



# MANS&C

*The Massachusetts Association of Nonprofit Schools and Colleges*



## PRESIDENT'S LETTER

Recent news reports pointed out the continuing pressure local communities are putting on nonprofit schools, colleges and universities in Massachusetts to make payments in lieu of taxes.

Andover town officials have opened PILOT negotiations with Phillips Academy by asking for a huge, 200 percent increase in voluntary payments the school makes to the town. Doubtless, they will be approaching other nonprofit schools in Andover with a PILOT proposal before long. Phillips Academy has been making voluntary payments for a number of years.

An Andover selectman pointed out that Phillips Academy staff members who live in faculty housing pay no property taxes and yet the town must assume the cost of educating their children in public schools. He did not mention how many of those faculty children attend other private schools.

Nor did he mention the fact that numerous students whose families live in Andover – and pay property taxes – attend Phillips Academy. The town saves a great deal of money by not having to pay the cost of educating those students.

The town manager noted that the academy probably would “push back” on the services they provide to the community.

“Push back” is exactly what our institutions should do when faced with PILOT proposals. It is essential for each of us to have a reasoned, detailed, up-to-date Community Impact Statement that includes the financial figures for the services we provide. We also must be prepared to explain the impact that PILOT payments would have on those services.

Other, more heartening news is that State Sen. Stanley Rosenberg, a Democrat from Amherst, appears to have the votes to become the Senate President once Therese Murray retires next year. This is one of the most influential political posts on Beacon Hill.



*State Sen. Stanley Rosenberg, left, and John J. Spillane*

Sen. Rosenberg has spoken at MANS&C board meetings twice in recent years and engaged in frank discussions about the issues our members face. He understands our concerns and appreciates our strengths.

The opportunity to meet influential legislators is just one benefit of MANS&C membership. In addition, our legislative counsel, John J. Spillane, is at the State House every day to monitor bills that would have a negative impact on our institutions.

The MANS&C website, [www.mansac.org](http://www.mansac.org), newsletter and news bulletins also are valuable resources for members. So renew your membership or join MANS&C today and take advantage of all we have to offer.

Best Regards,

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## Andover Increases PILOT Pressure

Taking a cue from a bill vigorously opposed by MANS&C, the town of Andover is proposing a more than 200 percent increase in payments in lieu of taxes for Phillips Academy.

Under Town Manager Buzz Stapczynski's proposal, Phillips Academy would pay Andover more than \$700,000 annually.

The academy began making PILOT payments to the town in 1999. Currently, it makes annual PILOT payments of \$169,303 and pays \$122,950 on taxable property for a total of \$292,252, according to an article in the Andover Townsman.

The current PILOT agreement expired on June 30 and negotiations on a new agreement are about to begin. Stapczynski called the \$700,000 figure a starting point and said he expected the academy to "push back on the community benefits they provide."

One Andover selectman pointed out the expense of educating the children of faculty members who live in academy housing and the cost of providing town services to the academy.

Phillips Academy's property is assessed at nearly \$194 million, according to the

town manager. If the academy were a for-profit business, it would be required to pay the town \$2.8 million annually.

Andover also is seeking payments from the Melmark School for children with Autism spectrum disorders. Pike School, the Massachusetts School of Law and Merrimack College, part of which is in Andover, do not have PILOT agreements with the town.

On Beacon Hill in recent months, MANS&C Legislative Counsel John J. Spillane testified in opposition to Senate Bill 1308, which would require nonprofit institutions to make PILOT payments equal to 25 percent of what they would pay on real and personal property if they were not tax-exempt. The Andover funding increases appear to be largely based on that bill.

MANS&C will continue to oppose bills that impose PILOT programs and others that threaten our members' financial stability and independence. We also will work with member institutions that face challenges from their communities.

The Andover Townsman article is available on the MANS&C website, [www.mansac.org](http://www.mansac.org), under Downloads.

## Payments Lag under Boston Agreement

Nonprofit educational institutions in Boston have increased their payments in lieu of taxes but are still lagging behind the goal city officials set in a landmark 2010 agreement.

Colleges, universities and other educational institutions made \$11.3 million in payments – short of the city's \$15.2 million request, according to a July 26 article in the Boston Business Journal.

Boston University, the leading cash contributor, paid the city \$6 million, followed by Harvard with \$2.2 million, the article reported.

The agreement requested that payments be equal to 25 percent of what the institutions would have paid if their property were taxable. It also suggested that contributions should be half cash and the rest in community services of equal value.

A number of nonprofit educational institutions made no payments at all.

The full text of the Boston Business Journal article can be found on [www.mansac.org](http://www.mansac.org) under Downloads.

# Massachusetts Implements Fingerprint Background Checks

A new law signed by the governor clears the way for FBI fingerprint-based background checks for employees at public and private schools and child care facilities who have direct access to children.

The measure makes technical corrections to a law that authorized the background checks and was signed by Gov. Deval Patrick in January. The FBI could not proceed without the corrections, according to State Rep. Alice Peisch, a Democrat from Wellesley who is House chair of the Joint Committee on Education.

With the passage of the new law, Massachusetts became the final state in the union to implement the federal fingerprint requirement.

The law applies to employees who have unmonitored access to children, including teachers and anyone who provides school-related transportation to children. Also covered are subcontractors or workers who are hired by the school to perform work on school grounds and may have contact with children.

Processes for taking and processing fingerprints under the new background check law are currently being formulated by the Executive Office of Public Safety and Security and a vendor hired to help implement the law.

State officials believe the new systems will be in place and that the vendor can begin taking fingerprints in late October or November. In the meantime, schools, programs and child-care providers must continue to run CORI checks on employees, as required under current state statutes.

As soon as the procedures are finalized, the Massachusetts Dept. of Elementary and Secondary Education will notify schools, programs and child-care providers of the steps required to begin taking and processing fingerprints of new employees.

MANS&C is advising members to discuss the implementation of the new law with their compliance officers or attorneys.

# Frequently Asked Questions Regarding the Background Checks Law

*The following is an abridged version of the Q&A published by the Executive Office of Education. The full version is available at <http://www.mass.gov/edu/2013newsupdates/frequently-asked-questions-regarding-background-checks.html>*

*Updated information will be published regularly on this site, so check back frequently in the coming weeks.*

Governor Patrick recently signed Chapter 459 of the Acts of 2012, "An Act Relative to Background Checks."

<http://www.malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter459>

This new law expands what public, private, and parochial schools, including approved private special education schools and child care facilities, already do in conducting state CORI checks on all employees at least once every three years. It creates a national criminal database check for all school employees and contractor employees.

All **newly hired** school employees, including educators, maintenance staff, cafeteria workers, bus drivers and employees of contractors who work in the schools and may have direct and unmonitored contact with children, are currently required to complete the new national background check for the 2013-14 school year. Volunteers at schools will continue to be required to submit to state CORI checks at least once every three years, as currently required by statute, but will not be required to submit fingerprints for the national checks.

For all **current** K-12 school employees and early educators, the law directs the Board of Early Education and Care and

the Board of Elementary and Secondary Education to adopt regulations that phase in national background checks over three years. Unlike state CORI checks that have no associated fee, individuals will pay a fee to comply with this requirement that ranges from up to \$35 for non-licensed employees to up to \$55 for license-holders. The Executive Office of Public Safety and Security (EOPSS) will design the system to meet this new national background check requirement.

EOPSS is meeting regularly with the Executive Office of Education, the Department of Early Education and Care, and the Department of Elementary and Secondary Education to plan for the full implementation of this new law. In the course of those meetings, EOPSS is evaluating the feasibility of implementing the law on its current schedule, taking into account the requirements of the state procurement process and the administrative and structural changes necessitated by the new law. If EOPSS and the other affected agencies conclude that the current statutory timeline for implementation is unworkable, they will evaluate all their options, including seeking an extension from the legislature.

## GENERAL BACKGROUND

### **Q: What is the new law on background checks for educators?**

On January 10, 2013, Gov. Patrick signed into law H. 4307, An act relative to background checks. The new law requires all public and private K-12 school employees in Massachusetts, as well as early educators, to submit to state and national fingerprint-based criminal background checks.

### **Q: Why is this law necessary?**

Prior to the enactment of the new law, Massachusetts required all public and private K-12 school employees, as well as early educators, to submit to a state

Criminal Offender Record Information (CORI) background check at least once every three years. The CORI check, while intended to protect the children of the commonwealth, leaves a major loophole because it only includes an individual's criminal history for Massachusetts; it is not a nationwide criminal history check. Moreover, before this new law was passed by the legislature and signed into law by Gov. Patrick, Massachusetts was the only state in the nation that was not conducting national fingerprint-based criminal history checks of K-12 school employees through the FBI's national criminal history database,

and Massachusetts was one of a small handful of states not conducting national fingerprint-based criminal history checks of early educators. The new law closes those loopholes and aligns Massachusetts with the rest of the nation.

**Q: *Who must submit fingerprints under the new law?***

Under the new law, all school-related personnel with the potential for unsupervised contact with children, including all public and private K-12 school employees (including employees at special education day and residential school programs under Chapter 71B), as well as subcontractors/laborers commissioned by schools to perform work on school grounds, individuals who regularly provide school-related transportation to children and anyone providing child care or support services licensed by the Department of Early Education and Care will be subject to fingerprint-based state and national background checks. School volunteers do not need to submit their fingerprints for the national checks, but they must continue to submit to state CORI checks.

**FEES**

**Q: *What is the cost of these national criminal history background checks, and who will pay it?***

The fee charged for running the national checks will be up to \$55 for school employees licensed under Section 38G (licensed educators and specialists) and up to \$35 for all others (i.e., school secretaries, cafeteria workers, janitors, bus drivers, etc.) and early educators. As is the case in almost every other state that conducts fingerprint-based national criminal history checks, the fee will be paid by the individual employee or educator.

**Q: *Why is there a fee for conducting the national checks?***

Unlike state CORI checks, the fingerprint-based national criminal history checks are more complex and require participation by multiple law enforcement agencies. All fingerprints must be submitted to the Federal Bureau of Investigation (FBI) to produce a national criminal history report. The FBI charges a fee to produce those reports. In addition, the Massachusetts Executive Office of Public Safety and Security (EOPSS), the Massachusetts Department of Criminal

Justice Information Services and the Massachusetts State Police must review, prepare and produce the FBI reports to school districts and licensing agencies in a form that is legally consistent with the commonwealth's CORI statute. There will be administrative costs associated with that process. The fees will support the FBI fee, as well as state administrative costs. All fees paid for these national checks will be deposited in a state trust fund and will be available only for the support of this system of national criminal history checks.

Please note that the fees established in the new law are reasonable and in line with the fees other states charge for similar national criminal history checks.

**Q: *If I am a school employee or early educator, is there a hardship exception to paying the fee?***

Yes. The law explicitly states that a school committee, superintendent or principal, as well as a program licensed or funded by the Department of Early Education and Care, may reimburse applicants all or part of the fee on the grounds of financial hardship.

**PEOPLE COVERED BY THE NEW BACKGROUND CHECKS LAW**

**Q: *Does the new background checks law apply to public and private institutions of higher education in Massachusetts?***

Generally, no. The new law concerns only public and private K-12 schools in the commonwealth, including special education programs approved under Chapter 71B, as well as early educators and child care providers. If a Massachusetts institution of higher education runs a program for school-aged children or an early child care center, then it would be subject to the new law, but only for those individuals employed through those particular programs.

**Q: *If I am a substitute teacher at a local public or private school, will I need to submit my fingerprints for the new state and national background checks?***

Yes. Substitute teachers are school employees under the new law and, therefore, must submit their fingerprints for the state and national checks. If substitute teachers hold educator licenses issued under G.L. c. 71, § 38G,

they will pay a fee up to \$55; otherwise, they will pay a fee up to \$35.

Due to the time that it will take to acquire an individual's fingerprints, run the prints through the FBI database, review and analyze the information received from the FBI and prepare a report for the employer, schools and districts are encouraged to contact prospective substitute teachers several months before the start of the school year to begin the background check process. For purposes of the new law, substitute teachers who worked in the district the prior school year will be considered current or existing employees, while all other substitute teachers will be considered newly hired school employees.

**Q: *If I am employed at a nonpublic K-12 school, such as a parochial school or independent school, do I need to submit my fingerprints for national criminal background checks?***

Yes. The new law requires all employees of public and private schools, including special education school programs approved under Chapter 71B, to submit fingerprints for the national background checks, which is consistent with their existing obligations under the CORI statute.

**Q: *Are all school contractors and their employees required to obtain criminal background checks?***

Yes. All independent contractors and their employees who may have direct and unmonitored contact with children on a particular school project must obtain the required state and federal background check reports prior to working in that position. The school or district is required to review all reports to determine the fitness of the applicant to work in a position in which they may have contact with children.

If an independent contractor adds a new employee to the workforce, the state and federal background checks must be conducted prior to the employee being assigned to any work that would bring the employee into direct contact with children.

**TIMELINE FOR SUBMITTING FINGERPRINTS**

**Q: *If I am a school employee or early educator, when must I submit my***

### ***fingerprints for the state and national criminal history checks?***

Under the new law, all newly hired school and early education employees are currently required to submit their fingerprints for state and national criminal history checks for the 2013-14 school year. All current or existing school and early education employees are currently required to submit to fingerprint-based background checks on a phased-in schedule leading up to the beginning of the 2016-17 school year. EOPSS, along with the Department of Early Education and Care and the Department of Elementary and Secondary Education, will be producing more information shortly regarding the timeline for existing school and early education employees to submit their fingerprints for the state and national criminal history checks, as well as additional information about the timeline for newly hired employees to submit fingerprints.

EOPSS is in the process of evaluating the feasibility of implementing the law on its current schedule, taking into account the requirements of the state procurement process and the administrative and structural changes necessitated by the new law. If EOPSS and the other affected agencies conclude that the current statutory timeline for implementation is not feasible, they will evaluate all their options, including seeking an extension from the legislature.

### ***Q: If I started employment in the winter or spring of 2013, am I considered a newly hired employee for purposes of the law?***

No. For the purposes of the law, newly hired school and early education employees are those who are hired prior to the start of the 2013-14 school year for purposes of beginning employment in that school year, e.g., as of September 2013.

### ***Q: If I have been teaching for five years but I will be starting employment in a new school district in 2013-14, am I considered a new employee for purposes of the law?***

Yes. If you are a new hire in any school district for the 2013-14 school year, you are a new employee for purposes of this law.

## **PROCESS FOR SUBMITTING FINGERPRINTS**

### ***Q: If I am a school employee or early educator, where do I go to submit my fingerprints for the state and national criminal history checks?***

In most states that currently run fingerprint-based criminal history checks on educators, independent vendors are authorized by the state to collect the fingerprints electronically and submit them to the state. In those states, the vendors are selected through a competitive bidding process. Once an experienced vendor is selected, a process will be established for required individuals to submit their fingerprints.

EOPSS is just beginning the process of issuing a Request for Responses (RFR) for this endeavor. We will post more information on this process when the procurement has been completed. In the meantime, please know that it is the commonwealth's goal to make this process as efficient and user-friendly as possible, and EOPSS will keep that goal in mind as it reviews and evaluates proposals from vendors.

### ***Q: If I am covered by the new background checks law, may I go to my local police station to submit my fingerprints for the state and national criminal history checks?***

No. In most states that currently run fingerprint-based criminal history checks on educators, individuals submit their fingerprints through independent vendors authorized by the state. Given that hundreds of thousands of individuals in Massachusetts are expected to submit their fingerprints for these national criminal history checks over the next several years, local police departments could not handle that volume and continue to provide standard law enforcement services to their communities.

### ***Q: If I am covered by the new background checks law, how many times during my career will I have to submit to the fingerprint-based state and national criminal history checks?***

Under the new law, it is anticipated that an individual would need to submit his or her fingerprints only once. EOPSS expects that the FBI will bring into operation a new "Rap Back" service in the next two to three years. That

service would allow authorized agencies to receive notification of subsequent criminal activity reported to the FBI based on previously submitted fingerprints. If that system is brought online as expected in the next two to three years, then EOPSS expects that fingerprints would need to be collected only once per individual.

As in the past, employees will be required to submit to state CORI checks (which are not fingerprint-based) at least once every three years. There is no fee for CORI checks.

## **FORM OF THE NATIONAL BACKGROUND CHECK REPORTS**

### ***Q: What is contained in the Federal Criminal History Record Information (CHRI) Report?***

An FBI Identification Record is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, federal employment, naturalization or military service. If the fingerprints are related to an arrest, the Identification Record includes the name of the agency that submitted the fingerprints to the FBI, the date of arrest, the arrest charge and the disposition of the arrest, if known to the FBI. All arrest data included in an Identification Record is obtained from fingerprint submissions, disposition reports and other reports submitted by agencies having criminal justice responsibilities.

### ***Q: What information will the national criminal background checks provide that was not included in the CORI checks?***

CORI checks include criminal history information only for Massachusetts, and they do not include criminal history information from any other state. Because national criminal background checks are processed through the FBI, they would include criminal history information for an individual from every state in the nation.

## **CONSISTENCY WITH STATE CORI LAW**

### ***Q: Will the criminal history reports derived from fingerprint-based state and national criminal history checks be consistent with reforms made to the commonwealth's CORI law in 2010 (Chapter 256 of the Acts of 2010)?***

The new background checks law explicitly states that any information received from state and national criminal background checks must be treated in accordance with the revised CORI law enacted in 2010, G.L. c. 6, §§ 167-178. For example, under the revised CORI law and pursuant to the language in the new background checks law, Massachusetts public safety officials are required to delete any sealed or juvenile offenses from criminal history reports before sending them to school districts.

**Q: When a school district or licensing agency receives the new criminal history reports, which will include both state and national criminal history information, are there guidelines for how those reports are to be reviewed and analyzed?**

Under the existing Massachusetts CORI law, the employer or licensing agency has discretion with respect to how to review and analyze the reports. Under the new background checks law, discretion remains with the employer or licensing agency. The new background checks law will provide more information to hiring and licensing authorities, but it does

not change how those authorities review and analyze the information. The law also requires a K-12 employer to notify the Commissioner of Elementary and Secondary Education of any criminal record information relevant to the fitness for licensure of license holders and applicants.

**Q: Will schools, as well as early education and child care providers, continue to run CORI checks in addition to the fingerprint-based national criminal background checks?**

Yes. Schools and early education providers will continue to run CORI checks on applicants and existing employees. Those CORI checks will continue to be run at no cost to applicants or existing employees. Under Massachusetts law, the CORI checks must be done at least once every three years, while the collection of fingerprints for the national background checks are intended to be done only once and updated on a regular basis once the FBI's "Rap Back" service is online.

## OTHER QUESTIONS

**Q: Where can I go to find more information about the new law?**

Watch this space. This FAQ is intended to be the primary place for dissemination of information about the new law. As we learn more information about the process and timing, we will continually update this FAQ. So, if your question has not been answered by this FAQ, it will probably be answered here eventually, as we get more information to share with you.

**Q: I still have additional questions; whom should I contact?**

For questions specific to early education and care, please contact the Department of Early Education and Care at (617) 988-6600.

For questions specific to elementary and secondary education, please contact the Department of Elementary and Secondary Education at [expandedbackgroundchecks@doe.mass.edu](mailto:expandedbackgroundchecks@doe.mass.edu).

For general questions about the new law, please call the Executive Office of Education at (617) 979-8340.

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