

MASSACHUSETTS CATHOLIC CONFERENCE
WEST END PLACE

150 Staniford Street, Boston, MA 02114-2511
Phone (617) 367-6060
FAX (617) 367-2767

LEGISLATIVE TESTIMONY

To: Members of the Joint Committee on the Judiciary
From: Edward F. Saunders, Jr., Esq., Executive Director
Re: Senate 1859, An Act Relative to Charities in Massachusetts
Date: March 2, 2010

The Massachusetts Catholic Conference (“Conference”) respectfully submits this testimony in opposition to Senate 1859, “An Act Relative to Charities in Massachusetts.”

The proposed Act was initially filed in response to the three-year parish reconfiguration process that began within the Roman Catholic Archdiocese of Boston in 2004.¹ A predecessor bill identical to Senate 1859 (then-Senate 1074), was defeated in the House of Representatives on January 25, 2006 by a vote of 147 to 3. This session’s filing marks the fourth time the proposed Act has been introduced.

The stated goal of Senate 1859—promoting transparency through governmental intrusion—raises serious questions. By removing existing religious exemptions in the state laws governing public charities, the bill would require officers of the Commonwealth to oversee the internal workings of religious entities to an unprecedented degree.

Section 2 of the bill would bring religious entities within the public charity oversight provisions of M.G.L. c. 12, §§ 8 to 8M, a section of which directs the Attorney General to “enforce the due application of funds given or appropriated to public charities within the commonwealth and prevent breaches of trust in the administration thereof.” M.G.L. c. 12, § 8. More specifically, “The attorney general, whenever he believes that charitable funds have not been or are not being applied to charitable purposes or that breaches of trust have been or are being committed in the administration of a public charity, may conduct an investigation upon application to and with the approval of a judge of the trial court.” M.G.L. c. 12, § 8H. This investigation could be far-reaching, since the statute authorizes the examination of “any documentary material of whatever nature relevant to such alleged misapplication of charitable funds or breach of trust.” M.G.L. c. 12, § 8H(1)(b). Based on this far-reaching investigation, the Attorney General can petition the courts for an order changing any internal operation of the religious entity that the Attorney General deems to be contrary to the public trust. M.G.L. c. 12, § 8I.²

¹ See Sen. Marian Walsh, Dear Colleague Letter, Aug. 16, 2004 (on file with the Massachusetts Catholic Conference) (tying introduction of the proposed Act to “the recent events with the Archdiocese, and particularly, the closure and potential sale of income generating assets” including a parish in the Senator’s district).

² Section 4 of the bill would expose religious entities to similar investigatory incursions by the Attorney General under chapter 68 concerning charitable fundraising. See M.G.L. c. 68, § 30 (authorizing investigation that examines “any documentary material of whatever nature relevant to such alleged violations or false or misleading information”) & M.G.L. c. 68, § 32 (authorizing penalties and court injunctions).

Thus, Senate 1859 contemplates draconian governmental interference with the operation of churches and other religious entities. The bill potentially would subject to the Attorney General's ultimate disapproval all decisions at the diocesan level, such as contested parish closings, that the Attorney General might characterize as misapplying charitable donations or breaching the public trust. Similarly, all decisions of a pastor, parish council or individual ministry leaders, would be subject to state review on the same basis as long as someone can claim that these decisions implicate charitable donations or the public trust. The scrutiny would be authorized in another direction as well, extending beyond the operation of a church located in the Commonwealth, to include a review of all property holdings of "any related organization." See Senate 1859, section 1 (requiring annual reports to the Attorney General to include "the address of each parcel of real property owned by the public charity and any related organization"). Section 3 defines "related organization" as any entity owned or controlled by, or benefiting or furthering the purposes of and engaging in business transactions with, the reporting entity.

This reporting requirement (applicable to all charities) would be extremely burdensome and would provide yet another investigatory entrée. The Attorney General would be empowered to scrutinize the property holdings of the Vatican, Peter's Pence, and all other institutions related under the bill's terms to the Roman Catholic Church in Massachusetts, a part of a world-wide religion, no matter their geographical location.

The reporting of property holdings seems especially wasteful since the information sought, in large part, is already a matter of public record, available for public inspection and accessible on-line. Each year every city and town assessor in the Commonwealth sends to all exempt property owners the "3ABC Form" which the property owner must complete and file with the assessor to maintain the tax exemption. Any individual can search any city or town collector's office website by property owner's name and obtain a listing of all properties owned by a particular individual or entity. Additionally the website of any Registry of Deeds can be searched by grantor and grantee to obtain a listing of all properties sold or acquired by any individual or entity.

The added requirement of full financial annual audits found in the statute (M.G.L. c. 12, § 8F) only increases the already heavy burden imposed by the bill and magnifies the potential for exceedingly intrusive second-guessing by state authorities on an unprecedented scale. The audit requirement alone is estimated to cost the Roman Catholic Archdiocese of Boston in excess of one million (\$1,000,000) annually. To require that such resources be diverted into administrative tasks which really provide no direct benefit to those who need the social service programs provided by the church does not make good sense.

The entanglement with religion would be excessive, going far beyond any "routine regulatory interaction"³ and thus raises substantial First Amendment concerns.⁴ The United States Supreme

³ Attachment to Marian Walsh's "Dear Colleague Letter," supra, at 4.

⁴ *Larson v. Valente*, 456 U.S. 228, 252 (1982) (indicating that "a statute must not foster an excessive governmental entanglement with religion"). See also *Surinach v. Pesquera de Busquets*, 604 F.2d 73, 76-78 (1st Cir. 1979) (consumer affairs agency ordered parochial schools to produce documents and information concerning all aspects of schools' finances as part of agency review preparatory to imposition of cost controls; schools entitled to injunctive

Court in *Waltz v. Tax Commissioner of the City of New York*, 397 U.S. 664 (1970), held that a local property tax exemption to property owned by religious institutions, did not violate the Establishment Clause of the First Amendment. In his decision for the majority Chief Justice Warren Burger, stated that "The elimination of the exemption would tend to expand the involvement of government by giving rise to tax valuation of church property, tax liens, tax foreclosures and the direct confrontations and conflicts that follow in the train of those legal processes." Legal scholars have interpreted Justice Burger's statement to mean that it is not necessarily the elimination of the exemption which would cause excessive government entanglement with religion, but rather the government's potential involvement with religious entities as a result of the elimination of the exception, which would violate the Establishment Clause of the First Amendment. The elimination of the religious exemption under M.G.L. c. 12, § 8 as is proposed in Senate 1859 will result in excessive government entanglement with religious entities in Massachusetts.

In addition to considering the bill's practical and constitutional problems, the accomplishments of the Archdiocese of Boston in achieving unprecedented financial transparency should be noted. Since 2006, the Archdiocese has produced and will continue to publish annual financial reports, which can be viewed online at <http://www.rcab.org/Finance/HomePage.html>. The National Leadership Roundtable of Church Management ("NLRCM") bestowed its inaugural Best Practices Award in 2006, commending the Archdiocese for the comprehensiveness of its financial reporting and for employing a user-friendly format. The NLRCM has encouraged other religious entities to adopt Boston's approach.⁵

Based on serious concerns with the practical and constitutional impact of Senate 1859 as identified in this testimony, and in light of the demonstrated commitment to financial transparency of the Archdiocese of Boston, the intended subject of this bill, the Conference respectfully urges the Committee to give Senate 1859 an adverse report.

The Conference is the public policy office of the Roman Catholic Bishops in the Commonwealth, representing the Archdiocese of Boston and the Dioceses of Fall River, Springfield, and Worcester.

relief from orders to produce because "eventual use to which the school's cost information could be put could interfere seriously with [the school's] religious duties and objectives").

⁵ Jack McCarthy, *Insights: The Ingredients of Financial Transparency*, 36 *Nonprofit & Voluntary Sector Q.* 156, 163-64 (2007).