

# MANS&C Quarterly

Massachusetts Association of Nonprofit Schools and Colleges

Fall '02

## From the President

This past legislative year was one of the most interesting sessions in recent years. The MANS&C Board and our legislative counsel, John W. Spillane, were hard at work to remain diligent in our efforts to protect nonprofit schools and colleges from being adversely affected by bills that were filed, while being attentive to the fact that in times of economic hardship it is easy to look to nonprofits to generate additional revenue.

The Massachusetts Great and General Court concluded its Formal Session in the second year of its two-year session on Aug. 1, 2002. The House and Senate will remain in Informal Session during the remainder of 2002, but can only consider noncontroversial legislation. Any member who objects to a bill that comes before the floor of either the House or Senate can defeat the legislation for the balance of the year. Nevertheless, MANS&C and other similar organizations are required to monitor the bills we oppose, to make certain that objections are raised in the event that such a bill comes out of committee or an attempt is made to pass it on the floor of the House and Senate.

This is an election year in which the citizens of the Commonwealth will elect a governor for a four-year term from the beginning of 2003 through 2006. On the Republican ticket, Mitt Romney is running for governor and Kerry Healey for lieutenant governor. On the Democratic side, State Treasurer Shannon O'Brien is running for governor and Christopher Gabrieli for lieutenant governor.

It is expected that the leadership of the House will remain with Speaker Finneran. He was the main speaker for the MANS&C Government Relations

*President, continued on back page*

## LEGISLATIVE SPOTLIGHT:

### State Representative Peter J. Larkin



*(Left to right) Bruce Amsbary, Debbie Martin, Representative Peter J. Larkin, Attorney John W. Spillane, Edward King and Paul White visit after Representative Larkin's remarks to the MANS&C Board.*

State Representative Peter J. Larkin, a Democrat who represents the Third Berkshire District, hails from the city of Pittsfield, Mass. Currently serving his sixth term, he is the House Chairman of the Joint Committee on Education, Arts and Humanities. Few legislative leaders have enjoyed the breadth of experience in leading various committees Larkin has. In fact, one might consider him a "Renaissance man" when viewing the assignments he has successfully discharged.

In 1996, while serving in only his fourth two-year term, Representative Larkin was nominated by the Speaker and ratified by his colleagues to chair the Committee on Criminal Justice, which deals with the definition of and punishment for crimes, as well as penalties and sentencing in the Commonwealth. In February 1997 he took over as Chairman

of the Joint Taxation Committee, filling a sensitive and critical post that oversees the full taxation policy for the state.

In 1999, Larkin moved on to lead the House side of the Joint Committee on Commerce and Labor, an assignment that included matters concerning commercial, industrial and mercantile establishments and the laws affecting them. The committee also addresses industrial development, consumer protection, employment discrimination and the state's labor laws. Finally, in his sixth term, during 2001, he assumed the Education, Arts and Humanities chairmanship. In this position he has focused on establishing an equal balance between the educational needs of all students and the fiscal needs of school districts, maintaining Massachusetts' ranking as one of the top education states in the nation, and providing students with

*Larkin, continued on page 3*

# LEGISLATIVE REPORT

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## EGTRRA Conformity

MANS&C joined with a coalition to urge the State Legislature to pass what was called An Act Enhancing State Revenues which would require Massachusetts law to be in conformance with the federal Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) law. Governor Swift vetoed this tax package. However, the General Court overrode her veto. It is now Statute 2002, Chapter 196.

This new law will enable members' employees to benefit from EGTRRA as it pertains to certain pension and retirement relief. It provides state tax deferral for additional catch-up contributions pertaining to individuals age 50 or over who might add to their retirement plan. It also provides for additional tax deferral contributions to 401(k) and 403(b) plans and provides full portability for pension plan rollovers, as well as tax-free college saving plan contributions, among other benefits.

## SENATE 4139

MANS&C was very active in opposition to SENATE 4139 filed by representatives of the Town of Watertown when Harvard University purchased a large parcel of land and a building located in that community. Those representing Watertown wished to create a precedent-setting scheme for taxing nonprofit institutions, including Harvard, in that community and in all communities in the Commonwealth. Harvard has attempted to work with the town regarding the potential loss of tax revenue to the Town of Watertown as a result of the acquisition, which would be tax exempt. MANS&C is closely monitoring these proceedings so that this proposed legislation, which is currently in the House Ways and Means Committee, should not be needed and would not adversely affect all of our member institutions across the State.

## SENATE 1272 and SENATE 1280

MANS&C has also been working with Boston University to defeat SENATE 1272 and SENATE 1280, which would no longer allow schools to have campus police officers with special state police powers. Instead, schools would have to hire off-duty police officers for their campus patrols. These bills have been contained in the Senate through the Formal Session and are being monitored during the Informal Session, which concludes on Jan. 1, 2003.

## SENATE 99

MANS&C and its members have initiated a grassroots effort to defeat SENATE 99, which would affect sports facilities maintained by colleges or universities. The bill would prohibit all institutions of higher education and tax-exempt hospitals from selling tax-exempt adult fitness facility services to the general public if a taxpaying business entity is offering similar services within 10 miles unless these tax-exempt entities pay the appropriate taxes. The bill was filed by private, for-profit sports workout facilities, because they felt disadvantaged by campus facilities that are not taxed and, in some instances, are open to the public. The bill requires the public charities division to "establish a system of mandatory arbitration for the purpose of receiving all complaints from aggrieved small businesses" and to respond to those complaints with a 13-step process. MANS&C is working with other institutions, including hospitals and the YMCA, to defeat this bill.

## HOUSE 2361

MANS&C has worked with other coalition groups to pass HOUSE 2361, which is an Act Relative to Small Group Insurance. Chapter 297 of the Acts of 1996 was passed seeking to aid small businesses with fewer than 50 employees. However, this bill hurt independent schools with fewer than 50 employees. HOUSE 2361 would correct this situation, allowing the small independent schools to join with health insurance

## Protect the Dover Amendment

Practically every legislative year, the Dover Amendment in some way comes under attack. MANS&C works with elected officials and their staff to ward off attempts to encroach on our zoning protections contained in the amendment. Contact with the governor's office is also sometimes necessary. We all should understand that the Dover Amendment protects our organization's members' rights to receive building permits—rights that cannot be challenged if the building supports purposes for which schools are chartered. Use for educational purpose is clearly protected, and permits cannot be denied for that use. Of course, local and state building codes must be followed, along with setback, sideyard and height codes.

Under the law as presently written, except in Boston and Cambridge, local planning boards have limited power to derail an application from a nonprofit school or college for a building permit. In fact there is no requirement that a school appear before such a board for approval. For community relations, some institutions desiring to be responsive to local concerns have voluntarily acceded to requests for local review. Since local boards know they have very limited authority, they tend to be reasonable.

MANS&C diligently follows attempts to eliminate or weaken our Dover Amendment protections! We work with our member institutions, other organizations and lobbyists to address the issues whenever the attacks occur, and we express our strong opposition to all appropriate parties. Several of our member institutions have benefited directly from our efforts. No doubt, as cities and towns seek more ways to extract increased financial contributions from educational and religious institutions, they will seek to use zoning permits to further their efforts. We must all remain vigilant in maintaining our protections.

consortiums, resulting in lower premiums. There would be no financial impact to the Commonwealth. At the end of the Formal Session, HOUSE 2361 remained before the Legislature without final passage in either the House or the Senate. MANS&C is continuing to work on this legislation to produce the desired result.

### Gobi Amendment

During the \$22 billion budget debate, Representative Ann Gobi of Spencer, Mass., filed an amendment which would call for a study of all tax-exempt institutions. She had a local situation in her community involving an educational institution whose tax exempt status had become an issue. MANS&C and other groups immediately opposed this amendment, and it was finally withdrawn and not acted upon by the body. During this process, MANS&C reviewed more than 1,000 amendments to the budget filed in the House and Senate, to scope out any adverse problems that would be created by passage of these amendments. The Gobi Amendment was one such amendment that would have hurt our interests.

### Binienda Bill

Representative John J. Binienda filed a bill to allow municipalities to tax the real estate of colleges and universities. As the state budget crisis continues to generate pressures on communities for more services, these communities are looking to colleges and independent schools and universities to replace lost state revenue. MANS&C has opposed this bill and any others that would alter the tax status of our member institutions. Currently, the Binienda Bill has not made it beyond the Rules Committee and has not been assigned to the Committee on Taxation for public hearing.

### SENATE 1629 and HOUSE 3218

MANS&C was also instrumental in opposing SENATE 1629 and HOUSE 3218, which provide first options to communities to buy land of nonprofit entities. This kind of legislation would be disastrous to our business managers in planning for

the real estate needs of member institutions. These bills have been placed in study.

### HOUSE 3969 and HOUSE 3880

HOUSE 3969 and HOUSE 3880, involving further erosion to the Dover Amendment law and giving our member institutions freedom from zoning restrictions in the various communities where located, were also defeated in Committee.

### SENATE 2340

MANS&C has been observing SENATE 2340, which is titled An Act Creating the Crime of Reckless Endangerment to Children. This legislation has been given considerable attention as the result of sexual abuse widely reported in the Catholic Church and in other areas. This bill was passed in the Senate in June and, just recently in the Informal Session, was passed in the House without objection. There is a concern that this legislation could involve any egregious conduct, not only by clergy, but also by school administrators concerning serious physical injury and sexual abuse of a child. The Legislature has said in the bill:

It is the intention of the General Court to penalize reckless behavior, including the failure to act where civil or criminal law has imposed a duty on persons to act in a certain manner, which results in a risk of serious physical injury or sexual abuse to a child.

MANS&C has not opposed this legislation, nor have church officials opposed it, and its application to private institutions of learning is being carefully reviewed. Protecting children from physical and sexual abuses, of course, is the motivating factor behind this legislation and is difficult to oppose. The bill was signed by Acting Governor Jane Swift on Sept. 12, 2002.

—John W. Spillane

## ECONOMIC IMPACT STATEMENT 2002

Total students	101,100
Students who are Massachusetts residents	51,500
Annual payrolls ( <i>does not include seasonal or student employees</i> )	\$1,575,000,000
Annual operating budgets	\$3,133,000,000

*Seventy-five percent of members reporting. More information to follow in the winter quarterly.*

### Larkin, continued from page 1

a learning experience that prepares them for opportunities available in the new economy. He has been a consistent advocate for adult literacy, job training and a state economic policy that creates broad employment chances for all citizens and that recognizes the primary forces that fuel our Commonwealth's economic engine.

Representative Larkin's experience in running a family owned business before his election equipped him with valuable life experience in deciding policy affecting all our citizens. A graduate of St. Joseph's High School in Pittsfield, he went on to earn a bachelor's degree at St. Bonaventure University before entering the family business.

His many legislative achievements have been acknowledged by dozens of awards and honors, including the recognition by MANS&C for his work on behalf of all schools but particularly for nonprofit schools and colleges. Chairman Larkin has been and continues to be a thoughtful, effective advocate for all aspects of education in the Commonwealth of Massachusetts.

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Luncheon on Oct. 25, 2001, at Suffolk University. There will be a new Senate president, and it is expected that Senator Birmingham will remain in his Senate Presidency position until Jan. 1, when the 40 senators will elect a new leader. Accordingly, this year will mark a change in two of the three key leadership positions—those of Governor and Senate President.

MANS&C will endeavor to work with the new leaders in the coming year and urges its members and their executive and administrative staffs to participate in these elections so that our relationship with the ultimate winners will be beneficial. The 160 members of the House of

Representatives will be elected for another two years. While many incumbents were not challenged in the primaries, there are significant contests for House of Representatives positions. Although a number of incumbents are not being challenged in the Senate elections, there are still a number of contested seats for this body.

The Swift administration continues until Jan. 1, 2003. Acting Governor Jane Swift will still have significant impact in the next three months over judicial appointments and other financial and budgetary matters. Because of the budget crunch, there is a remote possibility that, after the fall elections, the House and Senate could be called back into Formal

Session in order to consider any ongoing fiscal matters that have not been resolved by passage of the current 2002 budget for the fiscal year of July 1, 2002, to June 30, 2003.

Attorney John W. Spillane and the MANS&C board will work on behalf of our members to forge relationships with newly elected legislators, while renewing the good relationships we have with current leaders at the State House. If you have concerns about particular issues, please don't hesitate to contact us.

—*Debbie Martin*

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