



Massachusetts Association of Conservation Commissions

protecting wetlands, open space and biological diversity through education and advocacy

March 2, 2016

James J. O'Day, House Chair
Joint Committee on Municipalities and Regional Government
State House, Room 540
Boston, MA 02133

Barbara L'Italien, Senate Chair
Joint Committee on Municipalities and Regional Government
State House, Room 413-C
Boston, MA 02133

Re: House Bill 3906, An Act to Modernize Municipal Finance and Government

Dear House Chair O'Day and Senate Chair L'Italien:

We are writing about House Bill 3906, An Act to modernize municipal finance and government, as filed by Governor Baker. Section 64 of the bill, which proposes to add Section 53K to General Laws Chapter 44, would create inconsistencies with G.L. c. 40, §8C (the Conservation Commission Act) and G.L. c. 131, §40 (the Wetlands Protection Act). The inconsistencies and resulting confusion would undermine the smooth functioning of conservation commissions and administration of the Wetlands Protection Act. We respectfully ask that your committee amend Section 64 of the bill to eliminate the ambiguities and inconsistencies. Details are below.

Conservation Commission Act

Every municipality in Massachusetts has established a conservation commission, as authorized by G.L. c.40 § 8C, for the promotion and development of the natural resources and protection of watershed resources in the municipality. Subject to the approval of a city council or selectmen, as applicable, a conservation commission may receive gifts, bequests, or devises of personal property. A city or town may also appropriate money to a conservation fund in the city or town that may be appropriated by the conservation commission for any purposes authorized by G.L. c.40 § 8C.

Wetlands Protection Act

Conservation commissions administer the Wetlands Protection Act in their communities. G.L. c.131, §40. Anyone proposing to do work in or near wetlands and subject to the requirements of the Act must file a notice with the municipal conservation commission and receive an order of conditions (permit) to do the work. The Act requires applicants to pay a filing fee, part to the municipality and part to the Department of Environmental Protection, to defray municipal and state costs of administering the Act. The amount going to the municipality "shall be expended solely by the local conservation commission for the performance of its duties under this chapter..." G.L. c.131, § 40.

House Bill 3906, Section 64, Would Create Conflicts with Current Law

House Bill 3906, Section 64, in adding c.44, §53K, to the General Laws, would give the municipal chief executive officer authority to expend monies received under G.L. c. 40, §8C. That, however, would be inconsistent with G.L. c. 40, §8C, which provides that funds in the conservation fund “may be expended by said (conservation) commission for any purpose authorized by this section.” Further, House Bill 3906, Section 64, would authorize the municipal treasurer to create a special account to deposit such funds, even though conservation monies are designated to a separate conservation fund under G.L. c.40, §8C.

House Bill 3906, Section 64, is ambiguous as to whether it applies to permit filing fees or only to impact fees and exactions. If it applies to filing fees, it would give the chief executive officer discretion to expend permit filing fees monies received. That would be inconsistent with G.L. c.131, §40, which provides that filing fees received for issuance of a wetlands permits “shall be expended solely by the local conservation commission for the performance of its duties under this chapter.”

Those ambiguities and conflicts between current law and the new c.44, §53K, proposed by House Bill 3906, Section 64, would create confusion over where conservation commission monies are deposited, the authority to expend those funds, and the timing and purposes allowed for those expenditures. If your committee determines it will favorably approve Section 64 of House Bill 3906, we urge amending that section to eliminate the ambiguities and conflicts in laws that would otherwise be created.

Suggested Amendments to Section 64 of House Bill 3906

The current system works well. Conservation commissions (appointed by city council, town manager, or selectmen, depending on form of municipal government) have expertise and experience in administering the Conservation Commission Act and in expending conservation-related funds pursuant to G.L. c. 40, §8C. Similarly, wetlands filing fees are essential to help cover the expenses of administering the Wetlands Protection Act; they have been in place for many years and expended responsibility by conservation commissions pursuant to the Act. For example, as authorized by the Act, commissions use filing fee monies for project-specific consultants, supplies, and equipment needed to administer the Act. They need the discretion to determine when and how best to use the funds in furtherance of their statutory responsibilities. There is no good reason to change those practices and procedures.

House Bill 3906, Section 64, provides no standards for when a chief municipal official may expend the monies received, even monies received and needed for conservation purposes or permitting expenses -- unlike G.L. c. 40, §8C, and G.L. c.131, §40, which specifically require that the monies be expended consistent with the mandates of those laws and by the commission with statutory authority to administer those laws. It makes sense that conservation commissions have the authority to expend conservation-related funds as needed and as required by the statutes under which they were collected. It would be poor public policy to alter those requirements and vest expenditure authority away from the entity administering and using the funds.

We suggest the reference to c.40 §8C, be deleted from line 914 of House Bill 3906 (in the first sentence of the proposed Section 53K) because there is already a statutory mechanism for expending funds that are deposited into the §8C conservation fund. We also suggest this sentence be added to the end of proposed Section 53K: “Notwithstanding the requirements of this section, any monies deposited into a conservation fund pursuant to G.L. c.40, §8C, shall be expended from that fund in accordance with that

statutory provision and any fees paid pursuant to G.L. c.131, §40, or any other permitting program shall be held and expended according to the statutory provisions authorizing those fees.”

We would be happy to provide additional information and meet or speak with you if that would be helpful.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Eugene B. Benson".

Eugene B. Benson
MACC Executive Director
Email: eugene.benson@maccweb.org
Phone: 617-489-3930 x21

Also signing this letter:

Charles River Watershed Association
Environmental League of Massachusetts
Mass Audubon
Massachusetts Rivers Alliance
Toxics Action Center