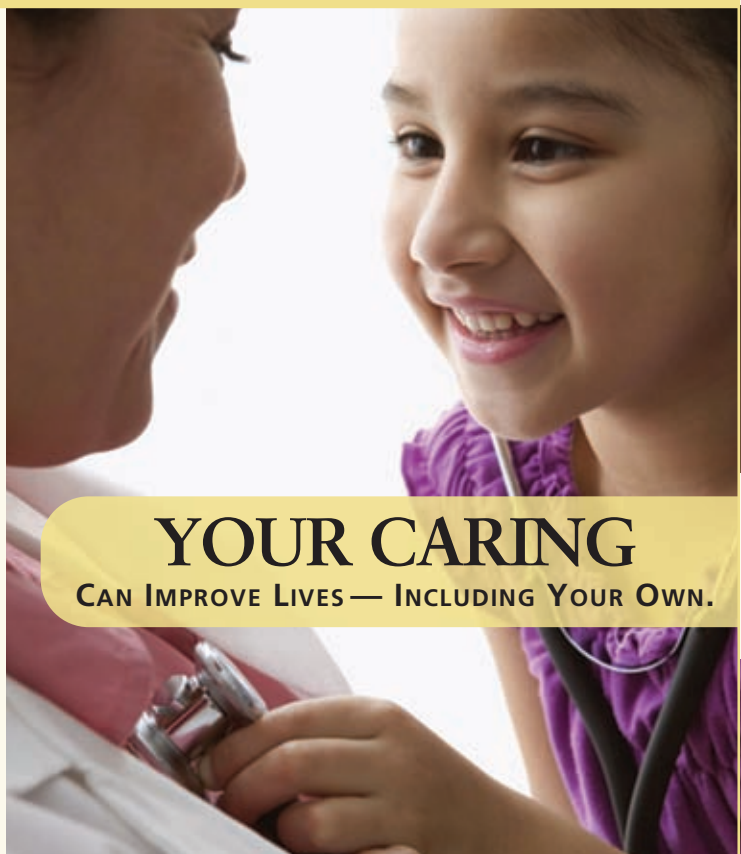
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# PAPER TIGER

The state's Public Records Law is flouted by  
officials at all levels of government

BY COLMAN HERMAN

**A LAW DESIGNED** to shine a bright light on the inner workings of state and local government in Massachusetts is instead leaving much of the bureaucracy in shadows, if not total darkness.

A seven-month investigation by *CommonWealth* revealed that public officials at all levels of government frequently game the Massachusetts Public Records Law, the state's counterpart to the federal Freedom of Information Act. The law is one of those "small-d" democratic initiatives meant to level the playing field between everyday citizens and the government that serves them. While some agencies routinely comply with the Public Records Law and turn over records, the deck is often stacked against citizens trying to use the law to gain access to government documents.

Huge swaths of state government are exempt or claim exemptions from the Public Records Law. The Legislature, for example, which passed the state's first public records law in 1851, explicitly exempted itself from the law in 1897. Judicial officials say their branch of government is also exempt, citing the public records regulations, which specifically exempt the judiciary, as well as several court decisions, including one last year by the Supreme Judicial Court. The

probation department, which is part of the state's trial court system, goes so far as to say its budget and salary records are beyond the reach of the law. Even Gov. Deval Patrick, who rode into office promising a transparent administration, claims that case law exempts his office from the Public Records Law, although his aides say he voluntarily complies with most requests.

And those sectors of government that are clearly subject to the Public Records Law often subvert it. The bottom line: Public records are not always so public in Massachusetts.

"Citizens who use the Public Records Law encounter widely varying results," says Ned Flaherty, a resident of Boston's South End who has spent more than a decade tracking the twists and turns associated with the controversial Columbus Center proposal over the Massachusetts Turnpike. "Some agencies provide prompt economical access to useful records. At other agencies, public records are virtually impossible to get."

The stonewalling tactics used by public officials include ignoring records requests, claiming records don't exist, disingenuously claiming exemptions, redacting so much from the records as to render them useless, and charging so much



money to produce the documents that they are unaffordable for most citizens. The Massachusetts Port Authority, for example, wanted to charge *CommonWealth* \$1,641 to provide 300 pages of executive director Thomas Kinton's appointment calendar, which amounted to \$5.41 a page. The cost included a charge of \$141 an hour for Kinton himself to spend 4.5 hours—for a total of \$635—to go over the redactions already made by his lawyer.

Citizens who encounter problems accessing public records can appeal to Secretary of State William Galvin's office, which oversees the Public Records Law. The office issues 200 to 300 rulings on appeals each year, but its effectiveness is hampered by its lack of enforcement powers. And its handling of one case in 2005 has the potential to significantly undermine the Public Records Law. When a citizen said that Boston Mayor Thomas Menino failed to respond to a documents request, Galvin's office concluded, in Catch-22 fashion, that no action could be taken because there was no response from the mayor to review. The implication is enormous: An official can escape the reach of the Public Records Law by simply ignoring it.

Some government officials say the Public Records Law can be burdensome and is not a top priority, but open-government advocates say officials often fight the release of records to conceal their actions. "They don't want people watching what they're doing," says Kevin McCrea, the lead plaintiff in a successful open government lawsuit against the Boston City Council. "Politicians are afraid of accountability," he adds. Recalling a line from *The Wizard of Oz*, McCrea says, "They want citizens to 'pay no attention to that man behind the curtain' because otherwise it will mess up their backroom deals."

Philosophies aside, there are so many hurdles thrown in front of citizens seeking records that many of them throw in the towel. Even seasoned reporters skilled in pursuing government documents chafe at the law.

"The Public Records Law is weak," says Walter Robinson, a Pulitzer Prize-winning investigative reporter at the *Boston Globe* who now teaches investigative journalism at Northeastern University. "It is broken. It is broken in a way that allows public officials to subvert the law."

#### POWERFUL ON PAPER, WEAK IN PRACTICE

Filing a public records request sounds easy when you read the user-friendly guide issued by the secretary of state's office. It says requests can be submitted orally or in writing, offers a sample of a written request, and notes that the records custodian—the government official in charge of the records—must respond within 10 days. "Every government record in Massachusetts is presumed to be public unless it may be withheld under one of 16 exemptions,"

Galvin says in a letter accompanying the guide.

The exemptions cover many areas. The most frequently invoked is the privacy exemption, which says that things like personnel files, medical records, and marital status are not available to the public. Documents that are part of an ongoing public policy development process, or part of an active law enforcement investigation, are also off limits to public records requests. Many exemptions are also written into other laws, cutting off access to records in such areas as drug addiction treatment, juvenile delinquency, firearms applications, library circulation records, and rape cases.

To gauge how well state and local government agencies are handling public records requests, *CommonWealth* reviewed hundreds of public records appeals on file at the secretary of state's office and made 44 public records requests of its own. The research reveals that fierce struggles over records are going on every day behind the scenes, pitting citizens and news organizations against government officials. The Public Records Law, which seems simple to use and very powerful on paper, is actually complicated and weak in practice.

*CommonWealth* sent out 44 public records requests by signature-confirmation mail. They were simple and straightforward, yet only two officials responded in full accordance

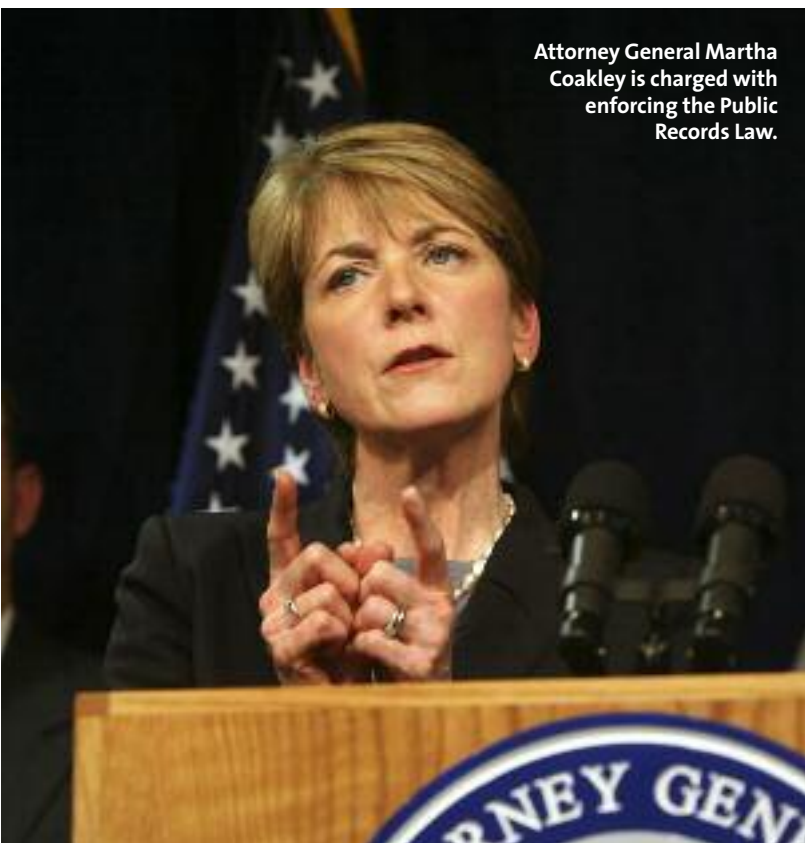
## The process of seeking documents was often time-consuming, and often ended in failure.

with the law. Six officials violated the law by not responding at all, and 21 officials responded only after the law's 10-day response deadline. Virtually all the officials who responded failed to comply with requirements that they notify requesters of their right to appeal a decision, or that they cite an exemption for redacting or refusing to produce documents. And a number of officials wanted to charge hefty fees for records.

The process of seeking documents was often time-consuming and frustrating, and many times ended in failure. The mayors of Everett (Carlo Demaria Jr.), Malden (Richard Howard), Revere (Thomas Ambrosino), and Springfield (Dominic Sarno) simply ignored requests for copies of their daily appointment calendars. The director of government services in Wellesley (Hans Larsen) responded, but he refused to provide his calendar, claiming a Public Records Law exemption for personal notebooks and other materials prepared by a government employee but not maintained as part of government files.



Attorney General Martha Coakley is charged with enforcing the Public Records Law.



Chelsea city manager Jay Ash acknowledges he failed to respond to a public records request within 10 days. It took him 22 days. “Do I deserve a demerit?” Ash asks. “No, I don’t think so. I’m faced with prioritizing, and there are a lot of demands on us for budgets, public safety, education, and other things. The request for public records is not the highest priority we face.”

We asked state Treasurer Timothy Cahill for records dealing with the state lottery’s distribution of thousands of Red Sox, Celtics, and Bruins tickets to lottery retailers. In May, one of Cahill’s lawyers, William Egan Jr., said the lottery would provide a cost estimate to fulfill the request within two weeks. As of September, no estimate had been received.

Last April, a lawyer for the Massachusetts State Police, Sean Farrell, said a request for documents dealing with complaints against private investigators was too vague and asked for specifics. We provided specifics, but Farrell was never heard from again.

The state Division of Insurance handed over many internal communications dealing with Progressive Insurance, a big newcomer to the Massachusetts auto insurance market, but none was from Commissioner Nonnie Burnes. When division lawyer Mindy Merow Rubin was queried on how this could be, the division suddenly found three communications from Burnes, as well as a number of other documents that didn’t show up initially.

Before making a public records request of the Boston Police Department, we checked the department’s website

for pertinent information. It tells requestors to indicate a reason for wanting the records, a condition that the public records regulations does not allow officials to impose.

Many officials wanted to charge hefty fees to fulfill public records requests. Fees are allowed under the law for photocopying, as well as for staff time spent searching for and redacting documents “based on the hourly rate of the lowest-paid employee capable of performing the task.” But the public records regulations encourages government officials to waive fees “where disclosure would benefit the public interest.” Nevertheless, Boston’s Inspectional Services Department wanted to charge \$596.41 for reports dealing with health and safety code violations of outdoor food stands around Fenway Park and inside TD Banknorth Garden—information that the city had pledged to post for free on the department’s own website.

The per-page fees for documents varied widely from agency to agency and, in two instances, were reduced when challenged. The Massachusetts Port Authority, for example, wanted to charge \$5.41 a page for executive director Kinton’s appointment

calendar. After the fee was questioned, the charge was reduced to \$4.09 a page. Similarly, the Office of Consumer Affairs and Business Regulation reduced its fee for the calendar of agency head Daniel Crane’s calendar from \$3 a page to \$2.08 a page after the charge was questioned.

The MBTA wanted to charge \$1.89 a page for the appointment calendar of general manager Daniel Grabauskas, with a staff attorney handling the photocopying chores at a cost of \$48 an hour. Attorney General Martha Coakley’s office wanted 88 cents a page for her calendar, while Massachusetts Turnpike Authority executive director Alan LeBovidge priced his calendar at 38 cents a page. Mayor Menino wanted 29 cents a page for his calendar, which included \$30.77 an hour for an aide to redact personal items.

Several officials charged nothing for their calendars, including the secretary of transportation (Bernard Cohen), the state auditor (Joseph DeNucci), and the Brookline town administrator (Richard Kelliher).

#### AT THE MERCY OF THE A.G.

Public record appeals are the purview of Alan Cote, who works as the supervisor of public records in the secretary of state’s office. A review of the office’s case files indicates that he handles appeals in an evenhanded manner, yet he makes no secret of the fact he favors openness and transparency at all levels and in all branches of government. “Government should be covered from top to bottom” by the Public Records Law, he says.

Cote can order government officials to release records, but when that doesn't work, his only recourse is to turn the case over to the attorney general's office, which can order officials to comply or, failing that, haul the agency into court. If Cote denies someone's bid to obtain records, the citizen can appeal his decision in the courts.

In the courts and with the attorney general, Cote's record is mixed. Several of his rulings have been overturned in the courts, and former Attorney General Thomas Reilly and his successor, Martha Coakley, have frequently disagreed with his decisions, sometimes to the point of getting contentious. Of 52 public records appeals Cote referred to Reilly dating back to January 1, 2003, the attorney general ordered the full release of records in 10 cases and the partial release in three cases, reversed Cote's rulings in 10 cases, and failed to respond to 14 cases referred by Cote. Other actions by Reilly include declining to intercede because of pending litigation or closing cases because the parties reached their own independent resolution.

Delays of a year or two for Reilly to issue a ruling were common. In one case, a woman seeking records from the State Police waited two years for Reilly to act, but then died, causing him to close the case without issuing a ruling.

Cote has referred 10 cases to Coakley since she took office in January 2007. She also took on two cases that Reilly left behind. Coakley ordered the release of records in six cases and reversed Cote's rulings in three cases. One case was resolved by the parties on their own. Coakley has yet to respond to two referrals from Cote, both submitted in May 2007.

Several times over the years Cote and the attorney general have engaged in verbal fisticuffs. One appeal Cote referred to Reilly's office for action in 2003 was returned with the suggestion he had not done a thorough job in reviewing the case. Cote, in a letter obtained through a public records request, called the attorney general's action insulting and said the decision "increases the frustration of this office and undermines the authority and weight of our administrative rulings."

In one decision that Coakley reversed this year, Cote accused the attorney general of exceeding her authority. Coakley's general counsel, James McKinley, defended the decision and delivered a lawyerly snub to Cote: "As you know," McKinley wrote, "the Supreme Judicial Court affords only a 'minimal' degree of deference to the supervisor's interpretation of the Public Records Law."

Cote's boss, Secretary Galvin, has backed legislation sev-



Northeastern University  
professor Walter Robinson  
says the Public Records  
Law is weak.

eral times to give his office the legal authority to enforce the Public Records Law, but it has gone nowhere on Beacon

## Gov. Patrick and his predecessors say the Public Records Law doesn't apply to them.

Hill. A spokeswoman for Coakley says the attorney general doesn't support giving Cote enforcement power. "The AG feels the statute should remain as it is," e-mailed Emily LaGrassa.

The governor's office also presents difficulties for Cote. Both governors Mitt Romney and Paul Cellucci claimed that the Public Records Law did not apply to them as a result of a 1997 court decision—*Lambert v. the Judicial Nominating Council*. Gov. Patrick makes the same claim.

Barney Keller, communications director for the Massachusetts Republican Party, says Patrick deserves more criticism than Romney or Cellucci. "The difference is that Patrick ran for office on a platform of having a transparent administration," he says. "We sometimes get the records we want from the governor, but at other times, his lawyers make it as difficult as possible."

At issue in *Lambert* was whether a personal questionnaire completed by an applicant for judicial appointment was a public record. The court ruled that it was not, since "the governor is not explicitly included" in the definition of who is covered by the Public Records Law. So whenever Patrick receives a public records request, his legal staff, citing *Lambert*, responds that the governor is not legally required to provide the documents. His office says, though, that he voluntarily provides records in most instances. The governor's office declined repeated requests for an interview and did not respond to questions submitted in writing.

Kimberly Keyes, a media attorney at the Boston law firm of Prince, Lobel, Glovsky & Tye, says the governor is interpreting *Lambert* too broadly. She says the court did not rule that the governor's office is totally immune from the Public Records Law, only that the personal questionnaires completed by applicants for judicial appointment and submitted to the governor through the Judicial Nominating Council are not public records. "*Lambert* was a narrow ruling, not a broad one," Keyes says.

When he receives appeals of records requests denied by the governor, Cote walks softly. He says he likes to handle appeals against the governor informally so as to avoid locking horns over the *Lambert* decision.

"Cote has to choose his battles," says Robert Ambrogio, executive director of the Massachusetts Newspaper Publishers Association. "He tries to do the best with what he has, but he is only as strong as the backing he gets from Martha Coakley."

Last year, Cote convinced the governor's office to hand over a series of department-produced budget-savings proposals to Barbara Anderson, executive director of Citizens for Limited Taxation. Anderson thought the suggestions might come in handy if there was an attempt during the budget process to raise taxes.

Patrick had initially refused Anderson's public records request, citing the *Lambert* decision as well as claiming that the budget records were exempt because they were part of ongoing policy deliberations.

Anderson says she was surprised that the governor would say he was exempt from the Public Records Law and that the Legislature had exempted itself. "What's more public than the Legislature?" she asks. "It's appalling. Once you wrap your mind around that, it's not surprising the governor would try the same thing. But I'm not shocked by anything anymore."

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## LICENSE TO STONEWALL

Cote's reluctance to rock the boat surfaced in 2005 in a case involving the Gaiety Theatre on the lower end of Washington Street in Boston. Shirley Kressel, a citizen activist and urban designer, says she filed a public records request with Menino, seeking all documents related to the demolition of the Gaiety. Built in 1908, the theater was an historic structure that many in town wanted to save, but the city approved its demolition to make way for a 30-story luxury apartment building.

Kressel says Menino did not respond to her records request, so she appealed to Cote, who decided to do nothing. He claims his hands were tied by a 2002 case in which the town of Easton refused to turn over minutes of executive sessions of the town selectmen to a citizen, claiming they were exempt from the Public Records Law. Cote ordered the town to hand over the minutes to him so he could examine them in private to determine whether or not they were, in fact, exempt. The town refused.

Cote referred the case to Reilly's office, which said that it would not take action against Easton until Cote made a final determination, as required by the Public Records Law, that the Easton minutes were a public record that must be released. Cote refused to do that, even though the

Public Records Law presumes records are public unless the holder of the records proves otherwise. He felt that the attorney general's interpretation of the law—that he first had to make a final determination before the attorney general could get involved—was incorrect. “I refused to make such an order without being able to see the documents,” he said in an e-mail.

He adopted the same reasoning in the Menino/Kressel case, declining to refer the case to the attorney general. Cote never even contacted Menino about the Gaiety records request. The result: a bureaucratic stalemate that opened a gaping hole in the Massachusetts Public Records Law.

A stunned Kressel said it best in an angry letter she fired off to Cote: “Your office appears to take the position that any public official can simply evade the law by ignoring it.” Cote did not budge.

Dot Joyce, the mayor's spokesperson, says she couldn't confirm that the mayor received Kressel's records request. She says the mayor responds to many records requests. “We're very open. There's not much we have denied,” she says.

The luxury apartment building that was supposed to rise from the rubble of the Gaiety never went up. What's there now is barren land surrounded by chain-link fence.

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### SUNSHINE STATE SHINES THE LIGHT

The availability of public records in Massachusetts is similar to what exists in other states across the country, according to Charles Davis, the executive director of the National Freedom of Information Coalition at the University of Missouri. He says all 50 states have public records laws, and most place legislative and judicial records off limits. Governors in many states also claim exemptions based on case law, Davis says.

Davis points to Florida as having the “gold standard” for state public records laws, noting that the exemptions in the Florida law are very narrowly defined and easily understood.

The Florida public records law was strengthened even more when Gov. Charlie Crist, a Republican, came into office in 2007. He established the Office of Open Government, which he charged with assuring full compliance with Florida’s public records law and with providing training to all executive agencies on the need for transparency and accountability.

Crist also appointed a special counsel on open government. Pat Gleason, the special counsel, points out that Florida not only has a public records law, but its constitution guarantees the right of access to public records. Gleason also notes that if a policy is still being hammered out in Florida, any related documents are public records, which is contrary to what the Public Records Law in Massachusetts says. When records disputes arise, Florida’s attorney general runs a mediation program, according to Gleason.

Crist has also established a Commission on Open Government to make recommendations to him on how Florida’s public records law could be improved. Commission staff director JoAnne Carrin says the commission will shortly be submitting recommendations that include making much more of the state’s financial data available on the state’s website, as well as making available more documents concerning complaints filed against professionals licensed by the state.

Davis says more states need to follow Florida’s lead. “Public officials need to put on their big-boy pants and act like adults and do the right thing by making documents easily available to the public they are supposed to serve,” he says.

Back in Massachusetts, there is little movement. Northeastern University’s School of Journalism is launching a center to increase access to public records. Former attorney general Scott Harshbarger and Kimberly Mottley, attorneys at Proskauer Ross LLP, are working with the American Civil Liberties Union and Citizens for Juvenile Justice, which have been stymied in their efforts to obtain aggregate sta-

tistical information from the state’s probation department. The two attorneys say they were surprised to learn the entire judicial branch claims an exemption, for all purposes, from the Public Records Law. “It just seems wrong,” says Mottley, who is exploring alternative legal options.

Robinson, the *Boston Globe* investigative reporter turned Northeastern professor, says the Public Records Law needs teeth. “That won’t happen until the press, and

## The exemptions in the Florida records law are narrowly defined and easily understood.

some chunk of the public they serve, become concerned enough to speak up, and loudly. This is not special interest legislation we’re talking about,” he says. “This is a pretty simple toolkit that makes it possible for all of us to hold government institutions accountable.” **CW**

*Colman Herman is a freelance writer living in Dorchester.*





James Rooney, executive  
director of the Massachusetts  
Convention Center Authority.

# Meeting market

Boston's new convention center is doing better than critics expected, but it has missed its most important economic benchmark. So why might its managers supersize it?

BY PHIL PRIMACK

## THE BOSTON CONVENTION & EXHIBITION CENTER

edges toward Summer Street, hovering like a giant spaceship looking for a place to park. Nearly five years after its opening, the sprawling facility on the South Boston Waterfront is still seeking the right fit, both physical and economic. Convention center officials say it may be time to expand the facility, even as the national convention industry faces challenges ranging from a glut of meeting space to sharply increasing costs for air travel. But talk of “supersizing” assumes the convention center has met its original goals. And on that, the record isn’t so clear.

Even some foes of the 1997 legislation that created the mammoth convention center acknowledge that it has attracted meetings and attendees more successfully and quickly than they anticipated. Last year, it hosted 125 events and drew 528,027 attendees, according to the Massachusetts Convention Center Authority, which pegs the overall annual economic impact at more than \$306 million. Many credit the strong performance to the leadership of the authority’s executive director, James Rooney, who is in the final year of his contract.

But despite such strong numbers, the convention center has failed to perform nearly as well as consultants predicted on the key industry benchmark of “heads on beds,” or hotel room nights. The convention center has generated half of the hotel room nights predicted in several studies, including one that played a crucial role in the legislative go-ahead to build the facility.

Rooney says he is “relatively indifferent to what some consultants said in the 1990s” and adds, “As I think of the context of those reports, they were generated around the question of should we build [the new convention center]. There was a lot of criticism at the time. It wouldn’t surprise me if [the reports] were produced to generate some level of support.”

He now says the convention center is nearing “business maturity.” Although he remains undecided on expansion, Rooney clearly thinks he has a solid track record upon which to literally build. “I have [no meeting space] to sell during peak periods through 2012,” he says.

### THE SPACE RACE

When it comes to convention centers, space has no final frontier. The justification for the Boston Convention & Exhibition Center (BCEC) was that while the John B. Hynes Veterans Memorial Convention Center, also owned by the convention center authority, has a great Back Bay location, its 289,188 square feet of exhibit and meeting space was inadequate, and its two-level layout caused headaches for meeting planners.

After reams of studies and a windfall for lobbyists, the Legislature in 1997 approved \$609 million to finance construction of the convention center, and the city of Boston kicked in another \$160 million to buy and clear the site. The state legislation also included \$85 million to entice votes from lawmakers in Springfield (most of it went to build the Springfield Civic Center) and Worcester (which got money to update what was then called the Worcester Centrum).

The convention center was designed to hold 600,000 square feet of meeting and exhibition space, but budget pressures reduced it to 516,000 square feet, still making it the length of two Hancock Towers placed end-to-end and the largest man-made space in New England.

The new convention center stands “head and shoulders over other convention centers around the country,” declared Gov. Mitt Romney at the building’s formal opening on June 10, 2004. Boston Mayor Thomas Menino said the new convention center “makes it possible to compete with cities across the country” for major conventions and trade shows.

Just four years later, however, convention officials and others worry that the BCEC, which is the ninth largest facility in the nation in terms of prime exhibit space (just behind San Diego and ahead of Miami), is too small. The convention center authority has hired consultants to help it develop a master plan for the 62-acre South Boston site, a third of which is now a parking lot. Based on feedback

from meeting planners, Rooney says, the greatest needs are to nearly double the convention center’s ballroom space and to add a “high-tech and broadcast-ready auditorium” with fixed seating for at least 5,000 people.

In language that could have been cloned from the 1990s, an October 2007 convention center authority press release said expansion could “ensure that Boston remains competitive in the meetings and convention marketplace as clients demand more space and better amenities now and in future bookings.” Of special interest are bookings by the kinds of groups—medical, scientific, educational, and technology—traditionally drawn to Boston.

“Medical meetings are space whores,” said Ron Olejko, who’s in charge of meetings for the American College of Rheumatology, including the one that brought 13,000 doctors and others to Boston in 2007. “Talk to any medical meeting planner, and we always want more space. We fit very well in the BCEC, but we basically maxed it out.”

Boston isn’t the only city hearing the space siren. According to *Tradeshow Week*, an industry publication, the amount of exhibit space in the United States grew by nearly 40 percent between 1997 and 2007. Indeed, a report last

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**‘We always want more space. We fit very well in the BCEC, but we basically maxed it out.’**

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year by two convention industry trade groups described “a buyer’s market” for show planners, who can often demand discount rental rates or other concessions from convention center operators. Still, new space keeps on coming. Philadelphia, New York City, Chicago, Las Vegas, and Orlando are among the competitor cities adding more prime exhibit space.

Rooney recognizes his industry’s insatiable appetite for space. He even shares—broadly—the views of one of the convention industry’s leading critics. Heywood Sanders, a professor of urban studies at Trinity University in San Antonio, says that too many cities build too many buildings to chase too few bookings.

“I agree with Heywood that there are winners and losers in any market situation,” says Rooney. “A lot of places overestimate their ability to compete. When I talk to people from other cities about making a public investment in a convention center, I’m equally blunt with all of them about the feasibility studies these consultants use to justify [such] investments. Some of these guys ought to be taken out and shot.”





**The Boston Convention  
& Exhibition Center, in  
South Boston.**

One reason for Rooney's disdain of consultants is that his own convention center has been hoisted on the petard of unfulfilled consultant projections on hotel room nights. (Rooney says he has instructed the authority's current consultants to be realistic. "I'll rein them in if I have to," he says.) Room nights were the main justification for the convention center because added hotel stays mean not only more room tax revenues, but also new money flowing into the local economy from out-of-town conventioners who stay at area hotels and spend on everything from meals and cabs to tours and trinkets.

According to the convention center authority's latest

annual Economic Impact Report, the South Boston facility generated 364,577 "associated hotel room nights" in 2007. Though certainly a lot of heads on beds, it's far fewer than had been projected. In 1997, a joint committee of the state and of the city of Boston, which was intended to be the deciding word on whether to authorize the new convention center, commissioned what became known as the Johnson Report. That study projected that by its fourth year of operation, the new convention center would create a demand for 654,000 hotel room nights, or nearly double the number actually achieved.

Authority officials say the Johnson Report is skewed

#### CONVENTION CENTER AUTHORITY PROPERTIES

MEETING FACILITY	EVENTS	ATTENDEES	HOTEL ROOM NIGHTS	ECONOMIC IMPACT (IN MILLIONS)*	ANNUAL DEBT SERVICE (IN MILLIONS)**	ANNUAL OPERATING SUBSIDY (IN MILLIONS)***
BCEC (South Boston)	125	528,027	364,577	\$306.22	\$31	\$0
Hynes (Back Bay)	122	324,701	237,535	\$188.00	\$0	\$1.5
MassMutual Center (Springfield)	171	182,994	7,078	\$2.65	\$3.3	\$4.4

Source: Massachusetts Convention Center Authority. All data is for fiscal year 2007.

\*"Direct spending," multiplied by two.

\*\*Approximate total for each MCCA facility, based on \$606 million 1997 authorization, which also includes \$1 million a year of debt service on the former Worcester Centrum.

\*\*\*Gap between annual revenues and operating expenses. BCEC and MMC figures are for calendar year 2007.

since, among other things, it assumed a 600,000-square-foot building that would be able to host more meetings at once than the existing 516,000-square-foot facility. But another report, prepared in 2002 by PriceWaterhouse Coopers for the Greater Boston Convention and Visitors Bureau and the Massachusetts Lodging Association, used the correct size—and it projected roughly the same number of room nights as the Johnson Report. The convention center authority says that study also had serious flaws.

Yet another study, conducted in 1997 by Sanders for the convention-center-doubting Pioneer Institute, did project about 350,000 room nights for the convention center at this point of its operation. “The crucial economic measure is how many people you bring in for multiple overnights,” Sanders says. “It turns out that my [1997] number was about right, but at the time, the argument was that the Johnson Report numbers were real. And those numbers were used [by the Legislature] as the basis for decision-making and going forward.”

Charles Chieppo, a former convention center authority board member and director of the Shamie Center for Better Government in 1997, says today’s claims of convention

center success mask this history. “The BCEC has outperformed my own expectations, largely due to Jim [Rooney]’s leadership, but the fact remains that what would have been viewed as failure in 1997 is seen as success today because of lowered expectations.”

Pat Moscaritolo, executive director of the convention

**‘No one has a crystal ball. I would be surprised if any of these reports ever hit the number.’**

and visitors bureau, doesn’t exactly disagree that pom-poms may have influenced earlier consultant reports. “I don’t dismiss these reports, but they were a best estimate based on data they were able to collect at the time. No one has a crystal ball. I would be surprised if any of these reports ever hit the number.”

What if the convention center was generating *more* room nights than predicted by the studies? Moscaritolo is

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asked. "We'd probably be making a big point of it," he chuckles. "But what's important isn't how the building is performing in regards to a consultant estimate, but how it's doing in the real world."

### **'THE FUTURE LOOKS EVEN BETTER'**

According to the convention center authority, the South Boston facility is doing quite well. But its economic impact claim of \$306 million in 2007 needs some context. Here's how the authority produces that number:

First, multiply the 364,577 hotel room nights by the average daily hotel rate (just over \$200 in 2007).

Second, multiply total attendance by the average length of attendees' stay (2.95 days) and by attendees' daily direct spending (about \$100, based on a survey of attendees about what they spend on food, shopping, and transportation while in Boston).

Add the above. Multiply the total by an economic multiplier of two, since the authority assumes that each dollar directly generated by the convention center induces another dollar of indirect economic activity. This 2.0 multiplier is higher than the multipliers used in the Johnson and Price-Waterhouse studies, but compared to the often ridiculous multipliers used elsewhere to justify public spending on things like stadiums and convention centers, it's reasonable.

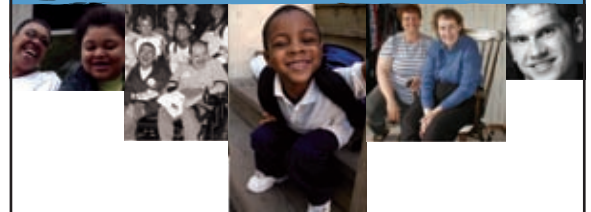
If anything, says Rooney, the authority is conservative with its numbers. But the economic impact figure includes activity from consumer and commercial events that were not originally within the convention center's mandate. It includes not only Dr. Jones flying in from Minnesota, but also Hometown Henry attending the boat or some other "gate show." (At first, the new convention center was barred from hosting such consumer shows, thanks to opposition from South Boston neighbors and a desire to protect other Boston meeting venues, but that edict has since been lifted.) Authority officials estimate that about 10 percent of the convention center's economic impact, or about \$31 million in 2007, was from day-tripping Boston residents. Rather than "new" money into the economy, that spending is often "economic transfer"—or money that would have been spent in the local economy anyway.

"The original conversation was 'no gate shows,' but that changed because the MCCA had to fill the space," says Pioneer Institute Executive Director James Stergios. "That's fine, but it's not the same as the conversation that centered on how many hotel room nights can be generated."

Rooney concedes that gate shows "are not high-value economic impact," but he says they are part of the convention center's economic story. Another part of that story, however, is the \$31 million the authority must pay each year on bonds used to finance the convention center's construction. That debt is financed mainly by a tax surcharge



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An artist's rendering of the Hynes Convention Center as it will look after renovations.

on Boston and Cambridge hotel rooms and car rentals and other fees. As for operating costs, the convention center now generates enough income to cover them. (The Hynes still runs about \$1.5 million in the red, but Rooney says its \$18 million renovation, set for completion next year, will generate enough revenue from new restaurants and retail space to close that gap. Another authority property, Springfield's MassMutual Center, continues to require a major operating subsidy. See the chart on Page 55.)

"I would submit that if you look at the \$850 million [total] investment in the BCEC, the taxpayers are already getting a good return," says Rooney. "And the future looks even better in terms of job creation, spending, economic activity, and all the benefits people thought this facility would provide."

One fear—that the bigger and better convention center would cannibalize the Hynes—has not materialized. Indeed, for all its supposed inadequacies, the Hynes remains a strong venue, attractive to conventioners seeking the nightlife and other amenities notably absent from the new convention center's immediate South Boston neighborhood, which falls far short on the kind of entertainment amenities sought by conventioners. "For me, the issue was less the hotels than the vibrancy around the area," says meeting planner Olejko. "It's kind of like a no-man's land."

Restaurants and other entertainment options have long been promised for the area, but they have come only slowly, though Bristol Property Management president Peter Bassett, a long-time MCCA board member, says a "significant amount of development has occurred," with more in the pipeline. "While I am not suggesting that the BCEC is the sole reason for this new development, [it has] without a doubt focused demand on the South Boston waterfront."

"Both [the Hynes and the BCEC] have become very important to the Boston economy," says Boston developer John Drew, president of the Drew Company. "Look at the numbers. Jim has almost duplicated the room nights coming out of the Hynes and he's done it while not hurting the Back Bay. I did not foresee that."

#### LEADERSHIP IN QUESTION

Rooney acknowledges that the convention center can already handle about 90 percent of all possible meetings. So why even think of expanding?

"The shows we cannot handle are pretty significant in ways that transcend economics," he says, citing the loss of BIO, the life sciences convention that drew more than

## One fear, that the bigger convention center would cannibalize the Hynes, has not materialized.

22,000 attendees to Boston in 2007. "BIO put Boston on the world map for a week for that industry. If the underpinning of our economy is high-tech, life sciences, and education, we require an ability to host meetings and events in those industries."

BIO show manager Robbi Lycett says the BCEC is now too small for the still-growing convention. "There are maybe five cities we can go to, of which Boston is not one," he says.

Trinity University's Sanders says lots of cities think they're BIO bait. "Philadelphia argues it is uniquely positioned to host medical events in part because pharmaceutical and medical tool companies are located there," he



says. “Denver is a popular destination for high-tech and medical events. So are San Francisco and San Antonio. From a purely local perspective, almost every city looks great. They all think they’re going to get these shows.”

Rooney hopes the authority “will begin a dialog” about a convention center master plan by the end of the year. But that assumes Rooney, whose contract expires in March, will be around to implement any plan. Though he and the convention center have earned accolades—the facility won a major trade group’s Convention Center of the Year award in 2007, and the American Society for Public Administration honored Rooney in May—the Patrick administration isn’t exactly rushing to offer him a new long-term contract. Rooney declined to discuss his contract, though he says he expects to stay on the job.

Asked if the administration is satisfied with Rooney’s performance, Patrick spokeswoman Cyndi Roy e-mailed that Rooney and the authority board “continue to do a very good job...and we are thankful for their work. It is too soon to discuss contracts, as...Jim’s term is not set to expire until March.” Roy declined further comment.

Uncertainty about Rooney’s reappointment, as well as looming authority board vacancies, has some convention center backers concerned.

“The MCCA has become one of the best operations of its kind in this industry,” says Dean Stratouly, co-founder and president of Congress Group, which develops real estate. Stratouly oversaw the convention center’s construction as head of the authority’s development committee. “Without Jim’s leadership, I have big concerns that the market would be as accepting of Boston. To not have him there would give me pause about whether or not it would be prudent to risk [any expansion].”

#### NO PLACE TO REST

With or without Rooney, any decision to expand the convention center will be driven by politics and economics, and not necessarily in equal parts. The economics, in turn, will be driven by what Rooney calls his three biggest priorities: “Hotels, hotels, and hotels.”

Even when it opened, the convention center fell far short of meeting planners’ hotel needs, especially rooms within easy walking distance. A half decade later, that situation has improved little. According to an analysis presented to the authority in June by Convention Sports & Leisure, the Minnesota-based convention industry consultant hired by the authority to help develop a master plan for the South

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Boston facility, the BCEC (with 1,700 rooms), is tied for second to last among 13 convention centers in competitor cities when it comes to hotel rooms within a half mile. The Hynes, with 6,000 rooms within a half mile, is good only for 11th place. And with just 793 “headquarter hotel rooms,” rooms directly attached to the building, the new convention center ranks last in the nation on that important convention industry measure.

The issue isn’t just the number of hotel rooms, but their rates. Boston’s high hotel costs (and the city’s high costs in general) are not lost on meeting planners. When it surveyed current and past convention center users, Convention Sports & Leisure found that only half said they would “definitely,” “likely,” or “possibly” use the new facility again. The biggest factors cited by the half who said they were “not likely” to or would “definitely not” use it were Boston’s high costs, geographic location, and weather. The consultant also estimated that under various expansion options, BCEC occupancy levels would fall to the low 50s—well under the industry target of 70 percent capacity, which the convention center expects to hit by 2010.

“BCEC is a terrific building with a great management staff,” says Stratouly. “But underlying it all is that we don’t have the hotel rooms.” Stratouly adds that many of the

hotel rooms under development or planned for Boston are likely to have room rates “higher than the guy in Kansas might be willing to pay. It’s not about just creating rooms, but the right kind of affordable hotel base.”

Boston developer Drew adds that while convention center expansion “would be extremely helpful in making the argument for more hotel rooms,” it won’t in itself loosen capital markets. “Hotel financing issues are basically not dependent on the BCEC,” says Drew, who developed the Seaport Hotel and has plans for another 300-room hotel in the South Boston Waterfront area.

The current menu for the convention center authority thus features chicken and egg. “Do you start expanding in the hope hotels will follow, or do you make the hotels come before expansion?” ponders Stratouly. “My view now is that until we solve our hotel challenge, how can we expand?”

Rooney agrees. “I would not recommend any kind of expansion absent a companion increase both in more hotels relatively nearby as well as more rooms at a moderate price point,” he said.

Another thickening cloud on the convention business horizon—rising travel costs and, especially, declining airline capacity—is beyond the authority’s control. “We’ve enjoyed tremendous growth in the visitor and convention

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An information technology conference, at left, drew 35,000 to the BCEC, while BIO International 2007 drew 22,000.



business due in part to expanded [airline capacity],” said Doug Ducate, president of the Dallas-based Center for Exhibition Industry Research. “The projected reduction in [routes and seats] is probably a much bigger threat to the industry than the economy. It’s probably the biggest concern.”

One other little problem to add to any convention center expansion punch list: paying for it. “You may have to increase some of these visitor-industry-related taxes and fees,” says Moscaritolo, and that would probably not go down well with many of his own constituents. “I wish the issue were just how well has the building performed, but there is no way the Patrick administration can buy into [expansion] without a financing plan that increases some

state taxes.”

Put it all together—hotel inventory, amenities, airline uncertainties, financing—and the convention center “is sailing into a headwind” if it wants to expand, says Convention Sports & Leisure principal John Kaatz, who is leading the authority’s master plan research effort. Kaatz says meeting planners want to be in Boston, but all the uncertainties in the market lead him to project an occupancy rate of just over 50 percent for an expanded BCEC, which is at the low end for convention centers.

Rooney lights up when he hears such low expectations. “That just gives me another thing to prove everybody wrong about,” he said. Sounds like a guy just about ready to supersize it. **CW**



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# Plush park

Big ambitions come with steep price tag for the Rose Kennedy Greenway

BY BRUCE MOHL | PHOTOGRAPHS BY FRANK CURRAN

Like the Big Dig that gave birth to it, there's nothing low-budget about the Rose Kennedy Greenway. The park, which snakes for more than a mile through the center of downtown Boston, cost more than \$50 million to build and will probably take tens of millions more to fully complete. The annual tab for upkeep is expected to be \$3.2 million, which, on a cost-per-square-foot-basis, would make the Greenway one of the most expensive parks to maintain in the nation.

The hefty price tag reflects the high ambitions for the park. The expectation is that the Greenway will be a signature feature of the city and state, a common ground for Boston residents and a destination point for tourists from all over the world.

Even the 2004 legal document creating the management structure for the Greenway drops the dense legalese when it comes time to describe the park. "A first-class public space and civic resource," the document says, "one that is *le meilleur des meilleurs* [the best of the best] in every respect."

Richard Dimino, president of A Better City, a business group that was heavily involved in the development of the Greenway, says he envisions a day when Europeans will hear about the park and want to come to Boston just to see it.

"This is a renaissance opportunity for the city of Boston," he says. "We want this park to be an icon of Boston, to help make it a destination city."

As anyone who has walked the Greenway knows, it will take time and a lot more attractions to fulfill that vision. The park is young and has tremendous potential. The city's residents are just beginning to discover its many

Maintenance of the 13-acre Greenway is expected to cost \$3.2 million a year.



The Chinatown section of the Greenway features fan-shaped paving stones and other unique features.

intriguing nooks and crannies. But the Greenway is very much a work in progress. It's not an easy park to manage. From the air, it looks like 12 small parks surrounded by streets on all sides. The Greenway is a pleasant place in which to walk, read a book, or have lunch—as long as the sun isn't too intense—but it's not a destination park, at least not yet. At the end of August, the *Boston Globe Magazine* selected 18 great walks in the area; the Greenway wasn't among them.

The Greenway is at a crossroads of political interests. It is located in Boston but owned by the Massachusetts Turnpike Authority, which is about to turn over the reins of day-to-day management to a private conservancy that will receive half its budget from state taxpayers—up to \$5.5 million a year through at least 2012.

The combination of private management and public funding effectively creates a two-tier park system in Massachusetts, one in which the Greenway is lavished with state tax dollars and personal attention while other parks are treated in cookie-cutter fashion.

The estimated cost of upkeep for the Greenway is a third of what the city of Boston spends on maintenance for all its 2,200 acres of open space, including parks like the Boston Common and the Public Garden. The maintenance tab for the 13-acre Greenway is also about the same as the state's entire budget for the 869-acre Charles River Reservation, which includes the Esplanade.

Katherine Abbott, a former commissioner of the state Department of Conservation and Recreation and currently executive vice president of the Trustees of Reservations,

which preserves scenic land in Massachusetts, says taxpayers are getting what they paid for. "They are implementing a model park," Abbott says of Greenway officials. "That's not what we're used to around here. They're creating a Lexus where we're used to a Hyundai."

Christine Poff, executive director of the Franklin Park Coalition, a group supporting the 485-acre, Frederick Law Olmsted-designed park in Boston, says the generous support for the Greenway reflects the political clout of the downtown business crowd. "I'm furious because there's not any money going to parks that everyday Bostonians are using," she says. "The Greenway is a median strip, a wide one. It's got some residential neighborhoods around it, but mostly it's for tourists and businesses."

### UNIQUE FEATURES ARE COSTLY

The cost of maintaining a park is driven by its use, its design, its location, its shape, and its level of programming and security. In almost every category, the Greenway scores extremely high.

The Greenway has benches manufactured in England, granite from Georgia, and paving stones from Colorado. There are multiple lighting systems and five different fountain systems, all of which are required to spurt out water of swimming-pool quality. The ring fountain at the center of the Greenway has so many proprietary parts that it is being maintained by its developer, Wet Design of Sun Valley, California. Greenway officials say most problems can be diagnosed and remedied remotely, but at least four



on-site visits will be required each year.

The Chinatown section of the Greenway features fan-shaped paving stones on the ground that are expensive to produce and tricky to install. The bamboo growing in the Chinatown section is surrounded by custom-designed metal frames, and the red gate at the entrance is painted



in a custom hue. “You can’t go to Home Depot and get this color,” says Anne Gorczyca, the Turnpike Authority’s manager of park construction.

Robert Pirani, who has studied park operating costs closely for the Regional Plan Association in New York, says customized features make a park appealing, but they can increase maintenance costs dramatically. “There’s a price to be paid for that uniqueness,” he says.

By virtue of its central location, the Greenway gets a lot of traffic. Yet the space is not easy to maintain because it’s long, narrow, and cut up into island parcels by cross streets. There are no maintenance sheds on the Greenway, so equipment has to be stored off-site at satel-

ite locations and brought in as needed. Trash has to be picked up and hauled away.

Nancy Brennan, executive director of the Greenway Conservancy, the private nonprofit preparing to take over day-to-day management of the park, vows that maintenance standards will be very high. She says the park must look good 12 months a year, day and night. She says graffiti must be removed within 24 hours, dead rodents even faster. Fallen tree limbs can’t linger. Cigarette butts have to be picked up quickly and sticky substances on tables removed. Trash has to be picked up often, maybe twice between 11 a.m. and 2 p.m. on nice-weather days.

No pesticides will be used on the plants and grass. “We’ve spent billions cleaning up Boston Harbor. We don’t want to contaminate it any more,” says Brennan.

About the only area where the Greenway has skimped is bathrooms. With the highway tunnels underneath the park so close to the surface, Brennan says bathroom pipes could not be installed. Visitors who need a restroom must find one in one of the adjacent buildings.

#### **MAINTENANCE TAB AMONG HIGHEST IN NATION**

For a public trying to come to terms with a Big Dig that cost roughly \$20 billion, the \$3.2 million-a-year maintenance bill for the Greenway doesn’t sound like much. But it is probably higher than any other park in Massachusetts and exceeds on a per-square-foot basis all but the most expensive parks in the nation.

“The design, visibility, and civic mission of the Greenway will make it a world-class space: they also will make it costly to operate,” says the Greenway Conservancy’s business plan.

The business plan envisions the Greenway spending roughly \$3.2 million a year on maintenance, \$1.4 million a year on programming, \$1.4 million on administration, \$935,000 on marketing and fund-raising, and \$635,000 on capital projects. The total annual budget is expected to be \$8.6 million, of which half would come from the state.

The Greenway’s actual park space totals 13.2 acres, so

## **The park’s design makes it a world-class space; it also makes it costly to operate.**

an annual maintenance cost of \$3.2 million works out to \$5.57 a square foot. And that’s an estimate. “We’ve made some assumptions, but we won’t know for sure until we

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can run the place," Brennan says.

Ben Welle, assistant director of the Center for City Park Excellence at the Trust for Public Land in Washington, D.C., said the cost range envisioned by the Greenway Conservancy would definitely place it in the top tier in the country. "In terms of maintenance, they are looking to be one of the elite parks in the nation," he says.

The Greenway Conservancy's business plan compares the cost of maintaining the Greenway to the cost of maintaining the Norman Leventhal Park in Post Office Square, the Public Garden, and the Battery Park City Parks in New York. The cost of the Greenway is 50 cents higher on a per-square-foot basis than the Leventhal Park and more than a dollar per foot higher than Battery Park City Parks, although the Battery Park figure does not include security costs.

A direct comparison with the Public Garden isn't possible because the city of Boston doesn't break out its costs by individual parks. Still, a comparison of manpower devoted to the two parks provides a stark contrast. The city assigns five workers to work exclusively on the Public Garden; the Greenway Conservancy is planning to hire 12 maintenance workers.

The Massachusetts Port Authority operates three parks, two in East Boston and one in South Boston. The three parks are all maintained at a high level, but none comes close to rivaling the cost of the Greenway on a square foot basis. Piers Park is \$3.67 a square foot, while Bremen Street Park and South Boston Maritime Park are below \$2 a square foot.

The state's Department of Conservation and Recreation operates three parks—Paul Revere, North Point, and Nashua Street—created as mitigation for the Big Dig. The department pays a contractor 39 cents a square foot to handle annual maintenance duties on all three parks, but that figure does not include charges for electricity, water, and trash removal.

Nationally, comparisons are even more problematic because of differing park configurations and weather patterns, but it's clear that the Greenway is in elite company financially. Tax records indicate the Greenway, for its size, is planning to spend more on maintenance than several signature city parks, including Gold Medal Park in Minneapolis, Discovery Green in Houston, Pioneer Courthouse Square in Portland, and Bayfront Park in Miami.

Daniel Biederman, who manages Bryant Park in New York City, says he spends \$1 million an acre, or roughly \$22.95 a square foot. But he says that figure includes all of the park's expenses, not just maintenance. Public filings from 2006 indicate maintenance expenditures are close to \$7 a square foot.

Whatever the figure, Biederman is not shy about spending money. A couple years ago he dropped \$200,000 refurbishing Bryant Park's bathroom, which he says is a





**Nancy Brennan,**  
head of the Rose  
Kennedy Greenway  
Conservancy.

bargain when you consider 600,000 people use it a year. “Women all over midtown Manhattan stop by because they know it’s a restroom they can trust,” he says.

Officials at Millennium Park in Chicago say they spend \$6.56 a square foot on maintenance, which is more than a dollar higher than the Greenway. Most of the difference can be traced to security costs. Millennium, with its sculptures, exhibits, and free public events, devotes a fifth of its maintenance budget to security. The Greenway, by contrast, relies on the Boston Police Department for the bulk of its security needs and plans to hire four of its own security employees.

Parks are often described as public benefits, but there is growing evidence that they can also pay economic dividends. For example, Bryant Park hosted Fashion Week in September, drawing designers and glitterati from all over the world. Chicago’s Millennium Park has also become an economic engine. An economic impact study done in 2005 projected that, by 2015, Millennium would generate \$1.4 billion in new residential development near the park and somewhere between \$1.9 billion and \$2.6 billion in gross sales from visitor spending.

“The park is wildly successful,” says Edward Uhler, who helped design Millennium Park and now works as a consultant to the private group that supports it financially.

Uhler says artist Anish Kapoor’s 110-ton, stainless-steel Cloud Gate sculpture, which everyone calls “The Bean” because of its shape, is known all over the world. “We couldn’t pay for the amount of advertising we’ve gotten from that,” he says.

### PRIVATIZING PUBLIC SPACES

Public management of park space is the norm in Massachusetts, but private management of city-center parks is commonplace nationally. To see why, one need look no further than the popular Norman Leventhal Park in Boston’s Post Office Square, which opened in 1992. The 1.7-acre park is operated by a for-profit company that uses parking revenues from a below-ground garage to pay for park maintenance. The city of Boston collects \$1.4 million in taxes from the park operator and contributes no money to the park’s operation.

As the Greenway began to take shape, public officials were intrigued by the idea of offloading park operations to a private entity, while private sector officials liked the single-minded focus a private group could bring to a park. “If you have a privatized group, there’s going to be more focus on the cleanliness, how it’s going to be maintained,” says Robert Beale, president of the Beale Cos., a Greenway abutter who was active in the park’s development. “It was our feeling that this was the way to go.”

City and state park agencies weren’t eager to take control of the Greenway because it was likely to consume an inordinate amount of their resources. “We have to serve all the community, not just the downtown,” says Antonia Pollak, the commissioner of Boston’s Parks and Recrea-

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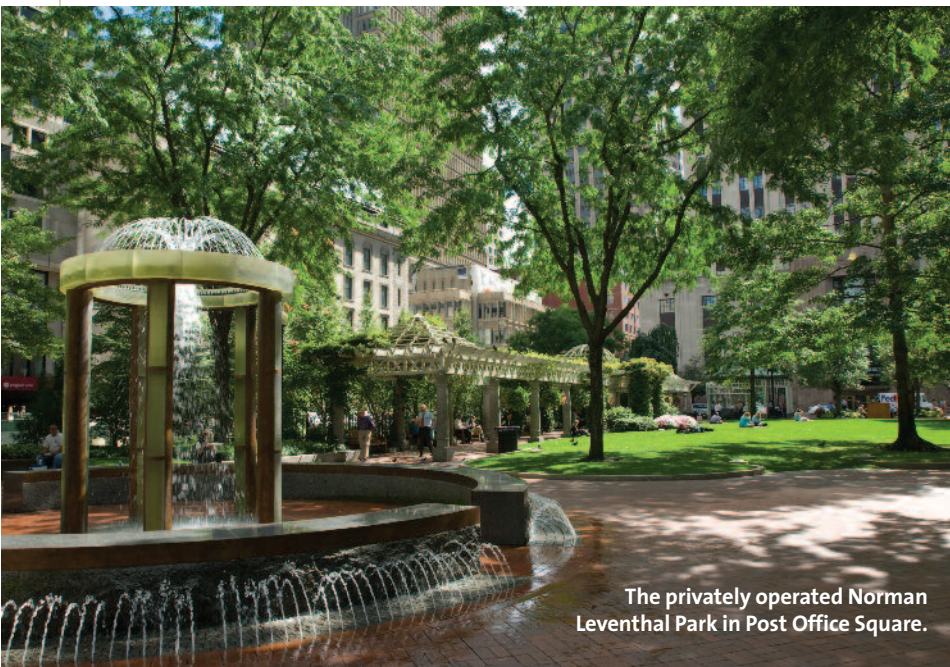
**‘[With] a privatized group, there’s going to be more focus on the cleanliness.’**

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tion Department. “Would I like more resources? Yes, but I’d like them for all our parks.”

Richard Sullivan, commissioner of the state’s Department of Conservation and Recreation, says it would make no sense for his agency to manage the Greenway. “It’s kind of a higher-end specialty facility and better off with somebody focused in that specialized area,” he says.

The problem was funding. Unlike the Post Office Square park, the Greenway has a tunnel underneath it, not a cash-generating garage. The original hope was that fund-raising would bring in enough money to cover the cost of Green-



The privately operated Norman Leventhal Park in Post Office Square.

way operations. But after reaching its initial fund-raising target of \$20 million, the inflow of contributions has slowed. Officials blame a weakening economy and the dearth of companies headquartered here, but even firms located along the Greenway were tepid in their enthusiasm.

Of the \$20.3 million raised so far, the biggest donation came from the Turnpike Authority (\$5 million). Other

big donors include Blue Cross Blue Shield of Massachusetts, Raytheon Corp., State Street Corp., the Joseph P. Kennedy Jr. Foundation, Bank of America, Boston Scientific, John Hancock Financial Services, National Grid, and Liberty Mutual. In all, 76 donors contributed more than \$1,000 and 439 contributed under \$1,000.

Only 14 percent of the contributions, or \$1.85 million, came from abutters, those who stand to benefit the most from the Greenway's creation. Abutters missing from the contribu-

tor list include Delaware North Co., owner of the TD BankNorth Garden, the Marriott Long Wharf Hotel, and the InterContinental Hotel.

"As the value of the land surrounding the Greenway increases, I would hope we would see more enthusiasm from the abutters in the future," says Charles Baker, a Greenway Conservancy board member and the chief

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executive of Harvard Pilgrim Health Care.

In the interim, the Greenway has turned to state taxpayers for help. In July, the Legislature approved a bill pushed by House Speaker Sal DiMasi that puts the state on the hook for half the Greenway Conservancy's budget — up to a maximum of \$5.5 million a year — through 2012. Dimino, head of the business group A Better City, says there is every expectation state funding will continue beyond 2012.

"For the Greenway to be successful, there needs to be a good balance between public and private funds," he says.

### PRESSURE ON BRENNAN

Nancy Brennan ran Plimoth Plantation before coming to the Greenway Conservancy. She oversaw a roughly \$9 million budget and a staff of 150 full-time and 60 seasonal workers at the recreated 1600s-era community. Those skills are coming in handy in her new job, but she also has to develop new ones. Her position at the Greenway Conservancy, which pays \$165,000 a year, requires the diplomacy of a politician and the vision of an artist. She is working with a blank canvas as scores of powerful stakeholders watch her every move.

One challenge is to protect the park from encroachments by abutters, the very same people her fund-raising operation is targeting. Developer Don Chiofaro, for example, is planning a major new development at the site of the parking garage in front of the New England Aquarium. Can Brennan make sure the new building doesn't block out the park's sun even as her Conservancy staff works out of donated office space in Chiofaro's One International Place on the other side of the Greenway?

Brennan's vision for the Greenway is still evolving. The park had a coming-out party in early October, but many important park pieces have been eliminated or remain up in the air. Gone is the planned "garden under glass" proposed by the financially struggling Massachusetts Horticultural Society. A proposed New Center for Arts and Culture, with galleries, a theater, and a café, has been delayed and scaled back. The Boston History Museum, proposed originally for a section of the Greenway just south of the North End parcels, is moving to a Turnpike-owned parcel on the other side of the Surface Artery. Museum officials say the Greenway parcel was too expensive to build on. They estimate it would have cost \$56 million to cover on-and-off ramps on the parcel, far above the \$31 million the state has set aside to cover the on-and-off ramps on that parcel and two others.

Without museums in place, Brennan is searching for ways to attract people to the Greenway. She is considering a winter skating rink and a summer movie program. She shows a visitor sketches of colorful tarps that could

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be erected along the Greenway next summer to provide shade for park visitors until the trees grow taller.

Biederman, the manager of New York's Bryant Park, and Uhler, the designer of Chicago's Millennium Park, have both visited the Greenway recently and come away concerned by the absence of crowds. Biederman's conclusion: "People are getting turned off because no one is there."

Uhler calls the Greenway a passive park, not a destination park. Biederman suggests that the Greenway needs more amenities that would increase what he calls the "dwell time" of visitors to the park. He says services such as WiFi, restrooms, and food, none of which the Greenway has, would boost the amount of time patrons spend in the park. And he warns that the Greenway needs attention now. "It needs a retrofit that brings in a lot of activity and life," Biederman says.

Shirley Kressel, a landscape architect and urban designer who moonlights as a Greenway watchdog, isn't so concerned with the design of the park. Her concern is with a private group, backed by downtown business interests, operating what is supposed to be a public park. She says she fears the private managers will pursue policies to benefit their financial supporters and not the public. "On top of that, they're going to be using public money to do it," she says.

Henry Lee, president of the Friends of the Public Garden, says private managers often do a great job running parks, but he is philosophically opposed to putting them in charge of public spaces.

"City or state government should not relinquish control over public space," he says.

Lee also marvels at the size of the Greenway's budget. "Most people feel it's more than is really needed," he says, quickly adding that his comment may reflect jealousy more than anything else. "Who am I to say it's excessive? But it does dwarf the resources available for parks in other parts of the city."

Eugenie Beal of Jamaica Plain, the chairwoman of the Boston Natural Areas Network and a longtime park activist, says she favors public management of public spaces. She says private management of the Greenway came to the fore because the park had too many cooks, none of whom could agree on who should run it. "Nothing better turned up," she says.

She also agrees the park's budget is big, but adds that it's time for Boston to recognize the value of its parks and the need to support them strongly. "We need to raise our aspirations," she says. "Boston Common's condition is a disgrace. It looks scruffy but everyone is used to it." **CW**



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## CONVERSATION





# Cos for action

Bill Cosby has found himself at the center of a storm for speaking out about education, responsibility, and values in the black community. It might be the most important role he ever plays.

The occasion was an NAACP dinner to commemorate the 50th anniversary of the *Brown vs. Board of Education* decision outlawing school segregation, but Bill Cosby was in no mood to celebrate. Instead, when the famed entertainer rose to offer remarks to the Washington gathering in May 2004, he delivered a withering condemnation of the values and behavior that he said were holding back lower-income black neighborhoods.

A half-century after the landmark court ruling, Cosby lamented the lack of interest among too many blacks in the schoolhouse doors opened up by the decision. "What the hell good is *Brown vs. the Board of Education* if



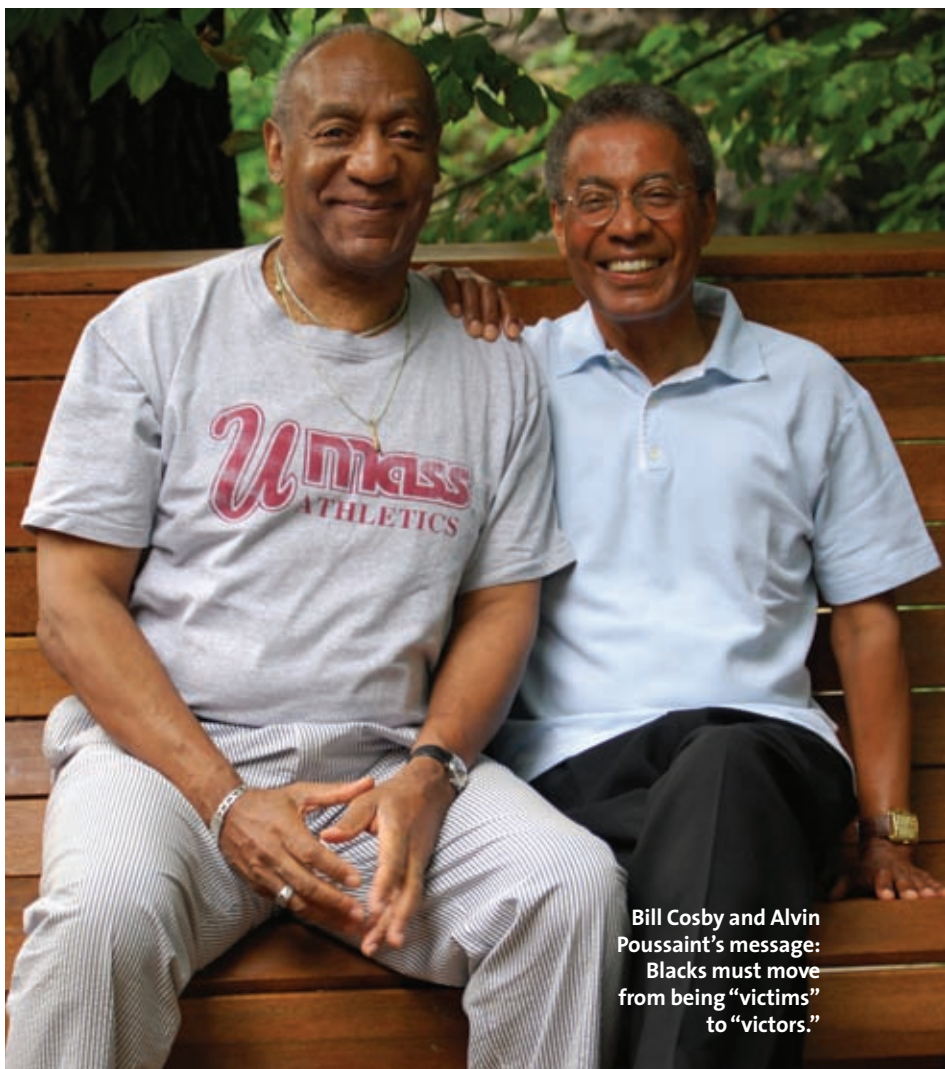
nobody wants it?” he said. He railed against a lack of parenting that would have been unthinkable when he was growing up in a poor Philadelphia neighborhood. He bemoaned astronomical high school dropout rates, absent fathers, women having children by multiple men, and prisons overflowing with black inmates who were not railroaded by the system but rather made horrible decisions.

He offered a parable about a boxer who was badly losing a bout. “It’s not what he’s doing to you,” his manager told him. “It’s what you’re not doing.” This was Bill Cosby’s way of telling black Americans to get up off the mat, to stop pointing fingers at the racial discrimination that remains a force, and focus instead on the degree to which they can change their own lives and help shape those of their children.

The 71-year-old western Massachusetts resident insists that his critique is nothing new. During our conversation, he mentions a profile in *Ebony* magazine more than 30 years ago in which he raised some of these same issues—and he has his agent’s office in Los Angeles fax a copy of the story to underline the point. They may be long-held views, but Cosby has never before staked out anything like the public profile he has assumed on these issues over the last four years. Since his 2004 speech, Cosby has hit the road, speaking to packed community meetings in cities across the country, imploring blacks to seize control of their destiny. Last year he laid out his message by co-authoring a book with his longtime friend, Harvard child psychiatrist Alvin Poussaint, called *Come On, People: On the Path from Victims to Victors*.

Cosby and Poussaint’s campaign has unleashed a passionate debate within the black community. *New York Times* columnist Bob Herbert praised them for “hammering home some brutal truths about self-destructive behavior with the African-American community” and called their work “nothing less than an effort to save the soul of black America.” Harvard’s Henry Louis Gates asked, in a *Times* op-ed, “Why the huge flap over Bill Cosby’s insistence that black teenagers do their homework, stay in school, master standard English, and stop having babies?”

“It’s important to talk about life chances—about the constricted set of opportunities that poverty brings,” wrote



Bill Cosby and Alvin Poussaint's message: Blacks must move from being “victims” to “victors.”

Gates. “But to treat black people as if they’re helpless rag dolls swept up and buffeted by vast social trends—as if they had no say in the shaping of their lives—is a supreme act of condescension.”

But Michael Eric Dyson, a black studies professor at

**Cosby and Poussaint have been praised—and vilified—for their blunt talk about values in the black community.**

the University of Pennsylvania, calls Cosby’s crusade a cruel “blame-the-poor tour” that ignores such factors as the disappearance of blue-collar jobs from cities. In 2005, Dyson, who has emerged as Cosby’s chief critic, went so far as to write a book titled *Is Bill Cosby Right? Or Has the Black Middle Class Lost Its Mind?*



Cosby does nothing to conceal his contempt for Dyson and other blacks whose careers, he says, are built on maintaining the image of African-Americans as dispossessed victims of an oppressive power structure. He calls such critics “intellectual panhandlers.”

He and Poussaint challenge the claim by Dyson and others that big changes in the economy have shut the door of opportunity to low-income blacks. They extol the pathway to decent jobs provided by community colleges, and insist that education is a ticket out of poverty that is within reach.

When it comes to a belief in education as the key to black self-improvement, Cosby has put his money where his mouth is, in ways both large and small. He and his wife, Camille, have donated millions to black colleges, including a \$20 million gift to Spelman College in Atlanta. Four years ago, Cosby, who lives in the Franklin County town of Shelburne, pledged to pay the college costs for four teenage boys graduating from high school in nearby Springfield, where Cosby has become a regular presence, speaking to community meetings and school gatherings.

In August, I spoke with Cosby and Poussaint. I sat with Poussaint at his office at the Judge Baker Children’s Center in Boston, with Cosby, an animated presence even via speakerphone, joining in from New York. What follows is an edited transcript of our conversation.

—MICHAEL JONAS

**COMMONWEALTH:** Your book on the need for black Americans to seize responsibility for their plight came out last year, but it really puts on paper issues that you, Mr. Cosby, raised in a speech four years ago that received lots of attention. What led you to speak out at the time you did, and then mount what has almost been a campaign to force the discussion of these issues?

**COSBY:** I’m looking at Philadelphia, 300-and-some murders of young men. I’m looking at Milwaukee, Wisconsin, with all those murders. I’m looking at Chicago, Detroit—the dropouts there. People are talking about, “You don’t put out our dirty laundry.” But nobody’s wanting to clean it. We’re not paying attention to the murders. We’re not paying attention to the 55 percent dropout rate. We’re not paying attention to teenage pregnancy, the numbers of our households run by single parents. We’re not paying attention to our black men going into prison and black men not standing to be the fathers of their children. Then we get the intellectual panhandlers who, I feel, realize that if these people really do get up and begin to fight the fight to win, they’ll be out of work.

**CW:** You talk about that in your book. You said blaming the problems of poor urban blacks on racism or “the

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system” keeps certain black people in the limelight—while keeping the black poor wallowing in victimhood.

**COSBY:** Sure.

**CW:** So you think there are leaders who are really just interested in maintaining their position? They’re kind of the lead grievance representatives?

**COSBY:** Let’s not call them leaders.

**CW:** At the root of a lot of your critique is really a withering appraisal of the state of the black family. Put most bluntly, at one point in the book you and Dr. Poussaint write, “In many neighborhoods parenting is not going on.” What do you mean by that?

**POUSSAINT:** Well, I think what we mean is that a lot of good parents and a lot of black parents help their children to succeed and have done the right thing. But it’s also very obvious that there are a lot of parents who are not doing the right thing, who are not nurturing and loving their children and giving them what they need to a significant degree. Some of these families can be two-parent, but an

overwhelming number of them are single-parent families. About 70 percent of black babies are born to single mothers. Many of them don’t know a lot about parenting. Many of them are young, they’re teenagers, and they don’t know what to do by their children. So one of the chapters in this book is devoted to parenting because you can’t assume that people know what to do. We know there are a lot of things that they’re not doing. They’re not tending to them, not understanding how to support education, not knowing what they need to do to help their minds and brains develop. And then, frankly, there are some parents who are abusing the children psychologically, physically. A lot of sexual abuse goes on in the black community. There’s a lot of use of corporal punishment, hitting and spanking, and a lot of that does turn into physical child abuse. We know that damages the chances of these young people. You get a lot of angry youth because of this, and you also get a lot of youth who find difficulty learning, being obedient, fitting into social situations, and fitting into schools because a lot of parents aren’t supporting the school situation. So we see parenting as key. We have to get out of the denial and stop pretending that all the parents are doing the right thing.



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**CW:** Or, I guess, pretending that these woes are all inflicted from outside.

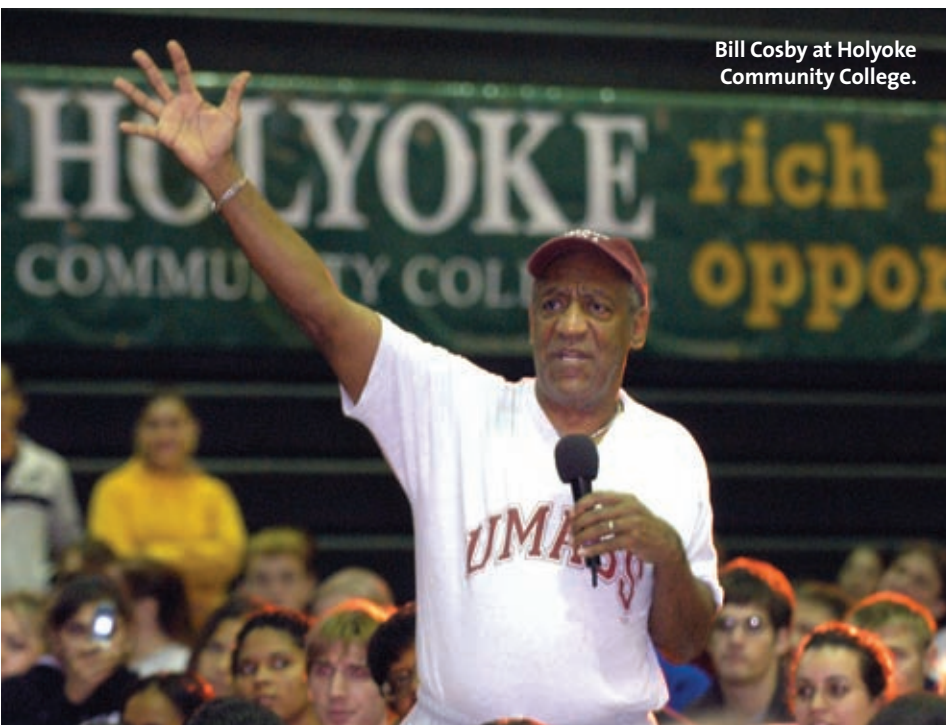
**POUSSAINT:** Yeah, blaming some of the failures of their home or parenting failures on systemic racism. “Well, we can’t be good parents until you get rid of all the systemic racism.” Or, “This can’t happen. We can’t stop killing each other until you get rid of the systemic racism. We can’t stop going to jail or avoiding jail until you get...” So there’s a

different from today. There was a time when two-parent families predominated and there was the respect for adults that you decry as being absent today. One thing that’s striking is that the decline of those things has come during the period after so many legal victories of the civil rights movement. There seems almost an irony there.

**POUSSAINT:** There were still high rates of unemployment [50 years ago] and all the other things that don’t support

marriage. [But] then you had a real change in value orientation that had to do also with the women’s movement and a change in values in the black community. In the past, when a young man got a young woman pregnant, he was supposed to marry her and help raise the children. A lot of that has disappeared. A lot of women now feel more free to say, “No, I don’t want to marry that guy anyway.” It’s easier to do that if the men are not accomplishing a lot. And for many of them who are ex-inmates, or who are unemployed, to get married is just another burden. We are not building those kinds of relationships between men and women that would help support families and then, of course, help support the children. In some of these communities, in some of the housing projects, sometimes you have close to 95 percent of [households] that are single-parent families who are headed by women.

**COSBY:** One of the things I think you have to look at is the denial by the noisemakers and the panhandlers. [They say] there are no examples that anybody can follow on the way to success. For instance, there are some principals of public schools to whom I have said, “Look, why is it that your school in this particular city is the third-worst high school in the city and two blocks down the street happens to be this, quote/unquote, charter school that has scored the highest points in the statewide examination and 100 percent of their kids are accepted to college?” That principal will say, “You can’t copy the same thing.” That’s not true. He’ll say that the teachers’ union is strong and that you have to put up with bad teachers. But what he’s not saying is the amount of work that he or she would be willing to go through in order to make it work. In other words, it’s not what they’re doing to you. It’s what you’re not doing.



Bill Cosby at Holyoke Community College.

**Poussaint: ‘We have to get out of denial and stop pretending that all parents are doing the right thing.’**

lot of excuse-making, like Bill says, from people not understanding what they can do to strengthen the community and, in fact, put us in a better position, a position of strength, because we have strong people or strong children or educated children to fight the remnants of systemic racism in society.

**CW:** In your book and in the talks you both have given, you’ve offered some pretty startling statistics on the state of the black family, say, 50 years ago, that are really quite

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### CONVERSATION

Our foremothers and forefathers marched down the middle of the street into the sea, in silence, to make a point. We were known to galvanize to make our point. So why is it that we can't begin to get together? This is the one time, out of many I guess, that we have to go door to door to door to door to make parents—who are depressed and don't believe that things can get better and feel powerless, etc.—understand. “We need you. You got to come out.” We've got to demonstrate, and we've got to keep it up. Things have to be turned around.

**CW:** Part of what has happened over the last several decades, you write, is a real decline in the sort of values needed to improve lives, to attain the sort of middle-class life that we associate with the American Dream. You talk about your own father, Mr. Cosby, not being particularly well-educated, but he had enough of a sense about education being a positive thing that he made sure you did your geometry.

**POUSSAINT:** I think a lot of people don't pay enough attention to education and have forgotten that that's what got us out of poverty in the first place. This has diminished among parents in a lot of communities—holding up education, pushing education, supporting it in various ways. We also have schools that are not so good. We're dealing with a staggering dropout rate. In some cities, like Detroit, it's 75 percent. In many of the big urban areas, it's over 50 percent, even higher among the black males. When you look at the fact that 80 percent of prison inmates are high school dropouts, being a high school dropout is a ticket to prison for young men. We have an incarceration rate now that's just incredible. Having ex-inmates coming out at the rate of probably 50,000 a month is creating burdens. They can't get jobs, they can't get work, frequently they can't get an education. Going to jail and the things that lead to that—we can do something about that.

**COSBY:** Boys started to wear their clothes in a certain way. Then we found out that the reason those [low-slung] pants are like that is because they're imitating the guys who are in prison. One would immediately think, “Why would a kid want to imitate somebody who's in prison? Why would anybody do that?” They leave the shoelaces untied. They leave the shirttail hanging out. The cap is on backwards. So they're making a style out of something. They may be crying out for some adults to make these corrections, but now it's turning into a fashion statement. Now we get to the point where boys are going into jail for crimes and they're saying, “Well, that's all right because I'll be with my boys.”

**POUSSAINT:** There's been a glorification of the thug image. Among a lot of these young black males, there's a status



in the thug image. The gangster rappers also glorify that image. So to dress like that and be thuggish is, like, status. [Young males'] values may get so twisted that they may actually feel they'll get more status from their buddies by going to jail. They might even get more status among their buddies if they find out you shot somebody. So values get twisted around. It's like it's normal, and they live

**'Everyone can't become a surgeon or one of those big things. But I got something for you: community college.'**

within that kind of experience, which is further tearing down the community.

**CW:** You write a lot about community colleges and the invaluable role they can play in lifting people out of poverty and onto the ladder of upward mobility. They often get

short shrift with people talking about the need to get a four-year college degree. But you talk about them in almost reverential terms: "God bless the community college," you write. "The front door of this institution welcomes you like your own personal Statue of Liberty—give us your slow starters, your late bloomers, your high school dropouts, your born-again victors."

**COSBY:** For people born here, it is our Statute of Liberty. Some people use the difficulty of getting a four-year degree as an excuse. Well, everybody can't go to college, everyone can't become a surgeon or one of those big things. But I say, I got something for you: community college for 18 months and you can become a nurse. Fiber optics. Training for construction work.

I just did a [session] in Baltimore. We actually went into a housing project. The chancellor or president of the community college was there. I asked her to come. We began to tell the people in the housing project what is available in terms of courses, classes, and the things that can happen for you. This is true of all the community colleges that I know of in this United States of America. You can get a GED there. You can get a job. People didn't know it was only 15 minutes from the neighborhood. We

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## CONVERSATION

have people who are Africans, coming from wherever, moving into a home, and they don't have money that's given to them by the government. So they move into a place that's eight deep in people from the same country. They already know where community college is. They came armed with the want and the dream of America. There are people living, born in America, seven generations or more, who deliberately say they don't need the education. They're so depressed. One of the things that I was told by the president of the community college is, "If we get them there, Mr. Cosby, we also have to tell them, 'Look, you got to stick with it, you got to stay with it.'" Alvin can answer this. I would imagine that people who are coming out of their depressed state and finding success sometimes don't really believe it.

**POUSSAINT:** I think that's true. I think a lot of these people who have been down and out, and feeling helpless and hopeless sometimes don't feel that making the effort is going to make any difference, that they don't have to put in all the hard work. So I think these people trying to return into the system, to community college, need a lot of support from everywhere—from their school, from their families—and a lot of help in order to stick with it.

**CW:** There is also sometimes the issue of negative peer attitudes toward schooling.

**COSBY:** I was in Oakland, California, and met two young people who had been in the foster care system but were now going to college. People consistently told them that they were not going to be anything, and when people saw them studying, they then said, "You think you're better

**Poussaint: people  
returning to education  
need 'a lot of help in  
order to stick with it.'**

than anybody, do you?" Poor people or lower-economic people, looking at someone who wants to make better and begins to pick up a book, laughing at them.

**CW:** You write about the early part of the 20th century, when popular culture had these horrible, racist portrayals of blacks. You write about the movie *The Birth of a Nation*

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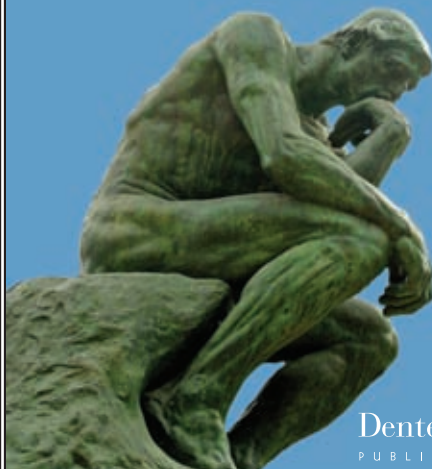


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being an example of that. Then you fast-forward to today, where you have some equally offensive, horrific imagery that is being produced by black so-called entertainers.

**POUSSAINT:** Yeah, so-called entertainers, and it sells. And sometimes there are white producers and black producers. But they use a lot of filthy stuff. They use the “N” word. The stuff they’re doing is degrading of black people, degrading of themselves.

**CW:** How do you combat that?

**POUSSAINT:** One way of combating is to stand up against it. There were a lot of people afraid to say anything about it. We need people who are spokesmen.

**CW:** Critics have said you’re just out of touch with popular culture and that some of the rap music lyrics are just expressing the reality of urban life, not glorifying it. You guys get accused of being crotchety old guys.

**COSBY:** They can throw anything they want at us.

**CW:** You’ve become such a popular target of criticism that you’ve had one guy [Michael Eric Dyson] even write a whole book about you and your ideas. Are you surprised that what you’ve spoken about has elicited controversy or that people find some of the statements you make controversial?

**COSBY:** No. I grew up in these neighborhoods. They’re not fooling me or anybody else, I think. It’s important to know that there are these panhandlers and misdirectional people. They get in some church or in some great hall, and they begin to entertain the people with all of these chants and pretending that they’re the great Baptist ministers from way back. The people go along with it because it does feel good. These [panhandlers] make them feel good.

**CW:** But it’s all an illusion, you’re saying?

**COSBY:** Very much so.

**POUSSAINT:** People can groove in a sense of victimhood, they really can—that’s partly the point of the book—and settle for that and actually believe that, and then take responsibility off of themselves.

**CW:** But there are inequities in society still. There is racism. You can’t say we’re in nirvana.

**POUSSAINT:** That’s right. Our history has always been—and you see so many examples of it with all the black peo-



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## CONVERSATION

ple who move into the middle class—struggling against the odds, to one degree or the other, and not succumbing. So now when you have fewer remnants of institutional racism, you see people, instead of moving forward, moving backward, taking the low road, and blaming it on the systemic structural situation. That is self-defeating in the end.

**COSBY:** There are so many people coming forward writing articles putting people, as Alvin said, in that victim mode and telling them not to move, that it's not their fault. But they are forgetting and excusing murder, excusing child abandonment, excusing family abandonment.

**CW:** At the beginning of the book—I'm not sure which set of bleak statistics about the state of urban black America you're talking about—but you write that it's enough to make you cry. Bob Herbert, in the *The New York Times*, wrote that there is a sense of real agony or grief evident in both of you over these issues. Is that a fair characterization?

**POUSSAINT:** I can speak for myself. Yeah, there's pain. There's sadness about what's going on: the loss of life, the loss of opportunity. To see people standing back and retreating, in a way, feeling helpless and hopeless, and not trying to make a difference is frustrating. That makes it even more painful and hard to accept. It's painful to watch and see so much deteriorate for our young people and for our families and the community.

**CW:** To really see a significant change, with all due respect to whatever your book can do, doesn't there need to be a buy-in among black leaders, among church leaders? At one point in the book, you say churches need to reach out more. Doesn't there have to be a wholesale turning of attitudes?

**POUSSAINT:** My feeling is that more and more people—and it's not just because of our book—are buying into the mission. You see more father-initiative programs. You see more programs where people are talking about ex-inmates. You see programs where they're trying to steer the kids straight, get them mentors, all kinds of other things. Then you see more emphasis and demands that people are making on parents, that they have to start doing their job. I think there's a groundswell of a lot of things happening all around the country.

**CW:** People need to hear it from leader figures, as well. On Father's Day, Barack Obama delivered a message—for which he got a lot of attention—that had a lot of echoes of what you've been saying. What was your reaction to his comments?



**POUSSAINT:** We welcomed Obama's speech. We felt he did say a lot of things that we've been talking about. We wrote an op-ed piece for the *New York Daily News* about a week after Obama's speech in which we said so. We then talked about specific ways in which black men can get themselves in a position to be better fathers and be involved with their children.

**'The revolution is in your apartment, it's in your house, it's in your neighborhood.'**

**CW:** What did you make of the controversy afterward involving Jesse Jackson, where following an interview he gave on Fox News, a still-live mike picked up his comments ripping Obama, saying he was talking down to black people?

**COSBY:** It is what it is. How can you say anything else? The mike is open and there it is, ladies and gentlemen.

**CW:** Do you feel some optimism now that, four years after, in some ways, you got this ball rolling?

**COSBY:** It's up to the people. The people have to feel that they can, and they have to want to. That is where we need—if you want to call them leaders, fine. I think instead of leaders, "initiators," people who can get started. What Alvin and I have found is that the apathy is a beast. People who are depressed are sort of [victim] to that beast of apathy. It's up to people in the community to be the therapists. You have to go by the house. You have to call. If you're going to run for office, you have to have a whole bunch of people out there on the phones calling people. You have to have people knocking on the door. These are the things that are needed to get the people excited and get them rolling.

**CW:** Of course, action has to come after the talk, right?

**COSBY:** The revolution is in your apartment, and the revolution is in your house, it's in your apartment building, it's in your neighborhood. But the ugly has lifted its head to fight, also, because you get all this blogging going on and people still fighting and calling me names. But they don't realize that Bill Cosby is not the enemy. **CW**



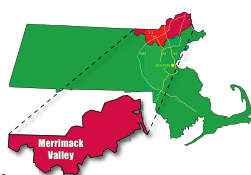
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## Help wanted

### Massachusetts consumers need champions on Beacon Hill

BY EDGAR DWORSKY

**THE JOB OF** being the voice of consumers in government has been vacant for years in Massachusetts. Not since the '80s and early '90s have we had political figures who made long-term commitments to consumer issues and were vocal advocates for the rights of the little guy.

Back then, we were a state that prided itself on having strong consumer protection laws and didn't apologize for them. We had state legislators who championed consumer rights (Sen. Lois Pines), a visible Consumer Protection Division run by the attorney general (Scott Harshbarger), and a secretary of consumer affairs (Paula Gold) who conducted marketplace investigations that affected everyone's pocketbook.

The results were impressive. The "lemon law" covering auto sales was born, home improvement contractors became regulated by the state, consumers got a three-day right to cancel timeshare and health club contracts, retailers were penalized on the spot for scanner errors or missing prices, advertisers came under strict oversight by the attorney general, and new consumer laws were proposed regularly.

At the state Office of Consumer Affairs and Business Regulation, investigators' duties included visiting stores to catch overcharging; expose those selling outdated meat; check on the availability of advertised items and see whether rain checks were fulfilled; inspect automobile dealers' lots to ensure "lemon law" rights were posted on every car; publish the names of car companies selling more than their share of lemons; and check that banks gave teens and senior citizens the discounted accounts to which they were entitled. The office also regularly filed consumer protection bills to fill loopholes in laws.

Paula Gold, the woman behind most of the

investigations and legislation, was secretary of consumer affairs from 1983 to 1989. A veteran of then-Attorney General Frank Bellotti's office, Gold's name became a household word, much like Betty Furness or Bess Myerson in New York years ago. She was the face of consumer protection in Massachusetts for many years. The public felt comforted that someone in government was watching out for them.

The attorney general's Consumer Protection Division was also active. Home improvement contractors who created nightmares for homeowners were sued. Promoters of phony going-out-of-business sales were caught. Credit bureaus that screwed up consumers' credit reports were made to change their practices. Retailers advertising fictitious discounts paid over \$1.4 million in penalties. Unscrupulous car dealers found themselves in front of judges. Regulations governing retail advertising, debt collectors, and travel were created or revised.

In the Legislature, Lois Pines, who served in the Senate from 1987 to 1999, crafted, among other things, the bottle deposit law, the state version of the Fair Credit Reporting Act, and the law requiring insurance policies to be in plain English. And whenever a pro-consumer or anti-consumer bill was up for a legislative hearing, representatives from both Consumer Affairs and the attorney general's office would testify to protect consumer interests.

But that was then, and this is now. Today it seems as if no one in state government is watching out publicly for consumer interests to any great degree.

There is no identifiable champion for consumer rights in the Legislature, and officials from Consumer Affairs and the attorney general's office rarely show up at legislative hearings or take public posi-



tions on bills affecting consumers. Bills that would have controlled spyware, regulated credit card fees, updated the bottle deposit law, and given new rights to car buyers, cell phone users, and debt-burdened consumers all died this session.

In the attorney general's office, eight years of Tom Reilly brought little in the way of consumer protection. In fact, he presided over a watering-down of consumer regulations at the behest of retailers. Reilly's successor, Martha Coakley, has aggressively pursued predatory lenders and tried to set auto insurance reform on the right track, among other things. At the same time, though, she significantly cut the hours of operation of the consumer complaint hotline, and has not assigned anyone to regularly monitor retail advertising practices. Lack of staff, however, didn't prevent the attorney general from creating a pro-business "economic development" division. Coakley's preference for concentrating on big issues and complex cases has largely pushed aside more routine consumer issues. That is a lost opportunity for someone who arguably could be forceful in a public consumer role.

Finally, at the state Office of Consumer Affairs and Business Regulation, a series of directors have come and gone—many having little, if any, consumer background,

and few willing to point fingers at any business wrongdoing. The office no longer conducts marketplace investigations and surveys, despite its enabling legislation that requires them. That office was even demoted from being a secretariat under Gov. William Weld.

## NO ONE MINDING THE STORE

When did "consumer protection" become a dirty word in Massachusetts? How is it that business protection is now seemingly more important than consumer protection? Where is the next crop of consumer leaders in government?

Maybe government officials are overcompensating for the Commonwealth's historic reputation for not being a business-friendly state. They don't realize, however, that facilitating new company startups and protecting the public in business transactions are not mutually exclusive. In fact, good consumer laws (and enforcement of them) help root out unfair competition and create a level playing field, so honest and compliant businesses can flourish.


To illustrate the problem that consumers face when no one is minding the store on their behalf, take the case of a recent business-backed bill on item pricing. Under the guise of "consumer protection" legislation, this bill reveals

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the level of disregard its drafters had for consumer interests while displaying boundless empathy for its business proponents. The bill in question would allow all retailers, including supermarkets, to stop putting price stickers on goods.

Despite the public's strong preference for maintaining prices on items, the bill called instead for installing self-service scanners in some but not all store aisles. These are the very devices that have repeatedly been shown by state inspectors and a private consumer group to fail to function properly. Compounding the problem, no action has been undertaken by either the current or previous attorney general to enforce their own regulations governing these machines.

Under the duplicitous title of An Act Relative to Clear and Conspicuous Price Disclosure, the proposed bill actually provided for *less* price disclosure. It did not even require at least 1-inch-high numerals on price signs, as the current law provides. Remarkably, advertised sale prices would not be required to be on items nor appear on aisle scanners.

Fines and inspections were to be drastically reduced or eliminated, thus crippling enforcement. In most cases, stores could be inspected a maximum of once a year, compared to no more than once a week now. Instant fines of \$100 were to be dropped. Other fines were to be reduced 90 percent, from a maximum of \$2,500 to \$250 per inspection in most cases. Fines that are now issued like parking tickets for supermarket pricing violations would be replaced by a time-consuming *criminal* court process for imposition of that measly \$250 penalty.

Can you imagine an inspector going into criminal court to complain that Stop & Shop has the wrong price for peas? It is not going to happen, and without a viable enforcement mechanism, compliance rates with even minimal price disclosure requirements will fall, to the detriment of shoppers.

How could such an anti-consumer bill nearly pass the House? It started at the top, when Speaker Sal DiMasi pronounced price stickers an anachronism at a meeting of retailers last November, without soliciting input about their value from consumer advocates. From there, a committee chair dutifully cobbled together parts of various anti-item pricing bills and spun them into a "consumer" bill. That chair was even quoted as calling the finished product "the strongest piece of consumer protection legislation in the country."

Funny, consumer groups were never even asked to comment on the bill until *after* it was approved by that committee, and then every group opposed it.

Why didn't Attorney General Coakley or Undersecretary of Consumer Affairs Dan Crane stand up in public to oppose the bill after their offices were made aware of it by consumer advocates? Sure, they were busy with the current foreclosure crisis or other priorities, and their efforts in that regard should be applauded. But it wouldn't have

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## PERSPECTIVES

taken a lot of time to get on their bully pulpits and publicly call this bill damaging to the shopping public. Fortunately, a few enlightened legislators were ready to fight the bill, and that helped kill it.

The item pricing bill is not the only example of anti-consumer legislation cleverly portrayed as good for the public that went unchallenged by consumer officials. The bill that would have abolished the cap on the resale price of tickets to sporting and entertainment events had been billed as consumer protection legislation. (See "Red Sox Call Their Own Play to Control Ticket Scalping," *Inquiries*, CW, Spring '08.) While including a provision to combat counterfeit tickets is laudable, most citizens who want to take their kids to a Red Sox game would prefer to see the Legislature outlaw the practice of selling tickets at three times their face value rather than legalize it.

Did the attorney general or Consumer Affairs take a public stand on the issue? No. Luckily, the bill stalled in the Senate after passing the House last fall.

The Legislature also recently took up two genuinely pro-consumer bills that would have created a bill of consumer rights for used car buyers and one for cell phone users.

Did the attorney general or Consumer Affairs take a public stand to help pass or even suggest amendments to those bills? No. And both bills were banished to study committees, where they died.

Another test is looming. Coakley's Consumer Protection Division is considering revisions to its decades-old advertising regulations. With retailers eager to water down the rules, will these attorney general and Consumer Affairs stand up to the pressure and increase (or at least maintain) the existing level of protection for consumers? Or will rules such as the one to prevent the advertising of phony discounts and fictitious "regular" prices become virtually meaningless?

Without someone in authority speaking up for them, individual consumers often feel powerless and think that their interests are not being protected. Particularly in the current tough economic climate, when shoppers are counting their pennies to help make ends meet, it is even more important that the few elected or appointed officials whose job it is to represent consumers and monitor the marketplace do so visibly, actively, and passionately. Goodness knows enough folks are watching out for businesses.

Think of all the new consumer issues today that did not exist 20 years ago that may require regulation or at least public inquiry, including: privacy rights and the surreptitious tracking of our online surfing habits; security of personal information; scams related to e-commerce and mobile commerce; TV digitalization; new electronic payment mechanisms; equal access to net services; genetically modified food; and "spy chips" implanted in consumer products (RFID). Sadly, individual consumer voices will barely be heard on these issues. Who can we count on in government

to advocate for us?

If someone had been looking out for our interests sooner, maybe we would not have found ourselves in the current mortgage mess, or at the mercy of credit card companies' sneaky fees and practices.

Recently, Undersecretary of Consumer Affairs Crane said that Gov. Deval Patrick asked him to put the "consumer" back in Consumer Affairs. Now is his chance. And the same golden opportunity exists for the attorney general and a small number of legislators to stand up for

consumer interests zealously. No one new has to apply for the job of being the voice of the consumer. It is already in the job description of these officeholders. They only need the disposition and inclination to act upon it.

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*Edgar Dworsky has been a consumer advocate for 31 years, having worked at both the state Office of Consumer Affairs and Business Regulation and the attorney general's office. Currently, he is founder of ConsumerWorld.org and editor of MousePrint.org, two consumer education websites.*

## Working in the dark

Massachusetts awards millions in job subsidies, but it's nearly impossible to find out whether they pay off **BY GREG LEROY**

**STATES AND CITIES** in the US spend more than \$50 billion a year in the name of economic development. But these subsidies to create and retain jobs, called everything from "business incentives" to "corporate welfare," are one of the most poorly understood forms of state spending. The average state has more than 30 subsidy programs, and many projects involve multiple incentives. Massachusetts is no exception.

However, it is nearly impossible for taxpayers to evaluate entire programs or specific projects. Programs are rarely audited, and when they are, auditors often conclude that poor recordkeeping precludes meaningful analysis. Records on specific deals exist, but they reside in different agencies and tax offices, making it very tedious to assemble the whole story. Compared with other ways that states interact with the private sector—such as lobbying and contracting—economic development subsidies remain in the Information Stone Age. Recent proposals for new subsidies in Massachusetts would only extend the problem.

This lack of transparency is often intentional. Governors get to announce the deals and pose at groundbreakings but rarely show any interest in making sure the deals actually pan out. Indeed, because tax breaks play out over many years, governors routinely pass big costs onto their successors.

Originally cooked up by Southern states and restricted to manufacturing (think of the Carolinas pirating the Northeast's textile industry in the 1950s), today these deals are granted by states in every region to all manner of businesses. Some programs, such as Tax Increment Financing (TIF) and economic opportunity areas, are geographically targeted within a state. (See "Build to Suit," Considered

Opinion, CW, Summer '08). Thanks to multiple subsidies, employers can receive more than \$100,000 per job. Subsidies can reduce every kind of tax a corporation normally pays, including property, income, excise, sales, and utility. They may also provide cash grants, low-interest loans, free or discounted land, training wages, and infrastructure.

For example, Massachusetts has bid aggressively against other states for two life sciences deals: Shire PLC's 2008 expansion decision in Lexington and Bristol-Myers Squibb's new Devens facility announced in 2006 on land owned by MassDevelopment, a state agency. Both deals include a combination of state tax credits and local subsidies. Bristol-Meyers even won \$34 million from the state for local wastewater and sewage improvements.

Companies never reveal what actually causes them to choose one site over another; this is the chronic "information asymmetry" or "prisoners' dilemma" problem at the core of what many describe as an economic war among the states. Corporate lobbyists claim that tax breaks make the difference, but other observers point out that state and local taxes are so small—combined, they usually account for less than 1 percent of the average company's cost structure, or much less than labor, land use, or energy costs—that subsidies rarely tip the scales.

The two recent Massachusetts episodes only muddy that debate, buttressing both arguments. Shire signaled that it was dissatisfied with Massachusetts's original offer of \$24 million when three other states offered more, so the Patrick administration upped the state package and the town of Lexington gave up \$7.6 million over 20 years. This doubled the overall package to \$48 million, or more than \$70,000 for each of the 680 projected jobs, and Shire agreed to

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## 2008 Breakthroughs in the news

"Researchers have uncovered a new clue as to the cause of Alzheimer's disease... The findings by the team, led by Dr. Ganesh M. Shankar and Dr. Dennis J. Selkoe, [both of Brigham and Women's Hospital]."

— *The Boston Globe*, June 25, 2008

"Brigham and Women's Hospital, in a first-of-its-kind medical trial has performed... a safer, less traumatic operation to help address the nation's obesity epidemic."

— *The Boston Globe*, June 28, 2008

"The technology, invented at Massachusetts General Hospital uses a microchip scanner no bigger than a business card to... identify minute amounts of tumor cells floating in the blood of cancer patients..."

— *The Boston Globe*, July 3, 2008

"Researchers have pinpointed 32 genes linked to Crohn's disease... That is the biggest reported catch for any disease... said Mark Daly of Massachusetts General Hospital... the study's senior author"

— *The Boston Globe*, July 7, 2008

**1846** First public demonstration of ether use during surgery  
— *Massachusetts General Hospital*

**1883** First use in North America of antiseptic during childbirth to protect mothers and newborns from deadly infections  
— *Brigham and Women's Hospital*

**1896** First use of X-ray image for diagnosis in U.S.  
— *Massachusetts General Hospital*

**1929** First use of iron lung to save polio victim  
— *Brigham and Women's Hospital*

**1954** First successful human organ transplant  
— *Brigham and Women's Hospital*



**1962** First successful surgical reattachment of severed limb  
— *Massachusetts General Hospital*

**1984** First heart transplant performed in New England  
— *Brigham and Women's Hospital*

**1993** Discovery of genes responsible for Huntington's disease and inherited ALS  
— *Massachusetts General Hospital*

**2003** Development of CRP test to predict risk of heart attack and stroke  
— *Brigham and Women's Hospital*

**2005** First use of new type of laser surgery to treat vocal injuries  
— *Massachusetts General Hospital*



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expand here. By contrast, Bristol-Myers Squibb chose the Bay State over a much larger subsidy package from New York, saying it could not find enough skilled workers to fill the 800 positions required for an expansion of the existing facility in Syracuse.

### SUNSHINE IS THE BEST ANTISEPTIC

In response to recurring concerns about whether large, company-specific deals are good policy, a diverse movement seeks to reform economic development to ensure that subsidies pay off for workers, taxpayers, and communities. The movement was birthed by plant closing opponents 20 years ago; they often found that factories slated to close had received subsidies, but that the fine print did not prohibit job flight. It has grown to include public sector unions, community organizations, environmentalists and smart-growth advocates, public interest researchers, small businesspeople, and tax policy advocates from both the left and right.

At the cornerstone of their organizing agenda is disclosure, for history tells us that sunshine is the best antiseptic for bad policies. For example, when community groups alleged that banks were “redlining” urban neighborhoods, they demanded the Home Mortgage Disclosure Act. Its geographic reporting of housing loans revealed discriminatory patterns, prompting Congress to pass the Community Reinvestment Act, enabling hundreds of community groups to win billions of dollars for neighborhood revitalization.

Disclosure of job subsidies means annual, company-specific, deal-specific reporting of costs and benefits—on the Web in a fully searchable format. The reports should be issued for several years after a subsidy is granted, so that everyone can track outcomes and evaluate both individual deals and overall program results. What was the source and value of the subsidy? What obligations for jobs, wages, benefits, and capital investments did the company incur in exchange? And what results has the company achieved (or not) toward meeting those obligations?

Today, responding to grass-roots activism, at least 27 states disclose (or are committed to start disclosing) such data on the Web. New Jersey and Rhode Island have most recently enacted disclosure legislation; in other states, the executive branch has instituted public reporting on its own.

To be sure, the quality of these disclosure websites varies greatly. Most received a “D” or “F” by the grass-roots organization I direct, Good Jobs First, because they cover only a few programs, fail to report outcomes, or are hard to search. However, Massachusetts still fails to even attempt public reporting. It does not provide the names of beneficiary companies, nor the value of their subsidies, job and investment obligations, or outcomes.



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## PERSPECTIVES

Three major new subsidies proposed for the Commonwealth—Gov. Deval Patrick's bills for life sciences and film production and House Speaker Salvatore DiMasi's "green jobs" legislation—still lack basic disclosure requirements. (See "Subsidizing the Stars," CW, Spring '08.) Indeed, the life sciences and green jobs bills both call for new bureaucracies astride the state's existing agency structure, suggesting even less transparency.

No credible arguments have ever been made against disclosure in the dozen years since states began requiring it. There are no suggestions that disclosure hurts the "business climate" or is burdensome or costly. Indeed, with the proliferation of Web-based technologies, it is easier and cheaper than ever.

That makes Massachusetts's secrecy a farce. A state that prides itself on its technology clusters and high-powered universities cannot even take existing spreadsheets and dump them on a website? While it takes more than that to create an optimal website, the crux of the issue is simple. If a state is even pretending to watch the store, it has lists of beneficiary companies and should have tracking data on outcomes. As for the fiscal burden issue, whatever modest cost a state might incur to create its website will be recovered when sunshine helps the state "clawback," or recoup monies from a single failed deal.

### THE PERILS OF SECRECY

Given its history, one would expect the Commonwealth to be keen on disclosure. Perhaps the largest pair of job-subsidy tax breaks ever enacted by Massachusetts came in 1995 and 1996, when Raytheon Corp. and Fidelity Investments led corporate lobbying campaigns for something called Single Sales Factor. Over the next decade, this one tax break cost the state \$1.5 billion, yet there are no public records about which specific companies got the biggest breaks or how many jobs they created.

Single Sales Factor (SSF) is a radical change in the way a state divvies up (the technical word is "apportion") the taxable profits of multi-state corporations. Historically, the states averaged three factors equally: the share of the company's payroll in the state, the share of its property in the state, and the share of its sales made in the state. However, under SSF, the only factor considered is in-state sales. That can mean a drastic income tax cut—of 80 percent or more—for companies, like Raytheon and Fidelity, that have a lot of employees and property in a state, but sell most of their goods or services outside that state. (SSF also creates an incentive for some kinds of companies to reduce their physical presence in the state so as to avoid taxation altogether; that was one of the loopholes closed by the combined reporting law signed by Gov. Patrick in July.)

In 1995, when it threatened to move jobs to other states,

Raytheon sought the tax change only for Massachusetts defense contractors. But SSF was soon expanded to include all manufacturers, and by the next year, with Fidelity also threatening to grow jobs elsewhere, it was expanded to take in all mutual fund companies as well. The two corporate lobbies claimed that, with SSF, Massachusetts would retain jobs in factories and grow them in mutual funds.

The two laws included modest job safeguards, but both were temporary. The manufacturing SSF required companies to maintain their payroll, but only until the end of 1999 (and using the term “payroll” instead of “headcount” enabled companies to lay off production workers while bringing in fewer higher-paid white-collar workers). The mutual fund SSF required companies to create 5 percent more jobs annually through the end of 2002, but then the job obligation expired.

Furthermore, these modest requirements did not address SSF’s fundamental lack of transparency. Most subsidies create paperwork that enters the public domain: a property tax application, a loan agreement, a training contract, etc. But SSF merely changes the definition of taxable income. It is absolutely opaque because state corporate income tax returns, like personal returns, are confidential. No one can see how big a tax windfall any specific company

got, and even if returns were disclosed (as they once briefly were in Massachusetts), they say nothing about jobs.

This secrecy covers up SSF’s core policy flaw: Companies that benefit have no obligation to create or even retain Massachusetts jobs, nor must they provide health care or full-time hours. No job requirements mean no clawback, and no penalty for job-creation shortfalls or layoffs.

Without disclosure, the only thing taxpayers can see for sure is less revenue for things like infrastructure and education, which really do create jobs and do not favor a small group of big companies. A decade after their enactment, the Raytheon and Fidelity SSF tax cuts had cost the Bay State’s treasury about \$1.5 billion in reduced corporate taxes, with about two-thirds of that going to mutual fund companies.

Before any state lards on new tax breaks, even for a cause as timely as “green jobs,” shouldn’t taxpayers get to see where their money is going and how their investments are paying off? **CW**

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*Greg LeRoy directs Washington, DC-based Good Jobs First ([www.goodjobsfirst.org](http://www.goodjobsfirst.org)) and is the author of The Great American Jobs Scam: Corporate Tax Dodging and the Myth of Job Creation.*

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# Voices on question 1

State income tax repeal, defeated by an 8-point margin in 2002, is back for a rematch in November. With the economy hurting and state finances shaky, the stakes couldn't be higher.

## Cut the waste and build the economy

BY CARLA HOWELL

**WHY ARE 1.35** million Massachusetts voters already planning to vote yes on Question 1 to end the state income tax? Should you join them?

There are three things to consider: what the debate is, government by the numbers, and why the people of Massachusetts benefit if you vote yes on 1.

Which choice, which vote is better for Massachusetts? Is it voting no, to keep the state income tax and require 3.4 million workers to keep paying \$3,700 each on average every year and maintain state spending at \$47.3 billion? Or is it voting yes, to end the state income tax and let the 3.4 million workers get back \$3,700 each on average every year and roll back state spending to \$34.7 billion?

The total state government budget for this year is \$47.3 billion. The \$28.2 billion “budget” figure tossed around by opponents of Question 1 is only part of the budget. There are *four* categories of the complete budget: statutory budgeted spending, non-budgeted spending, capital spending, and expendable trust spending. (For more information on these categories and their levels in 2007, go to pages 308-312 in the budget at [www.mass.gov/Aosc/docs/reports\\_audits/SBFR/2007\\_SBFR.pdf](http://www.mass.gov/Aosc/docs/reports_audits/SBFR/2007_SBFR.pdf).)

The total brought in from the state income tax is \$12.6 billion. After we end the state income tax, \$34.7 billion will be left in the state budget.

The combined budgets of Massachusetts cities and

towns total more than \$22 billion, after subtracting state aid to municipalities. So \$56.7 billion is the amount left over for our city, town, and state governments after we end the state income tax. That is way more than needed to fund every essential government service.

Fabrizio Surveys asked Massachusetts voters this question: “How many cents out of every dollar you pay in state taxes would you say is wasted by the state government?” They answered, on average, 41 cents.

One more interesting number: 45 percent of Massachusetts voters already plan to vote yes on Question 1, according to three polls. With a November 4 voter turnout of 3 million, that comes to a whopping 1.35 million votes to end the state income tax.

**Question 1 supporters say passage would return an average \$3,700 to each state taxpayer.**

Voting yes will give back over \$3,700 each on average to over 3.4 million Massachusetts workers. That's each worker every year.

It will take \$12.6 billion out of the hands of Massachusetts big government—and put it back into the hands of the men and women who earned it. Every year.

In productive, private hands this \$12.6 billion a year will create hundreds of thousands of new jobs in Massachusetts.

This tax cut will force the state Legislature to streamline and cut the waste out of the Massachusetts state budget.

It will force the state Legislature to get rid of the failed,

flawed government programs that don't work—and often make things worse.

It will make the state Legislature accountable to Massachusetts workers and taxpayers—instead of the government employees, lobbyists, and special interests who profit from high government spending.

With less government and no income tax, Massachusetts will become a magnet to private, productive businesses and individuals. There will be more good jobs and more good workers.

It will save thousands of Massachusetts families from home foreclosures and bankruptcy.

By making the Massachusetts total tax burden more affordable, we'll allow more of our young people to stay in Massachusetts near their families, their friends, and their homes.

And that's why you should vote yes on 1.

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*Carla Howell is chair of the Committee for Small Government, sponsor of Question 1 to end the state income tax. The committee's website is: [www.SmallGovernmentAct.org](http://www.SmallGovernmentAct.org).*

## It won't end business as usual

BY RICHARD R. TISEI

**MASSACHUSETTS IS AT** a crossroads. With a bloated state budget, a sputtering economy, and a rampant loss of faith in state government, Question 1 serves as tempting fruit.

Although repealing the state's income tax would cause a sudden and dramatic shift in the mission and scope of state government, the temptation might never be greater for voters who want to send a message to Beacon Hill that the current way of doing business is unacceptable. However, like the apple in the Garden of Eden, this fruit represents a temptation with broad consequences and a lasting after-bite.

It's easy to understand the appeal of eliminating the income tax, since, on average, every taxpayer would pocket an extra \$3,700 of their income a year. In these tough times, that money could cover a mortgage payment, a full oil tank, or a college tuition payment.

But is the antidote appropriate for the disease? Abolishing the income tax would take \$12 billion in annual revenues off the table—an amount roughly equivalent to 40 percent of the \$28 billion state budget—and force the state to either make drastic spending cuts or find other ways

to raise money. The immediate cuts would have to come in areas like school funding, Medicaid programs, and services to the disabled, elderly, and children. Significant cuts to local aid would lead to even higher property taxes.

In my 24 years of serving in the Legislature, I have never voted for a broad-based tax increase, and I have consistently worked to control state spending. That said, I believe that completely eliminating the income tax would go too far.

The real issue facing the state is that more must be done to eliminate waste and duplication in state government. Gov. Deval Patrick pledged to do just that, claiming he would cut \$1 billion in his first year in office. Instead, the state budget has increased by more than \$2 billion under Patrick's watch.

Much of government needs reforming. To take two examples, the pension system is broken and the Massachusetts Turnpike Authority, which is drowning in debt, needs to be eliminated. Current spending levels are unsustainable, as the economy is unpredictable and we already have a heavy tax burden impacting residents and businesses. We can't afford to roll out new programs every year, nor to increase spending on old programs that have failed to yield results. People "in the building," as they say on Beacon Hill, have no idea of the economic difficulties the average family is facing on a daily basis and why there is such outrage and frustration over the actions taken at the State House.

The cornerstone of Gov. Patrick's campaign was a pledge to reduce property taxes, but two years have gone by and he hasn't even offered a plan, let alone reduced anyone's tax bill. Again, for the proponents of Question 1 the timing couldn't be more perfect. Just before the November election the quarterly tax bills will be issued, and each property tax bill that is higher than the bill of the year before will be a reminder of this failed campaign promise.

Many voters across the state, when polled on Question 1, say they don't expect the income tax to go away even if the ballot question prevails. Speaker Sal DiMasi has confirmed as much, stating publicly he would ignore the voters if the question passes. However, voters consistently say they are considering supporting the initiative to "send a message" to Beacon Hill that they are tired of business as usual.

Given the dominance that the leaders of the Democratic Party enjoy, there is no impetus to implement serious reforms. Power is centralized, and there is very little debate, at least publicly, as most important decisions are made behind closed doors.

This lack of balance could best be seen in the most recent state budget process. Every year, the House and Senate pass their own versions of the budget, and then a conference committee crafts a compromise budget with a bottom line that usually falls somewhere in between the

numbers proposed by the two branches.

However, that was not the case this year. Despite major concerns about revenues, the final budget carried a price tag that was \$30 million higher than the House proposal and \$160 million higher than the Senate version. The governor then vetoed a symbolic \$122.5 million, but at the same time asked for emergency powers to make dramatic mid-year cuts to local aid if revenues are sharply reduced.

The House and Senate spent most of the last two days of formal session overriding veto after veto, eventually restoring \$56.5 million to an already bloated budget. If the clock had not run out, they likely would have continued until every last veto was overturned. This is what happens when one political party dominates through sheer numbers.

Every Republican in the House and Senate voted against this year's budget because they know it is unsustainable and will have to be cut at some point later in the year. Given rising health care costs, the expiring federal Medicaid waiver, overly optimistic revenue projections, and other factors, the budget was built on a house of cards that could easily come tumbling down at any moment.

What happened with the budget is indicative of a much larger problem, which is the state's voracious appetite for spending, driven in part by the many special interest (or,

more appropriately, "spending" interest) groups constantly lobbying for funding to support their pet projects. The Democratic-controlled Legislature keeps spending the money as fast as it comes in, often on new or expanded programs that are of questionable public benefit, while more worthwhile initiatives are ignored and left scrambling for funding.

Unfortunately, passing Question 1 will not end business as usual. Regardless of the outcome at the ballot box, business will go forward as usual. Rank-and-file legislators will be returned to Beacon Hill by the same voters who wish to send them a message. In reality, if change is really going to occur, there needs to be a sea change. The days of one-party rule in Massachusetts must end, and a sense of balance must be restored to the Legislature.

A true two-party system would add the checks and balances currently lacking on Beacon Hill. Currently, the House of Representatives is comprised of 141 Democrats and only 19 Republicans, while there are 35 Democrats and 5 Republicans in the Senate. These majorities are among the most lopsided in the nation.

Legislators "in the building" often forget the money they spend doesn't belong to them, or the state, but to the taxpayers of the Commonwealth. To send a lasting mes-

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sage, rather than voting to repeal the income tax, Massachusetts voters should consider supporting Republican candidates, both in the upcoming election and in the future, who will provide fiscal discipline and greater balance to state government.

*Richard R. Tisei, a resident of Wakefield, is the minority leader of the Massachusetts State Senate.*

## Keep an eye on New Hampshire

BY WILLIAM F. J. ARDINGER


**LIKE MOST POLITICAL** issues these days, the contest over Question 1—to repeal the Massachusetts individual income tax—is polarized. Proponents claim that repeal is required because government agencies, by their nature, are wasteful and unaccountable. Opponents respond by characterizing the proposal as so sweeping that it would


create political and fiscal chaos.

As is often the case with polarized political contests, the Question 1 debate might benefit from a different, and less vituperative, perspective. In that spirit, I offer a look at the Commonwealth's tax dilemma from the point of view of a tax policy attorney in New Hampshire, a state that has never had a personal income tax on wages, earnings, or capital gains.

I know that many Massachusetts readers will question what they could possibly learn from New Hampshire. After all, it was then-*Boston Globe* columnist Mike Barnicle who once wrote, "Granite State natives are a mentally-challenged lot of easily confused white people who think buildings with elevators qualify as tourist attractions and spend enormous amounts of money in tattoo parlors or gun stores."

Let's begin by dispelling some myths. While some might believe that New Hampshire's tax system stingily constricts government services, the truth is that our government provides the same general panoply of public programs that most states do. As one example, New Hampshire's most important priority is K-12 public education. According to 2005 data, New Hampshire spent \$10,077 per pupil, ranking it 12th highest in the nation. By comparison, Massachusetts spent roughly \$10,555 per pupil (ranking 10th).





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But there can be no question that New Hampshire's tax system is dramatically different from those in other states. It imposes no tax on individual earned income or capital gains, nor does it impose any general retail sales tax. As a result, just over 60 percent of New Hampshire's total general revenues come from property taxes. In contrast, property taxes constitute 36 percent of Massachusetts' total general revenues.

Because Massachusetts and New Hampshire have very different histories and demographics, it is unlikely that policymakers or voters would ever recommend replicating New Hampshire's entire tax system in the Commonwealth. But they cannot dismiss the fact that the existence of New Hampshire and its tax system, along with other states that compete to attract good businesses with good jobs, places very real constraints on tax policy decisions in Massachusetts.

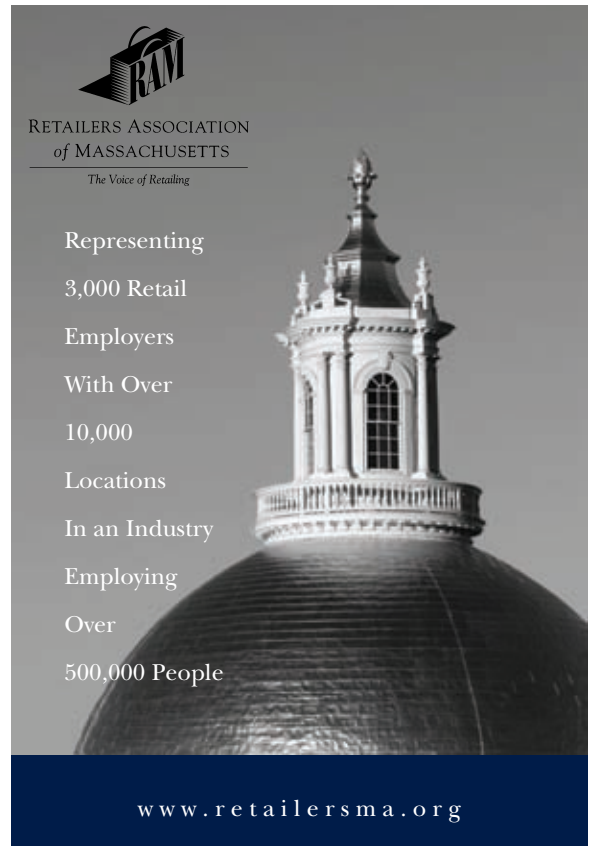
In today's very mobile economy, the fact that New Hampshire offers an "income-tax-free" environment for employers and workers just 30 miles north of Boston will increasingly be an important factor pressuring Massachusetts to reconsider many long-standing policy positions, including the proper scope and role of the income tax.


It has become trite to cite the growing influence of an integrated global economy over economic and legal matters. Still, some policymakers close their eyes to this new reality, often defending the status quo by relying on outmoded theories and arguments that were developed during the 1930s, 1940s, 1950s, and 1960s—before the forces of a free-flowing global capital market were truly unleashed.

These forces operate like a hurricane storm surge. They pour in over political borders, eroding the foundations of longstanding traditional political and economic institutions, built in times of less mobile capital. These institutions naturally resist change. Such attempts to delay the change demanded by the global economy are doomed to failure, either by slow erosion or by catastrophic events.

In this context, New Hampshire may be understood as just one of many jurisdictions, along with Massachusetts, competing for economic capital in a global marketplace. As a competitor, our state has strengths and weaknesses. Our top competitive advantage is in the market for entrepreneurs. We offer these important agents for job creation some important benefits: access to a good labor force, a good public school system, a small business level tax but no use tax on business purchases, and no income or capital gains tax. In effect, New Hampshire's choice against levying an income tax offers entrepreneurs a lower "price" for building a new business than does Massachusetts.

Understanding tax policy issues as arising within this competitive context should shed new light on some long-held tax policy misperceptions. For example, under the old



  
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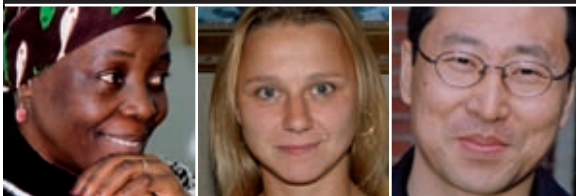
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“closed economy” view, a tax on corporate income was viewed as a progressive tax, because it was born by capital, not labor. But under an “open economy” view, economists now argue that domestic labor, not domestic capital, bears most of the long-run burden of a corporate income tax due to the ability of capital to move across borders much more freely than in past years.

Under an “open economy” view, who actually bears the burden of a personal income tax? In an environment of perfectly competitive jurisdictions, a state that imposes a very burdensome income tax may well drive businesses and their jobs to neighboring states that offer a lower tax burden. In such a case, the employees who lose their jobs may be viewed as bearing the true burden of the income tax. Of course, we do not live in a perfectly competitive environment, nor are taxes the only criteria governing location choices. But there can be no doubt that taxes play a very important role.

The fact that Question 1 has returned, just six years after a similar referendum to repeal the income tax, may be seen as a symptom caused by the pervasive influence of an increasingly interconnected global economy. In this new era, all traditions and institutions must be continually scrutinized to see if old assumptions about tax policy and structuring the public sector remain appropriate. Indeed, the presence of New Hampshire, offering a very different tax system just to the north, should serve as a clarion call to remind Massachusetts’ policymakers that these traditions and institutions can no longer be protected from the gale force winds of competitive global markets.

*William F. J. Ardinger is a shareholder and treasurer of the law firm of Rath, Young and Pignatelli, P.C. and is the director of the firm’s tax practice group. He is a former member of the New Hampshire House of Representatives, where he served on the Ways and Means Committee.*

## Huge cuts will bring high costs

BY SANDRA L. FENWICK

**ACROSS THE UNITED STATES**, families are being squeezed financially as the costs of driving their cars, heating their homes, and feeding their families have all skyrocketed. At the same time, they have seen the value of their homes and retirement plans decline, and many worry that their jobs are in jeopardy.

To add insult to injury, seemingly every day we read about some abuse of taxpayer dollars—from a firefighter on disability leave who competes in bodybuilding contests to a proposed increase in pension benefits for state retirees even as the state faces a billion-dollar deficit. (To his credit, Gov. Deval Patrick vetoed this proposal.)

Under these circumstances, it is understandable that Massachusetts voters might consider supporting the ballot question to repeal the state income tax, either because

## We would be throwing away investments in our economic future.

they want to vote themselves a pay raise or because they simply want to “send a message” to political leaders.

But this would be the worst step we could take as citizens of our Commonwealth, and the Massachusetts Taxpayers Foundation urges voters to resist this impulse. We have much to be proud of in this state. Many of the things we cherish most about Massachusetts depend on public support, including our world-class system of health care; our beautiful beaches, parks, hiking and biking trails,

and other open spaces; and our leading public education system, which consistently tops the country in student achievement and SAT scores.

We as a state have wisely invested in these resources because we understand how important they are to the quality of our and our children’s lives, as well as to our state’s economic future. By supporting this ballot question, we would be throwing away these investments and forfeiting much of what makes Massachusetts a special place to live and raise our families.

To put the tax repeal into context, voters should understand one basic fact: The income tax accounts for \$12.5 billion, or approximately 40 percent, of the state budget. Proponents of the tax repeal contend it’s really “only” 25 percent of a \$47 billion state budget, but the \$47 billion includes some double counting and is overstated by 50 percent. They misinterpret official state budget sources which include fund transfers, gross lottery receipts before winnings, fiduciary revenue, and capital spending.

No individual, family, or business could possibly cut 40 percent of its budget without dramatic consequences. That will certainly be the case if Question 1 passes. And keep in mind that if all 68,000 state employees were fired, it would save only about \$5 billion.

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Repealing the income tax would be a major blow to the Massachusetts economy, both in the short and the long term. The state would likely see a large drop in its bond rating amidst fiscal chaos, which would be a huge deterrent to business expansion. In the longer term, the large cuts in spending on education and transportation would seriously undermine the state's competitive position and discourage private investment for years to come.

At a time when business is looking for more and more skilled workers, is this the time to cut spending on education? At a time when workers are increasingly dependent on mass transit, is this the time to slash spending on transportation?

This is not simply a matter of economic theory. These questions will determine the opportunities our citizens will have—or not have—to find good jobs that pay decent salaries over their working lives. Passage of Question 1 would send Massachusetts to the bottom of the list of states in which to invest.

Our citizens will pay a high price in other ways as well. Because of huge cuts in aid to cities and towns, there will inevitably be large layoffs of teachers, public safety, and other municipal employees, as well as dramatic increases in property taxes. Property taxes fall more heavily on lower- and middle-income families than does the income tax, so if Question 1 passes we will see a shift of the tax burden from the wealthy to those individuals and families who are already struggling to make ends meet.

If your son or daughter is attending the University of Massachusetts or a state or community college, you can plan on paying much higher tuition and fees. If you have a family member who is being supported by the human services system, you will see either a sharp reduction in that service or its elimination altogether. Don't count on using state parks and beaches, since they will surely be closed. And we will certainly see much more rapid deterioration of our roads, bridges, and transit systems than is already taking place.

The consequences for public safety will also be enormous, with cuts of 40 percent for state and local police, district attorneys and sheriffs, the statewide court system, and state and county prisons.

As citizens we expect a lot from our governments, which we often take for granted, even if we are sometimes justifiably angered by the excesses or abuses of taxpayer dollars. I urge voters not to let their frustrations lead them down the self-defeating path of repealing the income tax. Our citizens, and the Commonwealth, will pay dearly if Question 1 passes.

*Sandra L. Fenwick is chair of the Massachusetts Taxpayers Foundation and chief operating officer of Children's Hospital in Boston.*



# Divided loyalties

Why do we trust employers and our favorite brands, but not our local government? **BY ALISON LOBRON**

**“SO, WHAT DO** you do?”

My friend visiting from San Francisco stifled a laugh when she heard this familiar line at a cocktail party. She has a theory that Bostonians can't use any other question to start a conversation with a stranger—and, furthermore, that until we've established what a person does (meaning gainful employment, not hobbies or recreation), we feel ill-equipped even to make small talk about vegetable dip.

I remembered her theory as I puzzled over some data in *Great Expectations*, MassINC's recent study of 25- to 39-year-olds and our attitudes toward life in Massachusetts. Several of the findings make sense only when you consider how central work is to our lives and identities. Here's an example: 55 percent of younger people in the state (and 61 percent in Greater Boston) say that the “availability of affordable housing” needs “major improvement.” At the same time, 87 percent pronounce themselves satisfied with their jobs—much higher than the 37 percent who voice confidence in the effectiveness of state and local government. Never mind that many of our salaries don't allow us to buy a home. Maybe we see the problem as one of high prices, not inadequate salaries.

This framing of the housing issue suggests a knee-jerk tendency to give our employers a benefit of the doubt that we deny our government. That's interesting when you consider that in 2007, the average CEO made 344 times what the average worker made, a huge increase in the wage gap since our parents were in their 20s and 30s and the ratio was about 35-to-1. Those of us in the 20-to-40 age bracket are more often average workers than CEOs. Nonetheless, a whopping 89 percent of us are convinced that our employers are “socially responsible,” defined as “respectful of ethical values, people, communities and the environment.”

It may be that we associate the phrase “socially responsible” with recycling bins, not with the treatment of, well, ourselves. Or it may be we give our employers the benefit of the doubt because our jobs are so central to our identity. If we don't yet

have families or even spouses, work often is what defines us, and who wants to think that she's slaving away 60 hours a week for some quasi-feudal lord—even if she sort of is?

Private employers also spend a lot of time and money shaping their image; if they give money to a local youth center or install low-energy light bulbs in their meeting rooms, we hear about it. But I suspect our tendency to have more faith in our employers than our local government also has a lot to do with the way we move around in our 20s and 30s.

My friend Cara is, in some ways, typical of my generation. Now 33, she's lived in five different



cities since she was 21. She works long days in the corporate world—8 a.m. to 8 p.m. isn't unusual—and while she owns her Cambridge condo, she says her connections to and identification with the city are negligible. She has no children, so no connection to schools or the local sports leagues. She doesn't make use of many civic institutions or know much about local government. She could as easily live in New York, San Francisco, or Chicago, since city and state are not important to her sense of self. So where do her energies and loyalties belong? To her friends, her work, and, of course,

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### REAL TALK

to the places she spends her money.

"I derive a certain comfort when I am in a new city from visiting a mall or a downtown area with familiar chains," she told me, a little sheepishly. "'There's the Starbucks,' I say, and I feel somewhat grounded. 'And the Ann Taylor store is over there.' I wander over and feel some comfort seeing the familiar Starbucks decor and Ann Taylor merchandise."

Cara is an Ann Taylor person in a way that she isn't a Cantabrigian, or a Bay Stater. It isn't that she's materialistic; it's that the source of her pantsuits has been a constant for 12 years, even as the store's backdrop has changed from San Francisco to Philadelphia to Cambridge. For anyone who moves around a lot, corporate brands can come to feel homey—ironic, yes, but there it is. I have friends who would have no problem swapping Massachusetts for, say, Pennsylvania, but wouldn't be caught dead buying a PC instead of a Mac (or vice versa), or sipping coffee at a Peets rather than a Starbucks. I know Prius drivers who love bonding with other Prius drivers based on what they imagine they must have in common.

This loyalty to brands rather than places isn't surprising, especially for those with the means and education to travel and conduct national job searches. Anyone who came of age in the last 15 years may find it easy to sort of glide right over regional attachments. Places that used to have "Metropolitan" or "Boston" in their titles (think of a certain theater and sports arena) are now named after Citibank and TD Banknorth. White-collar employees can live all over the world while working for the same corporation, enjoying the same grande iced latte each morning, and reading no newspaper other than *The New York Times* online, if they are so inclined.

There is probably not much government can do about disappearing geographic lines and loyalties. However, it can work to make Massachusetts more attractive to young people, and that means devoting resources to the top concern of this generation: housing prices. Still, the way I see it, my age bracket also needs to stop asking what our state can do for us and what we can do for our employer, and start posing the opposite question to each. If you work in a company where the CEO makes 300 times what you do, and you worry about affording a home in Massachusetts, well, sure, one answer is to move to Raleigh and another is to wonder why the state government isn't doing more to help. But another is to start demanding a bit more from our employers—or at least recognizing that they play an integral role in the salary-to-housing price equation.

What we do will likely continue to be central to who we are. But that shouldn't stop us from seeing our workplaces—and our municipalities—as two-way streets. **CW**

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*Alison Lobron is a writer in Cambridge. She can be reached directly at [alobron@hotmail.com](mailto:alobron@hotmail.com).*



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