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**Massachusetts Department of Revenue  
Division of Local Services**

**LOCAL FINANCES**

**Community Preservation Fund, Compensated  
Absences Fund and other Special Fund Issues**



2012

**Workshop B**

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# **LOCAL FINANCES**

## **Community Preservation, Compensated Absences and other Special Funds**

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# LOCAL FINANCES

## Community Preservation, Compensated Absences and other Special Funds

### DISCUSSION TOPICS

#### COMPENSATED ABSENCES

1. How does a community pay for lump sum payments of sick and vacation leave made to persons retiring or otherwise leaving municipal service? Can it be charged to the departmental salary account?

#### COMMUNITY PRESERVATION FUND

2. Can CPA billing software or other implementation expenses be charged to the CPA fund?
3. Can expenses incurred by the municipality's law department, manager or other department for general legal or policy advice or other municipal departments on CPA issues, e.g., by the accounting officer, law department, town managers, etc., be charged to the CPA fund?
4. How should a community budget for their estimated trust fund distribution? If they supplement the local surcharge with other local revenues?
5. Can a community ever appropriate from CPA funds without a CPC recommendation? To the CPA fund?

6. Does the CPC have to submit its operating budget or project recommendations for review by the finance committee, selectmen, mayor/manager or capital improvement committee before submission to the legislative body for action? Can those officials make any changes in the recommendations or refuse to present the recommendations to the legislative body?
  
7. Can a percentage be used in CPC or other recommendations and can the legislative body vote a percentage, *e.g.*, 10% of revenues for the open space reserve; 50% of local meals excise revenues to the CPA fund?
  
8. Can the legislative body change the amount of a CPC recommended appropriation or reservation?
  
9. Can the community reduce or revoke the CPA surcharge if there is debt outstanding? Can the surcharge be collected for one purpose once the CPA is revoked to fulfill the debt obligation only?
  
10. Can the community establish a separate reserve for recreation?
  
11. The parks and recreation department wants the CPC to recommend using fund monies for a number of projects on the department's wish list. Can CPA monies be used for any of these projects? The projects include:
  - Purchasing land to create an athletic field and park.
  
  - Exercising the town's option to purchase a private golf course currently classified under G.L. Ch. 61B that is being sold for development and using it as a municipal course.
  
  - Converting a parcel of vacant land donated to the town several years ago into soccer fields.

- Installing new drainage at an existing athletic field that has a flooding problem.
  - Fixing a leaking roof at the town skating rink.
  - Adding or replacing lights, fencing, playground equipment or other amenities at three town recreational sites.
  - Buying dilapidated soccer fields from a non-profit organization and restoring them. As an alternative to town ownership and operation of the site, giving monies to the organization to help it restore the fields.
  - Buying an indoor swimming pool from a non-profit organization and rehabilitating the facility. As an alternative to having the town own and then have to operate the site, giving monies to the organization to help it rehabilitate the facility.
12. A local non-profit organization makes a \$25,000 gift to the community for use in developing a new recreational site. Since that is a CPA purpose, does the accounting officer credit the gift to the community preservation fund? If so, can it be spent without appropriation like other gifts and who would decide the specific spending purpose? Are donations for CPA purposes kept with the fund or set up as a separate gift account?
13. If CPA funds are appropriated to a "Municipal Affordable Housing Trust Fund," does the community just give a lump sum payment to the trust? What happens if the funds are not expended for the expected purpose?

## **REVOLVING FUNDS**

1. Can a municipality appropriate monies into a revolving fund?

2. Can a municipality transfer the unspent and unencumbered balance of a departmental revolving fund for another purpose during the year? Can it set up a revolving fund for the receipts of a new program after July 1 and if so, are all receipts collected credited to the fund, or just those received after the fund is authorized?
  
3. Can a municipality set up a single departmental revolving fund for all fees charged by a department? If so, does the municipality have to separately segregate the receipts and expenses for each fee generating program or activity? Can it charge the fund for expenses for non-fee generating programs and activities? Legal fees? Capital items?

### **REVENUE TREATMENT**

1. Are payments made to the municipality or a municipal department by a developer, or party to an agreement with the municipality, for some particular purpose set up as separate accounts?
  
2. Can a municipality vote to establish a trust fund for certain revenues for a particular purpose?

# STATUTORY TREATMENT OF MUNICIPAL REVENUES

## GENERAL FUND REVENUES (Estimated Receipts)

All unrestricted revenues, including real and personal property taxes, other local taxes, such as excises, special assessments and betterments, unrestricted local aid, investment and rental income, voluntary and statutory payments in lieu of taxes and other receipts not expressly dedicated by statute. Revenue belongs to the general fund unless otherwise provided by statute. G.L. c. 44, § 53.

Anticipated general fund revenues for the fiscal year may be appropriated as the tax levy (raise and appropriate) until the tax rate is set. Collections during the year above the estimates used to set the rate are not ordinarily available for appropriation until after the close of the fiscal year and certification by the Director of Accounts as part of the municipality's undesignated fund balance (free cash). G.L. c. 59, § 23.

## SPECIAL REVENUE FUNDS

Particular revenues segregated from the general fund into a separate fund and earmarked for expenditure for specified purposes by statute. Special revenue funds are classified based on the availability of the funds for expenditure and need for a prior appropriation. Special revenue funds include annual revenue funds, receipts reserved for appropriation and revolving funds. They also include gifts and grants from governmental entities and private individuals and organizations. Special revenue funds must be established by statute.

### Annual Revenue Funds (Estimated Receipts)

Annual revenue streams segregated from the general fund into a separate fund to separately budget and account for services that generate, or for purposes supported by, those revenues. Includes enterprise funds for services financed and delivered in a manner similar to private enterprises in order to account for all costs, direct or indirect, of providing the goods or services.

Enterprise Funds (Utility, Health Care, Recreational, Transportation Facility)	G.L. c. 44, § 53F½
Community Preservation Fund	G.L. c. 44B
Light Plant Receipts (Appropriated by Light Plant Board)	G.L. c. 164, § 57

### Receipts Reserved for Appropriation (Actual Collections)

Receipts from a specific revenue source segregated from general fund into a separate fund and earmarked for appropriation for specified purposes by statute. Appropriations are limited to actual collections on hand and available.

Ambulance Receipts	G.L. c. 40, § 5F
Waterways Improvement Fund	G.L. c. 60B, §§ 2(i) & 4 G.L. c. 40, § 5G
Sale of Real Estate	G.L. c. 44, § 63
Dog Fees	G.L. c. 140, § 147A G.L. c. 140, § 172

### **Revolving Funds (Actual Collections)**

Receipts from a specific revenue source segregated from general fund into a separate fund and earmarked for expenditure without appropriation for specified purposes by statute to support the activity, program or service that generated the receipts. Typically authorized for programs or services with expenses that (1) fluctuate with demand and (2) can be matched with the fees, charges or other revenues collected during the year. The board or officer operating the program is usually given spending authority, but can only spend from actual collections on hand and available.

Arts Lottery Council Monies	G.L. c. 10, § 58
School Rental Receipts	G.L. c. 40, § 3
Parks and Recreation Fees	G.L. c. 44, § 53D
Departmental Revolving Fund	G.L. c. 44, § 53E½
Outside Consultants Revolving (Planning/Zoning/Health/Conservation)	G.L. c. 44, § 53G
Student Athletic and Activities	G.L. c. 71, § 47

### **TRUST AND AGENCY FUNDS**

Fiduciary funds segregated from the general fund to account for assets held in a trustee capacity or as an agent for individuals, private organizations, other governmental units, etc. These include expendable trust funds, non-expendable trust funds, pension trust funds and agency funds.

Examples of Trust Funds are:

Scholarship Fund	G.L. c. 60, § 3C
Local Education Fund	G.L. c. 60, § 3C
Cemetery Perpetual Care Fund	G.L. c. 114, § 25

Examples of Agency Funds are:

Police Outside Detail Fund	G.L. c. 44, § 53C
Student Activity Agency Account	G.L. c. 71, § 47
Sporting License Receipts	G.L. c. 131, § 18

### **APPROPRIATED SPECIAL PURPOSE FUNDS**

Statutory funds to account for allocation of general revenues by the appropriating authority to particular purposes.

Reserve Fund	G.L. c. 40, § 5A (cities) G.L. c. 40, § 6 (towns)
Stabilization Fund (unrestricted)	G.L. c. 40, § 5B
Pension Reserve Fund	G.L. c. 40, § 5D
Unemployment Compensation Fund	G.L. c. 40, § 5E
Conservation Fund	G.L. c. 40, § 8C
Overlay (annual accounts)	G.L. c. 59, § 25
Overlay Surplus (balances)	G.L. c. 59, § 25

## SPECIAL PURPOSE FUNDS QUICK REFERENCE

### Enterprise Revenues

Water Surplus	G.L. c. 41, § 69B
Landfill/Trash Collection Charges	G.L. c. 44, § 28C(f)
Landfill Closure Reserve	G.L. c. 44, § 28C (f)
Enterprise Funds	G.L. c. 44, § 53F½
Electric Light Receipts	G.L. c. 164, § 57

### Temporary Funds (Expire At Year's End)

Reserve Fund	G.L. c. 40, § 5A (cities) G.L. c. 40, § 6 (towns)
Free Cash (Must be certified by DOR)	G.L. c. 59, § 23
Enterprise Retained Earnings (Must be certified by DOR)	G.L. c. 44, § 53F½ G.L. c. 59, § 23
Overlay Surplus	G.L. c. 59, § 25

### Revolving Funds (No Appropriation Needed)

Arts Lottery Council Monies	G.L. c. 10, § 58
School Rental Receipts	G.L. c. 40, § 3
Centennial Celebration	G.L. c. 40, § 5H
Performance Bond Forfeitures (Up to \$100,000 by local option)	G.L. c. 41, § 8IU
Expedited Permitting Fees	G.L. c. 43D, § 6(b)
Special Detail Funds	G.L. c. 44, § 53C
Parks and Recreation Fund	G.L. c. 44, § 53D
Departmental Revolving Fund	G.L. c. 44, § 53E½
Energy Revolving Loan Fund	G.L. c. 44, § 53E¾
Outside Consultants Revolving Fund (Planning/Zoning/Health/Conservation)	G.L. c. 44, § 53G
Anniversary Celebration Fund	G.L. c. 44, § 53I
Affordable Housing Trust Fund	G.L. c. 44, § 55C
Educational TV Trust Fund	G.L. c. 71, § 13H
Culinary Arts Programs	G.L. c. 71, § 17A
School Day Care Receipts	G.L. c. 71, § 26C
Student Athletic and Activities	G.L. c. 71, § 47
Student Activity Agency	G.L. c. 71, § 47
Community Schools Programs	G.L. c. 71, § 71C
Adult Continuing Education	G.L. c. 71, § 71E
Use of School Property	G.L. c. 71, § 71E
Non-resident Students' Tuition	G.L. c. 71, § 71F
Vocational Education Programs	G.L. c. 74, § 14B
School Choice	G.L. c. 76, § 12B(O)
Law Enforcement Trust	G.L. c. 94C, § 47
Wetlands Protection Fund	G.L. c. 131, § 40 St. 1997, c. 43, § 218 St. 1998, c. 194, § 349
Multi-community Yard Waste Program	St. 1993, c. 179
School Bus Advertising Receipts	St. 2002, c. 184, § 197
Extended Election Polling Hours	St. 1983, c. 503
School Lunch Fund	St. 1948, c. 548

**OTHER SPECIAL PURPOSE FUNDS (Held-Over From Year To Year)**

Fingerprinting Fees (local portion)	G.L. c. 6, § 172B½
Tax Credit Bond Proceeds	G.L. c. 44, § 21B
Self-Insurance Health Fund	G.L. c. 32B, § 3A
Other Post Employment Benefits (OPEB) Liability Trust Fund	G.L. c. 32B, § 20
Stabilization Fund	G.L. c. 40, § 5B
Pension Reserve Fund	G.L. c. 40, § 5D
Unemployment Compensation Fund	G.L. c. 40, § 5E
Ambulance Receipts Reserved	G.L. c. 40, § 5F
Beach and Pool Receipts Reserved	G.L. c. 40, § 5F
Golf Course Receipts Reserved	G.L. c. 40, § 5F
Skating Rink Receipts Reserved	G.L. c. 40, § 5F
Waterways Improvement Fund	G.L. c. 40, § 5G
	G.L. c. 60B, § 2(i)
Conservation Fund	G.L. c. 40, § 8C
Recycling Commission Fund	G.L. c. 40, § 8H
Building Insurance Fund	G.L. c. 40, § 13
Workmen's Compensation Fund	G.L. c. 40, § 13A
Parking Meter Fees	G.L. c. 40, § 22A
Off-street Parking Receipts	G.L. c. 40, §§ 22B & 22C
Commission on Disabilities Fund	G.L. c. 40, § 22G
Compensated Absences	G.L. c. 41, § 31D
Bond Proceeds	G.L. c. 44, § 20
State Highway and Water Pollution Funds	G.L. c. 44, § 53
Insurance/Restitution Proceeds (Up to \$20,000)	G.L. c. 44, § 53
Lost School Books/Industrial Arts Supplies	G.L. c. 44, § 53
Grants and Gifts	G.L. c. 44, § 53A
	G.L. c. 71, § 37A
Sale of Real Estate Proceeds	G.L. c. 44, § 63
Community Preservation Fund	G.L. c. 44B, § 7
Overlay	G.L. c. 59, §§ 25 & 70A
Local Education Fund	G.L. c. 60, § 3C
Scholarship Fund	G.L. c. 60, § 3C
Low Income Seniors and Disabled Tax Relief Fund	G.L. c. 60, § 3D
Wastewater Disposal Receipts	G.L. c. 83, § 1G
Estimated Sewer Betterments	G.L. c. 83, § 15B
Bicyclist Traffic Fines Receipts Reserved	G.L. c. 85, § 11E
Non-Resident Student Motor Vehicle Registration Fines Receipts Reserved	G.L. c. 90, § 3½
Weight and Measure Fines Receipts Reserved	G.L. c. 98, § 29A
Educational/Instructional Materials Trust Fund	G.L. c. 71, § 20A
METCO Reimbursements	G.L. c. 76, § 12A
Cemetery Sale of Lots Fund	G.L. c. 114, § 15
Cemetery Perpetual Care Funds	G.L. c. 114, § 25
Spay and Neuter Deposits	G.L. c. 140, § 139A
Dog Fees	G.L. c. 140, § 147A
	G.L. c. 140, § 172
Building and Fire Code Enforcement Fines Receipts Reserved	G.L. c. 148A, § 5

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## MODEL MULTIPLE DEPARTMENTAL REVOLVING FUNDS ARTICLE AND VOTE

**Article 5 - DEPARTMENTAL REVOLVING FUNDS AUTHORIZATION.** To see if the town will vote to authorize revolving funds for certain town departments under Massachusetts General Laws Chapter 44, § 53E½ for the fiscal year beginning July 1, 2012, or take any other action relative thereto.

**Motion** – That the town establish revolving funds for certain town departments under Massachusetts General Laws Chapter 44, § 53E½ for the fiscal year beginning July 1, 2012, with the specific receipts credited to each fund, the purposes for which each fund may be spent and the maximum amount that may be spent from each fund for the fiscal year (if optional information included (shaded columns) then insert: the disposition of the balance of each fund at the end of the current fiscal year and restrictions on expenditures that may be made from each fund), as follows:

<u>Revolving Fund</u>	<u>Authorized to Spend Fund</u>	<u>Revenue Source</u>	<u>Use of Fund</u>	<u>FY13 Spending Limit<sup>1</sup></u>	<u>Disposition of FY12 Fund Balance (Optional)</u>	<u>Spending Restrictions or Comments (Optional)</u>
Hazardous Materials	Fire Chief	Fees charged to persons spilling or releasing hazardous materials	Training and special equipment needed to respond to hazardous materials incidents	\$15,000	New fund	
Title V Inspection	Board of Health	Septic system inspection fees	Salaries of inspectors or contractual services related to septic system inspections	\$40,000	Balance available for expenditure	
Teen Center	Teen Center Director	Teen center snack bar receipts, dance admission charges, activity charges and receipts	Expenses, supplies and contractual services to operate Teen Center	\$15,000	Balance available for expenditure	Fund may not be spent for salaries of more than one part-time employee. Full-time director salary funded in annual budget
Senior Citizens Bus	Council on Aging	Bus user fees	Salaries, expenses, contractual services to operate bus service to senior citizen housing developments and debt service on bus purchased for program	\$50,000	\$5,000 of balance available for expenditure, remainder to revert to General Fund	Fund may not be spent for salaries of more than two full-time employees, or any capital item over \$500
TOTAL SPENDING <sup>2</sup>				\$120,000		

<sup>1</sup> FY13 per department spending limit is \$100,000 (1% of FY12 levy of \$10,000,000)

<sup>2</sup> FY13 total spending limit is \$1,000,000 (10% of FY12 levy of \$10,000,000)

**COMPENSATED ABSENCES FUND**  
**General Laws Chapter 40, § 13C**  
**(Added by St. 2012, c. 66, § 1)**

Section 13D. Any city, town or district which accepts the provisions of this section by majority vote of its city council, the voters present at a town meeting or district meeting or by majority vote of a regional school committee may establish, appropriate or transfer money to a reserve fund for the future payment of accrued liabilities for compensated absences due any employee or full-time officer of the city or town upon the termination of the employee's or full-time officer's employment. The treasurer may invest the monies in the manner authorized by section 54 of chapter 44, and any interest earned thereon shall be credited to and become part of the fund. The city council, town meeting or district meeting may designate the municipal official to authorize payments from this fund, and in the absence of a designation, it shall be the responsibility of the chief executive officer of the city, town or district. In a regional school district, funds may be added to the reserve fund for the future payment of accrued liabilities only by appropriation in the annual budget voted on by the city council of member cities or at the annual town meeting of member towns.

**TREATMENT OF MUNICIPAL REVENUES**  
**General Laws Chapter 44, § 53**

Section 53. All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof; provided, however, that (1) sums allotted by the commonwealth or a county to cities or towns for highway purposes and sums allotted by the commonwealth to cities, towns or districts for water pollution control purposes shall be available therefor without specific appropriation, but shall be used only for the purposes for which the allotment is made or to meet temporary loans issued in anticipation of such allotment as provided in section six or six A, (2) sums not in excess of twenty thousand dollars recovered under the terms of fire or physical damage insurance policy and sums not in excess of twenty thousand dollars received in restitution for damage done to such city, town or district property may be used by the officer or department having control of the city, town or district property for the restoration or replacement of such property without specific appropriation and (3) sums recovered from pupils in the public schools for loss of school books or paid by pupils for materials used in the industrial arts projects may be used by the school committee for the replacement of such books or materials without specific appropriation.

## **GIFTS AND GRANTS**

### **General Laws Chapter 44 §53A**

Section 53A. An officer or department of any city or town, or of any regional school or other district, may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a county or municipality or an agency thereof, and in the case of any grant or gift given for educational purposes may expend said funds for the purposes of such grant or gift with the approval of the school committee, and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift in cities having a Plan D or Plan E form of government with the approval of the city manager and city council, in all other cities with the approval of the mayor and city council, in towns with the approval of the board of selectmen, and in districts with the approval of the prudential committee, if any, otherwise the commissioners. Notwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation. If the express written terms or conditions of the grant agreement so stipulate, interest on the grant funds may remain with and become a part of the grant account and may be expended as part of the grant by such officer or department receiving the grant or gift without further appropriation. Any grant, subvention or subsidy for educational purposes received by an officer or department of a city, town or school district from the federal government may be expended by the school committee of such city, town or district without including the purpose of such expenditure in, or applying such amount to, the annual or any supplemental budget or appropriation request of such committee; provided, however, that this sentence shall not apply to amounts so received to which section twenty-six C of chapter seventy-one of the General Laws, and chapter six hundred and twenty-one of the acts of nineteen hundred and fifty-three, as amended, and chapter six hundred and sixty-four of the acts of nineteen hundred and fifty-eight, as amended, apply; and, provided further, that notwithstanding the foregoing provision, this sentence shall apply to amounts so received as grants under the Elementary and Secondary Education Act of 1965, (Public Law 89-10). After receipt of a written commitment from the federal government approving a grant for educational purposes and in anticipation of receipt of such funds from the federal government, the treasurer, upon the request of the school committee, shall pay from the General Fund of such municipality compensation for services rendered and goods supplied to such federal grant programs, such payments to be made no later than ten days after the rendition of such services or the supplying of such goods; provided, however, that the provisions of such federal grant would allow the treasurer to reimburse the General Fund for the amounts so advanced.

## **DEPARTMENTAL REVOLVING FUND**

### **General Laws Chapter 44, § 53E½**

Section 53E½. Notwithstanding the provisions of section fifty-three, a city or town may annually authorize the use of one or more revolving funds by one or more municipal agency, board, department or office which shall be accounted for separately from all other monies in such city or town and to which shall be credited only the departmental receipts received in connection with the programs supported by such revolving fund. Expenditures may be made from such revolving fund without further appropriation, subject to the provisions of this section; provided, however, that expenditures shall not be made or liabilities incurred from any such revolving fund in excess of the balance of the fund nor in excess of the total authorized expenditures from such fund, nor shall any expenditures be made unless approved in accordance with sections forty-one, forty-two, fifty-two and fifty-six of chapter forty-one.

Interest earned on any revolving fund balance shall be treated as general fund revenue of the city or town. No revolving fund may be established pursuant to this section for receipts of a municipal water or sewer department or of a municipal hospital. No such revolving fund may be established if the aggregate limit of all revolving funds authorized under this section exceeds ten percent of the amount raised by taxation by the city or town in the most recent fiscal year for which a tax rate has been certified under section twenty-three of chapter fifty-nine. No revolving fund expenditures shall be made for the purpose of paying any wages or salaries for full time employees unless such revolving fund is also charged for the costs of fringe benefits associated with the wages or salaries so paid; provided, however, that such prohibition shall not apply to wages or salaries paid to full or part-time employees who are employed as drivers providing transportation for public school students; provided further, that only that portion of a revolving fund which is attributable to transportation fees may be used to pay such wages or salaries and provided, further, that any such wages or salaries so paid shall be reported in the budget submitted for the next fiscal year.

A revolving fund established under the provisions of this section shall be by vote of the annual town meeting in a town, upon recommendation of the board of selectmen, and by vote of the city council in a city, upon recommendation of the mayor or city manager, in Plan E cities, and in any other city or town by vote of the legislative body upon the recommendation of the chief administrative or executive officer. Such authorization shall be made annually prior to each respective fiscal year; provided, however, that each authorization for a revolving fund shall specify: (1) the programs and purposes for which the revolving fund may be expended; (2) the departmental receipts which shall be credited to the revolving fund; (3) the board, department or officer authorized to expend from such fund; (4) a limit on the total amount which may be expended from such fund in the ensuing fiscal year; and, provided, further, that no board, department or officer shall be authorized to expend in any one fiscal year from all revolving funds under its direct control more than one percent of the amount raised by taxation by the city or town in the most recent fiscal year for which a tax rate has been certified under section twenty-three of chapter fifty-nine.

Notwithstanding the provisions of this section, whenever, during the course of any fiscal year, any new revenue source becomes available for the establishment of a revolving fund under this section, such a fund may be established in accordance with this section upon

certification by the city auditor, town accountant, or other officer having similar duties, that the revenue source was not used in computing the most recent tax levy.

In any fiscal year the limit on the amount that may be spent from a revolving fund may be increased with the approval of the city council and mayor in a city, or with the approval of the selectmen and finance committee, if any, in a town; provided, however, that the one percent limit established by clause (4) of the third paragraph is not exceeded.

The board, department or officer having charge of such revolving fund shall report to the annual town meeting or to the city council and the board of selectmen, the mayor of a city or city manager in a Plan E city or in any other city or town to the legislative body and the chief administrative or executive officer, the total amount of receipts and expenditures for each revolving fund under its control for the prior fiscal year and for the current fiscal year through December thirty-first, or such later date as the town meeting or city council may, by vote determine, and the amount of any increases in spending authority granted during the prior and current fiscal years, together with such other information as the town meeting or city council may by vote require.

At the close of a fiscal year in which a revolving fund is not reauthorized for the following year, or in which a city or town changes the purposes for which money in a revolving fund may be spent in the following year, the balance in the fund at the end of the fiscal year shall revert to surplus revenue unless the annual town meeting or the city council and mayor or city manager in a Plan E city and in any other city or town the legislative body vote to transfer such balance to another revolving fund established under this section.

The director of accounts may issue guidelines further regulating revolving funds established under this section.

**COMMUNITY PRESERVATION ACT**  
**General Laws Chapter 44B**  
**2010 Official Edition**  
**As amended by St. 2012, c. 139, §§ 69-83**

**Section 1.** This chapter shall be known and may be cited as the Massachusetts Community Preservation Act.

Section 2. As used in this chapter, the following words shall, unless the context clearly indicates a different meaning, have the following meanings:—

“Acquire”, obtain by gift, purchase, devise, grant, rental, rental purchase, lease or otherwise. “Acquire” shall not include a taking by eminent domain, except as provided in this chapter.

“Annual income”, a family’s or person’s gross annual income less such reasonable allowances for dependents, other than a spouse, and for medical expenses as the housing authority or, in the event that there is no housing authority, the department of housing and community development, determines.

**“Capital improvement”, reconstruction or alteration of real property that: (1) materially adds to the value of the real property, or appreciably prolongs the useful life of the real property; (2) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and (3) is intended to become a permanent installation or is intended to remain there for an indefinite period of time. [69]**

“Community housing”, low and moderate income housing for individuals and families, including low or moderate income senior housing.

“Community preservation”, the acquisition, creation and preservation of open space, the acquisition, creation and preservation of historic resources and the creation and preservation of community housing.

“Community preservation committee”, the committee established by the legislative body of a city or town to make recommendations for community preservation, as provided in section 5.

“Community Preservation Fund”, the municipal fund established under section 7.

“CP”, community preservation.

“Historic resources”, a building, structure, vessel real property, document or artifact that is listed ~~or eligible for listing~~ [70] on the state register of historic places or has been determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of a city or town.

“Legislative body”, the agency of municipal government which is empowered to enact ordinances or by-laws, adopt an annual budget and other spending authorizations, loan

orders, bond authorizations and other financial matters and whether styled as a city council, board of aldermen, town council, town meeting or by any other title.

“Low income housing”, housing for those persons and families whose annual income is less than 80 per cent of the areawide median income. The areawide median income shall be the areawide median income as determined by the United States Department of Housing and Urban Development.

“Low or moderate income senior housing”, housing for those persons having reached the age of 60 or over who would qualify for low or moderate income housing.

“Maintenance”, ~~the upkeep of real or personal property~~ incidental repairs which neither materially add to the value of the property or appreciably prolong the property’s life, but keep the property in a condition of fitness, efficiency or readiness. [71]

“Moderate income housing”, housing for those persons and families whose annual income is less than 100 per cent of the areawide median income. The areawide median income shall be the areawide median income as determined by the United States Department of Housing and Urban Development.

“Open space”, shall include, but not be limited to, land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use.

“Preservation”, protection of personal or real property from injury, harm or destruction; ~~but not including maintenance.~~ [72]

“Real property”, land, buildings, appurtenant structures and fixtures attached to buildings or land, including, where applicable, real property interests.

“Real property interest”, a present or future legal or equitable interest in or to real property, including easements and restrictions, and any beneficial interest therein, including the interest of a beneficiary in a trust which holds a legal or equitable interest in real property, but shall not include an interest which is limited to the following: an estate at will or at sufferance and any estate for years having a term of less than 30 years; the reversionary right, condition or right of entry for condition broken; the interest of a mortgagee or other secured party in a mortgage or security agreement.

“Recreational use”, active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground or athletic field. “Recreational use” shall not include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.

“Rehabilitation”, capital improvements, or the making the remodeling, ~~reconstruction and making~~ of extraordinary repairs to historic resources, open spaces, lands for recreational use and community housing for the purpose of making such historic resources, open spaces, lands for recreational use and community housing functional for

their intended uses, including but not limited to improvements to comply with the Americans with Disabilities Act and other federal, state or local building or access codes; provided, that ~~with respect to historic resources, "rehabilitation" shall have the additional meaning of work to comply with the Standards for Rehabilitation stated in the United States Secretary of the Interior's Standards for the Treatment of Historic Properties codified in 36 C.F.R. Part 68;~~ and provided further, that with respect to land for recreational use, "rehabilitation" shall include the replacement of playground equipment and other capital improvements to the land or the facilities thereon which make the land or the related facilities more functional for the intended recreational use.

"Support of Community housing", shall include, but not be limited to, programs that provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing, or to an entity that owns, operates or manages such housing, for the purpose of making housing affordable. [73]

**Section 3. (a)** Sections 3 to 7, inclusive, shall take effect in any city or town upon the approval by the legislative body and their acceptance by the voters of a ballot question as set forth in this section.

**(b)** Notwithstanding the provisions of chapter 59 or any other general or special law to the contrary, the legislative body may vote to accept sections 3 to 7, inclusive, by approving a surcharge on real property of not more than 3 per cent of the real estate tax levy against real property, as determined annually by the board of assessors. The amount of the surcharge shall not be included in a calculation of total taxes assessed for purposes of section 21C of said chapter 59.

**(b½)** Notwithstanding the provisions of chapter 59 or any other general or special law to the contrary, as an alternative to subsection (b), the legislative body may vote to accept sections 3 to 7, inclusive, by approving a surcharge on real property of not less than 1 per cent of the real estate tax levy against real property, and making an additional commitment of funds by dedicating revenue not greater than 2 per cent of the real estate tax levy against real property; provided, however, that additional funds so committed shall come from other sources of municipal revenue, including, but not limited to, hotel excise taxes pursuant to chapter 64G, linkage fee and inclusionary zoning payments, however authorized, the sale of municipal property pursuant to section 3 of chapter 40, parking fines and surcharges pursuant to sections 20, 20A, and 20A1/2 of chapter 90, existing dedicated housing, open space and historic preservation funds, however authorized, gifts received from private sources for community preservation purposes, and provided further that additional funds so committed shall not include any federal or state funds. The total funds committed to purposes authorized under this chapter by means of this subsection shall not exceed 3 per cent of the real estate tax levy against real property, less exemptions adopted. In the event that the municipality shall no longer dedicate all or part of the additional funds to community preservation, the surcharge of not less than 1 per cent shall remain in effect, but may be reduced pursuant to section 16.

[74]

(c) All exemptions and abatements of real property authorized by said chapter 59 or any other law for which a taxpayer qualifies as eligible shall not be affected by this chapter. A taxpayer receiving an exemption of real property authorized by said chapter 59 or any other law shall be exempt from any surcharge on real property established under this section. The surcharge to be paid by a taxpayer receiving an abatement of real property authorized by said chapter 59 or any other law shall be reduced in proportion to the amount of such abatement.

(d) Any amount of the surcharge not paid by the due date shall bear interest at the rate per annum provided in section 57 of said chapter 59.

(e) The legislative body may also vote to accept one or more of the following exemptions:

(1) for property owned and occupied as a domicile by a person who would qualify for low income housing or low or moderate income senior housing in the city or town;

(2) for class three, commercial, and class four, industrial, properties as defined in section 2A of said chapter 59, in cities or towns with classified tax rates; or

(3) for \$100,000 of the value of each taxable parcel of residential real property; or

(4) for \$100,000 of the value of each taxable parcel of class 3, commercial property, and class four, industrial property as defined in section 2A of said chapter 59. [75]

(f) Upon approval by the legislative body, the actions of the body shall be submitted for acceptance to the voters of a city or town at the next regular municipal or state election. The city or town clerk or the state secretary shall place it on the ballot in the form of the following question:

"Shall this (city or town) accept sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body, a summary of which appears below?"

(Set forth here a fair, concise summary and purpose of the law to be acted upon, as determined by the city solicitor or town counsel, including in said summary the percentage of the surcharge to be imposed.)

If a majority of the voters voting on said question vote in the affirmative, then its provisions shall take effect in the city or town, but not otherwise.

(g) The final date for notifying or filing a petition with the city or town clerk or the state secretary to place such a question on the ballot shall be 35 days before the city or town election or 60 days before the state election.

(h) If the legislative body does not vote to accept sections 3 to 7, inclusive, at least 90 days before a regular city or town election or 120 days before a state election, then a question seeking said acceptance through approval of a particular surcharge rate with exemption or exemptions, may be so placed on the ballot when a petition signed by at least 5 per cent of the registered voters of the city or town requesting such action is filed

with the registrars, who shall have seven days after receipt of such petition to certify its signatures. Upon certification of the signatures, the city or town clerk or the state secretary shall cause the question to be placed on the ballot at the next regular city or town election held more than 35 days after such certification or at the next regular state election held more than 60 days after such certification.

**(i)** With respect to real property owned by a cooperative corporation, as defined in section 4 of chapter 157B, that portion which is occupied by a member under a proprietary lease as the member's domicile shall be considered real property owned by that member for the purposes of exemptions provided under this section. The member's portion of the real estate shall be represented by the member's share or shares of stock in the cooperative corporation, and the percentage of that portion to the whole shall be determined by the percentage of the member's shares to the total outstanding stock of the corporation, including shares owned by the corporation. This portion of the real property shall be eligible for any exemption provided in this section if the member meets all requirements for the exemption. Any exemption so provided shall reduce the taxable valuation of the real property owned by the cooperative corporation, and the reduction in taxes realized by this exemption shall be credited by the cooperative corporation against the amount of the taxes otherwise payable by or chargeable to the member. Nothing in this subsection shall be construed to affect the tax status of any manufactured home or mobile home under this chapter, but this subsection shall apply to the land on which the manufactured home or mobile home is located if all other requirements of this clause are met. This subsection shall take effect in a city or town upon its acceptance by the city or town.

**Section 4. (a)** Upon acceptance of sections 3 to 7, inclusive, and upon the assessors' warrant to the tax collector, the accepted surcharge shall be imposed.

**(b)** After receipt of the warrant, the tax collector shall collect the surcharge in the amount and according to the computation specified in the warrant and shall pay the amounts so collected, quarterly or semi-annually, according to the schedule for collection of property taxes for the tax on real property, to the city's or town's treasurer. The tax collector shall cause appropriate books and accounts to be kept with respect to such surcharge, which shall be subject to public examination upon reasonable request from time to time.

**(c)** The remedies provided by chapter 60 for the collection of taxes upon real estate shall apply to the surcharge on real property pursuant to this chapter.

**Section 5. (a)** A city or town that accepts sections 3 to 7, inclusive, shall establish by ordinance or by-law a community preservation committee. The committee shall consist of not less than five nor more than nine members. The ordinance or by-law shall determine the composition of the committee, the length of its term and the method of selecting its members, whether by election or appointment or by a combination thereof. The committee shall include, but not be limited to, one member of the conservation commission established under section 8C of chapter 40 as designated by the commission, one member of the historical commission established under section 8D of said chapter 40 as designated by the commission, one member of the planning board established under section 81A of chapter 41 as designated by the board, one member of the board of park commissioners established under section 2 of chapter 45 as designated by the board and one member of the housing authority established under section 3 of chapter 121B as

designated by the authority, or persons, as determined by the ordinance or by-law, acting in the capacity of or performing like duties of the commissions, board or authority if they have not been established in the city or town. If there are no persons acting in the capacity of or performing like duties of any such commission, board or authority, the ordinance or by-law shall designate those persons.

**(b)(1)** The community preservation committee shall study the needs, possibilities and resources of the city or town regarding community preservation, including the consideration of regional projects for community preservation. [76] The committee shall consult with existing municipal boards, including the conservation commission, the historical commission, the planning board, the board of park commissioners and the housing authority, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one or more public informational hearings on the needs, possibilities and resources of the city or town regarding community preservation possibilities and resources, notice of which shall be posted publicly and published for each of two weeks preceding a hearing in a newspaper of general circulation in the city or town.

**(2)** The community preservation committee shall make recommendations to the legislative body for the acquisition, creation and preservation of open space; for the acquisition, preservation, rehabilitation and restoration of historic resources; for the acquisition, creation, and preservation, rehabilitation and restoration of land for recreational use; for the acquisition, creation, preservation and support of community housing; and for rehabilitation or restoration of open space, ~~land for recreational use and~~ community housing that is acquired or created as provided in this section; provided, however, that funds expended pursuant to this chapter shall not be used for maintenance. With respect to community housing, the community preservation committee shall recommend, wherever possible, the reuse of existing buildings or construction of new buildings on previously developed sites. With respect to recreational use, the acquisition of artificial turf for athletic fields shall be prohibited. [77]

**(3)** The community preservation committee may include in its recommendation to the legislative body a recommendation to set aside for later spending funds for specific purposes that are consistent with community preservation but for which sufficient revenues are not then available in the Community Preservation Fund to accomplish that specific purpose or to set aside for later spending funds for general purposes that are consistent with community preservation.

**(c)** The community preservation committee shall not meet or conduct business without the presence of a quorum. A majority of the members of the community preservation committee shall constitute a quorum. The community preservation committee shall approve its actions by majority vote. Recommendations to the legislative body shall include their anticipated costs.

**(d)** After receiving such recommendations from the community preservation committee, the legislative body shall ~~then~~ take such action and approve such appropriations from the Community Preservation Fund as set forth in section 78-, and such additional non-Community Preservation Fund appropriations as it deems appropriate to carry out the recommendations of the community preservation committee. In the case of a city, the

ordinance shall provide for the mechanisms under which the legislative body may approve and veto appropriations made pursuant to this chapter, in accordance with the city charter. [78]

(e) For the purposes of community preservation and upon the recommendation of the community preservation committee, a city or town may take by eminent domain under chapter 79, the fee or any lesser interest in real property or waters located in such city or town if such taking has first been approved by a two-thirds vote of the legislative body. Upon a like recommendation and vote, a city or town may expend monies in the Community Preservation Fund, if any, for the purpose of paying, in whole or in part, any damages for which a city or town may be liable by reason of a taking for the purposes of community preservation.

(f) Section 16 of chapter 30B shall not apply to the acquisition by a city or town, of real property or an interest therein, as authorized by this chapter for the purposes of community preservation and upon recommendation of the community preservation committee and, notwithstanding section 14 of chapter 40, for purposes of this chapter, no such real property, or interest therein, shall be acquired by any city or town for a price exceeding the value of the property as determined by such city or town through procedures customarily accepted by the appraising profession as valid.

A city or town may appropriate money in any year from the Community Preservation Fund to an affordable housing trust fund.

**Section 6.** In ~~every~~each fiscal year and upon the recommendation of the community preservation committee, the legislative body shall spend, or set aside for later spending, not less than 10 per cent of the annual revenues in the Community Preservation Fund for open space, ~~but not including land for recreational use,~~ not less than 10 per cent of the annual revenues for historic resources and not less than 10 per cent of the annual revenues for community housing. In each fiscal year, the legislative body shall make ~~such~~ appropriations from the Community Preservation Fund as it deems necessary for the administrative and operating expenses of the community preservation committee ~~but the~~ and such appropriations shall not exceed 5 per cent of the annual revenues in the Community Preservation Fund. The legislative body may also make appropriations from the Community Preservation Fund as it deems necessary for costs associated with tax billing software and outside vendors necessary to integrate such software for the first year that a city or town implements the provisions of this chapter, provided, however, that the total of any administrative and operating expenses of the community preservation committee and the first year implementation expenses do not exceed 5 per cent of the annual revenues in the Community Preservation Fund. [79]

Funds that are set aside shall be held in the Community Preservation Fund and spent in that year or later years, ~~but~~; provided, however, that funds set aside for a specific purpose shall be spent only for the specific purpose. Any funds set aside may be expended in any city or town ~~in the commonwealth~~. The community preservation funds shall not replace existing operating funds, only augment them.

**Section 7.** Notwithstanding the provisions of section 53 of chapter 44 or any other general or special law to the contrary, a city or town that accepts sections 3 to 7,

inclusive, shall establish a separate account to be known as the Community Preservation Fund of which the municipal treasurer shall be the custodian. The authority to approve expenditures from the fund shall be limited to, the legislative body and the municipal treasurer shall pay such expenses in accordance with chapter 41.

The following monies shall be deposited in the fund: (a~~i~~) all funds collected from the real property surcharge or bond proceeds in anticipation of revenue pursuant to sections 4 and 11; (ii) additional funds appropriated or dedicated from allowable municipal sources pursuant to subsection (b $\frac{1}{2}$ ) of section 3, if applicable; (b~~iii~~) all funds received from the commonwealth or any other source for such purposes; and (e~~iv~~) proceeds from the disposal of real property acquired with funds from the Community Preservation Fund. The treasurer may deposit or invest the proceeds of the fund in savings banks trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth which are members of the Federal Deposit Insurance Corporation or national banks, or may invest the proceeds in paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the commonwealth or in the manner authorized by section 54 of chapter 44, and any income therefrom shall be credited to the fund. The expenditure of revenues from the fund shall be limited to implementing the recommendations of the community preservation committee and providing administrative and operating expenses to the committee. [80]

**Section 8. (a)** Except as otherwise provided, the fees of the registers of deeds to be paid when a document or instrument is recorded shall be subject to a surcharge of \$20; provided, however, that if the document or instrument to be filed includes multiple references to a document or instrument intending or attempting to assign, discharge, release, partially release, subordinate or notice any other document or instrument, each reference shall be separately indexed and separately assessed an additional \$20 surcharge. The fee for recording a municipal lien certificate shall be subject to a surcharge of \$10; provided, however, that if the certificate includes multiple references to a document or instrument intending or attempting to assign, discharge, release, partially release, subordinate or notice any other document or instrument, each reference shall be separately indexed and separately assessed an additional \$10 surcharge. The surcharges imposed shall be used for community preservation purposes. No surcharge shall apply to a declaration of homestead under chapter 188. No surcharge shall apply to the fees charged for additional pages, photostatic copies, abstract cards or additional square feet for the recording of plans.

**(b)** The fees of the assistant recorder, except as otherwise provided, to be paid when the instrument is left for registering, filing or entering with respect to registered land shall be subject to a surcharge of \$20. The fees for so registering, filing or entering a municipal lien certificate shall be subject to a surcharge of \$10. The surcharges shall be imposed for the purposes of community preservation. No surcharge shall apply to a declaration of homestead of chapter 188. No surcharge shall apply to the fees charged for additional lots shown on plans, for indexing instruments recorded while a petition for registering is pending, for additional certificates of sewer assessments, for old age assistance liens, for duplicates and for photocopies.

**(c)** All surcharges on fees collected pursuant to this section shall be forwarded to the Massachusetts Community Preservation Trust Fund, established in section 9.

**Section 9. (a)** There shall be established and set up on the books of the commonwealth a separate fund, to be known as the Massachusetts Community Preservation Trust Fund, for the benefit of cities and towns that have accepted sections 3 to 7, inclusive, and pursuant to said sections 3 to 7, inclusive, have imposed a surcharge on their real property tax levy, subject to any exemptions adopted by a municipality. The fund shall consist of all revenues received by the commonwealth: (1) under the provisions of section 8; (2) from public and private sources as gifts, grants and donations to further community preservation programs; (3) from damages, penalties, costs or interest received on account of litigation or settlement thereof for a violation of section 15; or (4) all other monies credited to or transferred to from any other fund or source pursuant to law.

**(b)** The state treasurer shall deposit the fund in accordance with the provisions of section 10 in such manner as will secure the highest interest rate available consistent with the safety of the fund and with the requirement that all amounts on deposit be available for withdrawal without penalty for such withdrawal at any time. All interest accrued and earnings shall be deposited into the fund. The fund shall be expended solely for the administration and implementation of this chapter. Any unexpended balances shall be redeposited for future use consistent with the provisions of this chapter.

**(c)** The state treasurer shall make all disbursements and expenditures from the fund without, further appropriation, as directed by the commissioner of revenue in accordance with said section 10. The department of revenue shall report by source all amounts credited to said fund and all expenditures from said fund. The commissioner of revenue shall assign personnel of the department as it may need to administer and manage the fund disbursements and any expense incurred by the department shall be deemed an operating and administrative expense of the program. The operating and administrative expenses shall not exceed 5 per cent of the annual total revenue received under the provisions of said section 10.

**Section 10. (a)** The commissioner of revenue shall annually on or before November~~October~~ 15 disburse monies from the fund established in section ~~940~~ to cities and towns that have accepted sections 3 to 7, inclusive, and notified the commissioner of their acceptance. The community shall notify the commissioner of the date and terms on which the voters accepted said sections 3 to 7, inclusive. The municipal tax collecting authority shall certify to the Commissioner the amount the ~~municipality~~city or town has raised through June 30 by imposing a surcharge on its real property levy and shall certify the percentage of the surcharge applied. In the event a city or town accepts sections 3 to 7, inclusive, pursuant to subsection (b 1/2) of section 3 the municipal tax collecting authority shall certify to the commissioner by October 30, the maximum additional funds the city or town intends to transfer to the Community Preservation Fund from allowable municipal sources for the following fiscal year. Once certified, the city or town may choose to transfer less than the certified amount during the following fiscal year.

**(b)** The commissioner shall multiply the amount remaining in the fund after any disbursements for operating and administrative expenses pursuant to subsection (c) of section 9 by 80 percent. This amount distributed in the first round distribution shall be known as the match distribution. The first round total shall be distributed to each city or town accepting said sections 3 to 7, inclusive, in an amount not less than 5 per cent but

not greater than 100 per cent of the total amount raised by the additional surcharge on real property by each city or town and if applicable, the additional funds committed from allowable municipal sources pursuant to subsection (b ½) of section 3. The percentage shall be the same for each city and town and shall be determined by the commissioner annually in a manner that distributes the maximum amount available to each participating city or town.

(c) The commissioner shall further divide the remaining 20 per cent of the fund in a second round distribution, known as the equity distribution. The commissioner shall determine the equity distribution in several steps. The first step shall be to divide the remaining 20 per cent of the fund by the number of cities and towns that have accepted said sections 3 to 7, inclusive. This dividend shall be known as the base figure for equity distribution. This base figure shall be determined solely for purposes of performing the calculation for equity distribution and shall not be added to the amount received by a participant.

(d) Each city and town in the commonwealth shall be assigned a community preservation rank for purposes of the equity distribution. The commissioner shall determine each community's rank by first determining the city or town's municipality's equalized property valuation per capita ranking, ranking cities and towns municipalities from highest to lowest valuation. The commissioner shall also determine the population of each city or town municipality and rank each from largest to smallest in population. The commissioner shall add each equalized property valuation rank and population rank, and divide the sum by 2+40. The dividend is the community preservation raw score for that city or town municipality.

(e) The commissioner shall then order each city or town municipality by CPcommunity preservation raw score, from the lowest raw score to the highest raw score. This order shall be the CPcommunity preservation rank for each city or town municipality. If more than one city or town municipality has the same CPcommunity preservation raw score, the city or town municipality with the higher equalized valuation rank shall receive the higher CPcommunity preservation rank.

(f) After determining the CPcommunity preservation rank for each city and town municipality in the commonwealth, the commissioner shall divide all cities or towns municipalities into deciles according to their CPcommunity preservation ranking, with approximately the same number of cities and towns municipalities in each decile, and with the cities or towns municipalities with the highest CPcommunity preservation rank shall be placed in the lowest decile category, starting with decile 10. Percentages shall be assigned to each decile as follows:

decile 1	140 per cent of the base figure.
decile 2	130 per cent of the base figure.
decile 3	120 per cent of the base figure.
decile 4	110 per cent of the base figure.
decile 5	100 per cent of the base figure.
decile 6	90 per cent of the base figure.
decile 7	80 per cent of the base figure.
decile 8	70 per cent of the base figure.
decile 9	60 per cent of the base figure.

decile 10      50 per cent of the base figure.

After assigning each city and town municipality to a decile according to their ~~CP~~community preservation rank, the commissioner shall multiply the percentage assigned to that decile by the base figure to determine the second round equity distribution for each participant.

**(gf)** Notwithstanding any other provision of this section, the total state contribution for each city and town shall not exceed the actual amount raised by the city or town's municipality's surcharge on its real property levy **and, if applicable, the additional funds committed from allowable municipal sources pursuant to subsection (b ½) of section 3.**

**(hg)** When there are monies remaining in the Massachusetts Community Preservation Trust Fund after the first and second round distributions, and any necessary administrative expenses have been paid in accordance with section 69, the commissioner may conduct a third round surplus distribution. Any remaining surplus in the fund may be distributed by dividing the amount of the surplus by the number of cities and towns that have accepted sections 3 to 7, inclusive ~~this chapter~~. The resulting dividend shall be the surplus base figure. The commissioner shall then use the decile categories and percentages as defined in this section to determine a surplus equity distribution for each participant.

**(ih)** The commissioner shall determine each participant's total state grant by adding the amount received in the first round distribution with the amounts received in any later round ~~or rounds~~ of distributions, with the exception of a city or town that has already received a grant equal to 100 per cent of the amount the community raised by its surcharge on its real property levy.

**(1)** Only those cities and towns that adopt the maximum surcharge pursuant to subsection (b) of section 3 and those cities and towns that adopt the maximum surcharge and additional funds committed from allowable municipal sources such the total funds are the equivalent of 3 percent of the real estate tax levy against real property pursuant to subsection (b½) of said section 3 ~~allowed by this chapter~~ shall be eligible to receive additional state monies through the equity and surplus distributions.

**(2)** If less than 10 per cent of the cities and towns ~~in the commonwealth~~ have accepted sections 3 to 7, inclusive, and imposed and collected a surcharge on their real property levy, the commissioner may calculate the state grant with only ~~one~~ round of distributions, or in any other equitable manner.

**(j)** After distributing the Massachusetts Community Preservation Trust Fund in accordance with this section, the commissioner ~~shall~~ may keep any remaining funds in the trust for distribution in the following year. [81]

**Section 11.** A city or town that accepts sections 3 to 7, inclusive, may issue, from time to time, general obligation bonds or notes in anticipation of revenues to be raised pursuant to section 3, the proceeds of which shall be deposited in the Community Preservation Fund. Bonds or notes so issued may be at such rates of interest as shall be necessary and shall be repaid as soon after such revenues are collected as is expedient. Cities or towns

that choose to issue bonds pursuant to this section shall make every effort to limit the administrative costs of issuing such bonds by cooperating among each other using methods including, but not limited to, common issuance of bonds or common retention of bond counsel. Except as otherwise provided in this chapter, bonds or notes issued pursuant to this section shall be subject to the applicable provisions of chapter 44. The maturities of each issue of bonds or notes issued under this chapter may be arranged so that for each issue the amounts payable in the several years for principal and interest combined shall be as nearly equal as practicable in the opinion of the officers authorized to issue bonds or notes or, in the alternative, in accordance with a schedule providing for a more rapid amortization of principal.

**Section 12. (a)** A real property interest that is ~~acquired~~<sup>purchased</sup> with monies from the Community Preservation Fund shall be bound by a permanent ~~deed~~ restriction, recorded as a separate instrument, that meets the requirements of sections 31 to 33, inclusive, of chapter 184, limiting the use of the interest to the purpose for which it was acquired. The ~~permanent deed~~ restriction shall run with the land and shall be enforceable by the city or town or the commonwealth. The ~~deed~~<sup>permanent</sup> restriction may also run to the benefit of a nonprofit **organization**, charitable corporation or foundation selected by the city or town with the right to enforce the restriction. The legislative body may appropriate monies from the Community Preservation Fund to pay a non-profit organization created pursuant to chapter 180 to hold, monitor and enforce the deed restriction on said property. [82]

**(b)** Real property interests acquired under this chapter shall be owned and managed by the city or town, but the legislative body may delegate management of such property to the conservation commission, the historical commission, the board of park commissioners or the housing authority, or, in the case of interests to acquire sites for future wellhead development by a water district, a water supply district or a fire district. The legislative body may also delegate management of such property to a nonprofit organization created under chapter 180 or chapter 203.

**Section 13.** The community preservation committee shall keep a full and accurate account of all of its actions, including its recommendations and the action taken on them and records of all appropriations or expenditures made from the Community Preservation Fund. The committee shall also keep records of any real property interests acquired, disposed of or improved by the city or town upon its recommendation, including the names and addresses of the grantor's or grantees and the nature of the consideration. The records and accounts shall be public records.

**Section 14.** Notwithstanding the provisions of any general or special law to the contrary, every city and town may accept sections 3 to 7, inclusive, and may thereupon receive state grants under section 10. A city or town that accepts said sections 3 to 7, inclusive, shall not be precluded from participating in state grant programs.

State grant programs may include local adoption of this chapter among the criteria for selection of grant recipients. Funds in the Community Preservation Fund may be made available and used by the city or town as the local share for state or federal grants upon recommendation of the community preservation committee and the legislative body, as provided for in section 5, if such grants and such local share are used in a manner consistent with the recommendations of the community preservation committee.

**Section 15. (a)** A person who, without permission, knowingly carries away or steals, mutilates, destroys, damages, causes to be damaged or cuts any tree, shrub, grass or any other portion of real property purchased by a city or town with funds derived from this chapter shall be liable to the city or town in tort for such actions.

**(b)** Damages, including punitive damages for willful or wanton violation of this chapter or any rule or regulation issued or adopted hereunder, may be recovered in a civil action brought by the city or town or, upon request of the city or town, by the attorney general. The city or town or, upon request of the city or town, the attorney general, may bring an action for injunctive relief against any person violating this chapter or any rule or regulation issued hereunder. The superior court shall have jurisdiction to enjoin violations, to award damages and to grant such further relief as it may deem appropriate.

**(c)** Any damages, penalties, costs or interest thereon recovered pursuant to this section shall be deposited into the Community Preservation Fund of the city or town in which the violation occurred.

**Section 16. (a)** At any time after imposition of the surcharge, the legislative body may approve and the voters may accept an amendment to the amount and computation of the surcharge, or to the amount of exemption or exemptions, in the same manner and within the limitations set forth in this chapter, including reducing the surcharge to 1 per cent and committing additional municipal funds pursuant to subsection (b $\frac{1}{2}$ ) of section 3. [83]

**(b)** At any time after the expiration of five years after the date on which sections 3 to 1, inclusive, have been accepted in a city or town, said sections may be revoked in the same manner as they were accepted by such city or town, but the surcharge imposed under section 3 shall remain in effect in any such city or town, with respect to unpaid taxes on past transactions and with respect to taxes due on future transactions, until all contractual obligations incurred by the city or town prior to such termination shall have been fully discharged.

**Section 17.** The commissioner of revenue shall have the authority to promulgate rules and regulations to effect the purposes of this chapter.

### **St. 2012, c. 139, § 155**

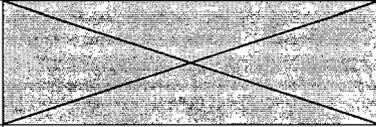
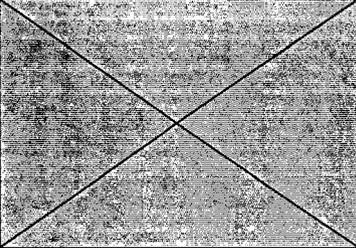
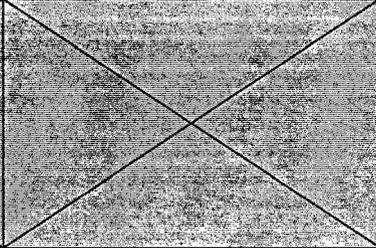
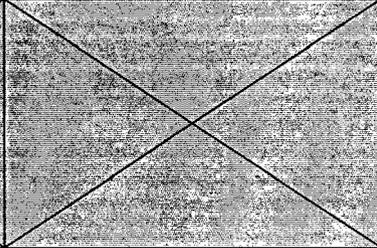
SECTION 155. (a) Notwithstanding any general or special law to the contrary, after complying with clause (a) of section 5C of chapter 29 of the General Laws, the comptroller shall dispose of the consolidated net surplus in the budgetary funds for fiscal year 2013 in the following order to the extent that funds are available: (i) transfer \$25,000,000 to the Massachusetts Community Preservation Trust Fund, established by section 9 of chapter 44B of the General Laws; and (ii) transfer the remaining balance from the General Fund to the Commonwealth Stabilization Fund.

**(b)** All transfers pursuant to this section shall be made from the undesignated fund balance in the budgetary funds proportionally from the undesignated fund balances; provided, however, that no such transfers shall cause a deficit in any of the funds.

**St. 2012, c. 139, § 218, as amended by St. 2012, c. 239 § 48**

SECTION 218. Sections 69 to 83, inclusive, shall apply to all Community Preservation Fund appropriations approved by a city or town's legislative body on or after the effective date of acceptance of sections 3 to 7, inclusive, of chapter 44B of the General Laws in any such city or town.

**Chart 1  
COMMUNITY PRESERVATION FUND ALLOWABLE SPENDING PURPOSES (G.L. c. 44B, § 5)**

	OPEN SPACE	HISTORIC RESOURCES	RECREATIONAL LAND	COMMUNITY HOUSING
<b>DEFINITIONS</b> (G.L. c. 44B, § 2)	Land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use	Building, structure, vessel, real property, document or artifact listed on the state register of historic places or determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of the city or town	Land for active or passive recreational use including, but not limited to, the use of land for community gardens, trails, and noncommercial youth and adult sports, and the use of land as a park, playground or athletic field <b>Does not</b> include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.	Housing for low and moderate income individuals and families, including low or moderate income seniors  Moderate income is less than 100%, and low income is less than 80%, of US HUD Area Wide Median Income
<b>ACQUISITION</b> Obtain property interest by gift, purchase, devise, grant, rental, rental purchase, lease or otherwise. Only includes eminent domain taking as provided by G.L. c. 44B	Yes	Yes	Yes	Yes
<b>CREATION</b> To bring into being or cause to exist. <i>Seideman v. City of Newton</i> , 452 Mass. 472 (2008)	Yes		Yes	Yes
<b>PRESERVATION</b> Protect personal or real property from injury, harm or destruction	Yes	Yes	Yes	Yes
<b>SUPPORT</b> Provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing, or to entity that owns, operates or manages such housing, for the purpose of making housing affordable				Yes, includes funding for community's affordable housing trust
<b>REHABILITATION AND RESTORATION</b> Make capital improvements, or extraordinary repairs to make assets functional for intended use, including improvements to comply with federal, state or local building or access codes or federal standards for rehabilitation of historic properties	Yes if acquired or created with CP funds	Yes	Yes	Yes if acquired or created with CP funds

## Chart 2 COMMUNITY PRESERVATION FUND FINANCING SOURCES

	ANNUAL FUND REVENUES	ALTERNATIVE ANNUAL FINANCING SOURCES	FUND BALANCE	BUDGETED RESERVES	BORROWING
<b>Definition</b>	Annual recurring revenues	Other financing sources dedicated by appropriation to the fund (G.L. c. 44B, § 3(b½))	Unspent funds generated by favorable operations during the previous FY that are available for appropriation	Funds designated by the legislative body for later appropriation for any CPA purpose during the fiscal year <u>and/or</u> for one of the following specific CPA purposes: (1) open space (excluding recreational), (2) historic resources and (3) community housing	Debt repaid with future fund revenues
<b>Source</b>	<p>Surcharges assessed for FY</p> <p>State trust fund distribution received during FY (beginning in 2<sup>nd</sup> year of fund operation)</p>	<p>Appropriations to the fund made from the tax levy (general fund) before the tax rate set, or from available funds until 6/30</p>	<p>Appropriation turn-backs, including unappropriated balance from any annual budgeted reserve</p> <p>Actual receipts in excess of budgeted revenues</p> <p>Investment interest</p> <p>Miscellaneous non-recurring revenues, <i>e.g.</i>, proceeds from sale of community preservation fund acquisitions, damages and fines related to the acquisitions, or public/private gifts/grants for the community preservation fund</p>	<p>Appropriations from annual fund revenues or fund balance</p>	<p>Proceeds from notes, bonds or other debt obligations issued for a CPA purpose</p>
<b>Limitations</b>	<p>Legislative body <i>must</i> appropriate or place in budgeted special purpose reserves at least 10% of each year's annual revenues for each of following CPA purposes: (1) open space (excluding recreational), (2) historic resources and (3) community housing</p> <p>Cannot spend from appropriations until FY begins (<i>i.e.</i>, 7/1)</p>	<p>Appropriations require legislative body vote that states the specific dollar amount being dedicated from general or available fund</p> <p>Appropriations from other financing sources may not exceed 2% of the year's tax levy</p> <p>Other financing sources are considered annual revenues for purposes of meeting the annual 10% appropriation or reservation requirement (see "Annual Fund Revenues")</p>	<p>May be appropriated by legislative body for any CPA purpose</p>	<p>Appropriations <i>to</i> a particular reserve require legislative body vote that states the specific dollar amount and source being reserved</p> <p>Appropriations <i>from</i> the annual budgeted reserve may be made for any CPA purpose during the FY only and any unappropriated balance at year-end closes to fund balance</p> <p>Appropriations <i>from</i> a particular special purpose reserve limited to that CPA purpose</p>	<p>Legislative body <i>must</i> specifically authorize borrowing under CPA (G.L. c. 44B)</p> <p>Borrowing limited in amount to debt service payable from estimated surcharge revenues over term</p> <p>Borrowing limited to purposes and terms applicable to municipal borrowing generally under G.L. c. 44 §§7 and 8</p> <p>Appropriations <i>from</i> proceeds remaining after purpose completed or abandoned restricted to a CPA purpose for which borrowing may be authorized for same or longer term than original loan</p>

	<b>ANNUAL FUND REVENUES</b>	<b>ALTERNATIVE ANNUAL FINANCING SOURCES</b>	<b>FUND BALANCE</b>	<b>BUDGETED RESERVES</b>	<b>BORROWING</b>
<b>Available to Appropriate</b>	Until tax rate set for FY. Once rate set, only budgeted reserves, fund balance or borrowing may be used as financing source.	Any time after appropriation into fund (or after 7/1 for new appropriations from general fund revenues)	Any time after accounting officer reports prior FY fund activities and balance to DOR until 6/30 close of current FY	Annual budgeted reserve during FY ( <i>i.e.</i> 7/1 to 6/30) Special purpose reserves any time (or after 7/1 for new reservations from annual revenues)	Anytime
<b>Similarity</b>	General fund annual tax levy (taxes, state aid, receipts)  Enterprise fund annual revenues (user charges and fees)	General fund and available funds appropriated to special purpose funds	Free cash Enterprise fund free cash (retained earnings)	Stabilization fund ( <i>i.e.</i> , general fund monies reserved for later appropriation for municipal purpose) Enterprise fund budgeted surplus	Other municipal debt

**Chart 3**  
**SAMPLE VOTES FROM COMMUNITY PRESERVATION FUND FINANCING SOURCES**

<u>SOURCE</u>	<u>VOTE</u>
Annual revenues	<ul style="list-style-type: none"> <li>• To appropriate \$10,000 from FY2013 Community Preservation Fund revenues for _____.</li> <li>• To reserve \$250,000 from FY2013 Community Preservation Fund revenues for FY2013 Community Preservation Fund purposes (FY2013 Budgeted Reserve)</li> <li>• To reserve \$100,000 from FY2013 Community Preservation Fund revenues for Open Space.</li> </ul>
Fund Balance	<ul style="list-style-type: none"> <li>• To appropriate/transfer \$75,000 from Community Preservation Fund balance to _____.</li> </ul>
Annual Budgeted Reserve	<ul style="list-style-type: none"> <li>• To appropriate/transfer \$75,000 from FY2013 Community Preservation Budgeted Reserve to _____.</li> </ul>
Special Purpose Reserves	<ul style="list-style-type: none"> <li>• To appropriate/transfer \$75,000 from Community Preservation Fund Open Space Reserve to _____.</li> </ul>
Excess Bond Proceeds	<ul style="list-style-type: none"> <li>• To appropriate/transfer \$10,000 from Community Preservation – Parcel X Land Acquisition Loan balance to _____.</li> </ul>

**SAMPLE COMMUNITY PRESERVATION PROGRAM APPROPRIATION VOTE**

**ARTICLE:** TO SEE IF THE TOWN WILL VOTE TO ACQUIRE BY PURCHASE OR EMINENT DOMAIN A PARCEL OF LAND DESCRIBED AS ASSESSORS MAP 30 LOT 125 CONSISTING OF APPROXIMATELY 25.2 ACRES FOR OPEN SPACE PURPOSES UNDER THE COMMUNITY PRESERVATION ACT, AND TO APPROPRIATE OR TRANSFER FROM THE COMMUNITY PRESERVATION FUND ANNUAL REVENUES OR AVAILABLE FUNDS, OR TO AUTHORIZE THE TREASURER WITH THE APPROVAL OF THE SELECTMEN TO BORROW UNDER THE COMMUNITY PRESERVATION ACT, A SUM OF MONEY TO FUND SUCH ACQUISITION, OR TAKE ANY OTHER ACTION RELATIVE THERETO.

**MOTION:** I move that the town authorize the Conservation Commission to purchase a parcel of land described as Assessors Map 30 Lot 125 consisting of approximately 25.2 acres for open space purposes under the Community Preservation Act and to fund such acquisition, that \$5,000,000 be appropriated with \$400,000 to be appropriated from FY2013 Community Preservation Fund revenues, \$100,000 to be transferred from the Community Preservation Fund Open Space Reserve, \$1,000,000 to be transferred from the Community Preservation Fund balance and that \$3,500,000 be borrowed by the treasurer, who is authorized with the approval of the selectmen, to issue any bonds or notes that may be necessary for that purpose, as authorized by General Laws Chapter 44B, § 11, or any other general or special law, for a period not to exceed the maximum number of years authorized by law.

## Chart 4

### SAMPLE VOTES TO COMMUNITY PRESERVATION FUND FROM ALTERNATIVE FINANCING SOURCES

#### SOURCE

#### VOTE

Annual General Fund revenues

- To raise and appropriate (or appropriate from the levy) \$100,000 and thereby dedicate \$100,000 of FY2013 meals excise revenues to the Community Preservation Fund.

Available Fund

- To appropriate/transfer \$75,000 from the Sale of Real Estate Fund to the Community Preservation Fund.

**SAMPLE LANGUAGE**  
**COMMUNITY PRESERVATION ACT REVOCATION OR SURCHARGE AMENDMENT**

**SURCHARGE RATE OR EXEMPTION AMENDMENT**  
**G.L. c. 44B, § 16(a)**

**Legislative Body Vote**

To amend the surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, from \_\_ per cent to \_\_ percent of the taxes assessed annually on real property, effective for fiscal years beginning on or after July 1, \_\_\_\_\_.

OR

To adopt/eliminate the exemption from the property tax surcharge imposed under section 3 of chapter 44B of the General Laws, the Community Preservation Act, for (type exemption), effective for fiscal years beginning on or after July 1, \_\_\_\_\_.

**Ballot Question**

Shall the (city or town) amend the property tax surcharge/adopt/eliminate an exemption from the property tax surcharge imposed under section 3 of chapter 44B of the General Laws, as approved by its legislative body, a summary of which appears below?

**COMMUNITY PRESERVATION ACT REVOCATION**  
**Must Follow Same Process as Acceptance**  
**G.L. c. 44B, § 16(b)**

**Legislative Body Vote/Petition Article**

To revoke the town's acceptance of Sections 3 to 7 of Chapter 44B of the General Laws, the Community Preservation Act, effective for the fiscal year beginning on July 1, \_\_\_\_\_.

OR

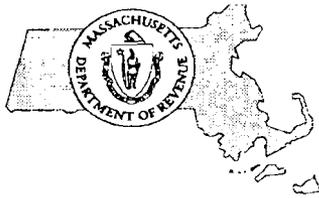
We the undersigned request that the question of revoking acceptance of sections 3 to 7 of Chapter 44B of the General Laws of Massachusetts, the Community Preservation Act, effective for the fiscal year beginning on July 1, \_\_\_\_\_, be placed on the ballot for the next regular municipal or state election.

**Ballot Question**

Shall the (city or town) revoke its acceptance of sections 3 to 7, inclusive of chapter 44B of the General Laws, as approved by its legislative body/proposed by a petition signed by at least five percent of the registered voters of this (city or town), a summary of which appears below?

**FAIR AND CONCISE SUMMARY**

A fair and concise summary of the amendment or revocation proposal must appear underneath the question on the election ballot. The summary is to be prepared by the community's city solicitor or town counsel. It should include the details of the proposal, such as the fiscal year it takes effect.



MASSACHUSETTS DEPARTMENT OF REVENUE  
DIVISION OF LOCAL SERVICES

P.O. Box 9655  
Boston, MA 02114

(617) 626-2300  
FAX (617) 626-2330

MITCHELL ADAMS  
Commissioner

ROBERT H. MARSH  
Deputy Commissioner

January 8, 1996

Anthony J. Torrisi  
Finance Director  
Town Offices  
36 Bartlet Street  
Andover, MA 01810

Re: Funding Unused Vacation & Sick Leave Liability  
Our File No. 95-1185

Dear Mr. Torrisi:

You have asked our opinion concerning a proposed special article on town meeting warrant to authorize a transfer from available funds and appropriation up to \$132,000 to a "compensated absence reserve account" for the purpose of funding accrued employee vacation and sick leave liabilities. You have indicated that town auditors have found a potential \$843,933 liability for such benefits which are currently unfunded.

The town cannot legally appropriate such funds to a true "reserve" account as you call it because such accounts require statutory authority and ordinarily connote an inability of the town to transfer the funds to any other purpose, contrary to **G.L. Ch. 44, §33B**. Reserve funds are essentially encumbered for the specific purpose intended. Reserve accounts also usually require a subsequent town meeting vote appropriating them for a proper reserve use.

However, the town could legally make such an appropriation to a special purpose "compensated absence fund". We believe that such an article would be prudent to help to reduce any potential unfunded liability of the town for these benefits. Through this article the town may pay such expenses as they arise without the necessity of further appropriation and without the necessity of annual departmental estimated appropriations to cover the anticipated expenses for a particular year. Special purpose appropriations carry over from year to year to the extent not expended, but still necessary for the purpose. To the extent the funds are not encumbered, they may be transferred to another purpose by town meeting, under **G.L. Ch. 44, §33B**.

We point out one potential reason why such an appropriation directly to such purpose may not be desirable. We note the widespread and common practice in the commonwealth for cities and towns to offer vacation and sick leave accumulations which are then paid at the time

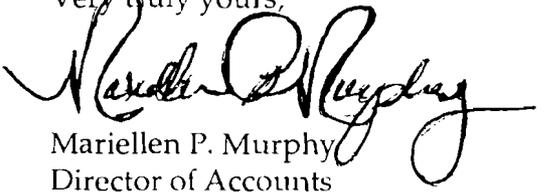
of retirement or termination. These policies have arisen in different ways. In some towns it has become a practice without any by-law or general policy vote of a board of selectmen. In others department heads may have established their own practices. In still others a by-law may provide the policy. See G.L. Ch. 40, §21A. In still others, collective bargaining agreements or practices may have established the policy.

There is clear prohibition in the general laws for municipal departments to incur liability for such benefits in excess of appropriation therefor. G.L. Ch. 44, §31. In addition, where such benefits are provided by collective bargaining for which no appropriation for such a cost item has been made, the benefit provision may not be enforceable. G.L. Ch. 150E, §7(b). However, a cogent argument can be made that a city or town by by-law or town meeting vote could establish such a benefit, in excess of appropriation, which would later be binding on the town. Compare Lynn Redevelopment Authority v. Lynn, 360 Mass. 503, 504-5 (1971) (city council when acting with mayor is not a department of the city and not bound by G.L. Ch. 44, §31) with Broadhurst v. Fall River, 278 Mass. 167, 169-70 (1932) (the mayor constitutes the executive department of a city and cannot incur liability without approval of finance board under city's special act).

The audit report suggests that some employees have been granted special benefits by department heads, such as excess vacation leave accrual. If Andover arguably has no legal liability to pay sick leave and vacation leave accumulations, or some portion thereof, because the policy has not been established by town bylaw or vote or the town has not appropriated sufficient funds for that purpose, the establishment of this fund may be considered such an appropriation and therefor bind the town. You may wish to review how these benefits have been provided to town employees to determine whether some or all of this so-called unfunded liability may not actually be a liability without the establishment of the fund.

We hope this addresses your concerns. If we may be of further service, please do not hesitate to contact us again.

Very truly yours,



Mariellen P. Murphy  
Director of Accounts



March 15, 2007

Rodney P. Smith  
Town Accountant  
36 Bartlet Street  
Andover, MA 01810

Re: Funding Termination Leave Payments  
Our File No. 2006-376

Dear Mr. Smith:

You have asked several questions concerning the funding of termination benefits paid to eligible employees leaving town service. These benefits include accrued vacation balances and a portion of sick leave balances based on formulas within the collective bargaining agreements. You have indicated that the termination benefit payments are not included within the operating budgets of the individual departments; i.e., they are not budgeted within the personal services or expense line items in those departments. In recent years (since the mid-90's) the town has appropriated sums to a special accumulated employee benefit account to cover these expenses. See our opinion 95-1185 to the town's finance director suggesting such a special purpose appropriation would be a valid method of funding these benefits.

Your specific questions are paraphrased as follows:

1. If town meeting under funds or fails to fund the special article, are the benefits still obligations of the town?
2. If the benefits are legal liabilities of the town, how do the benefits get paid without a sufficient appropriation? Can they be paid from the payroll accounts of the departments from which the employees retire or leave?
3. Can the accountant refuse payment, or, alternatively, charge another account?

The short answer to your questions is that the town may very well be liable to pay these benefits, despite the lack of specifically appropriated funds to cover them. However, the town will be unable to pay the benefits if it has an insufficient appropriation in the proper accounts at the time payment is due. To make such payments the town would need a reserve fund transfer or town meeting transfer to the proper accounts. Alternatively, payment must be made, even in the absence of an appropriation, if a lawsuit is brought and a judgment entered against the town in a court of law. GL c. 44, §31. What account is appropriate to pay the benefits from depends upon the town's intention when it appropriates amounts in the various line items. If the town's intention was to pay all or

specific termination benefits from the special appropriation account and it insufficiently funds that account, it may not pay the benefit amount from the salary line that was intended to pay other salary related costs. The town could, however, decide not to fund the benefits from the special purpose account going forward and appropriate those amounts to the salary accounts, as was done in the past.

The following sets forth our legal analysis:

Generally, collective bargaining agreement cost items funded by town meeting in the first year of the contract are legally binding in subsequent years. Boston Teachers Union, Local 66 v. School Committee of Boston, 386 Mass. 197 (1982). Certain future benefits specified in the general laws may be binding on the town whether or not it has appropriated funds to cover the expense at the time the benefit is earned. For example, pension benefits and post-retirement health insurance benefits will be legally binding on the town whether it has appropriated funds at the time services have been delivered to cover the future benefit. See generally GL c. 32 and c. 32B.

The state has taken steps in the pension reform law to require municipalities to fully fund the various contributory retirement systems by the 2020s. The Governmental Accounting Standards Board (GASB) Statements 43 & 45 will require towns to keep track of and report outstanding accumulating other post-employment benefits (OPEB). Several towns have obtained special legislation to create trust funds to meet those obligations. However, the vacation accumulation and sick leave balance termination benefits negotiated in collective bargaining agreements or otherwise provided by local employment policies would normally require that appropriations be made at the time services are to be rendered and benefits earned for a particular year. GL c. 150E, §7(b) (requires appropriation of cost items of collective bargaining agreement before contract becomes binding) & GL c. 44, §31 (no department of a municipality may incur an expense in excess of appropriation).

An argument can be made that to the extent the town has authorized the program by by-law, the town may incur an obligation to pay even in the absence of an appropriation. Compare Lynn Redevelopment Authority v. City of Lynn, 360 Mass. 503, 504-5 (1971) (mayor and city council acting together could bind the city beyond the appropriation because mayor and council not a department of the city) with Broadhurst v. Fall River, 278 Mass. 167, 169-70 (1932) (the mayor constitutes the executive department of the city and cannot incur liability without approval of the legislative body). However, we are not aware of any general law authorizing the town to make any such by-law. For example, GL c. 40, §21A authorizes a town by by-law to provide for sick and vacation leave, but does not specifically authorize a by-law providing accumulation of future unfunded benefits. Similarly, GL c. 41, §108A authorizes a town to provide a compensation plan for its employees, but does not specifically authorize plans calling for the payment of future benefits. Nor would we argue that the town could establish such a by-law using its home rule powers, given the normally restrictive municipal finance laws, which comprehensively are intended to prohibit towns from incurring expenses beyond their capabilities.

Nevertheless, cities and towns in practice have offered these termination benefits because at the time they were first negotiated or offered there was little or no obligation to pay them. The necessary amount to cover those with benefits accruing in the early years was generally anticipated and appropriated by the town when the employees retired. The amounts generally were paid from the salary and wages accounts, which usually included sufficient amounts to cover the benefits. Similarly, such benefits provided by by-law were generally provided in the annual budget by estimating the amounts necessary to pay them and including those amounts in the salary and wages line items. That tradition has carried forward in the vast majority of communities and has led to a growing unfunded future liability and a pay as you go system. Today these termination benefit provisions are common in collective bargaining agreements and by-laws throughout the commonwealth and are widely assumed to be binding obligations.

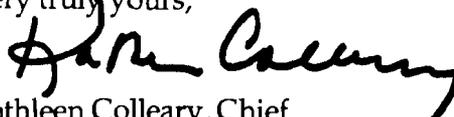
In the case of Andover, we stated in the 1995 opinion that by establishing the special appropriation account for these liabilities the town may be more clearly creating a liability for such benefit payments. We therefore believe that the termination benefits are legally binding obligations of the town, and that failure to continue to fund them will not eliminate the obligation.

However, while the town may have a legal obligation to pay, it may not make payment if it has no available appropriation from which to pay, absent a lawsuit and judgment against the town. GL c. 44, §31 (each spending article voted by the town creates a line item appropriation for the purpose intended by the vote, but a judgment against the town may be paid without appropriation). If the town did not appropriate sufficient amounts to the special purpose article to cover the entire liability during a particular year, and did not intend to appropriate any funds for such purpose in the annual operating budget for salaries and wages, then the town may only pay current year vacation entitlement and actual sick leave expenses from its operating budget.

The town accountant should not authorize payment in these circumstances, but should advise the appropriate town officials that a reserve fund or town meeting transfer is needed to meet the obligations, since the expenses of a lawsuit may be incurred if significant delay in making payment results.

I hope this addresses your concerns.

Very truly yours,

  
Kathleen Colleary, Chief  
Bureau of Municipal Finance Law

KC/GAB

**COMMUNITY PRESERVATION ACT**  
**Revocation**

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- May revoke acceptance after 5 years (G.L. c. 44B, § 16(b))
- Must use same procedure used to accept:
  - 5% voter petition or legislative body vote
  - Referendum at next regular municipal or state election
- No revocation ballot question in statute (See Appendix 2 for sample language)
- Municipal counsel must provide fair and concise summary to appear under question

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**Revocation**

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- Once revoked, CPA no longer operational:
  - No new CPA borrowings can be authorized
  - No new 10% minimum spending for open space, historic resources and community housing
  - No CPC recommendation needed for appropriations

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**Revocation**

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- Municipality must wind up fund
  - Determine fund obligations
  - Determine uncommitted fund monies available to meet obligations
    - Fund Balance
    - Uncommitted annual revenues
    - Applicable reserves

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**Revocation**

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- If insufficient available monies in fund:
  - Must continue to assess surcharge until monies accumulated
  - May reduce surcharge to rate needed (G.L. c. 44B, § 16(a))
  - Will receive state trust fund distributions in any year after surcharge assessed
- Balances after reservations to meet fund obligations must still be appropriated for CPA purposes

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**Surcharge Amendments**

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- May amend surcharge rate or exemptions after acceptance (G.L. c. 44B, § 16(a))
- Requires legislative body vote and referendum
- No revocation ballot question in statute (See Appendix 2 for sample language)
- Municipal counsel must provide fair and concise summary to appear under question

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**Revocation and Amendment**

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- May present both revocation and surcharge amendment referendum at same election
  - If both approved, CPA revoked but amended rate applies to any surcharges that must be assessed to wind up fund
  - If revocation rejected, but amendment approved, amended rate applies to future surcharges

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**Revocation and Amendment**

- Fiscal year revocation or amendment is implemented:
  - Next tax year if silent
  - Next fiscal year if expressly stated
  - Current fiscal year if:
    - Tax rate not set
    - Expressly stated

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2012-205 wayland CPA surcharge amendment-string.txt

From: Colleary, Kathleen  
Sent: Monday, April 09, 2012 2:53 PM  
To: 'Turkington, Frederic'  
Cc: 'mjlanza@comcast.net'  
Subject: 2012-205 wayland CPA surcharge amendment

Dear Mr. Turkington:

This is in reply to your email regarding a proposal to amend the Community Preservation Act (CPA) surcharge being considered by wayland's 2012 annual town meeting for submission to voters at the state biennial election in November.

At the outset, we note that the proposal would reduce the 1.5% CPA surcharge rate to 0.1%. According to our records, wayland accepted the CPA with the 1.5% rate in 2002 using the petition process. G.L. c. 44B, § 3(h). Arguably, if the town accepts such a de minimis rate, it would as a practical matter effectively implement a revocation without following the statutory procedure required by G.L. c. 44B, § 16(b). Although the statute does not establish a minimum surcharge rate, we doubt the legislature intended for cities and towns to use the amendment process as an alternative to that procedure.

On the timing of the election, we defer to the Elections Division of the Secretary of State to provide the definitive answer. It has been our understanding, however, that a CPA referendum must go on the ballot of the next regularly scheduled municipal or state election held more than 35 days after written notice to the town clerk (if a municipal election is next) or 60 days after written notice to the secretary of state (if a state election is next). G.L. c. 44B, § 3(f), (g) and (h). Also see G.L. c. 50, § 1 definition of state election. According to the town's website your 2012 annual town meeting will be held in early April 2012 shortly after your 2012 annual election. If town meeting acts favorably on the reduction article, then the next election would be a 2012 state election and it would be held in more than the 60 days needed to provide the requisite notice to the secretary of state.

With respect to when any change in the surcharge rate accepted by the voters takes effect, the CPA is silent about when any acceptance, revocation or amendment takes effect. Compare other local option taxes available to cities and towns. See, for example, G.L. c. 64G, § 3A (room occupancy excise), G.L. c. 64L, § 2(c) (meals excise). There are also many local acceptance statutes relating to locally assessed taxes and exemptions and issues often arise with respect to when those provisions can be implemented as well.

We do not think an amendment of the CPA surcharge is analogous to setting the annual property tax rate. In accepting the CPA, the city or town fixes the rate at which it will annually assess the surcharge. G.L. c. 44B, § 3(b). That is the rate unless amended in accordance with the statutory procedure. With respect to property taxes, however, state law provides for a rate of taxation to be determined annually based on the budgetary requirements, assessed valuations and tax classification decisions of the city or town for that fiscal year. G.L. c. 40, § 56; c. 59, §§ 2A, 23 and 38. There is no statutory requirement that the annual tax rate be set by any particular date during the fiscal year.

The general rule is that changes in laws apply prospectively, and more specifically, changes in tax laws apply prospectively as of the next tax period after the effective date of the amendment, unless otherwise clearly intended by the legislature. *Magee v. Commissioner of Corporations & Taxation*, 256 Mass. 512, 517 (1926); *United States Trust Co. v. Commissioner of Corporations and Taxation*, 299 Mass. 296, 299 (1938); *Squantum Gardens, Inc. v. Assessors of Quincy*, 335 Mass. 440, 452 (1957). As a property tax, the CPA surcharge is assessed as of January 1. Under the general rule, that would mean a change in CPA taxation would apply as of the next January 1 assessment date, i.e., as of January 1, 2013 for fiscal year beginning on July 1, 2013 (FY2014). See *Squantum Gardens* cited above.

The issue presented here is whether a city or town may make a permitted change in

this locally assessed tax take effect earlier, i.e. retroactive to an earlier tax period, which in this case would be January 1, 2012 for the fiscal year beginning July 1, 2012 (FY2013). There is no question that the legislature may do so within certain constitutional limits. A tax having a retroactive effect is constitutional "unless the retroactive feature ... is arbitrary and burdensome". Trustees of Boston University v. Board of Assessors of Brookline, 11 Mass. App. 325, 332 (1981) quoting 2 Sands, Sutherland Statutory Construction § 41.10, at 286 (4th ed. (1973)). (In the Boston University case, the Supreme Judicial Court reviewed legislation removing the tax exempt status of certain property owned by educational institutions. The legislation was enacted in August 1974 after both the fiscal year 1975 assessment date and fiscal year began, but before taxes were due and payable for that fiscal year. It contained a provision stating that it would apply to taxes assessed for fiscal year 1975 and thereafter. The court held that the taxpayer had not acquired any "vested right" to the exemption for fiscal year 1975 and that the retroactive adjustment in taxes for the year in which the statute became effective was reasonable and constitutional.)

The issue arises because as you know, cities and towns do not have the power to tax under the home rule amendment. Mass. Const. Amend. 89 § 7. They may only impose those taxes authorized by the legislature and must do so only in the manner expressly provided by statute. ("Because the Legislature has preempted the field of taxation, its approval is required. 'The laws established by it cannot be waived or changed by municipalities or their officers. Such laws are and must be general in their operation. When the Legislature has covered the whole subject, there is no room for the exercise of authority by local officers. The town has no power to make a contract concerning that subject.' " Saugus v. Refuse Energy Systems Co., 388 Mass. 822, 826-827 (1983), quoting Southborough v. Boston & Worcester St. Ry., 250 Mass. 234, 239 (1924).)

The courts have not addressed the issue of whether cities and towns may make locally accepted tax laws retroactive. Given the preemptive nature of local taxation, the better view is that they may do so only where authorized by the legislature.

To the extent, however, that the courts could conclude that cities and towns can make such retroactive changes, it seems to us that cities and towns would have to make their intent clear, as the legislature is required to do. In addition, they would have to make the changes in a manner consistent with the overall framework established by the legislature for local taxation under G.L. c. 59.

with respect to a CPA surcharge rate amendment, that would mean:

1. The legislative body vote would have to expressly state the fiscal year in which the change will take effect if the referendum is successful;
2. That fiscal year could not be earlier than the year in which the referendum takes place; and
3. The referendum would have to occur before the city or town sets its property tax rate for that fiscal year. See G.L. c. 59, § 23, which requires that in setting the tax rate, the assessors are to report the tax and other revenues the community anticipates receiving during the year from all sources. If the amendment is successful, the community's tax rate recapitulation for the year would have to reflect the amended estimate of annual revenues from the surcharge.

It should be noted that taking the position that cities and towns have the power to retroactively reduce the surcharge means they have the power to so increase it as well.

As you also know, although the CPA permits surcharge amendments and revocation, it does not provide a format for a ballot question for those actions. Below is a suggested question form for surcharge amendments that was reviewed by the Elections Division.

Shall the (city or town) amend (OR adopt/eliminate an exemption from) the property tax surcharge under section 3 of chapter 44B of the General Laws, as approved by its legislative body, a summary of which appears below?

2012-205 wayland CPA surcharge amendment-string.txt

A fair and concise summary of the amendment proposal must appear underneath the question on the election ballot. The summary is prepared by town counsel and would include the details of the proposal, such as the rate change and fiscal year it would take effect.

We assume you will continue to consult with town counsel about the best course of action in regards to this matter.

Kathleen Colleary, Chief  
Bureau of Municipal Finance Law  
Division of Local Services  
Massachusetts Department of Revenue  
617-626-2400  
DLSLAW@dor.state.ma.us

This e-mail response is intended to provide general information about the application of municipal tax and finance laws and Department of Revenue policies and procedures. It is not a public written statement, as defined in 830 CMR 62C.3.1, and does not state the official position of the Department on the interpretation of the laws pertaining to local taxes and finance. It should be considered informational only.

2012-322 Sturbridge revoking CPA surcharge.txt

From: Colleary, Kathleen  
Sent: Thursday, March 08, 2012 4:58 PM  
To: 'Barbara Barry'  
Subject: RE: revoking CPA surcharge

Hi Barbara,

If the CPA is revoked, the accounting officer must determine the liabilities of the fund, which includes the debt service, and the amount of uncommitted fund monies available to meet them. Those monies must then be reserved so they are available for appropriation to meet the obligations as they become due. (The debt may not be callable and able to be retired immediately). See Sections I-F, III-A-10 and VIII-L of IGR 00-209, as amended.

<http://www.mass.gov/dor/docs/dls/publ/igr/2000/00-209amended.pdf>. If there are insufficient uncommitted monies, then the surcharge must continue to be assessed until sufficient revenues are raised. In our view, the surcharge is only being assessed at that time to wrap up the fund, which means there is no longer an obligation to allocate 10% of each of those year's revenues to the 3 CPA spending purposes. Remaining uncommitted monies, or balances in other reserves, are available for appropriation for CPA purposes.

As an example, Dana revokes the CPA while it has \$1m in CPA debt outstanding, all of which was issued to fund open space acquisitions. It has \$300,000 in fund balance, \$250,000 in the Community Housing reserve and \$200,000 in the Historic Resources reserve. Dana will get a state trust fund distribution next FY (because it assessed a surcharge this year), which it estimates will be about \$75,000. Therefore, it has \$375,000 available to reserve for appropriation for the debt service as it becomes due in future years since the historic and housing reserves can only be used for those purposes. (Those reserves continue to be available for appropriation for eligible projects at any time until exhausted.) Consequently, Dana will have to assess a surcharge for 1 or more years in order to accumulate the other \$625,000 needed to cover the debt service. Any extra monies left after it has enough additional revenues from surcharges (plus trust fund distributions and investment earnings it receives while it winds down the fund) can be appropriated for any CPA purpose.

Hope this answers the question.

Kathleen

Kathleen Colleary, Chief  
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From: Barbara Barry [<mailto:bbarry@town.sturbridge.ma.us>]  
Sent: Thursday, March 08, 2012 9:02 AM

Page 1

2012-322 Sturbridge revoking CPA surcharge.txt

To: Colleary, Kathleen  
Subject: revoking CPA surcharge

Hi Kathleen.

It is my understanding that you have been contacted by various individuals from the Town of Sturbridge who have posed specific questions relative to revoking the CPA.

Unfortunately, responses from you are being interpreted in two different ways and so I do need some clarification to make sure that I am interpreting your responses correctly.

There will be a ballot question on our April Annual Town Election to revoke the CPA. If that ballot question passes the Town will not be able to immediately revoke the surcharge because we have debt obligations on the surcharge going out to fiscal year 2030. Everyone is clear on that point.

The area that is garnering different opinions is what you mean when you say "new projects can be undertaken only if funds left after accounting for fund liabilities." I interpret this to mean that if the CPA is revoked then the liability is all of the remaining debt and that once there are sufficient funds to cover all of the debt than any excess funds can be used for CPA projects. Others interpret this statement to mean fund liabilities on a year by year basis. Could you please clarify this point.

Also, if you could clarify one additional point. We currently have no debt or other liabilities against the fund restricted for Community Housing. It is my interpretation that if CPA was revoked the fund balance for Community Housing could be utilized for specific projects but that appropriations could not exceed the actual fund balance in any given year.

Any additional clarification that you could provide is very much appreciated.

-Barbara

Barbara Barry  
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Town of Sturbridge  
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# Focus

## on Municipal Finance

### An Analysis of the Treatment of Municipal Revenue

by Kathleen Colleary, Esq.

Increasingly over the past few years, the Division of Local Services' (DLS) legal and accounting staffs are asked if certain payments made to cities and towns may be reserved for a particular purpose. With limited general revenues and tight budgets, municipalities are looking to raise additional revenue for particular purposes and want to know if a special fund can be used for those monies.

This article discusses the treatment of municipal revenue under Massachusetts law and looks at the following three categories of payments municipalities receive frequently:

- Payments made by developers, or parties to an agreement with the municipality, for a particular purpose.
- Cash payments from developers or vendors to secure performance of obligations, so-called performance deposits.
- Donations or other monies received from municipal fundraising activities.

#### Overview

One of the most fundamental principles of municipal finance in Massachusetts is established by M.G.L. Ch. 44 Sec. 53. It creates the basic rule that all revenues from any source are unrestricted general revenues available for expenditure for any valid municipal purpose after appropriation by the municipality's legislative body. Any analysis of the treatment of a particular receipt begins with this statutory presumption that any money received by any department or officer in the regular course of municipal business belongs to a common pool of financial resources referred to as the general fund, and spending priorities

for those resources are established through the budget and appropriation process.

There are many exceptions that permit particular receipts to be segregated into a separate, special fund. However, any exception to M.G.L. Ch. 44 Sec. 53 must be created by another statute, either a general law or special act that applies to the particular city or town. A special fund cannot be created by the selectmen, mayor, finance director, or department head, a vote of the legislative body, or bylaw or ordinance. *Chart 1* (on page 5) includes a list of the general laws that create some type of special fund.

*Chart 2* (on page 6) is a summary of the different treatments of municipal monies that are permitted by various general laws. This article looks at "special revenue" funds, which are funds where particular receipts are earmarked and restricted for expenditure for particular purposes. Special revenue funds include:

- Receipts reserved for appropriation, where the earmarked revenues have to be appropriated;
- Revolving funds, where the earmarked receipts can be spent without appropriation; and
- Gifts and grants, which can be spent without appropriation.

#### Payments by Developers and Vendors for Designated Purposes

Mitigation payments, infrastructure charges or other exactions made by a private party in connection with a regulatory activity or a municipal contract are often the subject of a bylaw or ordinance. Examples include:

- A property owner who has a permit application pending before the conservation commission and as a mitigation measure agrees to make a "donation"

to the conservation fund for the purchase of conservation land.

- A developer of a commercial property makes a payment required under the town's zoning bylaw in lieu of having sufficient parking spaces with the monies to be used for the acquisition, improvement and maintenance of municipal parking.
- A cell phone company that is leasing town-owned property for its equipment agrees to give the town a one-time or annual "gift" in addition to its lease payments.

The parties often characterize these payments as gifts, grants or donations. Under M.G.L. Ch. 44 Sec. 53A, genuine gifts or grants to a city or town department are segregated from the general fund and may be spent by the department head without appropriation for the purpose specified by the donor, but with the approval of the selectmen or mayor. These types of payments are rarely genuine gifts or grants, however. They do not come within the ordinary definition or meaning of a gift, which is a voluntary payment of money or transfer of property made without anything in consideration. Even if a party's decision to develop a property, engage in a regulated activity or contract with a municipality is one of choice, these payments are usually being made with the expectation of receiving something valuable in return. If the payment is a condition of receiving some privilege or benefit, or paid in return for some municipal action or authorization, it is not a voluntary donation or gift and the funds belong to the general fund regardless of the parties' characterization.

In a recent bylaw review, the attorney general took the same position regarding payments made by a developer for storm drainage and traffic light infra-

*continued on page four*

**An Analysis of the Treatment of Municipal Revenue**

continued from page three

structure under a bylaw that were to be deposited in a "special" gift account to fund the operation, maintenance and repair of the infrastructure.<sup>1</sup> The attorney general ruled that the bylaw was inconsistent with state law regarding the treatment of receipts under M.G.L. Ch. 44 Sec. 53 because the payments were not gifts.

There is a mechanism by which a municipality can reserve these payments for the identified purposes in the future, however. Under M.G.L. Ch. 40 Sec. 5B, a municipality may establish multiple stabilization funds for different purposes. By establishing a fund under that statute and appropriating the amount of the payment into the fund, a community can achieve the objective of reserving or saving these monies for use for a particular purpose in the future.

**Performance Deposits**

Performance deposits, which are also often the subject of a bylaw or ordinance, are cash payments made to secure performance of obligations, typically by developers or municipal contractors. For example, a bylaw may require a cash deposit to be held by the treasurer to secure restoration of a public road way under a street opening permit, or completion of work required under a drainage or driveway permit within two years of issuance. The intent is to hold the deposit and refund it if the work is performed, but if there is a default, for the municipality to use the funds to complete the work itself.

These arrangements make practical sense, but no statute generally governs when a third party escrow or surety is not used and cash is paid directly to the municipality to be held to secure performance. The only statutes dealing with these deposits apply to city contracts, M.G.L. Ch. 43 Sec. 29, and cash deposits of less than \$100,000 that are accepted in lieu of performance bond to secure installation of infrastructure required by a municipal planning board under the subdivision control law, M.G.L. Ch. 41 Sec. 81U.

Two recent attorney general bylaw review letters provide guidance in structuring the deposits in order to make them consistent with the general rule that receipts belong to the general fund.<sup>2</sup> Officials should work with municipal counsel so that the deposits are not received by and do not belong to the municipality unless and until there is a default, *i.e.*, they are not subject to M.G.L. Ch. 44 Sec. 53 until that time. This requires having clear standards for defining default. Counsel would also advise about any liability issues with having the treasurer act as the escrow agent, so that a third party escrow might be considered instead. If there is a default, an appropriation is required before any expenditure may be made to complete the work.

**Gifts, Fundraisers and Trusts**

DLS is often asked how to handle many small contributions a community may receive when it is accepting donations for a particular project. For example, the parks department wants to refurbish a playground and is raising money to help pay for the new improvements and equipment. People are sending in small checks for the project. These payments are gifts under M.G.L. Ch. 44 Sec. 53A, but it is impractical to create a separate gift account for each payment. The accounting officer can create a consolidated gift account to accumulate the many smaller and general contributions for the same identified purpose. Some formal title or designation should be given to the account, *e.g.*, the "Yourtown Park Playground Project," and the specific spending purposes identified. Donors can then identify their contributions for that account fully aware of the purpose and terms and conditions of the gift. The formal designation can be made by the applicable board or officer, or a vote of the legislative body, for example if it appropriates money for the project, but sets a condition that a certain amount must be raised in gifts first.

Communities also ask how they can establish their own trust funds, *i.e.*, declare certain municipal revenues are held in trust. A community cannot create its own trust. A trust is created by a donor who gives a gift to the municipality in the form of a trust, which would typically mean there is some trust instrument or specific instruction authorizing a specified municipal trustee to hold the donated monies in trust. Typically, trusts are used when the gifts are given with the intention that they be continuing, *i.e.*, accumulate interest and that the municipality spend from the annual earnings for particular purposes.

There are some statutory special funds commonly called trust funds because they hold particular funds in a fiduciary capacity. An example would be perpetual care funds, which are paid by a person buying a plot in a municipal cemetery, with the interest to be used for the perpetual care of the plot. The local scholarship fund is another, with the primary source of revenue being voluntary contributions (gifts) made by taxpayers when they pay their property tax or excise bills.

A community does not create a trust, it administers one created by a donor, or established under a statute for particular receipts.

**Summary**

Any money received by the community belongs to the general fund and can only be spent by appropriation under M.G.L. Ch. 4 Sec. 53. Only another statute, either general law or special act, can authorize a different treatment for any particular revenue. If there is a statute permitting a different treatment, local officials must follow the specific requirements of the statute in accounting for and spending the revenue. ■

1. Case 3157, Bellingham (December 22, 2004).

2. Case 3171, Plainville (February 22, 2005); Case 3130, Sharon (December 13, 2004).



# Bulletin

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2008-13B

## MTBE Litigation Settlement Proceeds

TO: Accountants, Auditors, Assessors, Mayors, Selectmen, City/Town Managers and Finance Directors

FROM: Gerard D. Perry, Director of Accounts

DATE: November 2008

SUBJECT: Treatment of MTBE Products Liability Litigation Settlement Proceeds

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We have received a number of inquiries regarding the treatment of settlement proceeds received as a result of a class action products liability lawsuit, *In Re: Methyl Tertiary Butyl Ether ("MTBE")*, brought against manufacturers and distributors of gasoline containing MTBE. This *Bulletin* explains the accounting treatment and expenditure of proceeds received from the settlement. G.L. c. 44, §§ 38 and 43.

We understand the settlement compensates cities, towns and districts for damages attributable to MTBE contamination of their water supplies. In addition to the monies now being distributed, the settlement provides for additional compensation should contamination be detected in other supplies in the future. We also understand the settlement does not place any restrictions on the use of these funds, although recipients may use all or some of the monies for current or future clean-up costs.

As is the case for proceeds payable to a city, town or district from the settlement of litigation claims generally, the MTBE settlement monies are unrestricted revenues that belong to the general fund and require an appropriation to spend. G.L. c. 44, § 53. Due to the timing of these distributions, many recipients would be unable to appropriate these monies for water or other purposes until after the close of FY09. The reason is that ordinarily any unanticipated general fund proceeds not reported in the tax rate are unavailable for appropriation until the Director of Accounts certifies them as part of a community's free cash at the close of the fiscal year. G.L. c. 59, § 23. In this case, however, recipients may reserve these settlement proceeds for appropriation during FY09. This treatment is consistent with longstanding Bureau policy that allows payments over \$20,000 received as restitution for damage to public property to be accounted for as available funds during the fiscal year received. (See G.L. c. 44, § 53(2), which allows smaller restitution payments to be spent without appropriation for repairs.)

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The Division of Local Services is responsible for oversight of and assistance to cities and towns in achieving equitable property taxation and efficient fiscal management. The Division regularly publishes IGRs (Informational Guideline Releases detailing legal and administrative procedures) and the Bulletin (announcements and useful information) for local officials and others interested in municipal finance.

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Post Office Box 9569, Boston, MA 02114-9569, Tel: 617-626-2300; Fax: 617-626-2330 <http://www.mass.gov/dls>

Therefore, a city, town or district has the following options regarding the treatment and use of MTBE settlement proceeds received during FY09:

- It may report all or a part of the proceeds as estimated receipts when setting the FY09 tax rate. The receipts may be applied to offset existing appropriations, or if a town or council meeting is held before the rate is set to offset new appropriations, for water or other purposes.
- It may reserve and appropriate the proceeds as an available fund for water or other purposes during FY09. Any monies not appropriated in FY09 will close to fund balance (free cash) at the end of FY09.
- It may reserve the proceeds for appropriation during FY09 by requesting an update to free cash. See Bulletin 2008-04B.

The same options will apply to additional payments received in any other fiscal year as compensation for newly detected contamination. The monies may be reported as estimated receipts in that year's tax rate, reserved and appropriated as an available fund during the year or reserved for appropriation through a free cash update.

For FY09 and future years, any proceeds not used or reserved under these options will close to fund balance at the end of that year.

Any questions you have should be directed to your Bureau of Accounts representative.