

SENATE . . . . . No. 1546

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By Mr. Webber, a petition (accompanied by bill, Senate, No. 1546) of Peter C. Webber for legislation to amend the procedures for public construction in the Commonwealth. State Administration.

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The Commonwealth of Massachusetts

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

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  
2 amended by Chapter 579 of the Acts of 1980, is hereby further  
3 amended by adding after section 42K the following sections:—

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

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

19 (2) After notification, the Massachusetts Council on the  
20 Arts and Humanities shall select an artist or artists to create  
21 and install works of art, or shall select works of art for pur-  
22 chase and installation. Such selection shall be pursuant to  
23 regulations established by the Massachusetts Council on the

24 Arts and Humanities pursuant to chapter 30A and subject to  
25 the approval of the general court. Said regulations shall pro-  
26 vide for a fair and open selection process, broad involvement  
27 of the designer, the using agency, and the community, and  
28 the judgment of creators of works of art of recognized ex-  
29 pertise and ability.

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

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

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

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



63 als, or any combination of the foregoing art media; provided,  
64 however, the term "work of art" shall not include reproduc-  
65 tions of original works of art unless the reproduction is one of  
66 an original limited edition numbered and signed by the artist;  
67 provided, further, that the term "work of art" shall not in-  
68 clude environmental landscaping or decorative, ornamental,  
69 or functional elements not designed by the artist or artists  
70 contracted for the purpose. The art may be an integral part  
71 of the building, attached to the building or detached within  
72 or outside the building.

73 (b) "Artist", the creator of a work of art under contract  
74 with the Massachusetts Council on the Arts and Humanities.

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

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

92 *Section 42P.* Notwithstanding any laws to the contrary, all  
93 works of art purchased through this program shall become the  
94 property of the commonwealth, and shall be under the con-  
95 trol of the deputy commissioner of capital planning and oper-  
96 ations. The deputy commissioner, with the approval of the  
97 commissioner, may recommend to the general court for its  
98 approval the sale of any work of art purchased through this  
99 program; and, after approval, shall notify the Massachusetts  
100 Council on the Arts and Humanities of intent to sell. The  
101 Council shall notify the artist, who shall have the right of

102 first refusal of the work at fair market value for a reasonable  
103 length of time. For purposes of this section, the deputy com-  
104 missioner may engage such experts as are deemed necessary  
105 on a consultancy basis, at rates established by the secretary  
106 for administration and finance and approved by the general  
107 court.

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

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