



MASSACHUSETTS MARINE TRADES ASSOCIATION

MMTA MUST READ GOVERNMENT RELATIONS & LEGAL REPORT - June 10, 2014

From The Desk of Jamy Buchanan Madeja, Esq, MMTA Gov't Relations & Legal Counsel

The following report is of developments in the Legislature and the executive branch. It's been quite a month. Kindly be sure the right people in your organization are receiving the information. If you'd like to add people in your business to the member edistribution list, just contact nathalie.grady@boatma.com. As usual, a full legislative tracking list is available at www.boatma.com in the Members Only section, tracking key legislation out of the 5,000 pending bills, along with copies of all final MMTA written testimony. If one in particular is of concern, give us a call or send us an email. Kindly also be aware that Beacon Hill may look "closed" when the Legislature is out of session (coming up July 31, 2014 for the alleged summer break). However, as avid readers or governmental buffs will already know, Beacon Hill never sleeps. It just does its thing more quietly, behind closed doors, requiring a different kind of monitoring and participation. And when they work, we work. MMTA is on the job for "the business of boating". Call us anytime with questions or concerns.

LEGISLATIVE BOATING CAUCUS:

We are delighted to report Chairman William Straus (D, Mattapoisett) has graciously agreed to Co-Chair the Boating Caucus starting in the new legislative session in January, when current Co-Chairman John Keenan (D, Salem) retires from the Legislature. Chairman Straus was a terrific advocate for the business of boating on the House floor debate this year regarding taxation matters. He also has a fine history of thoughtful leadership on wide ranging issues of importance to our members, including environmental regulation and transportation funding (which can be where dredging issues arise, for example). He will join House Co-Chair Susan Gifford (R) and Senate Co-Chairs Robert Hedlund (R) and Anthony Petruccelli (D). Last month MMTA released the following press announcement:

Boating Trades Thank Representative Straus For Tax Stance

The Massachusetts Marine Trades Association extends its sincere appreciation for the efforts of Representative William Straus to defeat a burdensome tax amendment tacked onto the Massachusetts House Budget during last week's debate. Thanks to Chairman Straus the "boat excise tax amendment" was wisely thrown overboard by a resounding vote of 1 to 146!

As Chairman Straus pointed out, the effort was being put forward by the very people who collect taxes, the Massachusetts Assessors Association, members of which incorrectly conveyed that this amendment was "revenue neutral." On the contrary, given that the Commonwealth's recreational boating industry is largely comprised of small family-owned and operated businesses struggling to stay afloat while surrounded by boat tax-free Rhode Island and New Hampshire.

With gas prices rising annually any additional taxes on existing and potential boat owners would limit boat use and sales, thereby challenging marine business growth and waterways access by the thousands of Massachusetts residents that enjoy boating as a cost-effective, family-friendly form of recreation. Indeed, the average length of a boat owned in Massachusetts is just 14 feet!

"I'm pleased to have been able to lead the effort in opposition to the proposed boat excise tax budget amendment. I'm also appreciative of the fact that the overwhelming majority of my colleagues in the House of Representatives voted to protect the needs and interests of boat owners in the Commonwealth by voting against this amendment" said Rep. Straus.

The Massachusetts Marine Trades Association (MMTA) was founded 50 years ago by the men and women of the recreational boating business community to promote professional integrity of the industry, improve boaters' access to our public waterways and insure the maintenance and growth of the rich maritime history enjoyed in the Commonwealth. MMTA members support the collection of excise and other taxes due by boaters as the current system requires.

STATE BUDGET SEASON:

Budget season continues with anticipated Conference Committee (appointed to be Representatives Dempsey, Kulik, DeMacedo and Senators Brewer, Flanagan, Ross) to resolve differences between House and Senate budget and Amendments. Incidental oddball Amendments were introduced and failed in the Senate (e.g. dedicated funding for public access studies on Cape Ann). Only the House debated any of great significance to the Business of Boating (reported on last month, very successful outcome). Our exposure in Conference Committee is minimal.

Other bills continue to be up for vote and debate, however, as legislators madly seek to push through their personally preferred bills or leadership makes trades to secure votes on highest priorities. Therefore, we must continue to track and address all the same issues as ever, on a broadly communicative personal inquiry level. After July 31, we can rely more on our Boating Caucus leadership to help us catch problem legislation, because the amount of activity dwindles dramatically and we have good relationships with Republicans in both House and Senate (one R must be present at each Informal Session for any work to proceed).

HOISTING REGULATIONS/LICENSING AND INSURANCE RELATED ISSUES:

Associated Industries of Massachusetts has written to the Department of Public Safety seeking changes to the time frame for securing answers on questions and potentially for changing the 'in-house

training' programs. MMTA helped them secure legislative attention to be at the ready, depending on the reply.

Please also note some members have concerns about liability associated with in-house training and licensure programs. In cases of serious bodily injury or death associated with a hoisting incident and related to an operator "licensed" through an in-house training program, the plaintiff is almost certain to attack the in-house program and the credentials of the operator. While it helps that the in-house program will have been state certified, it may not be sufficient as the plaintiff probes the details of implementation of the in-house program. It is important in any event to be sure one's insurance covers defense costs and has an adequate coverage limit for a major tragic event, preferably coverage which does not deduct defense costs from the total coverage limit.

MASS DEPARTMENT OF REVENUE VISITS AND LETTERS:

Once again, MassDOR is sending written notices to marinas and boaytards seeking information and, in many cases, making site visits, seeking to collect suspected sale and use tax on out of state vessels. The written notice from the Massachusetts Department of Revenue says it is "requesting" copies of "dockage and storage contracts and/or a list with Out of State and Documented vessels." The request also usually states that "the list should include the owners name, address, telephone number, boat make, length, boat name or registration id number and the number of years the vessel has been docked or stored at your location."

Orally, Mass DOR has indicated they are seeking documentation to support **suspicious** of vessel owners who have not paid sales or use tax and yet may owe it to the Commonwealth because their vessel was originally purchased with the intention of storage or use in Massachusetts. (There is no statute of limitations if the original intention of the boater at time of purchase was to return to Massachusetts, although the burden of proof switches to the Commonwealth after a while). These possible tax evaders are, of course, customers and may not even know of MassDOR's convoluted policies about collecting sales tax on boats purchased out of state years ago.

First, businesses are under no legal obligation to comply with the MassDOR's request for information or even to respond to it. It is not the required subpoena for records nor is it a court order. It is an agency requesting that the business help them find possible tax evaders and help them build their case against them.

Second, the marina is under a statutory requirement *not* to provide the information as the statute requires businesses and others to keep confidential personal information of this nature, absent a court order or similarly dominant provision of law such as a subpoena in a DOR proceeding against a particular vessel owner. In the new Consumer Personal Information Statute and Regulations, there is no exemption allowing provision of confidential information to a government agency. So if someone from DOR physically shows up at your facility, simply tell them the marina has no authority to violate this state statute, unless the DOR person can provide some law saying its ok.

Last year, MMTA contacted the MassDOR about this issue and their representatives have stated that 1) the notices are indeed requests, not legally enforceable court orders or subpoenas, such that

compliance is voluntary; and 2) that no written exemption is available from DOR regarding the confidentiality laws, because it is the taxpayer who is entitled to confidentiality, not a business providing information to the MassDOR voluntarily. The MassDOR representatives seemed most anxious to provide assurances that they generally would not disclose this personal information, yet they could not cite to any clear authority for them to withhold it from public records requests or to protect the business from violations of the confidentiality statute, making the business quite vulnerable to private action by a customer should the business voluntarily provide personal records to MassDOR.

Finally, DOR also has no authority to require you to allow them to walk your private docks, but they do have authority to be in any area open to the public. If you wish, you can tell them you try to help the Commonwealth when it is legal for you to do so, but you were advised it is not legal for you to provide personal information of customers voluntarily and that your insurance isn't meant for non-customers and their guests walking the docks, so you aren't supposed to provide that access voluntarily either, so sorry. Be sure to tell your staff what to do if you are not there when DOR comes in the future.

CHAPTER 91 LICENSING ENFORCEMENT:

The Massachusetts Department of Environmental Protection has been systematically auditing all possible licensing issues on any site which comes to their attention on even modest matters, resulting in extended and delayed periods of review and, in some cases, expensive fines (e.g. \$30,000 proposed for having rearranged docks for safer entry channel by larger vessels). All should be reviewing known licenses and considering whether it makes sense to do a voluntary self-reporting to license properly and avoid worst penalties or untimely negotiations.

SENIOR EXECUTIVE CHANGES CONTINUE:

Effective June 9, Executive Office of Energy and Environmental Affairs (EEA) Secretary Richard K. Sullivan will become Chief of Staff for Governor Deval Patrick, and current Undersecretary for Environment Maeve Vallely Bartlett will be appointed EEA Secretary (which includes MEPA review). Secretary-to-be Bartlett is extremely experienced in state government and is a very capable, thoughtful public servant. We are fortunate she has been appointed to this most senior post.

OTHER NEWS:

Monomoy Island & South Beach: Chatham members and CCMTA very concerned about U.S. Fish & Wildlife asserting automatic expansion of Monomoy Wildlife Refuge geographically and publishing a controversial Comprehensive Conservation Plan. MMTA will be commenting, although CCMTA is taking the lead on this matter.

A public hearing is scheduled in Chatham 6-9 p.m. for June 17 at Chatham High School (425 Crowell Road), and the public comment period continues until July 9, 2014.

See the below links for more information.

http://www.fws.gov/northeast/planning/Monomoy/pdf/ExecutiveSummary_DraftCCPEIS_2April2014.pdf

http://www.fws.gov/refuge/Monomoy/what_we_do/draftccp.html

That's most of the news fit to print! Here's to a safe, successful upcoming boating season!

