

Drafting Effective Dates in Massachusetts: A Practitioner's Guide

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A practitioner’s guide to when Massachusetts statutes take effect — and to the rules that decide when the drafter does not.

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1. Every bill has an effective date. The only question is who picks it.

Ask this before you draft a word: **when do you want this to take effect?**

Everything that follows is downstream of the answer. A drafter who skips the question does not avoid it. Article 48 and G.L. c. 4, § 1 answer it instead — years later, in a case the drafter is not in.

Every bill filed in the General Court has an effective date, whether or not the drafter supplies one. If the statute speaks, the statute controls. If the statute is silent, background law fills the gap, and background law does not ask what the drafter had in mind.

The General Court has always held the power to say when its statutes take effect, and it holds it still. Before 1918 that power was unqualified: an act took effect when the General Court said it did, and if the act was silent, at and from the time of its passage. *Opinion of the Justices*, 3 Gray 601, 606 (1855). In 1918 the voters ratified Article 48 of the Amendments, which added the only constitutional constraint that exists today:

No law passed by the general court shall take effect earlier than ninety days after it has become a law, excepting laws declared to be emergency laws and laws which may not be made the subject of a referendum petition, as herein provided.

Mass. Const. amend. art. XLVIII, The Referendum, I.

Article 48 supplements that pre-existing power; it does not supplant it. The drafter may still name any date and any triggering event, subject to one floor: no sooner than ninety days after the act becomes law, unless the bill is declared an emergency law or is not subject to referendum at all.

That is the entire constitutional framework. Everything else in this guide is how to work inside it. Sections 2 and 3 set out the three default rules and the five referendum-exempt categories. Sections 4 through 10 take up the tools a drafter actually reaches for — emergency preambles, the *Sutton* rule for appropriation bills, sunsets, contingent dates, inoculators, retroactivity, time computation, resolves, and where in the bill the effective date belongs.

2. Three rules, in order — and silence picks one for you

Three rules fix the moment a Massachusetts statute takes effect, and they apply in order of priority. Decide which one you want before you decide the date.

Rule one: the statute controls what it says. If the bill names an effective date — in the operative text of a section or in a trailing effective-date section — that date governs. Within the Article 48 floor, the drafter may choose any date, any triggering event, or any combination of the two. This is the rule you want, and Section 10 explains where to put it.

Rule two: silence in a referendum-exempt act means the thirtieth day. G.L. c. 4, § 1 supplies the default. Read the section closely, because two of its features are routinely misstated.

First, the thirty-day default reaches only acts that *cannot* be made the subject of a referendum petition — religion, judges, courts, local acts, current-expense appropriations. It does not reach ordinary legislation. The exempt categories are the narrow class, not the broad one.

Second, the thirty days run from the day the act **has the force of law**, not from the Governor's signature. The section says "on the thirtieth day next after the earliest day on which it has the force of a law." Those two dates are the same when the Governor signs. They diverge when a bill becomes law without signature after ten days, and when it becomes law over a veto — which is exactly when someone will be looking the question up.

Kagan v. United Vacuum Appliance Corp., 357 Mass. 680, 682 (1970), works the rule end to end. St. 1968, c. 760, the long-arm statute, was approved on July 25, 1968. Because it "relates to . . . the powers . . . of courts," it could not be made the subject of a referendum. Article 48's ninety-day floor therefore did not apply, G.L. c. 4, § 1 did, and the statute took effect on the thirtieth day — August 24, 1968. The suit was filed after that date, so the court had jurisdiction. Two months of difference, decided by a category.

Rule three: silence in an act subject to referendum means the ninetieth day. Article 48, The Referendum, I, bars any non-exempt law from taking effect earlier than ninety days after it becomes law. When such a law says nothing, the ninety-day rule answers by default. A drafter who needs it sooner has three options: bring the bill within an exempt category (Section 3), attach an emergency preamble (Section 4), or obtain the Governor's emergency declaration (Section 4).

The three rules interact but never collide. Rule one, when triggered, displaces the other two. If rule one is not triggered, rules two and three divide what is left between them according to whether Article 48 reaches the subject matter. *Commonwealth v. Yee*, 361 Mass. 533, 537 (1972), shows the stakes in a single sentence: St. 1971, c. 1071, § 2 would have taken effect on December 11, 1971 if exempt and on February 9, 1972 if not. One statute, one silence, sixty days apart.

The fourth path: acts that take effect on local acceptance

Section 1 closes with a proviso that most treatments of this subject leave out, and that a drafter of special legislation needs:

*[A] statute so enacted which may not be made the subject of such a petition and which is to take effect upon its acceptance by a municipal or other corporation or by any board or officer thereof, unless otherwise expressly provided therein, shall, **for the purpose of such acceptance only**, take effect as soon as it has the force of a law as aforesaid.*

G.L. c. 4, § 1.

An acceptance act therefore has two effective dates built into background law, and the drafter gets both for free. The act becomes available for acceptance immediately — the city council or town meeting may act on it at once, without waiting thirty days — while its substantive operation waits on the acceptance itself. Draft against that structure rather than around it. A drafter who writes "this act shall take effect upon its passage" onto an acceptance act has said nothing the proviso had not already supplied, and a drafter who writes a thirty-day delay has postponed the vote the act exists to invite.

One act, several moments

A bill may carry more than one effective date, and a single act may come into force in stages: one section on passage under an emergency preamble, a second on a named future date, a third on the occurrence of

a contingent event. Nothing in Article 48 or the General Laws forbids staggering the operative moments of different provisions. The only constraint is that each date or event must independently satisfy Article 48.

An illustrative form:

SECTION 10. Sections 1 through 4 shall take effect on January 1, 2027. Section 5 shall take effect upon the appointment of the first commissioner under section 3. The remaining sections shall take effect as provided in Article 48 of the Amendments to the Constitution.

The remainder of this guide assumes the drafter has decided, for each provision, which of the three rules to engage — and, if rule one, by what mechanism.

3. Five exempt categories. Three of them are traps.

Article 48 does not reach every law. Five categories of subject matter are excluded from the referendum, and therefore from the ninety-day waiting period the referendum enforces. A bill falling wholly within one of them may take effect on passage, on approval, or on any date the drafter chooses, with no emergency preamble and no supermajority. The threshold question is whether the bill fits.

The categories are set out in Article 48, The Referendum, III, § 2, reproduced verbatim by the Supreme Judicial Court in *Commonwealth v. Yee*, 361 Mass. 533, 536 (1972):

No law that relates to religion, religious practices or religious institutions; or to the appointment, qualification, tenure, removal or compensation of judges; or to the powers, creation or abolition of courts; or the operation of which is restricted to a particular town, city or other political division or to particular districts or localities of the commonwealth; or that appropriates money for the current or ordinary expenses of the commonwealth or for any of its departments, boards, commissions or institutions shall be the subject of a referendum petition.

Mass. Const. amend. art. XLVIII, The Referendum, III, § 2.

Split into drafting categories:

- (i) religion, religious practices, or religious institutions;
- (ii) the appointment, qualification, tenure, removal, or compensation of judges;
- (iii) the powers, creation, or abolition of courts;
- (iv) laws whose operation is restricted to a particular city, town, or other local political subdivision — the local-matters exemption; and
- (v) appropriations — which *Yont* holds to be two rules rather than one: (a) for the current or ordinary expenses of the Commonwealth; or (b) for any of its departments, boards, commissions or institutions, whether the expense is ordinary or not.

There are five, and there is no sixth. This matters because Article 48 contains a *different* exclusion list, for a different power, and the two get merged. The initiative — not the referendum — excludes measures making "a specific appropriation of money from the treasury of the commonwealth." Mass. Const. amend.

art. XLVIII, The Initiative, II, § 2. A drafter who reaches for a specific-appropriation exemption to escape the ninety-day rule is reading the wrong half of the article.

Three of the five carry practical ambiguity worth anticipating.

Judges and courts (ii and iii) reach further than the caption suggests, and stop at purpose. Yee draws the line: a law whose chief thrust is to confer or restrict a court's jurisdiction falls within the exclusion; a law that touches the courts only incidentally does not. "The chief thrust of c. 1071 is not directed at the judiciary." Yee, 361 Mass. at 537; see also *Horton v. Attorney General*, 269 Mass. 503, 511 (1929). A bill creating a new cause of action, or assigning a matter to one court rather than another, is within the exclusion. A bill that merely adds to the volume of judicial work is not.

The local-matters exemption is the most invoked and the most misapplied. A law qualifies only if its operation is *restricted* to a particular city, town, or political subdivision — a special act, not a general law that happens to bite in one place. A statute drafted to apply statewide is outside the exemption even if, as a practical matter, one municipality is the only one affected. A drafter relying on this exemption must confirm that the bill is drafted as a special act, with the subject city or town named and the operation of the statute limited on its face to that locality. If the limitation is not on the face of the bill, the exemption is not available.

The appropriation exclusion is two rules, and the second is far wider than it reads. Take the clause slowly: money "for the current or ordinary expenses of the commonwealth **or** for any of its departments, boards, commissions or institutions." The natural reading carries "current or ordinary" across both branches. It does not:

The established and recognized rules of grammatical construction require that the words "current or ordinary expenses" in the quoted clause of art. 48 refer to and modify the words "of the commonwealth" immediately following, and do not extend to appropriations "for any of its departments, boards, commissions or institutions." The word "for" precedes each division of the quoted clause and marks the difference between the two branches of that clause.

Yont v. Secretary of the Commonwealth, 275 Mass. 365, 368 (1931).

The first branch reaches only the Commonwealth's ordinary operating expenses. The second reaches *any* appropriation for a department, board, commission or institution — "whether for current or ordinary expenses, or for exceptional or momentous expenses." *Id.* In *Yont* itself the appropriations were \$7,000,000 for state highway construction and \$1,500,000 for a building: capital spending, expressly "not for current or ordinary expenses but . . . for designs outside the usual course," and excluded from the referendum all the same. *Id.* at 371.

That width is deliberate, and the drafting history is the reason to trust it. The Convention's committee draft read "for the current or ordinary expenses of the commonwealth or **of** any of its departments." An amendment struck "of any" and inserted "**for** any." The convention was told precisely what the change would do — the committee text would permit a referendum on every appropriation except current and ordinary ones, while the amendment would exclude all appropriations for the departments — and adopted it after full debate. 2 Debates in the Constitutional Convention of 1917-1918, at 677, 778-783. Two words, changed on the floor in 1918, decide whether a modern statute can be put to a referendum.

The consequence for a drafter of substantive legislation is large. An act that funds its own machinery may sit outside the referendum entirely, however contested its subject. The Attorney General so advised the State Secretary about expanded gaming: chapter 194 of the Acts of 2011 could not be made the subject of

a referendum petition, because section 94 transferred \$15,000,000 to the Massachusetts Gaming Commission for start-up and operating costs, and section 2A appropriated \$500,000 for a Division of Gaming Enforcement within the Department of the Attorney General. Either appropriation, standing alone, was enough. Letter of the Attorney General to the Secretary of the Commonwealth (Dec. 7, 2011).

Two arguments against that result were pressed, and both failed — which is what makes the rule dependable rather than merely available.

The first was that the appropriation was "incidental and subsidiary" to the act's real purpose. There is no such test here. The "main design" or "chief thrust" criterion belongs to the powers-of-courts cases, and the Supreme Judicial Court has declined to import it into the appropriation exclusion. *Ward v. Coletti*, 383 Mass. 99, 107-108 & n.13 (1981) (declining to take the criterion from *Horton* and *Yee*; in *Yont* the court "did not use such a criterion").

The second was that reading the clause this way lets the General Court insulate any law from the referendum by attaching an appropriation to it. *Yont* met that argument directly and accepted the consequence:

The argument that the interpretation here set forth will enable the General Court to nullify the effect of article 48 of the Amendments by tacking to any law an appropriation for a department cannot override the plain meaning of the pertinent words of the amendment. Moreover, it cannot be presumed that the legislative department of the government will be actuated by unworthy motives or enact laws as a cover for ulterior aims.

Yont, 275 Mass. at 369.

Read that passage for what it is. The court declined to police motive and rested instead on the presumption of legislative good faith. The power is real, it is broad, and the only check on it is the drafter's own judgment about what the appropriation is for.

One boundary, taken up in Section 5. *Sutton Corp. v. Metropolitan District Commission*, 423 Mass. 200 (1996), holds that an outside section **unrelated** to the appropriations in the bill takes Article 48 on its own terms. The gaming act was the opposite case: appropriations enacted to carry out the act's own provisions. Relatedness is what separates them, and in *Yont*, in *Ward*, and in chapter 194 nobody claimed the appropriations were unrelated to the purpose of the law.

The practical consequence divides into three cases. A bill plainly inside an exempt category needs no preamble and may take any date the drafter chooses. A bill *arguably* inside one, but uncertain, should carry a preamble as insurance against a later determination that it was subject to referendum after all — with the cost of that insurance, set out in Section 4, understood before it is bought. A bill plainly outside every category is subject to the ninety-day rule unless the drafter accepts the delay, secures a preamble, or obtains the Governor's declaration.

4. The preamble costs two-thirds of each branch. Budget for it.

The emergency preamble — an EP, in drafting shorthand — is the mechanism Article 48 supplies for bringing a non-exempt law into force sooner than ninety days after passage. It is the most common effective-date tool in Massachusetts practice and the one a drafter is most likely to write, inherit, or have to repair.

It is also not free, and the guide literature tends not to say so. Here is the price, in the constitutional text:

*A law declared to be an emergency law shall contain a preamble setting forth the facts constituting the emergency, and shall contain the statement that such law is necessary for the immediate preservation of the public peace, health, safety or convenience. **A separate vote, which shall be recorded, shall be taken on the preamble, and unless the preamble is adopted by two-thirds of the members of each House voting thereon, the law shall not be an emergency law.** Upon the request of two members of the Senate or of five members of the House of Representatives, the vote on the preamble in such branch shall be taken by call of the yeas and nays.*

*Mass. Const. amend. art. XLVIII, The Referendum, II, as amended by art. LXVII; quoted in *Molesworth v. Secretary of the Commonwealth*, 347 Mass. 47, 48 (1964).*

Two-thirds of each branch, on a separate recorded vote. On an uncontested bill that is a formality. On a contested one it is the whole question, and a drafter who has told a member that the preamble is a minor procedural step has set the member up. The yea-and-nay call is not automatic; it comes on the request of two Senators or five Representatives, and a member who wants the preamble vote on the record can force it.

What a preamble does — and the two things it does not

An EP does two things. It removes the ninety-day delay Article 48 would otherwise impose, and it prevents the operation of the act from being suspended while a referendum petition is pending. Art. 48, The Referendum, III, § 3; *Molesworth*, 347 Mass. at 52 ("The principal consequences in Massachusetts of adopting a so called 'emergency' preamble are to make the measure effective upon its passage rather than ninety days thereafter, and to prevent the operation of the measure from being suspended until after the next biennial election.").

It does not defeat the referendum. This is the point most often assumed away, and *Molesworth* states it on the same page: "In Massachusetts also, unlike the situation in some States, the adoption of an emergency preamble does not prevent the measure to which the preamble is attached from being subject to referendum at the next election." *Id.* A preamble buys immediate operation and protection from suspension. It does not buy immunity, and a drafter who tells a client otherwise is wrong on the constitution.

It also does not accelerate anything else in the bill. An EP moves the constitutional moment of effect and nothing more. Every other temporal provision — a thirty-day notice period, a six-month phase-in, a regulatory date keyed to a future event — runs on its own terms, measured from whatever moment the preamble fixed. A bill creating a new category of prohibited conduct and taking effect on passage still cannot be enforced against conduct completed before passage. A bill creating a licensing scheme with a thirty-day application window still cannot deny a license on day one. Drafters who assume otherwise build implementation failures into the statute.

Placement and standard form

The preamble goes before the enacting clause, not after it. That placement is not cosmetic. A preamble is not enacted text and does not require enactment to operate; everything following the enacting clause is the statute, and the preamble precedes it in order to declare, as legislative judgment, why the statute should operate at once.

The General Court uses a standard form:

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to [insert a very short general statement of the subject of the bill] forthwith, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public [peace, health, safety, or convenience].

Three elements deserve attention. "Whereas" opens the preamble and signals that what follows is not enacted text. The recital of purpose names the bill in general terms — the drafter need not enumerate every operative provision, and where the title is descriptive of the subject, the operative words of the title will serve. The four grounds at the end are drawn from Article 48 itself, and the drafter must select at least one.

Treat the form as a starting point rather than a stamp. Where an act carries provisions of more than one character — an appropriation and a set of substantive outside sections, say — the recital should name each of them, because the preamble is where the General Court states what the declared emergency covers. Section 5 sets out a working example of the standard form extended for exactly that reason.

Select public convenience.

Why public convenience: **Molesworth**

Molesworth v. Secretary of the Commonwealth, 347 Mass. 47 (1964), is the leading Massachusetts case on emergency preambles, and its central passage is worth reading with an eye on who joined it:

A determination that a statute should, for reasons of public convenience alone, take effect at once rather than after the lapse of ninety days is so obviously a matter of legislative policy that no court should disregard or question the determination unless, in the manner of its adoption or in substance, there has been plain violation of some constitutional mandate.

Molesworth, 347 Mass. at 52.

That reasoning commands three Justices of six. The court divided on whether the adequacy of a preamble is reviewable at all: Justices Kirk and Spiegel took the view that the recitals are left by Article 48 wholly to the General Court and present no justiciable question; Justices Spalding, Whittemore and Reardon and the writer held the question justiciable. All the participating Justices except Justice Whittemore concurred in the result, but the stated reasons are those of three. *Id.* at 50.

Read the vote rather than the label and the guidance gets stronger, not weaker. Five of six upheld the preamble. Two of those five would not have reviewed it in the first place. A drafter deciding whether to rely on a preamble is not relying on a fragile plurality rationale; the drafter is relying on a court in which the deferential position and the non-justiciable position together account for everyone who reached the question.

Two working rules follow.

First, public convenience is the safest of the four grounds. Peace, health and safety each invite a court to ask whether the recited facts plausibly implicate peace, health or safety. Public convenience does not. As *Molesworth* put it, "'Public convenience' is a comprehensive term," and "[s]light grounds will warrant the Legislature in concluding that public convenience will be served by making the act effective at once." *Id.* at 52, 53. Choosing public convenience forecloses the narrow inquiry the other three grounds invite.

Second, the recited facts need not be detailed. The court found "no indication that the Constitutional Convention attached any special importance to the words 'setting forth the facts constituting the emergency,'" and concluded that "little is needed to satisfy the requirement for a statement of facts." *Id.* at 53. The standard statement suffices. A drafter is not required to build a factual record in a preamble, and should not try — a detailed recital gives a challenger something to test that a general one does not.

The Governor's declaration

The Governor holds an independent power to bring a law into immediate effect by filing a declaration with the State Secretary. It is separate from the legislative preamble and available whether or not the bill carries one. It is the fallback when a bill without a preamble has already passed and immediate operation turns out to be necessary after the fact.

Work from the filing date. The declaration operates when it is filed with the State Secretary — not on the date of the Governor's signature and not on the date of the announcement. See *Opinion of the Justices to the Governor*, 368 Mass. 889, 897 (1975). A declaration filed before the ninetieth day prevents suspension of the law under The Referendum, III, § 3; one filed after the ninetieth day, as to a law already suspended, terminates the suspension.

The error that recurs

One preamble error appears often enough to name. Drafters assume an EP accelerates waiting periods inside the substantive law. It does not, for the reasons given above, and the assumption is expensive because it surfaces only at implementation, when the agency asks why it cannot act and the answer is in a section nobody re-read.

A drafter uncertain whether a bill needs a preamble should return to Section 3. A drafter certain the bill is not exempt, and uncertain whether ninety days is tolerable, should weigh the preamble against its actual cost — a separate recorded vote and two-thirds of each branch — rather than treating it as a free precaution. Where the votes are there, take the preamble. Where they are not, the ninety-day delay is the plan, and the bill should be drafted and scheduled on that assumption rather than on hope.

5. Every outside section stands or falls on its own subject matter

Appropriation bills hold a special position in Massachusetts practice. Article 48 excludes appropriations from the referendum, and therefore from the ninety-day delay the referendum enforces — on both branches Section 3 sets out, and the second of them is broad enough to cover any appropriation for a department, board, commission or institution. Before 1996 that exclusion was widely understood to travel with the whole vehicle: a general appropriation act could carry outside sections on any subject and take any effective date the drafter chose, without a preamble. *Sutton Corp. v. Metropolitan District Commission*, 423 Mass. 200 (1996), ended that understanding.

The facts are simple and the dates are the lesson. St. 1993, c. 110, the general appropriation act for fiscal year 1994, carried two outside sections — §§ 224 and 225 — amending G.L. c. 231, § 6C and inserting § 6I to replace the fixed twelve per cent prejudgment interest rate on judgments against the Commonwealth with a Treasury-linked rate capped at ten per cent. Section 390 of the chapter gave those sections an effective date of July 1, 1993. The Governor approved the act on July 19, 1993. It carried no emergency

preamble. Sutton Corporation's final judgment against the Metropolitan District Commission entered on August 16, 1993 — after the stated effective date, and before the ninetieth day.

The Supreme Judicial Court applied the twelve per cent rate. The outside sections were subject to Article 48 because their subject matter, prejudgment interest, was not within the current-expenses exemption: "the provisions of the bill relating to interest in actions against the Commonwealth are not sufficiently related to appropriations to bring them within the excluded matters provision of art. 48." *Sutton*, 423 Mass. at 214. Attaching a provision to an appropriation bill, the court held, "would not be effective to insulate a legislative enactment from the operation of art. 48, when that enactment did not pertain to matters excluded from the referendum process by art. 48." *Id.* A specific effective date in § 390 could not change that. Absent a preamble, the ninety-day rule controlled, and the amendment took effect on October 17, 1993 — sixty-two days after the judgment it had been written to govern.

The reported award was \$255,504.61 in damages with \$346,903.72 in prejudgment interest at twelve per cent, running from April 20, 1982. The twelve per cent rate stood because the section written to replace it took effect sixty-two days too late to reach the judgment. The court declined to decide whether prejudgment interest is even a proper subject for an outside section, *id.* at 214 n.23 — so the drafting question was never the close one. The effective-date question decided the case.

The rule that follows is straightforward, and the operative word is *related*. Evaluate each outside section against the appropriations the bill is actually making. A section that appropriates money, or that operates in service of the appropriations the bill makes, comes within the exclusion and may take any date the drafter specifies. A section addressing any other subject — which is most outside sections in modern practice — takes Article 48 on its own terms, and a specified date earlier than the ninetieth day holds only if a preamble covers the act or the section is independently within one of the other exempt categories.

Note which way that cuts. *Sutton* is not authority that an appropriation cannot carry substantive provisions out of the referendum; it is authority that an *unrelated* one cannot. Where a substantive act appropriates the money to run the scheme it creates, the appropriation and the substance are the same design, and the whole act is excluded — the point Section 3 draws from the 2011 gaming decision. The prejudgment-interest sections in *Sutton* failed that test because they had nothing to do with the appropriations in the bill they rode on.

For the drafter working today, the operative rule is simpler than *Sutton*'s analysis suggests: **if the appropriation bill carries an emergency preamble, the outside section may take any date specified; if it does not, the outside section takes effect no earlier than the ninetieth day after passage.**

The practice changed at once, and the fiscal year 1998 general appropriation act shows the entire mechanism between its first page and its last.

St. 1997, c. 43, closed with a conventional effective-date section:

SECTION 311. Except as otherwise provided, the provisions of this act shall take effect on July 1, 1997.

Read it against the calendar. The Governor returned that bill to the House of Representatives with his objections in writing on July 10, 1997 — nine days after the date § 311 assigns to the act. Standing alone, that is St. 1993, c. 110, § 390 again: a general appropriation act carrying outside sections, with a specified

effective date earlier than the day the act became law. *Sutton* had held one cycle earlier that such a section cannot, by itself, carry a non-exempt outside section past the ninety-day rule.

It does not stand alone. The act opens with an emergency preamble, and the recital is not the standard form:

*Whereas, The deferred operation of this act would tend to defeat its purpose, which is immediately to make appropriations for the fiscal year beginning July 1, 1997, **and to make certain changes in law, each of which is immediately necessary or appropriate to effectuate said appropriations or for other important public purposes**, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.*

St. 1997, c. 43.

Set that beside the standard form in Section 4. The standard recital names the subject of the bill and stops. This one names two subjects — the appropriations, and the "changes in law" — and then, in seven words, reaches the outside sections that have nothing to do with the appropriations at all: *or for other important public purposes*.

Those seven words are the whole answer to *Sutton*. Had the recital covered only changes "necessary or appropriate to effectuate said appropriations," a challenger could argue that an outside section unrelated to the budget fell outside the declared emergency — which is precisely the gap *Sutton* had opened. The added clause forecloses the argument before it is made. And the ground selected is public convenience, the safest of the four, for the reasons Section 4 gives.

Preambles on that model have since been adopted as a matter of course on appropriation bills carrying outside sections. The preamble covers the entire act, outside sections included, so the drafter need not parse section by section which provisions it reaches. That is why the question rarely surfaces — and why a drafter who assumes rather than checks will eventually be wrong at the worst possible moment.

The lesson generalises past appropriation bills. A preamble is drafted, not stamped. Where an act carries provisions of more than one character, the recital should name each of them, because the preamble is the only place the General Court says what the emergency covers.

Two corollaries.

First, *Sutton's* reasoning reaches any vehicle combining exempt and non-exempt subject matter, not appropriation bills alone. A supplemental budget, a bond bill, or a closeout act carrying non-appropriation outside sections is governed by the same rule.

Second, *Sutton* operates at the level of the individual section. A preamble on an act brings the entire act into immediate effect, every section, exempt or not. A specific effective date on one section carries no such force as to any other; each section stands or falls on whether Article 48 reaches it. So: put a preamble on any appropriation-type vehicle carrying outside sections, and do not use section-specific effective dates as a substitute for one. *Sutton* is what a substitute looks like when it fails.

6. Three ways to end a statute, and the one that ends it silently

Most statutes are drafted to run indefinitely. Some are not. A drafter may want a statute to expire on a date certain, on a specified event, or only if some other event happens first. Each limit is achieved by a

separate bill section in a standard form, and each has its own failure mode. This section takes up sunsets, contingent effective dates, and inoculators; retroactivity is Section 7.

Sunsets

A sunset causes a statute to cease operation on a specified date or event. Draft it in two steps, ordinarily as two sections.

SECTION 2. Section X of chapter Y of the General Laws, as inserted by section 1 of this act, is hereby repealed.

SECTION 3. Section 2 of this act shall take effect on July 1, 2030.

Separating the repeal from its effective date is the point of the form: a later General Court can extend or shorten the sunset by amending one short section, without reopening the repeal itself.

Three points deserve attention.

First, sunsetting a general law is an unusual choice and should be made only where the General Court has expressed a clear intent that the statute be time-limited. Most general laws are drafted to run indefinitely. Sunsets belong to special acts and to statutes establishing commissions, task forces, and pilot programs.

Second, draft the sunset's effective date with the same care as any other effective date. A sunset keyed to "completion of the commission's work," with no backstop, invites indefinite extension by inaction — the commission simply never completes its work, and the statute never ends.

Third, and this is where practice and text have drifted apart: **a citation to G.L. c. 4, § 2A is treated in the General Court as terminating the commission, and the section does not say so.** Both halves of that sentence matter.

The working rule is settled. A § 2A citation fixes the commission's end, and the reporting date is the terminal date. A drafter operating inside the General Court can rely on that, and should.

The text will not carry the rule on its own. Clause (6) provides that the commission —

may report from time to time but shall file its final report not later than the last Wednesday in January in the following year, if it is established, continued, or revived and continued, in an odd-numbered year, or not later than the last Wednesday in December in the same year, if it is established, continued, or revived and continued in an even-numbered year.

G.L. c. 4, § 2A.

That is a filing deadline. Nothing in the section says the commission ceases to exist, and the section expressly contemplates a commission being "continued, or revived and continued." Note also that § 2A applies by its terms to "each special commission established to make an investigation and study of any matter" — not only to commissions established by resolve.

The gap only matters when the reader is not in the building. Counsel to an agency, a court construing the act years later, a successor drafter inheriting the file — none of them have the practice, and all of them have the text. Cite § 2A for the timetable and then say the rest:

SECTION 4. The commission established by section 1 shall file its final report as provided in section 2A of chapter 4 of the General Laws, and shall expire upon the filing of that report or upon the date by which the report is required to be filed, whichever occurs first.

One sentence closes the distance between what the office knows and what the statute says. Writing it is not doubting the practice. It is making the practice legible to the next reader, which is most of the job.

Contingent effective dates

A contingent effective date ties the operation of a statute, or of a particular section, to a specified event. The form is familiar from judicial reorganization legislation:

Sections 98 and 99 of this act shall take effect sixty days after the selection of the chief administrative justice as provided in section 329 of this act.

St. 1978, c. 478, § 343.

The drafter specifies the triggering event, identifies an actor or mechanism that will mark its occurrence, and — where timing matters — a fixed interval running from the event. Miss the middle element and the section will not fail loudly. It will fail silently, which is worse.

The Sudan divestment act supplies the case study. Section 7 of chapter 151 of the Acts of 2007 reads, in its entirety:

This act shall expire when the government of Sudan is not the subject of sanctions, relative to genocide, imposed by the government of the United States.

St. 2007, c. 151, § 7.

Read it as a drafter rather than as a policy statement. It names no order, no date, no document, and no actor. It expires on a state of the world, and it poses three contestable questions in order to establish that state: which federal measures count as "sanctions"; whether those sanctions are "relative to genocide"; and whether they run against "the government of Sudan" rather than against particular persons connected with it.

Nineteen years on, all three are live. The sanctions the act was written against — sections 1 and 2 of Executive Order 13067 — were revoked effective October 12, 2017, pursuant to Executive Order 13761. But the national emergency declared in EO 13067 continues, as expanded by Executive Order 13400, which is directed specifically at the conflict in Sudan's Darfur region, and by Executive Order 14098 of May 2023; the emergency was continued by notice as recently as October 2024.

So: has chapter 151 expired? The question can be argued either way, and nobody is required to answer it. That is the failure, and it is not the one drafters expect. The hazard is not that the triggering event never occurs. The hazard is that the trigger is a legal conclusion no one was assigned to reach — so the statute books carry an act that may or may not be law, with nothing on its face to say which, and no one looking.

Three rules follow. Ask whether the triggering event is one over which the Commonwealth has control or influence; where it is not, supply a backstop date — "or on January 1, 2030, whichever occurs first." Name

the actor who determines and publishes that the event has occurred, so the operative date becomes a matter of record rather than of research. And prefer a trigger that can be verified from a document with a date on it, over one that requires a judgment about the state of the world.

A contingent effective date without a backstop is a bet that the event will occur. Take the bet only when the odds are clear, and never take it without naming who calls the race.

Inoculators

An inoculator is a contingent effective date used defensively. A drafter facing an amendment that will be adopted, but that the drafter does not want to operate, attaches a contingent effective date keyed to an event the drafter believes will not happen — typically an agency study reaching a specified conclusion, followed by enabling legislation. The amendment passes. The study is not completed, or is completed without the specified finding. The amendment never takes effect. The underlying bill has been inoculated against the amendment's practical effect while the amendment is permitted to be adopted on the floor.

The tactical setting is House Rule 72 (2025–26 session), which permits amendments in the second degree but not in the third. A member who cannot defeat a first-degree amendment by further amendment may instead offer a second-degree amendment adding a contingent effective date that will not be triggered. Because no third-degree amendment is in order without unanimous consent, the inoculator is ordinarily the last word. The technique appears most often on appropriation-bill amendments but works equally on amendments to the General Laws.

The form adds a section invoking the underlying amendment by reference and conditioning its operation on the specified event. From H.3755 of the 2015 session:

SECTION 3. Notwithstanding any general or special law to the contrary, the provisions of subsection (c¾) of section 32E of chapter 94C of the General Laws, as inserted by section 1 of this act, shall not take effect until such time as the executive office for administration and finance, in conjunction with the executive office of public safety and security, has furnished a study of the legislation's impact on the local economy and the revenue cost to the commonwealth and its municipalities and political subdivisions, including, but not limited to, a distributional analysis showing the impact on taxpayers of varying income levels, the current practice of other states and any anticipated change in employment and ancillary economic activity to the joint committee on judiciary, and until legislation has been filed and enacted pursuant to Part 2, Chap. 1, Sec. 1, Art. II of the Constitution.

H.3755 of 2015, § 3.

Two features are characteristic. The trigger combines an executive-branch deliverable — an inter-agency study with specified contents — with a legislative deliverable, enabling legislation enacted under the constitutional provision cited. Either alone would be a high bar. Both together, by design, are higher.

A drafter asked to prepare an inoculator should confirm that the instruction to draft defensively is the client's instruction. The technique is legitimate and consequential in equal measure: an inoculated amendment occupies the space its subject matter would otherwise occupy, and a later General Court reviewing the statute may take the section for operative law when it is not. Flag inoculated sections in the drafting file so that later amendments can be prepared with the inoculation in view. This is the same failure the Sudan example illustrates, arrived at deliberately rather than by accident — a provision on the books that is not in force, and no record on the face of the statute saying so.

7. A prospective effective date will not save you

A prospective effective date will not keep a statute from operating retroactively. Massachusetts asks whether a provision attaches a substantial new legal consequence to an event already completed — not whether the last section of the bill says "prospective." If you want retroactive reach, say so in terms. If you do not, read every substantive section against that test before the bill is filed.

The test, and where it comes from

The governing question is whether the provision "attaches new legal consequences to events completed before its enactment." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269–270 (1994). Massachusetts adopted the *Landgraf* formulation well before it was given its most quotable statement, applying it in *Commonwealth v. Bruno*, 432 Mass. 489, 498 (2000), *Doe No. 8725 v. Sex Offender Registry Board*, 450 Mass. 780, 787 (2008), and *Federal National Mortgage Association v. Nunez*, 460 Mass. 511, 522 (2011).

Moe v. Sex Offender Registry Board, 467 Mass. 598 (2014), is where the court settled accounts with the older Massachusetts test. Under *McCarthy v. Sheriff of Suffolk County*, 366 Mass. 779, 781 (1975), the question had been whether a statute impaired a vested substantive right. *Moe* explained that the court had "gradually abandoned the *McCarthy* test in favor of the *Landgraf* test," noting that the last time it had cited *McCarthy* on retroactivity — fourteen years earlier, in *Bruno* — it had applied the new test anyway.

The relationship between the two is one of scope. Impairment of a vested substantive right is still a new legal consequence and still renders a statute retroactive. It is no longer the only one. In *Moe* itself, the court held amendments retroactive because they "mandate a substantial new legal consequence (Internet publication of offender's registry information) to events completed on or before the date of their enactment (SORB's final determination that offender should be given level two classification)." The offender had no vested right in the non-publication of his classification. The statute was retroactive all the same.

The practical consequence for the drafter: the class of provisions a Massachusetts court will treat as retroactive — and therefore decline to apply to completed conduct absent express language — is larger than a vested-rights instinct would predict, and has been for a quarter century. Draft to the wider test.

The constitutional floor

The outer limit is Part II, c. 1, § 1, art. 4, which empowers the General Court to enact laws "not repugnant or contrary to this Constitution." A retroactive statute impairing a vested contractual or property right, or imposing criminal punishment for conduct lawful when committed, is unenforceable to that extent. The inquiry is fact-specific and resists statement as a rule.

For the drafter it functions as a floor rather than a test. A retroactive provision clearly inside it is drafted to its stated date. One clearly outside it should not be drafted. One whose status is uncertain is flagged to the client before drafting proceeds, not after.

What the drafter writes

To reach completed events, say so. The standard form is a separate section:

SECTION X. Section [] of this act shall apply to [specified events] occurring

before, on, or after the effective date of this act.

To foreclose the question, say that instead:

SECTION X. Section [] of this act shall apply only to [specified events] occurring on or after the effective date of this act.

Transitional drafting decides these cases — *Mason*

In the Matter of the Estate of Mason, 493 Mass. 148 (2023), is the case every effective-date drafter should read, because it was decided by an effective-date section written fifteen years earlier.

The question was whether the three-year ultimate time limit of the Massachusetts Uniform Probate Code, G.L. c. 190B, § 3-108, barred a MassHealth estate-recovery claim against a decedent who died in 2008, before the MUPC took effect in 2012. The court held it did not — and did so without reaching any canon of retroactivity, because the drafters had answered the question in the act:

[A]n act done before the effective date [of the MUPC] in any proceeding and any accrued right is not impaired by this act. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right.

St. 2008, c. 521, § 43(4); see also St. 2012, c. 140, § 66(b).

MassHealth's right accrued at death in 2008, when a fifty-year period under former G.L. c. 193, § 4 had already begun to run. Section 43(4) preserved it. The presumption against retroactive operation pointed the same way. *Sliney v. Previte*, 473 Mass. 283, 288 (2015); *Nunez*, 460 Mass. at 516.

Then the part that should hold a drafter's attention. The same transitional section contained a second, more general rule — § 43(2), providing that the MUPC applied to proceedings commenced after the effective date — which pointed the other way. The court resolved the conflict by treating the specific preservation language of § 43(4) as controlling over the general provision of § 43(2), and by observing that § 43(2) addressed procedure while the ultimate time limit, a statute of repose, addressed substantive rights. *Wing v. Commissioner of Probation*, 473 Mass. 368, 373 (2015).

Two lessons, and they are the reason this case belongs in a guide about effective dates rather than a guide about statutory construction.

A savings clause is not boilerplate. It is the provision most likely to decide a case fifteen years after enactment, and it will be read closely by a court that has nothing else to go on.

And a transitional section with two rules in it has a conflict in it. Section 43 said both "proceedings commenced after the effective date" and "accrued rights are not impaired." Those are different rules with different scopes, and the drafter who wrote both did not resolve which governed. The Supreme Judicial Court resolved it, correctly, by canon — but the drafter could have resolved it in a sentence, and should have. When a transitional section contains more than one rule, say expressly which controls.

Three traps

A statute that voids preexisting obligations going forward is retroactive in substance, whatever its stated effective date, because the new consequence attaches to obligations created before enactment. Decide whether that result is intended, and if it is, draft toward it expressly.

Limitations and repose periods are the most common source of inadvertent retroactivity, as *Mason* shows. A shortened period may extinguish claims that were live on the day of enactment; a lengthened one may revive claims already expired. Either may be intended. Neither should be accidental. Resolve it before the bill is finalized, and where the purpose is to reach pre-enactment claims, say so.

New regulatory obligations — licensing, registration, disclosure — attach new consequences to completed conduct if drafted without a transition rule. The cure is a savings clause or a transitional provision stating how the new regime applies to conduct in progress or completed at the effective date.

The effective-date section is not a substitute for reading the substantive sections against the new-legal-consequence test. It is what you write after you have done that.

8. Count in days. Never in weeks. In months only when the policy is monthly.

An effective date is a point in time, but statutes constantly measure from that point — thirty days after enactment, six months after approval, one year after an agency adopts rules. A drafter writing those measurements should know how Massachusetts counts.

Start the count the day after the act becomes law.

Days

Settled and uncomplicated. Exclude the day of the triggering event; include the last day. A statute taking effect "thirty days after passage," passed on January 1, takes effect on January 31 — not January 30, not February 1. *Bemis v. Leonard*, 118 Mass. 502 (1875).

One qualification, stated precisely because the loose version of it is wrong. G.L. c. 4, § 9 provides that where the day or the last day for the performance of an act "falls on **Sunday or a legal holiday**," the act may be performed on the next succeeding business day. **Saturday is not in § 9.** A drafter who assumes a Saturday extension under the General Laws will be disappointed; Saturday extensions come from elsewhere, notably Mass. R. Civ. P. 6(a), and from particular statutes that say so. Section 9 also governs the *performance of acts*, not the effectiveness of statutes: it does not move the effective date of an act, which arrives on the calendar day computed, business day or not.

Weeks

Do not draft in weeks. "Two weeks after passage" invites argument about whether the count starts on the day of passage or the day after, and about whether weeks mean calendar weeks or fourteen days. Both problems disappear when the provision says fourteen days. This one is categorical: if a client specification calls for weeks, convert to days before drafting.

Months

Harder, because a month is a variable unit — twenty-eight, twenty-nine, thirty or thirty-one days depending on which month and which year. Massachusetts practice applies the corresponding-date rule: three months from January 15 ends April 15; one month from January 31 ends on the last day of February, because February has no corresponding date. Workable, and a reliable generator of end-of-month disputes.

A drafter needing precision writes in days or writes a calendar date. "This section shall take effect on July 1, 2026" cannot be misread. "This section shall take effect six months after passage" can.

Microsoft Excel's EDATE function implements the corresponding-date rule and is a useful check while drafting: EDATE(start_date, months) returns the date the stated number of months after the start date, using the same end-of-month convention. The difference between counting in days and counting in months, on the same triggering dates:

Trigger date	Measurement	Resulting date
January 15, 2026	30 days after	February 14, 2026
January 15, 2026	1 month after (EDATE)	February 15, 2026
January 31, 2026	30 days after	March 2, 2026
January 31, 2026	1 month after (EDATE)	February 28, 2026
July 1, 2026	180 days after	December 28, 2026
July 1, 2026	6 months after (EDATE)	January 1, 2027

Two of those pairs are two days apart and one is four. On a filing deadline, that is the case.

Years

Usually calendar or fiscal, and the fiscal ones need care. A statute keyed to the Commonwealth's fiscal year — July 1 through June 30 — should say so expressly rather than rely on an inferred conversion. The Commonwealth's fiscal year does not align with the federal fiscal year of October 1 through September 30, does not align with the calendar year, and may not align with the fiscal year of a regulated entity. "Fiscal year 2027" is unambiguous only when the referenced fiscal year is identified.

Watch for General Laws provisions carrying their own fiscal-year definitions. G.L. c. 118E, § 64 defines a "fund fiscal year" running October 1 through September 30, and the hospital fiscal year used in the sections that follow it ends in the calendar year by which it is identified. A cross-reference to one of those chapters imports its definition, not the Commonwealth's.

The default

Whenever the underlying policy permits, write a specific calendar date. A specific date eliminates all three classes of ambiguity at once — inclusive versus exclusive counts, end-of-month corresponding-date quirks, and fiscal-year conventions. Where a specific date is unavailable because the operative event is contingent on external action, days is the next best unit. Use months and years only when the policy genuinely operates in those increments and the end-of-month and fiscal-year edge cases have been worked through.

9. Resolves take effect at once — § 2, not § 1

A resolve takes effect immediately on becoming law. The thirty-day rule does not apply to it. This is the single most useful thing to know about drafting resolves, and it is the thing most often got wrong, because the drafter reaches for the section governing acts.

A resolve is a legislative instrument distinct from an act, used for matters the General Court wishes to address without codifying as permanent law — agency studies, one-time expenditures, declarations of the sense of the General Court. Resolves are numbered in their own chapter series and printed separately from the acts.

The default is set by G.L. c. 4, § 2, in a single sentence:

A resolve, unless otherwise expressly provided therein, shall take effect as soon as it has the force of a law conformably to the constitution.

G.L. c. 4, § 2.

That differs materially from § 1, which governs acts and supplies the thirty-day default. A drafter working on a resolve should not assume § 1 applies. Section 2 controls, and the default is immediate operation.

Whether resolves are subject to the referendum at all is a harder question, and one this guide will not pretend is settled. The distinction usually drawn is between resolves of a law-making character and resolves operating as administrative directions, with the referendum reaching the first and not the second. That line is analytically sound and consistent with how Article 48 speaks of "law[s] passed by the general court." It is also, so far as the reported cases go, an inference rather than a holding, and a drafter should treat it as one. The broader question — whether resolves as a class are properly subject to referendum — is taken up in the companion article.

The operational rule is prudential and the arithmetic favors caution, but only just. An unnecessary preamble on an administrative resolve costs a separate recorded vote and a two-thirds margin the drafter must actually have. Omitting a necessary preamble on a law-making resolve costs ninety days and leaves the resolve open to suspension on a referendum petition. Where the votes are available and the character of the resolve is genuinely uncertain, include the preamble. Where the resolve is plainly an administrative direction, do not spend the floor time.

10. Put it at the end and cross-reference by section number

Effective-date provisions belong at the end of the bill, in their own sections, ordered by the section numbers of the operative provisions to which they apply. A bill with one effective date carries one closing section. A bill with several carries several, grouped after the substantive text and before any severability or short-title provisions.

The alternative — distributing effective-date provisions through the bill, next to the sections they govern — produces a bill that is harder to review, harder to amend on the floor, and harder to read once enacted. The convention exists for the reader who comes later, and it is worth following.

Cross-reference by number

SECTION 12. Sections 3, 5 and 7 of this act shall take effect on July 1, 2026.

Not:

SECTION 12. The foregoing amendments to chapter 32 of the General Laws shall take effect on July 1, 2026.

Use the cross-reference form and update it when section numbers move. The substantive-description form survives renumbering — which is exactly why it also survives scrutiny. Nobody re-reads a sentence that never breaks. A provision that fails loudly when the bill changes is worth more than one that quietly goes on describing a section that is no longer there.

Where the effective date lives after enactment

Once enacted, the effective date is not published by the State Secretary as a separate attribute of the chapter law. The Secretary assigns the chapter number, certifies the text, and publishes. The effective date lives inside the text of the chapter — in the section the drafter wrote — or, where the text is silent, is supplied by the applicable default under G.L. c. 4, § 1 (acts) or § 2 (resolves), or by Article 48's ninety-day rule.

For anyone trying to establish when a statute took effect, that means the answer is almost always in the act itself, and where it is not, it is a function of the date of passage and the applicable default. The hard cases are the ones from Section 3: acts whose exempt status is arguable, where the effective date turns on a categorization nobody made at the time.

The Official Edition of the General Laws, prepared by the Counsel offices of the House and Senate, carries effective-date information in notes appended to the affected section. Westlaw and Lexis carry the same information as historical notes drawn from the chapter laws. Either is reliable for routine work. For any question where the precise date matters — whether the statute was in force on the day of a particular event, whether an amendment took effect immediately or ninety days later, whether a sunset or contingent trigger has operated — go back to the chapter law and confirm. Do not rely on the secondary source alone.

11. Ask the question first

The preceding sections set out the mechanics: the thirty-day rule of G.L. c. 4, § 1, the ninety-day rule of Article 48, the five exempt categories, the two-thirds cost of a preamble, the *Sutton* rule for outside sections, the new-legal-consequence test and the savings clauses that answer it, and the prudent-drafter rule for resolves. Applied together they will produce an effective-date provision that is technically sound and defensible on review.

They will not tell a drafter what the client wants, and that is where the real choices are. Within the class of bills for which Article 48 permits but does not require a preamble, reasonable drafters reach different conclusions. A bill addressing a genuine emergency — a public health threat, a fiscal cliff, a court order with

a near-term compliance deadline — is a different drafting problem from a bill whose operative provisions will not be implemented for months regardless of when it takes effect. The member's preferences, the session calendar, the interaction with other pending legislation, and the drafter's own sense of how similar bills have been received all bear on the choice.

Which returns to the question this guide opened with, and the reason it belongs at the beginning of a drafting conversation rather than the end: *when do you want this to take effect?*

Ask it first. Ask it before the language is settled, because the answer changes the language — whether the bill needs a preamble, whether it needs a backstop date, whether a savings clause is doing work or taking up space. A drafter who asks at the end is not choosing an effective date. A drafter who asks at the end is documenting one that has already been chosen by default, by silence, and by a background rule that never saw the bill.