

Lunenburg Trust Fund Commission

Bilotta Meeting Room/PACC

Lunenburg Town Hall

January 29, 2026

Due to a scheduling conflict with one of the Trust Fund Commission members the meeting was rescheduled to start at 5:30pm. Members recited the Pledge of Allegiance. Chairman Bowen proceeded to read the posted open meeting notice from the Agenda.

No public was present. There were no opening comments from either Mr Howard or Chairman Bowen.

Chairman Bowen reminded the public that our normal meeting schedule is to meet on the 2nd and 4th Thursday of the month, this meeting was rescheduled from Jan 22nd due to a scheduling conflict with one of the members of the Trust Fund Commission.

No Finance Direct or Treasurer reports were presented - as those are published by the Private Trust Company on a quarterly basis, we expect to receive a Treasurer update in February 2026.

The main topics to be discussed during the meeting are two warrant articles drafted by Chairman Bowen in regards to the appropriation of funds to pay for cy pres filings for the American Legion Trusts and a warrant article on vacancies on the Trust Fund Commission.

The first warrant discussed was the Appropriation for Legal Expenses related trust fund Cy Pres proceedings, the text was read as follows:

Town of Lunenburg, Massachusetts

Annual Town Meeting – May 2, 2026

Warrant Article

**ARTICLE __: APPROPRIATION FOR LEGAL EXPENSES RELATED TO TRUST FUND CY
PRES PROCEEDINGS**

To see if the Town will vote to appropriate the sum of Fourteen Thousand Two Hundred Fifty-Two Dollars and Thirty-Nine Cents (\$14,252.39) from the General Fund for the payment of legal expenses, as advised by Town Counsel, necessary for the research, analysis, legal drafting, and filing of cy pres petitions in the Massachusetts Probate and Family Court,

Worcester Division, for the purpose of correcting and updating the terms of certain municipal trust funds so that they may lawfully and effectively serve their intended charitable purposes, including but not limited to:

1. The American Legion Poor Trust Fund (Ledger Name: American Legion Poor) and the Post 283 American Legion Trust Fund (Ledger Name: Lunenburg Post #283), which presently restrict use of funds to members of American Legion Post #283, an organization that is no longer an active or recognized National or State post of the American Legion, thereby preventing the funds from being used for the benefit of Lunenburg resident veterans; and

2. The Worthy Poor Fund (Ledger Name: Worthy Poor Income), whose existing terms require modification to conform with the modern structure of public assistance, as the responsibility for the care of the poor is no longer a municipal function and was assumed by the Commonwealth of Massachusetts in the early twentieth century under statewide public welfare laws;

said appropriation being for the purpose of restoring lawful, practical, and charitable use of these trust funds through judicial approval consistent with donor intent, or take any other action relative thereto.

Submitted by:

Board of Commissioners of Trust Funds

Prepared: January 29, 2026

After review there was identified the need to strike the word municipal from the 6th line of the first paragraph. In order to provide the public with further information on the need to expend these funds, Chairman Bowen drafted a Legal Research Memorandum, the text of which follows:

Town of Lunenburg, Massachusetts
Legal Research Memorandum
Prepared: January 29, 2026

LEGAL RESEARCH MEMORANDUM Re: Warrant Article – Appropriation for Cy Pres Proceedings Affecting Certain Trust Funds Town of Lunenburg, Massachusetts I. Purpose This memorandum explains the legal authority supporting the Warrant Article requesting an appropriation of \$14,252.39 from the General Fund to fund legal services required to pursue cy pres relief in the Massachusetts Probate and Family Court. The purpose of the cy pres proceedings is to restore certain charitable trust funds to lawful and effective use where their current terms are impossible or

impracticable to carry out as written. II. Massachusetts Uniform Trust Code and Cy Pres Massachusetts General Laws Chapter 203E, the Massachusetts Uniform Trust Code, governs the

administration and modification of charitable trusts. Under Section 413 of that chapter, a court may modify the terms of a charitable trust when the original charitable purpose has become unlawful, impracticable, impossible to achieve, or wasteful. The doctrine of cy pres allows the court to redirect the trust property to a purpose as near as possible to the donor's original charitable intent. This authority is judicial in nature and must be exercised by the Probate and Family Court. III. Powers and Duties of the Board of Commissioners of Trust Funds Under M.G.L. Chapter 41, Section 45, the Board of Commissioners of Trust Funds is charged with

the custody and management of trust funds given or bequeathed for the benefit of the Town or its inhabitants. The Board acts as a fiduciary and is required to administer each trust strictly in accordance with donor intent. The Board does not have authority to unilaterally alter or modernize trust purposes; when trust terms can no longer be fulfilled, judicial approval through cy pres is required. IV. Role of the Attorney General The Attorney General of the Commonwealth has supervisory authority over charitable trusts and is a necessary party to any court proceeding seeking cy pres relief or other modification affecting a charitable interest. Probate and Family Court rules require that the Attorney General receive notice and an opportunity to be heard before relief may be granted. V. Limitations of Attorney General Administrative Filings Administrative filings with the Attorney General's Non-Profit Organizations and Public Charities Division, including annual charity filings and related forms, do not authorize changes to donor-restricted purposes. Such filings are regulatory and reporting mechanisms only. They cannot substitute for a court decree modifying a charitable trust. Where a trust's purpose must be altered, Probate and Family Court approval is required. VI. Application to the Affected Trust Funds The American Legion Poor Trust Fund and the Post 283 American Legion Trust Fund restrict benefits to members of American Legion Post #283. Because that post no longer exists as an active or recognized organization, the trusts cannot be administered as written, even though the underlying charitable intent to benefit veterans remains clear. The Worthy Poor Fund was created at a time when towns were responsible for operating poorhouses and providing direct relief to the indigent. Over time, Massachusetts shifted responsibility for public assistance from municipalities to statewide public welfare systems. As a result, the original method of administering the Worthy Poor Fund is no longer practicable under modern law. VII. Need for General Fund Appropriation The individual donor trust accounts affected by this warrant article do not contain sufficient funds to cover the legal costs associated with pursuing cy pres relief. In addition, using restricted trust assets to finance litigation intended to alter the governing terms of those same trusts would raise fiduciary concerns. Because the cy pres proceedings are undertaken to restore lawful usability and preserve donor intent, the associated legal costs must be borne by the Town through an

appropriation from the General Fund. VIII. Conclusion Approval of the Warrant Article will allow the Town to seek necessary judicial relief to restore long-standing charitable trust funds to lawful and effective use, consistent with donor intent and modern legal requirements, while avoiding fiduciary risk and ensuring proper oversight by the Probate Court and the

Attorney General.

No discussion on wording as written and no changes.

Mr Howard made a motion to approve the warrant article for **APPROPRIATION FOR LEGAL EXPENSES RELATED TO TRUST FUND CY PRES PROCEEDINGS** with the aforementioned removal of the word municipal from the first paragraph. The Motion was seconded by Chairman Bowen. Vote on the motion was Mr Howard = Aye, Chairman Bowen = Aye.

The next item on the agenda was to discuss the warrant/bylaw to address the **Distribution of Trust Funds in the Absence of a Quorum**, the amended text of which is as follows:

Town of Lunenburg, Massachusetts
Annual Town Meeting – May 2, 2026
Warrant Article

ARTICLE __: DISTRIBUTION OF TRUST FUNDS IN THE ABSENCE OF A QUORUM

To see if the Town will vote to amend the General Bylaws of the Town of Lunenburg by adding a new section to Chapter 12, Boards, Commissions and Committees, designated as § 12-9, entitled 'Distribution of Trust Funds in the Absence of a Quorum,' to authorize the Select Board, on a limited and conditional basis, to approve distributions from trust funds only when the Board of Commissioners of Trust Funds lacks a lawful quorum, and further to establish specific voting requirements and safeguards applicable to such action, including: (i) a unanimous vote of all five Select Board members when only one elected member of the Board of Commissioners of Trust Funds remains in office; (ii) in the event of an emergency where unanimity is not possible, the temporary inclusion of that sole elected member of the Board of Commissioners of Trust Funds as a voting participant, with approval by a majority of the Select Board members present; and (iii) conflict-of-interest and emergency fallback procedures, including reliance on the Rule of Necessity when legally required; all subject to strict compliance with donor intent, the governing trust instruments, existing policies of the Board of Commissioners of Trust Funds, and all applicable laws, or take any other action relative thereto.

Submitted by:
Board of Commissioners of Trust Funds

Prepared: January 29, 2026

Chairman Bowen proceeded to read the detailed wording of the proposed warrant article/bylaw the text of which follows:

Distribution of Trust Funds in the Absence of a Quorum — Delegated Authority to the Select Board

Prepared: January 29, 2026

Draft Warrant Article

Article __: Distribution of Trust Funds in the Absence of a Quorum — Delegated Authority to the Select Board

To see if the Town will vote to amend the Town's General Bylaws by adding a new chapter and section entitled "Distribution of Trust Funds in the Absence of a Quorum," authorizing the Select Board, on a limited and conditional basis, to act in place of the Board of Commissioners of Trust Funds solely when the Board of Commissioners of Trust Funds lacks a quorum, or take any other action relative thereto.

Submitted by: Select Board

Chapter __. Financial Administration

§ __ __. Distribution of Trust Funds by the Select Board in the Absence of a Quorum of the Board of Commissioners of Trust Funds

§ 1. Purpose and Findings.

(a) The Town maintains multiple trust funds "given or bequeathed for the benefit of the Town or the inhabitants thereof," which are managed by the Board of Commissioners of Trust Funds (BCTF) pursuant to M.G.L. c.41, § 45 and Lunenburg Charter § 3-11. This bylaw ensures timely distributions when the BCTF is unable to attain a legal quorum, without altering donor restrictions or the BCTF's statutory and chartered management role.

§ 2. Definitions.

(a) "Absence of a quorum" means fewer than the number of BCTF members required to constitute a quorum under applicable law and the Town's governing rules, present and eligible to act at a duly posted meeting. (Under general Massachusetts practice, when a quorum is present, a majority of that quorum may act unless a statute provides otherwise.)

§ 3. Triggering Conditions.

The Select Board may act under this section only if both of the following are true:

(a) The BCTF fails to attain a quorum at two (2) duly posted meetings noticed at least seven (7) days in advance, scheduled within forty-five (45) days prior to the requested action; or there exists a vacancy or recusals that make a quorum impracticable for at least thirty (30) days; and

(b) The Town Manager or Town Clerk provides a written certification to the Select Board that a quorum could not be obtained despite reasonable scheduling efforts (to be filed with the Town Clerk). (Posting and meeting conduct shall comply with the Open Meeting Law and standard Select Board practice.)

§ 4. Scope of Delegated Authority.

(a) Distributions Authorized. When the conditions of § 3 are satisfied, the Select Board may

approve the expenditure of trust interest, trust income, and, where permitted, trust principal, provided that such expenditures are authorized or required by the governing trust instrument and would otherwise fall within the lawful authority of the BCTF under M.G.L. c.41, § 45 and Charter § 3-11.

(b) Expenditure of Interest (Non-Depletion). Interest earnings generated by trust assets may be expended in addition to trust income and principal, where allowed by the terms of the trust, provided that such expenditures (1) are consistent with the stated purposes of the trust; (2) do not deplete all monies held in the trust fund; and (3) maintain a reasonable continuing balance in accordance with the trust instrument and applicable fiduciary standards.

(c) Preservation of Fund Balance. No action taken pursuant to this section shall result in the exhaustion of a trust fund or materially impair the long-term viability of the trust. All distributions shall preserve the corpus or minimum balances required by: (1) the express terms of the trust; and (2) any policies duly adopted by the Board of Commissioners of Trust Funds, including spending-rate, reserve, or preservation policies; and (3) any applicable distribution, preservation, reserve, or spending standards imposed by a professional trust management company, investment manager, or fiduciary engaged by the Town for the management of trust assets, and all current policies duly adopted by the Board of Commissioners of Trust Funds, which policies shall remain in full force and effect.

(d) No Expansion of Select Board Authority. Nothing in this section shall be construed to expand the Select Board's authority beyond the temporary approval of distributions during an absence of a quorum. The investment, management, allocation, and preservation of trust assets remain the exclusive responsibility of the BCTF, subject to law, the Town Charter, and the governing trust instruments.

§ 5. Application and Review Process.

(a) Who may apply. Any resident of Lunenburg or Town department eligible under a particular trust may file a written application with the Town Manager's Office on a form approved by the Select Board, identifying the trust, requested amount, purpose, legal basis, and how the request complies with donor terms. (General information about the Trust Fund Commission and contacts shall be posted on the Town website.)

(b) Financial/legal review. Prior to Select Board action, the Treasurer/Collector shall verify fund balance, available income/interest/principal, and any restricted conditions; Town Counsel shall review for legal sufficiency and donor compliance. Written reviews shall be included in the Select Board packet.

(c) Public meeting and vote. The Select Board shall deliberate and vote at a posted public meeting. Approval requires a majority of the members present when a quorum is present, unless a higher threshold applies by law or by this bylaw.

(d) Notice to BCTF. Agenda and materials shall be transmitted to all sitting BCTF members at least forty-eight (48) hours before the meeting.

§ 6. Voting Procedures When the BCTF Lacks a Quorum.

(a) Nature of the BCTF. The BCTF is a three-member board, elected to staggered three-year terms, with vacancies filled as provided by law and the Charter.

(b) Inclusion of Any Sole Elected BCTF Member. If, at the time the Select Board acts under

this bylaw, only one (1) elected BCTF member remains in office (with the other seats vacant or ineligible), the Select Board shall include that elected BCTF member in its deliberations on any application for distribution, with the right to speak, present facts, and respond to questions.

(c) Default Voting Standard (Unanimous Five-Member Vote). In the circumstance described in § 6(b), the Select Board's vote to approve any distribution shall require a unanimous vote of all five (5) Select Board members (i.e., 5-0), taken at a meeting where all five members are present.

(d) Emergency Fallback with Sole Elected BCTF Member as a Voting Participant. (1) If an emergency exists and a unanimous five-member vote cannot be taken because one or more Select Board members are absent or must abstain, the sole elected BCTF member referenced in § 6(b) shall be seated as a voting participant for that agenda item only. "Emergency" shall have the meaning used in the Lunenburg Charter ("a sudden, unexpected, unforeseen happening ... necessitating immediate action or response"). (2) In that emergency circumstance, the voting standard defaults from unanimity to a majority vote of the Select Board members present, with the seated elected BCTF member counted as a qualifying vote for that item. (A quorum of the Select Board must still be present.)

(e) Appointed-Only BCTF Member Not a Voting Participant. If the Select Board has appointed (rather than the voters electing) one (1) individual to the BCTF and a BCTF quorum still does not exist, that appointed individual may attend and advise but shall not participate as a voting member under § 6(d). In such case, the Select Board shall proceed to a unanimous five-member vote under § 6(c); alternatively, in an emergency, the Select Board may defer to a date when all five members are present and able to vote.

(f) Conflicts, Abstentions, and Emergency Continuity (Legal Safeguard). (1) In an emergency where multiple Select Board members must abstain for conflicts, the Select Board may designate two (2) Finance Committee members to sit and vote solely for that agenda item, only to the extent such temporary designation is lawful under state law. (2) Prior to any temporary designation under § 6(f)(1), Town Counsel must confirm in writing that such temporary voting substitution is legally permissible. If not permissible, the Select Board shall instead proceed under the Rule of Necessity, allowing otherwise disqualified Select Board members to participate to the extent necessary to take legally required action, with written advice from Town Counsel or the State Ethics Commission. (3) The meeting minutes shall reflect: the nature of the emergency; the reason(s) for abstentions; counsel's written opinion; and whether the Select Board proceeded with temporary designation under § 6(f)(1) or under the Rule of Necessity per State Ethics Commission Advisory 05-05.

(g) Open Meeting Law and Voting Mechanics. All votes under this section shall occur in an open session duly posted under the Open Meeting Law. When a quorum is present, a majority of that quorum may act unless a higher threshold is imposed by this bylaw or general law.

§ 7. Transition and Pending Matters.

(a) Transition of pending requests. Any application, request, or matter relating to the distribution of trust funds pending before the BCTF at the time a quorum cannot be achieved shall not lapse or be deemed denied solely due to the absence of a quorum. Upon a

formal Select Board finding under § 3, such pending matters may, at the Select Board's discretion, be temporarily assumed and acted upon under this bylaw, provided all actions strictly comply with the governing trust terms.

(b) Preservation of prior actions. Any advisory vote, recommendation, or preliminary determination made by the BCTF prior to the loss of a quorum may be considered but is not binding on the Select Board, which shall make an independent determination based on the trust instrument, applicable law, and the record.

(c) Return of authority. Upon re-establishment of a BCTF quorum, all pending and future matters concerning trust management and distributions shall immediately revert to the BCTF. The Select Board shall take no further action under this section except for ministerial acts necessary to effectuate an already-approved distribution.

§ 8. Fiscal Handling and Records.

(a) Upon Select Board approval, the Treasurer/Collector shall disburse funds, maintain accounting entries by trust (preserving corpus and earnings distinctions), and include such disbursements in the annual trust fund report to Town Meeting, consistent with Charter reporting.

(b) The Select Board shall issue a written determination for each action documenting: (1) the absence-of-quorum finding; (2) the trust's governing terms; (3) the approved distribution and purpose; and (4) references to legal and financial review. The determination shall be filed with the Town Clerk.

§ 9. Emergencies.

If an application demonstrates a time-sensitive need such that delay would frustrate donor intent or materially harm an intended beneficiary, the Select Board may call a special meeting to act under this section, provided the conditions in § 3 are met and all Open Meeting Law requirements are satisfied. (Use the Charter definition of "emergency" for consistency.)

§ 10. Construction; Severability.

This section shall be construed liberally to effectuate donor intent and continuity of municipal operations while preserving the BCTF's statutory and chartered role. If any provision is held invalid, the remainder shall continue in effect. (The Town's Charter delineates roles for elected boards, including the BCTF; this bylaw supplements, not supplants, those provisions.)

§ 11. Effective Date.

This bylaw shall take effect upon approval by the Attorney General or the lapse of ninety (90) days without action after submission by the Town Clerk, and after posting/publishing as required by M.G.L. c.40, § 32.

(Non-binding Explanatory Note)

This bylaw does not transfer management of Lunenburg's trust funds away from the BCTF. Under M.G.L. c.41, § 45 and Charter § 3-11, the BCTF manages and controls trust funds for the Town's benefit, consistent with donor terms. The bylaw only provides a narrow, temporary pathway for the Select Board to approve distributions when the BCTF lacks a

quorum, maintaining donor restrictions and fiduciary protections, requiring Treasurer/Collector accounting, and leaving all investment and management to the BCTF.

Chairman Bowen proceeded to read a section-by-section analysis of the document.

Mr Howard and Chairman Bowen had a brief discussion on the proposed organizing structure of this Board tasked with fulfilling the fund distribution authority of the Trust Fund Commission. Mr Howard felt that having members of the Select Board fill the necessary gap to achieve a quorum would be a sufficient approach, but Chairman Bowen felt that since this is an unusual arrangement that the 5-0 requirement is a necessary higher standard since these activities do not fall in the normal roles/responsibilities of members of the Select Board.

Mr Howard made a motion to approve the **DISTRIBUTION OF TRUST FUNDS IN THE ABSENCE OF A QUORUM** warrant. The Motion was seconded by Chairman Bowen. The vote on the motion was Mr Howard = Aye, Chairman Bowen = Aye.

Chairman Bowen advised that Real Estate investigations are on "Hold"

The next meeting is scheduled to be held on February 12, 2026 at our normal time of 5:00pm.

There was no public comment, nor any comment from Mr Howard or Chairman Bowen.

Mr Howard made a motion to adjourn. Chairman Bowen seconded the motion. The vote on the motion was Mr Howard = Aye, Chairman Bowen = Aye. The Meeting was adjourned at 6:34pm.