

Summary of Terry Yoffie's Notes
Review Meeting on S.B. 90
With George Foord, Tony Logalbo and Guive Mirfendereski
July 20, 2009

Current Discussion RE: S.B 90

All sections were reviewed by the group and the following notes describe by section what concerns and/or ideas were identified to strengthen the proposed bill S.B. 90.

Each comment/suggestion will be presented by section and line numbers.

S.B. 90, Section 1. Definitions are weak and therefore a challenge in Section Two. All agreed that the five terms "rehabilitation", "preservation", "restoration", "maintenance" and "upkeep" are unclear as to what they mean. Because of the lack of clarity, the C.P. committees across the commonwealth are challenged to review and assess fund proposals where there continue to be questions about what these terms mean in terms of open space, housing, recreation and historic assets.

Better wording is necessary. With the legislation having such vague term definitions and the department of revenue not issuing regulations, the commonwealth leaves cities and towns open to solving definition questions through the general court. George Foord will provide recommended definitions that he will research from existing commonwealth practices.

Maintenance definition should require a funding plan to be presented for every project proposal. We find that cities and towns are burdened by newly acquired, restored, and rehabilitated assets that will add additional maintenance to already strained operating budgets (this fiscal year they are severely affected by reductions in tax revenue and state aid funding). We recommend that projects that are approved for CP funds also be eligible to apply for and use CP funds for their ongoing maintenance. We recommend that projects be designed with a plan for funding ongoing maintenance and that such plans be detailed in their CP proposal. Such CP funds can only be used for maintenance of CP funded acquisition, preservation, creation, and rehabilitation projects. CP funds may not be used for maintenance of assets that have not ever received CP funding. This is not intended to offer cities and towns another resource for funding their "underfunded" maintenance and deferred maintenance concerns.

Section 2. (b 1/2) – Recommend that this Section be deleted. Allowing cities and towns to divert general fund (typically unrestricted) revenues into the CP fund (is typically restricted) does not make much fiscal sense. Endorsement of reductions in general fund revenues as they are diverted to CP purposes is not good for city and town budgets. This may allow the commonwealth to "make up" reductions in state matching funds but it is not fiscally conservative and thus is not good fiscal policy.

Section 3. e (4) – Recommend that this Section be deleted. This section will reduce yields to the cities and towns while providing nonresidential property owners with minimal tax benefits. This provision will put further financial pressure on cities and towns. If we understood the background behind this provision, we might be more supportive. If the principle of "maintenance of effort" is what is being raised here, then please use language that emphasizes that.

Section 6 – lines 63-81: Recommend that as a matter of public policy, some language be considered to motivate greater cooperation between neighboring cities and towns and inter- and intra- regionally.

Proposals that promote public housing/smart growth projects that might straddle two communities or protect water resources across a group of communities are examples of projects that could involve two different communities or a group of communities within (between) a region(s). We would hope that S.B. 90 might work to move the commonwealth into more regional cooperation and joint ventures.

We do see in the original bill and S.B. 90 that CP funds may be used for projects within any city or town (line 80) and thus, the beginnings of such regional policy does exist.

Section 7 (b) should be deleted if 2 (b ½) is deleted.

Section 7(d), line 88 – add “and other” between “real” and “property”.

Section 8 (d), line 133 – delete “of the department” between “commissioner” and “of”.

Section 9, lines, lines 148 – 153 - delete the language regarding payment of 0.50% to registries for administrative costs. Paying this out of the CP trust fund will reduce the amount of CP funds for distribution to cities and towns. This is new and would not be popular with cities and towns.

Section 10, lines 166, 177 references to “subsection (b ½)” should be struck if subsection (b ½) is deleted as recommended above.

Section 10 (b) – The state’s fiscal situation has dramatically changed since the financial assumptions were developed for S. B. 90. We would like to be certain that someone is checking the feasibility of funding the 75% distribution commitment. With real estate activity low, it is important to confirm that the state can fulfill such a generous commitment to the cities and towns.

Data are clear that several cities and towns in Massachusetts have not adopted the CP Act. Is there any interest in creating an incentive in this amendment that would encourage their participation?

Finally, one last recommendation on incentives would be to develop one that would promote the building of additional affordable housing units over renovating existing units and thus, add additional units to the existing affordable housing inventory. We are still a long distance away from offering an adequate number of affordable housing units to citizens.

Section 10 and all Sections, editorial note – have the word processing program check for consistent numbering and lettering of all sections. Sec. 10 has the most obvious errors in the identities of the subsections.

Section 11(a), Line 252, strike “right” and replace with “obligation” between the words “with” and “to enforce the restriction.” Query on lines 253 – 256: where will the cost to enforce deed restriction come from? Should it be taken as an administrative expense from the CP Fund or from the Housing project? We believe that it should be charged to the Housing project.

Section 11(b), lines 263 – 267. We are not comfortable with this provision regarding the transfer of property ownership to a nonprofit organization and feel that it needs further research with regard to the interplay between the provisions here and in Chapter 184. If this Section does remain, at a minimum, we would add “for value by a certified appraiser” on line 263 after “such property” and before “acquired under this chapter”.

Section 12. Delete this new Section 12. We recommend that Section 16(b) remain in place. We do not recommend this new Section 12 in that it affects the local revocation provision of the Act.

Conclusions:

All participants at the meeting would be willing and pleased to assist with drafting/redrafting any provisions requiring changes. We will await Richard Powell's and Senator Creem's recommendations on what next steps they believe are needed.