



# NEWSLETTER

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## ADVISORY BOARD v COMMONWEALTH OF MASSACHUSETTS

On August 22nd, the Advisory Board filed a petition for declaratory judgment in front of a single justice of the Supreme Judicial Court. The suit seeks to declare three outside sections of the Fiscal Year 1992 state budget unlawful, on constitutional and statutory grounds. If left unchanged, the total additional cost to ratepayers over the next thirty years could reach \$500,000,000.

The three outside sections of the budget in question are:

### Section 165

This section creates a **\$.00015 per gallon tax on water, exposing ratepayers to a cost of up to \$16 million per year.** The Commissioner of the MDC is required to set, on an annual basis, a per-gallon charge for water drawn by the MWRA from the MDC watershed. The Commissioner is not required to set the per-gallon charge at an amount directly related to the cost of providing water to the MWRA. This per-gallon charge would require the MWRA to collect a tax rather than a fee to cover the cost of services provided because it does not limit the fee paid by the MWRA to that which is needed to cover the direct cost of providing water to the MWRA. Also, revenue collected from the tax would be used by the MDC to fund maintenance of recreational areas which benefit all the citizens of the Commonwealth and not simply the MWRA ratepayers, therefore, any fee collected to fund such recreation costs is an unlawful tax.

### Section 108

This section creates a **Watershed Management Fund** to be managed by the Commonwealth, to be used for "the maintenance and operating costs of the MDC's watershed division,...including the costs of capital improvements necessary to ensure the safety and purity of the water supply and protection of watershed lands pursuant to state and federal standards." However, the section is "subject to appropriation," the same language that effectively "hand-cuffed" the MDC and prevented the maintenance of an adequate water and sewer system, by holding necessary funds hostage in the general fund.

### Section 46

This section provides for the **prepayment of the MDC debt purported by the Governor to be \$120 million.** Ratepayers are being forced to fund a bond issue to place money into the General Fund, which benefits all citizens of the Common-

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wealth. Under the MWRA enabling legislation, the MWRA is statutorily required to reimburse the Commonwealth, on an annual basis, for one hundred percent of the principal and interest the Commonwealth paid on MDC sewer bonds and fifty percent of the principal and interest paid by the Commonwealth on MDC water bonds. In the FY92 budget, these provisions have been abolished and, instead, the Commonwealth has demanded that the MWRA ratepayers pay to the Commonwealth \$120,000,000. A payment of this magnitude would require the MWRA issue bonds at a cost of \$312,000,000, over a thirty-year period. If the MWRA were simply to reimburse the Commonwealth for the payments of principal and interest, as statutorily mandated in 1985, the cost would be no more than \$112,000,000, over the same period of time. This results in a net increase in cost to ratepayers of \$200,000,000. The Commonwealth intends to place the \$120 million in the General Fund and not to retire the water and sewer bonds.

### The Furlough Program

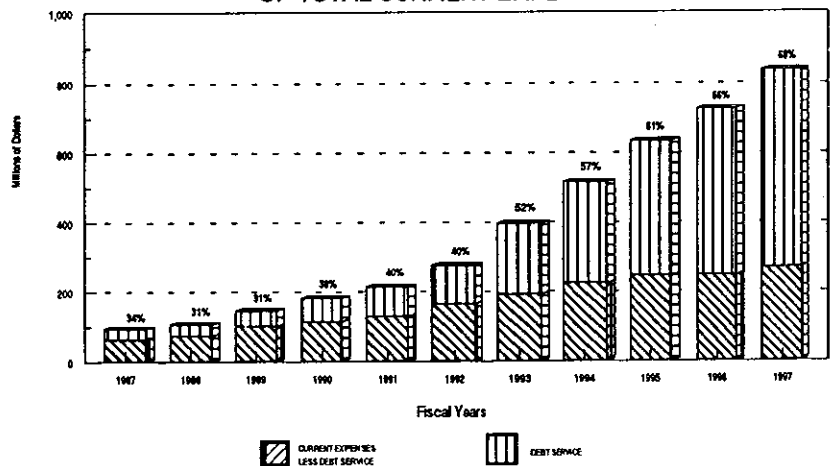
The suit also seeks a declaratory judgment concerning the ability of the state to demand a \$1.3 million payment from the MWRA in lieu of a "furlough" program. The suit does not seek to test the validity of such a program, it only asks for a declaration, by the court, that any payment in lieu of a furlough program should directly benefit those paying the salaries of the employees who would have been furloughed. MWRA employees do not work for the state and their salaries are not paid by the state. The only money the Commonwealth's general fund receives from MWRA employees is through their payment of state taxes, which would not be collectable if these employees were furloughed. The suit asserts that any money saved from a "furlough" program should be returned to the ratepayers in an effort to reduce the impact of stringent rate increases.

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## MWRA BORROWS \$300 MILLION IN OCTOBER

The next major phase of the MWRA's borrowing program is underway, as the Authority offered \$300 million in general revenue bonds in a negotiated sale on October 23rd. The term of issue was 30 years, and the interest rate was 7.0384%. The bonds maturing after 2001 will be callable, in or after 2001, at the Authority's option. The Authority retained the previously-established bond ratings of single A- from Standard and Poor's, single A from Moody's, Inc., and A from Fitch. Some \$43 million went to the debt service reserve fund and for the cost of issuance, leaving \$257 million for deposit to the Construction Fund.

MWRA DEBT SERVICE AS A PERCENTAGE OF TOTAL CURRENT EXPENSES



Source: MWRA Current Expense Budget FY 1997-1992.  
Note: FY1983-1992 Included, FY1980-1981 Proposed.

This was the first of what is now expected to be two issues between now and June 30th. A second issue has been projected for March or April, for \$500 million. A winter issue for some \$200 million in variable rate financing, that later would be converted to fixed rate debt, is no longer being considered. Additional borrowing approaching \$900 million is proposed for FY93.

This fall's borrowing comes at a time when the Authority's capital program is picking up considerable steam. Spending during this fiscal year is projected to be \$581.5 million, more than double the spending of the year just ended. By next June, spending will be at the rate of more than \$2 million per day, as compared to last June's \$1 million per day.

This fiscal year is the first of the three biggest spending years for the capital program with spending projections for FY93 near \$800 million, and FY94 projections approaching \$700 million (in FY92 dollars, on an accrual basis). Nearly three-quarters of this year's spending, \$419.1 million, is budgeted for the new Deer Island plant and related facilities. With the inclusion of all new interceptor, residuals, and other sewerage projects, wastewater projects will account for 94% of all spending this year.

Debt service payments to support this growing capital program are also increasing rapidly. This year, debt service is budgeted for \$111.3 million, representing 41% of the overall budget. The increase in debt service represents over half of this year's 31% rate increase. By next year, debt service is projected to grow to \$207 million, or just over 50% of the FY93 budget. The increase in debt service next July represents 100% of next year's projected 39.5% increase. Debt service is projected to rise by close to \$100 million each year for the next five years.



(AB v Commonwealth continued from page 2)

### State Action

On September 16, the Attorney General filed a "motion to dismiss" the Advisory Board's complaint, a common tactical procedure in matters of civil litigation. The challenges raised in the Commonwealth's are primarily ones of standing and ripeness. We expect to survive the motion and continue to a hearing on the merits of our case in front of the Supreme Judicial Court of Massachusetts.

### Where is the MWRA ?

On Monday, October 28, the MWRA Board of Directors voted to pursue legal action against the Commonwealth regarding the outside section of the FY92 budget called into

question by the Advisory Board's lawsuit. The MWRA has now taken an official position by cross-claiming against the Commonwealth. Having the MWRA as a party adverse to the state will help the suit on many counts; however, the MWRA's action is separate and distinct from that of the communities and the Advisory Board.

On Friday, November 15, the MWRA filed its answer and cross-claim against the Commonwealth. The Authority asks for a determination of the validity of two provisions of the state budgetary enactments for fiscal years 1991 and 1992, specifically sections 90, pertaining to the "furlough payment", and section 46. With this action the MWRA has effectively cast its lot with the Advisory Board and the communities on these two provisions and has not directly challenged the Advisory Board's stand on sections 108 and 165.

After reading the Advisory board's complaint and the MWRA's answer and cross-claim, it is clear that we share common ground. However, there still remain some issues of dispute. The most noticeable difference concerns the Water Tax and the Watershed Fund. The Advisory Board challenges these dangerous provisions while the MWRA remains silent. The Watershed Fund is subject to appropriation and has the potential to become a state "slush fund" under the guise of watershed protection. The "water tax" also sets an extremely dangerous precedent, giving the state the power to increase this per gallon tax on a yearly basis completely outside of the budget review process of the MWRA. As it stands, there will be three distinct voices speaking to the court.

### The Road Ahead

To date 38 communities have joined with the Advisory Board as plaintiffs. These 38 communities constitute over 86% of the weighted vote of the Advisory Board and it is expected that by the end of the calendar year, 90% of the weighted vote of the Advisory Board will be participating in the suit as plaintiffs.



## CALENDAR

December 22 - February 1

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Dec 22	Dec 23	Dec 24	Dec 25 MERRY CHRISTMAS	Dec 26	Dec 27	Dec 28
Dec 29	Dec 30	Dec 31 END OF SLUDGE DUMPING	Jan 1 NEW YEAR'S DAY	Jan 2	Jan 3	Jan 4
Jan 5	Jan 6	Jan 7	Jan 8 MWRA Board of Director's Meeting	Jan 9	Jan 10 8:15am Executive Committee Meeting 11:00am Wastewater Advisory Committee - Boston	Jan 11
Jan 12	Jan 13 8:30am Operations Committee Meeting - Brookline	Jan 14 10:30am WSCAC Meeting at Quabbin	Jan 15	Jan 16 1:30pm Advisory Board Meeting - Wellesley	Jan 17	Jan 18
Jan 19	Jan 20	Jan 21	Jan 22 MWRA Board of Director's Meeting	Jan 23	Jan 24	Jan 25
Jan 26	Jan 27	Jan 28	Jan 29	Jan 30	Jan 31 MMA Conference - Boston	Feb 1 4:00pm MMA Conference - Advisory Board Workshop

## LEGISLATIVE UPDATE

The Advisory Board has introduced three pieces of legislation, through Representative Cass (D-Wakefield), which seek to repeal three outside sections of the state budget. Also the subject of court action brought by the Advisory Board and the service-area municipalities, the repeal legislation gives the Legislature and the Governor the opportunity to correct the situation without involving the courts. The bills were filed on September 12th and have already been refiled for the January session ensuring that the legislative prong of the Advisory Board attack on sections 165, 108, and 46, is now well underway.

The repeal bills were issued a public hearing on October 17th by the Committee on Natural Re-

sources. Testimony in support of the legislation, (House 6142-repeal of the Water Tax, House 6143-repeal of the Watershed Fund, and House 6144-repeal of the \$120 million prepayment), was led by the legislation's chief sponsor, Rep. William Cass (D-Wakefield), and was followed by additional members of the General Court including: Representatives Anthony Giglio (D-Medford); Robert DeLeo (D-Winthrop); Warren Tolman (D-Watertown); Patricia Jehlen (D-Somerville) and Sally Kerans (D-Danvers). Supplying the Committee with written testimony were Representatives Paul Casey (D-Winchester) and Marie-Louise Kehoe (D-Dedham).

Oral testimony was also offered by Mayor John McCarthy of Everett; Robert Ciolek, Executive Director of the Boston Water and Sewer Commission and a member of the MWRA Board of Directors; Ted Ryan, Town Manager of Stoneham; Ed Sullivan, Selectman from Canton; Anne Paulsen, Selectman from Belmont; Joe Foti, Water Superintendent from Somerville; Neil Callahan, DPW Director from Malden; Joe Favaloro, Executive Director of the MWRA Advisory Board; and John Hegarty, a concerned citizen from Dorchester. All spoke strongly in favor of the legislation.

Anne Paulsen testified, "We in Belmont pay the rates because we want a top-notch system. But it is not appropriate to take the monies paid by ratepayers for water and sewer projects and use them instead to balance the state's budget. It is so important that we get this project done and my fear is that actions such as this will erode citizens' confidence in the project and will jeopardize its completion."

### **Legislative Caucus**

At the October Advisory Board meeting Representative Cass (D-Wakefield) announced that he and Representative Deleo (D-Winthrop) had founded a legislative caucus. The first caucus was held on November 4th, for the purpose of uniting all MWRA service-area legislators in an effort to protect MWRA municipalities and their citizens' interests. Many Senators and Representatives attended the caucus and have pledged their support to help shepherd proactive ratepayer legislation through the General Court and work to defeat legislation adverse to the interests of already beleaguered ratepayers. This forum served primarily to educate Legislators about the numerous pieces of legislation filed and provided an opportunity for legislators to serve as co-sponsors on various pieces of legisla-

tion. Some of the pieces of legislation have up to 44 co-sponsors.

Examples of some of the pro-ratepayer legislation which the Advisory Board filed for next year's legislative session include:

#### **1992 ADVISORY BOARD LEGISLATION**

##### **REPEAL OF THE WATERSHED MANAGEMENT FUND (Rep. Cass)**

##### **REPEAL OF THE \$120 Million PREPAYMENT (Rep. Cass)**

##### **AN ACT RELATIVE TO THE ESTABLISHMENT OF THE CLINTON-LANCASTER WASTEWATER DISTRICT (Senator White)**

Seeks to transfer the Clinton Wastewater Treatment Plant from the operating and capital budget of the MWRA to the Clinton/Lancaster Sewer District. This treatment plant costs MWRA ratepayers an additional and unnecessary \$2.8 million a year.

##### **AN ACT RELATIVE TO THE COST OF THE CLEAN-UP OF BOSTON HARBOR (Rep. Cass)**

This legislation seeks to find the fairest formula to spread the cost of the harbor cleanup over the entire Commonwealth. Refile of House 5193 which has been placed into a study order.

##### **AN ACT TO REDUCE WATER AND SEWER FEES (Rep. Cohen)**

The legislation would allow homeowners to deduct their water and sewer fees from their taxes. Refile of House 2211 which is currently awaiting action in Taxation.

##### **AN ACT RELATIVE TO THE COMPOSITION OF THE MWRA BOARD OF DIRECTORS (Senator LoPresti)**

The bill would allow Winthrop and Quincy to directly appoint their own representatives to the Board instead of submitting a list for gubernatorial approval. In addition, the bill would allow the Board to elect its own Chairman instead of having the Secretary of Environmental Affairs automatically serve as Chairman. It has been speculated that the Cape delegation would like to amend this legislation in order to add a Cape seat to the Board of Directors. The Advisory Board strongly opposes this action and has expressed its disapproval to all involved parties. If adopted, the amendment would dilute the balance of the Board in favor of special interests and not the ratepayers who are paying 96% of the burden of the Boston Harbor cleanup.

##### **AN ACT FURTHER REGULATING UNIFORM PROCUREMENT (Senator Buell)**

This bill seeks to provide preference to a responsive Massachusetts bidder if his or her bid is within ten thousand of the lowest bid.

# WATER AND SEWER RATE SURVEY

The Fourth Annual Advisory Board Water and Sewer Rate Survey has been completed. The Advisory Board began the yearly survey in 1988 to provide service-area rate information to member communities for use as a general reference. Today the Rate Survey is one of the most useful pieces of information the Advisory Board provides, with many Survey requests coming from both the public and private sector.

A perusal of this year's survey reveals that in the 60 MWRA communities combined rates for FY92 increased by an average of \$47.46 from \$395.98 to \$443.44, or 12% per family. The average community increase is less than the 33.1% increase levied by the MWRA on the individual municipalities. Many communities, in order to control "local" rate increases, have reduced or eliminated local infrastructure improvements as well as reduced staffing levels. Also, some communities used FY91 stabilization funds to offset the FY92 increase, while others established a two year rate system in FY91 that incorporated minimal increases for FY92. All of these scenarios were developed by local officials to lessen the burden on ratepayers.

The following information represents system-wide rate data with community totals in each category:

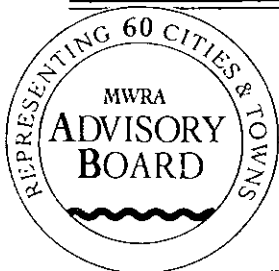
**Billing Frequency:**

Semi-annually.....	26
Tri-annually.....	3
Quarterly.....	29
Bi-monthly.....	2

**Rate Structure:**

Ascending Block...	26
Flat Rate .....	32
Fixed Rate.....	2

Lifeline Rates.....	17
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The ADVISORY BOARD

# NEWSLETTER

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