

By Ms. Pollard, a petition (accompanied by bill, Senate, No. 1151) of Sharon M. Pollard and Nicholas J. Costello for legislation to amend the procedures for public construction in the Commonwealth. State Administration.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-two.

AN ACT AMENDING THE PROCEDURES FOR PUBLIC CONSTRUCTION
IN THE COMMONWEALTH.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter Seven of the General Laws, as most recently amend-
2 ed by Chapter 579 of the Acts of 1980, is hereby further
3 amended by adding after section 42K the following sec-
4 tions: —

5 *Section 42L.* Every awarding authority shall cause to be
6 placed into a separate account one per centum of every ap-
7 propriation, bonding authorization, or grant for the financing
8 of an approved building project, as defined in paragraph (g) (1)
9 of this chapter; provided, however, that the amount set aside
10 per project shall not exceed one hundred thousand dollars.
11 Said account shall be expended by the deputy commissioner
12 of capital planning and operations for works of art, as de-
13 fined in section 42M of this chapter, for installation within
14 or outside of the building to be constructed, in the following
15 manner: —

16 (1) Upon selection of a designer pursuant to section 30B of
17 this chapter, the deputy commissioner of capital planning and
18 operations shall notify the Massachusetts Council on the Arts
19 and Humanities of the designer's selection, the estimated
20 building cost, and the type of construction.

21 (2) After notification, the Massachusetts Council on Arts
22 and Humanities shall select an artist or artists to create and
23 install works of art, or shall select works of art for purchase
24 and installation. Such selection shall be pursuant to regula-

25 tions established by the Massachusetts Council on the Arts
26 and Humanities pursuant to chapter 30A and subject to the
27 approval of the general court. Said regulations shall provide
28 for a fair and open selection process, broad involvement of the
29 designer, the using agency, and the community, and the judg-
30 ment of creators of works of art of recognized expertise and
31 ability.

32 (3) The Massachusetts Council on the Arts and Humanities
33 shall notify the deputy commissioner of capital planning and
34 operations of the selection of the artist or artists, and, upon
35 written approval from the deputy commissioner, shall execute
36 a written contract with said artist and artists including, but
37 not limited to, a description of the work or works purchased
38 or commissioned, the contract price, and a deadline date for
39 completion, delivery, or installation. The contract price shall
40 not be increased once the contract is executed without written
41 authorization from the deputy commissioner and a concomit-
42 ant increase in the scope of the work or works of art; pro-
43 vided, however, that in no case shall the contract price exceed
44 the amount available under this statute.

45 (4) Upon completion of the installation of the work or
46 works of art, the Massachusetts Council on the Arts and Hu-
47 manities shall certify to the deputy commissioner of capital
48 planning and operations that the terms of the contract have
49 been satisfied and that final payment may be made. Partial
50 payments for work in progress may be made if provisions for
51 such are included in the written contract, provided that the
52 Commonwealth acquires equity in the work of art equal to
53 the value of the partial payments. In no case shall the partial
54 payments exceed more than two-thirds of the contract price.

55 *Section 42M.* As used in sections 42L through 42R, the fol-
56 lowing words and terms shall have the following meanings,
57 unless the context shall clearly indicate a different meaning
58 or intent: —

59 (a) "Work of art", any work of visual art, including but
60 not limited to, a painting, mural, fresco, sculpture, mosaic, a
61 work of graphic art, original lithographs, etchings, or prints,
62 photographs, crafts including crafts in clay, fiber, textile,
63 wood, metal, plastic, glass, and like materials, mixed media,

64 collage, assemblage, the artistic placement of natural mate-
65 rials, or any combination of the foregoing art media; pro-
66 vided, however, the term "work of art" shall not include re-
67 productions of original works of art unless the reproduction is
68 one of an original limited edition numbered and signed by the
69 artist; provided, further, that the term "work of art" shall
70 not include environmental landscaping or decorative, orna-
71 mental, or functional elements not designed by the artist or
72 artists contracted for the purpose. The art may be an inte-
73 gral part of the building, attached to the building or detached
74 within or outside the building.

75 (b) "Artist", the creator of a work of art under contract
76 with the Massachusetts Council on the Arts and Humaniti-
77 ties.

78 *Section 42N.* The Massachusetts Council on the Arts and
79 Humanities shall, in accordance with section 40K of this chap-
80 ter, maintain a complete and accurate record of the works of
81 art acquired through this program. Said record shall include,
82 but not be limited to, a photograph or slide of each work of
83 art, the purchase price, a copy of the contract with the artist,
84 and a record of payments. The Council shall, within thirty
85 days of the end of the fiscal year, deliver to the deputy com-
86 missioner of capital planning and operations a complete list
87 of the works of art acquired during the fiscal year, the cost of
88 each work of art, and the location. A copy of this list shall be
89 delivered to the House and Senate Committees on Ways and
90 Means.

91 *Section 42O.* The using agency shall be responsible for the
92 routine maintenance and care of the work of art, and shall
93 consult with the artist after the installation of the work to
94 determine necessary maintenance procedures.

95 *Section 42P.* Notwithstanding any laws to the contrary, all
96 works of art purchased through this program shall become
97 the property of the commonwealth, and shall be under the
98 control of the deputy commissioner of capital planning and
99 operations. The deputy commissioner, with the approval of
100 the commissioner, may recommend to the general court for
101 its approval the sale of any work of art purchased through
102 this program; and, after approval, shall notify the Massachu-

103 sets Council on the Arts and Humanities of intent to sell. The
104 Council shall notify the artist, who shall have the right of
105 first refusal of the work at fair market value for a reasonable
106 length of time. For purposes of this section, the deputy com-
107 missioner may engage such experts as are deemed necessary
108 on a consultancy basis at rates established by the secretary for
109 administration and finance and approved by the general court.

110 *Section 42Q.* No person shall intentionally commit, or au-
111 thorize the intentional commission of, any physical deface-
112 ment, mutilation, or alteration of a work of art owned or pur-
113 chased by the commonwealth. The artist shall at all times
114 retain the right to claim authorship, or, for just or valid rea-
115 son, to disclaim authorship of the work of art. The rights of
116 this section shall be retained by the artist and the artist's
117 estate in accordance with the provisions of the Federal Copy-
118 right Amendments of 1978.

119 *Section 42R.* The Massachusetts Council on the Arts and
120 Humanities, under circumstances deemed appropriate by a
121 majority of the Council, and with the written permission of
122 the deputy commissioner of capital planning and operations,
123 may use set aside funds to contract with a performing arts
124 organization to provide live performances of music, theatrical
125 works, dance, opera, or any combination thereof within or ad-
126 jacent to the building for which the funds were originally set
127 aside; provided that, in no instance shall the total amount
128 expended for performances in any fiscal year exceed ten per
129 centum of the total amount set aside for works of art.