

House No. 103

Message from His Excellency the Governor recommending legislation relative to An Act transferring county sheriffs to the Commonwealth.

The Commonwealth of Massachusetts



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To the Honorable Senate and House of Representatives:

I am filing for your consideration a bill entitled “An Act Transferring County Sheriffs to the Commonwealth”.

This legislation will promote more efficient government by transferring to the Commonwealth the seven sheriffs who are still county officers. The other seven sheriffs’ offices already became state agencies when the Legislature abolished their county governments. This bill will not abolish the remaining seven county governments.

This bill will provide more stable and predictable budgeting for the transferred sheriffs’ offices. It will enable bringing them onto the state payroll and accounting systems. It will allow the state Group Insurance Commission to provide their employees’ health care, at considerable savings.

This legislation results from extensive discussion with the seven county sheriffs and others, following similar legislation that I filed last year.

To allow these important efficiencies and savings to begin promptly on July 1 for the new fiscal year, I urge your prompt action to enact this bill.

Sincerely,
DEVAL L. PATRICK,
Governor.

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TRANSFERRING COUNTY SHERIFFS TO 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 SECTION 1. The offices of the Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth, and Suffolk
2 county sheriffs, in this act referred to as "offices of transferred sheriffs" or "transferred sheriffs," are
3 hereby transferred to the commonwealth as provided in this act on its effective date, also called the
4 transfer date.

5 SECTION 2. Section 17 of chapter 37 of the General Laws is hereby amended by striking out the second
6 and third paragraphs and inserting in place thereof the following paragraph:-

7 The salaries of the sheriffs shall be a sum equivalent to 95 per cent of the salary of an associate justice of
8 the superior court.

9 SECTION 3. Chapter 64D of the General Laws is hereby amended by striking out sections 11, 12 and 13
10 and inserting in place thereof the following 2 sections:-

11 Section 11. Except for Barnstable and Suffolk counties, there shall be established upon the books of each
12 county of a transferred sheriff, the government of which county has not been abolished by chapter 34B or
13 other law, a separate fund, maintained separate and apart from all other funds and accounts of each
14 county, to be known as the Deeds Excise Fund. Notwithstanding any general or special law to the
15 contrary, except for Barnstable and Suffolk counties, on the first day of each month, 10.625 per cent of
16 the taxes collected in the counties of transferred sheriffs under this chapter shall be transmitted to the
17 Deeds Excise Fund for each county. The remaining percentage of taxes collected under this chapter,
18 including all taxes collected under this chapter in Barnstable and Suffolk counties, and all counties the

19 government of which has been abolished by chapter 34B or other law, but not including the additional
20 excise authorized by section 2 of chapter 163 of the acts of 1988, shall be transmitted to and retained by
21 the General Fund of the commonwealth in accordance with section 10.

22 Section 12. (a) There shall be within the executive office for administration and finance a county
23 government finance review board, in this section called the board, consisting of the secretary of
24 administration and finance or her designee, the commissioner of revenue or her designee, and the state
25 auditor or his designee. The secretary of administration and finance or her designee shall serve as
26 chairperson of the board.

27 (b) Notwithstanding any general or special law or county charter to the contrary, no annual or
28 supplementary budget of any county shall take effect until reviewed and approved by the board. Except
29 for Barnstable and Suffolk counties, the board shall not approve any budget of any county unless it is
30 satisfied:

31 (1) that the estimates of revenue are reasonable and that adequate funding has been provided for
32 all necessary county expenditures;

33 (2) that of the amounts deposited in the Deeds Excise Fund for each county from
34 revenues derived under this chapter, (a) not more than 60 per cent of the deposits shall be
35 disbursed and expended for meeting the costs of the operation and maintenance of the county;
36 and (b) not less than 40 per cent shall be disbursed and expended for the automation,
37 modernization and operation of the registries of deeds; and

38 (3) that with respect to funds appropriated for the purpose designated in subclause (b) of
39 clause (2) and which are not dedicated to the Deeds Excise Fund in each county under section
40 11, the submitted proposed budget shall provide a continuing amount of expenditure of not less
41 than 102.5 per cent of the amount expended for that purpose in the preceding fiscal year.

42 In the case of Barnstable county, the board shall not approve any budget unless it is satisfied that the
43 estimates of revenue are reasonable and that adequate funding has been provided for all necessary county
44 expenditures.

45 (c) If a proposed budget is disapproved by the board, the county commissioners or any successor body
46 shall, with the approval of the county advisory board, if applicable, and within 30 days of notification of
47 disapproval of the proposed budget, resubmit a revised proposed budget to the board, which addresses the
48 board's concerns.

49 (d) The board shall develop guidelines for implementing this section.

50 SECTION 4. Notwithstanding any general or special law to the contrary, all functions, duties and
51 responsibilities of the office of a transferred sheriff pursuant to this act including, but not limited to, the
52 operation and management of the county jail and house of correction, and any other statutorily authorized
53 functions of those offices, are hereby transferred from the county to the commonwealth on the effective
54 date of this act, subject to its provisions.

55 SECTION 5. Notwithstanding any general or special law to the contrary, the government of Barnstable,
56 Bristol, Dukes, Nantucket, Norfolk, Plymouth and Suffolk counties, except the office of county sheriff,
57 shall retain all existing authority, functions and activities as of the transfer date for all purposes,
58 including, but not limited to, the purposes established pursuant to chapters 34, 34A, 35 and 36 of the
59 General Laws or as otherwise authorized by this act. Nothing in this act shall affect the existing county
60 boundaries.

61 SECTION 6. All valid liabilities and debts of the office of a transferred sheriff which are in force
62 immediately before the transfer date shall be obligations of the commonwealth as of the transfer date,
63 except as may be otherwise provided in this act. All assets of the offices of transferred sheriffs as of
64 immediately before the transfer date shall become assets of the commonwealth, except as may be
65 otherwise provided in this act.

66 SECTION 7. (a) Notwithstanding any general or special law to the contrary, all rights, title and interest in
67 real and personal property, including those real properties improved upon through construction overseen
68 by the Division of Capital Asset Management and paid through commonwealth funds, which are

69 controlled by the office of a transferred sheriff immediately before the transfer date, including without
70 limitation, all correctional facilities and other buildings and improvements, the land on which they are
71 situated, and any fixtures, wind turbines, antennas, communication towers and associated structures and
72 other communication devices located thereon or appurtenant thereto, shall be transferred to the
73 commonwealth, except as otherwise provided in this act. This transfer of all buildings, lands, facilities,
74 fixtures and improvements shall be subject to chapter 7 of the General Laws and the jurisdiction of the
75 commissioner of capital asset management as provided therein, except as otherwise provided in this act.

76 (b) If such a sheriff occupies part of a building or structure owned by a county, the county shall lease that
77 part of the building or structure to the commonwealth under reasonable terms determined by the
78 commissioner of the capital asset management.

79 (c) The transfer under this section shall be effective and shall bind all persons, with or without notice,
80 without any further action or documentation. Without derogating from the foregoing, the commissioner of
81 capital asset management may, from time to time, execute and record and file for registration with any
82 registry of deeds or the land court, a certificate confirming the commonwealth's ownership of any interest
83 in real property formerly controlled by the office of a transferred sheriff pursuant to this section.

84 **SECTION 8. This section shall apply only after the commonwealth has refinanced any outstanding**
85 **bonds of the Plymouth County Correctional Facility Corporation established by chapter 425 of the**
86 **acts of 1991. That Corporation shall be dissolved and its assets transferred to the commonwealth.**
87 **The criminal detention facility constructed under said chapter 425 shall be transferred to the**
88 **commonwealth. The revenue held by the Corporation in the Repair and Replacement and Capital**
89 **Improvement Accounts shall be transferred to the Plymouth sheriff's Facility Maintenance Trust**
90 **Account. The Plymouth sheriff shall make expenditures from this account only for the**
91 **maintenance, repair and replacement of the sheriff's facilities.**

92 SECTION 9. All valid leases and contracts of the office of a transferred sheriff which are in force
93 immediately before the transfer date shall be obligations of the commonwealth, and the commonwealth
94 shall have authority to exercise all rights and enjoy all interests conferred upon the county by those leases
95 and contracts except as may be otherwise provided in this act.

96 SECTION 10. Notwithstanding any general or special law to the contrary, beginning in fiscal year 2010
97 and thereafter until terminated by this section, Barnstable, Bristol, Dukes, Nantucket, Norfolk, and
98 Plymouth counties shall appropriate and pay to their respective county retirement boards amounts equal to
99 the minimum obligations to fund from their own revenues in fiscal year 2009 the operations of the office
100 of the sheriff for the purpose of covering the unfunded county pension liabilities of the retired sheriff's
101 office employees that remain in the county retirement systems, as determined by the actuary of the public
102 employee retirement administration commission. The state treasurer, under section 20 of chapter 59 of
103 the General Laws, shall assess the city of Boston and remit to the State-Boston retirement system an
104 amount equal to the minimum obligation of Suffolk County to fund from its own revenues in fiscal year
105 2009 the operations of the office of the sheriff. The secretary of administration and finance shall establish
106 a plan for county governments to pay off these unfunded county pension liabilities and shall establish an
107 amortization schedule to accomplish this task. These payments shall remain in effect for the duration of
108 that amortization schedule, which shall not exceed 25 years. When these liabilities are paid off, or after
109 the term of 25 years, these counties shall continue to appropriate and the state treasurer shall continue to
110 assess the city of Boston an amount equal to the minimum obligation to fund from their own revenues in
111 fiscal year 2009 the operations of the office of the sheriff, but shall pay such amounts to the state
112 treasurer, who shall place such funds in the commonwealth's General Fund.

113 SECTION 11. Notwithstanding any general or special law to the contrary, any funds, including but not
114 limited to county correctional funds and other sources of income and revenue, to the credit of the offices
115 of transferred sheriffs as of June 30, 2009, shall be paid to the state treasurer, but the county treasurer may
116 pay appropriate fiscal year 2009 sheriff's department obligations after June 30, 2009. Payment of
117 obligations to be charged to the sheriff's fiscal year 2009 budget as approved by the county government

118 finance review board must be within that budget or otherwise be approved by the secretary of
119 administration and finance.

120 SECTION 12. (a) Notwithstanding any general or special law to the contrary, and except for all counties
121 the governments of which have been abolished by chapter 34B or other law, revenues of the office of
122 sheriff in Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth and Suffolk counties for civil
123 process, inmate telephone and commissary funds, shall remain with the office of sheriff.

124 (b) In order to encourage innovation and enterprise, each sheriff's office shall annually confer with the
125 house and senate committees on ways and means regarding each sheriff's efforts to maximize and
126 maintain grants, dedicated revenue accounts, revolving accounts, fee for service accounts and fees and
127 payments from the federal, state and local governments and other such accounts and regarding which
128 revenues shall remain with the sheriff's office.

129 (c) Any sheriff who has developed a revenue source derived apart from the state treasury may retain that
130 funding to address the needs of the citizens within that county.

131 (d) Any un-encumbered carry-forward deeds excise or other funds to the credit of the sheriff as of June
132 30, 2009 shall be paid to the state treasurer.

133 SECTION 13. For the purpose of recovering liabilities assumed by the commonwealth, other than
134 unfunded pension liabilities, on behalf of the office of a transferred sheriff, the secretary of administration
135 and finance shall establish a plan to recover those amounts from county governments.

136 SECTION 14. (a) All employees of the offices of transferred sheriffs, including those who immediately
137 before the effective date of this act hold permanent appointment in positions classified under chapter 31
138 of the General Laws or have tenure in their positions by reason of section 9A of chapter 30 of the General
139 Laws or do not hold such tenure, are hereby transferred to that transferred sheriff as employees of the
140 commonwealth, without interruption of service within the meaning of said section 9A or said chapter 31,
141 and without reduction in compensation or salary grade.

142 (b) Notwithstanding any general or special law to the contrary, all such employees of the offices of
143 transferred sheriffs shall continue to retain their right to collectively bargain pursuant to chapter 150E of

144 the General Laws, and shall be considered sheriff's office employees for the purposes of said chapter
145 150E.

146 (c) All petitions, requests, investigations and other proceedings approximately and duly brought before
147 the offices of transferred sheriffs, or duly begun by those sheriffs and pending before them before the
148 transfer date, shall continue unabated and remain in force, but shall be assumed and completed by the
149 office of transferred sheriff.

150 (d) All orders, rules and regulations duly made and all approvals duly granted by transferred sheriffs
151 which are in force immediately before the transfer date, shall continue in force and the provisions thereof
152 shall thereafter be enforced, until superseded, revised, rescinded or canceled in accordance with law by
153 that sheriff.

154 (e) All books, papers, records, documents, and equipment, which immediately before the transfer date are
155 in the custody of transferred sheriffs shall be transferred to that sheriff upon the effective date of this act.

156 (f) All duly existing contracts, leases and obligations of transferred sheriffs shall continue in effect. No
157 existing right or remedy of any character shall be lost, or affected by this act.

158 SECTION 15. The rights of all employees of each office of transferred sheriffs shall continue to be
159 governed by the terms of collective bargaining agreements, as applicable. If any collective bargaining
160 agreement has expired on the transfer date, the terms and conditions of any such agreement shall remain
161 in effect until a new agreement is reached.

162 SECTION 16. Notwithstanding any general or special law to the contrary, a transferred sheriff in office
163 immediately before the transfer date shall become an employee of the commonwealth with salary to be
164 paid by the commonwealth. The sheriff shall remain an elected official under the provisions of section
165 159 of chapter 54 of the General Laws. The sheriff shall operate pursuant to chapter 37 of the General
166 Laws. The sheriff shall retain administrative and operational control over the office of the sheriff, the jail,
167 the house of correction and any other occupied buildings controlled by a transferred sheriff upon the
168 effective date of this act. The sheriff and sheriff's office shall retain and operate under all established
169 common law power and authority as well as chapters 126 and 127 and any other relevant provisions of the
170 General Laws in effect before the transfer.

171 SECTION 17. Notwithstanding any general or special law to the contrary, the transferred sheriff shall be
172 considered an "employer" as that term is defined in section 1 of chapter 150E of the General Laws for the
173 purposes of said chapter 150E. The sheriff shall also have power and authority as employer in all matters,
174 including but not limited to hiring, firing, promotion, discipline, work-related injuries and internal
175 organization of the department.

176 SECTION 18. (a) Notwithstanding any general or special law or rule or regulation to the contrary, the
177 sheriff, special sheriff, all deputies, jailers, superintendents, deputy superintendents, assistant deputy
178 superintendants, keepers, officers, assistants and other employees of the office of a transferred sheriff,
179 employed immediately before the transfer date in the discharge of their responsibilities set forth in section
180 24 of chapter 37 and section 16 of chapter 126 of the General Laws, shall be transferred to the
181 commonwealth with no impairment of employment rights held immediately before the transfer date,
182 without interruption of service, without impairment of seniority, retirement or other rights of employees,
183 without reduction in compensation or salary grade and without change in union representation. Any
184 collective bargaining agreement in effect immediately before the transfer date shall continue in effect and
185 the terms and conditions of employment therein shall continue as if the employees had not been so
186 transferred. Nothing in this section shall be construed to confer upon any employee any right not held
187 immediately before the date of said transfer, or to prohibit any reduction of salary grade, transfer,
188 reassignment, suspension, discharge layoff or abolition of position not prohibited before such date. These
189 employees shall not be considered new employees for salary, wage, tax, health insurance, Medicare or
190 any other federal or state purposes, but shall retain their existing start and hiring date, seniority and any
191 other relevant employment status through the transfer.

192 (b) All demands, notices, citations, writs, precepts and all other notices given by the sheriff, special
193 sheriff, deputies, jailers, superintendents, deputy superintendents, assistant deputy superintendants,
194 keepers, officers, assistants or other employees of the office of a transferred sheriff, as the case may be,

195 on or before the transfer date shall be valid and effective for all purposes unless otherwise revoked,
196 suspended, rescinded, canceled or terminated in accordance with law.

197 (c) Any enforcement activity imposed by the sheriff, special sheriff, any deputies, jailers, superintendents,
198 deputy superintendents, assistant deputy superintendants, keepers, officers, assistants or other employees
199 of the office of a transferred sheriff, before the transfer date, shall be valid, effective and continuing in
200 force according to the terms thereof for all purpose unless superseded, revised, rescinded or canceled in
201 accordance with law.

202 (d) All petitions, hearings appeals, suits and other proceedings duly brought against, and all petitions,
203 hearings, appeals, suits, prosecutions and other legal proceedings begun by the sheriff, special sheriff,
204 deputies, jailers, superintendents, deputy superintendents, assistant deputy superintendants, keepers,
205 officers, assistants or the employees of the office of a transferred sheriff, as the case may be, which are
206 pending before the transfer date shall continue unabated and remain in force notwithstanding the passage
207 of this act.

208 (e) All records maintained by the sheriff, special sheriff, deputies, jailers, superintendents, deputy
209 superintendents, assistant deputy superintendants, keepers, officers, assistants and other employees of the
210 office of a transferred sheriff before the transfer date shall continue to enjoy the same status in any court
211 or administrative proceeding, whether pending on said transfer date or commenced thereafter, as they
212 would have enjoyed in the absence of the passage of this act.

213 SECTION 19. All officers and employees of the office of a transferred sheriff transferred to the service of
214 the commonwealth shall be transferred with no impairment of seniority, retirement or other rights of
215 employees, without reduction in compensation or salary grade and without change in union
216 representation, except as otherwise provided in this act. Any collective bargaining agreement in effect for
217 such transferred employees immediately before the transfer date shall continue as if the employees had
218 not been so transferred, until the expiration date of such collective bargaining agreement. Nothing in this

219 section shall be construed to confer upon any employee any right not held immediately before the transfer
220 date, or to prohibit any reduction of salary or grade, transfer, reassignment, suspension, discharge, layoff
221 or abolition of position not prohibited before the transfer date.

222 SECTION 20. (a) Notwithstanding any general or special law to the contrary, employees of the office of a
223 transferred sheriff who become state employees under this act and who are eligible for group insurance
224 coverage as provided under chapter 32B of the General Laws or who are insured under said chapter 32B,
225 shall have that eligibility and coverage transferred to the jurisdiction of the group insurance commission
226 effective 4 months after the transfer date, and those employees shall cease to be eligible or insured under
227 said chapter 32B. These employees shall not be considered to be new employees. The group insurance
228 commission shall provide uninterrupted coverage for group life and accidental death and dismemberment
229 insurance and group general or blanket insurance providing hospital, surgical, medical, dental and other
230 health insurance benefits to the extent authorized under chapter 32A of the General Laws. Employees
231 who were covered by a collective bargaining agreement on the transfer date shall continue to receive the
232 group insurance benefits required by their respective collective bargaining agreements until the expiration
233 date of those agreements.

234 (b) The human resources division of the executive office for administration and finance shall assume the
235 obligations of the office of a transferred sheriff to employees who become state employees and who are
236 covered under a health and welfare trust fund agreement established under section 15 of chapter 32B of
237 the General Laws pursuant to a collective bargaining agreement until the expiration date of the collective
238 bargaining agreement.

239 (c) Any monies in the employees' group insurance trust funds of Barnstable, Bristol, Dukes, Nantucket,
240 Norfolk, Plymouth and Suffolk counties established pursuant to section 8A of said chapter 32B three
241 months after the transfer date that would otherwise have been paid toward benefits for employees of the
242 transferred sheriffs shall be transferred to the Group Insurance Commission Trust Fund established
243 pursuant to section 9 of said chapter 32A.

244 (d) Any monies in a claims trust fund established pursuant to section 3A of said chapter 32B that would
245 otherwise have been reserved for claims made by employees of a transferred sheriff are hereby transferred
246 to the group insurance commission as of the transfer date.

247 SECTION 21. Notwithstanding chapter 32 of the General Laws or any other general or special laws to the
248 contrary, the retirement system in the county of a transferred sheriff shall continue pursuant to this section

249 and shall be managed by the retirement board as provided in this section beginning on the transfer date.
250 Employees of a transferred sheriff who retired on or before the transfer date shall be members of the
251 county retirement system, which shall pay the cost of benefits annually to such retired county employees
252 and their survivors. The retirement assets of the employees of transferred sheriffs who become state
253 employees pursuant to this act shall be transferred from said county retirement system to the state
254 retirement system, which shall thereafter be responsible for those employees, subject to the laws
255 applicable to employees whose transfer from one governmental unit to another results in the transfer from
256 one retirement system to another, except for paragraph (c) of subdivision (8) of section 3 of chapter 32 of
257 the General Laws. All other provisions governing the retirement systems of the counties of Barnstable,
258 Bristol, Dukes, Nantucket, Norfolk, Plymouth and Suffolk shall remain in effect.

259 SECTION 22. County commissioners, county sheriffs, county treasurers, county retirement systems, the
260 State-Boston retirement system, and all executive branch agencies and officers shall cooperate with the
261 secretary of administration and finance in effecting the orderly transfer of the county sheriffs to the
262 commonwealth. The secretary may establish working groups as she considers appropriate to assist in the
263 implementation of the transfer.

264 SECTION 23. This act shall take effect on July 1, 2009.