



# DLS

DIVISION OF LOCAL SERVICES  
MA DEPARTMENT OF REVENUE

Mark E. Nunnally  
Commissioner of Revenue

Sean R. Cronin  
Senior Deputy Commissioner

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# Local Finances

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## Adopting and Amending Operating and Capital Budgets

### Workshop B 2015

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# Discussion Topics

## **CASE STUDY 1 BUDGET FORMAT AND CONTROL**

The Town of Dana has traditionally voted an annual operating budget that includes separate line items for every position and type of compensation. Other operating expenses are likewise voted with great specificity. This approach has resulted in having to call, at considerable expense, several town meetings during the year to make budget transfers. The finance committee believes it is time to give department managers more flexibility.

For FY2017, it wants to develop a format for departmental budgets that consolidates numerous salary and compensation items into an amount for "personal services." Most other budgeted expenses would be included in an amount for "expenses," although some departments may have additional amounts. The committee wants to allow any budgeted funds to be used for any departmental operating purpose and proposes that the budget vote contain a provision that all of the "amounts within departmental budgets are considered a single appropriation, not separate items."

The selectboard does not believe the finance committee has the power to change established budget practice through its recommendations and is prepared to present its own budget to town meeting in the customary format. It does think there is some merit in consolidating budget items though, but is concerned about giving department heads unlimited discretion over their budgets, particular with respect to personnel costs. Therefore, it could support a consolidation of budget items along the lines the finance committee proposes if the following language is added to the budget vote: "provided, however, that expenditures for Personal Services shall not be increased unless, in each instance, the Finance Committee grants prior approval."

### Questions:

1. Who is responsible for submitting the annual budget in a town? In a city?
2. Can the selectboard or finance committee change the established line items used in adopting the annual operating budget? If so, is town meeting bound by those recommendations? Who establishes the format of a city budget?
3. What is the effect of the budget vote language proposed by the finance committee?
4. What would be the effect of the proviso suggested by the selectboard?
5. What if town meeting decides not to follow the finance committee recommendation to consolidate. Can it address the problem of having to hold other town meetings by voting to authorize the finance committee to permit department heads to move funds between separate line item appropriations? Are there any restrictions or additional approvals a city or town legislative body can impose on any intradepartmental or interdepartmental transfers of voted appropriation items?

G.L. c. 41, § 59  
G.L. c. 41, § 60  
G.L. c. 44, § 31  
G.L. c. 44, § 32  
G.L. c. 44, § 33B

## **CASE STUDY 2**

### **ACTION ON PROPOSED BUDGET**

In the past few years, Prescott has set its tax rate very late because it could not balance its budget. This year, both the selectboard and finance committee want to ensure annual town meeting adopts a balanced budget within its Proposition 2½ levy limit so the town does not have to hold another town meeting before the tax rate is set. The following approaches are proposed for action on the omnibus budget article:

- Having the moderator announce that any amendment increasing a recommended amount must be accompanied by a corresponding decrease elsewhere in the budget or must be made contingent upon passage of a Proposition 2½ ballot question.
- Having town meeting adopt a procedural rule at the outset of action on the budget article that any amount voted in excess of the recommended amount is contingent upon passage of a Proposition 2½ ballot question.
- Including language in the budget warrant article that any amount voted in excess of the recommended amount is contingent upon passage of a Proposition 2½ ballot question.
- Incorporating the dollar amount recommended for each item and the total amount recommended into the article including language that the total voted under the article cannot exceed the total amount recommended.

#### Questions:

1. Do any of these approaches prevent town meeting from voting a budget in excess of the recommended budget?
2. Can the town adopt a by-law that restricts town meeting's power to increase the recommended budget?
3. If Prescott was a city, would the city council be able to vote a budget in excess of the amount recommended by the mayor? If so and it does, can the mayor veto the entire budget or council's action to increase particular appropriation items?

G.L. c. 39, § 10  
G.L. c. 41, § 60  
G.L. c. 44, § 32  
G.L. c. 44, § 33

## CASE STUDY 3 CONTINGENT OPERATING BUDGET

Enfield's Finance Committee recommended total appropriations of \$8,000,000 for FY2016 departmental operating budgets, debt service and other annual expenses such as health insurance costs. It advises that if its budget recommendations are voted by the town, the town will have a balanced budget within its Proposition 2½ levy limit. No override would be required to have a balanced budget.

### PROPOSED FISCAL YEAR 2016 ANNUAL BUDGET

THE FINANCE COMMITTEE RECOMMENDS THAT THE FOLLOWING AMOUNTS BE APPROPRIATED FROM THE TAX LEVY, UNLESS OTHERWISE SPECIFIED, FOR FISCAL YEAR 2016 DEPARTMENTAL OPERATING PURPOSES, DEBT SERVICE AND OTHER TOWN EXPENSES:

<u>Purpose</u>	<u>Recommended Amount</u>
Office of Selectboard	
Personal Services	22,000
Expenses	51,000
...	
School Department	4,000,000
...	
Town Planner	
Personal Services	0
Expenses	0
...	
Conservation Commission	
Personal Services	8,000
Expenses	10,000
	(Includes \$8,000 transfer from Wetland Protection Fund)
...	
<b>TOTAL</b>	<b>\$8,000,000</b>

Action on the budget and other appropriation articles was postponed until the end of the meeting. On June 30, 2015, after several nights of debate during which amendments were made to the Finance Committee's recommendations that restored or increased funding for certain items by a total of \$200,000, the town adopted the Finance Committee's recommendations, as amended, by voting to:

appropriate from the tax levy, unless otherwise specified, the amounts recommended by the Finance Committee for departmental operating purposes, debt service and other town expenses in Fiscal Year 2016, with each item to be considered a separate appropriation, contingent upon the passage of a Proposition 2½ override question in the amount of \$200,000.

For legal and practical reasons, the earliest date the selectboard could schedule a special election for the override was September 22, 2015.

1. What amounts should the town clerk certify to the treasurer, assessors and accountant as the town's appropriations under the FY2016 budget article after the meeting dissolves, i.e., does the town have an approved annual operating budget on July 1, 2015? Can the department heads begin spending from these appropriations on July 1? If no, can town departments spend based upon 1/12 of the FY2015 budget?
2. Are the appropriations effective if the Proposition 2½ override question is approved by the voters on September 22, 2015? If not, is the override still effective? If yes, for how long?
3. How else could the Finance Committee recommendation and town meeting vote on the omnibus budget article have been structured?
4. If Enfield was a city, could the mayor propose making any operating budget item contingent on a Proposition 2½ ballot question? Could the city council increase an item in the mayor's budget and make the increase contingent on a Proposition 2½ ballot question?

G.L. c. 44, § 32

G.L. c. 44, § 33

G.L. c. 59, § 21C(m)

## **CASE STUDY 4 CAPITAL BUDGET**

Due to budget constraints, Dana's Finance Committee and Selectboard decided that the FY2016 capital budget had to be made contingent on Proposition 2½ ballot questions. In preparing the annual town meeting warrant, the selectboard added "contingency" language to the customary annual capital spending article so that it read:

ARTICLE 5. To act on the report of the Capital Outlay Committee and to raise and appropriate, transfer from available funds, or borrow money for the capital needs of the Town for Fiscal Year 2016 contingent upon passage of a Proposition 2½ referendum under General Laws Chapter 59 § 21C, or take any other action relative thereto.

### **PROPOSED FISCAL YEAR 2016 CAPITAL BUDGET**

THE CAPITAL OUTLAY COMMITTEE RECOMMENDS THAT THE FOLLOWING AMOUNTS BE APPROPRIATED FOR THE SPECIFIED CAPITAL PURPOSES:

<u>Purpose</u>	<u>Recommended Amount</u>
Fire Department	
Replace Town Ambulance	50,000
Replace 1 Fire Engine	1,000,000
Police Department	
Replace 4 cruisers	60,000
TOTAL	\$1,100,000

**FINANCE COMMITTEE RECOMMENDATION:** THE COMMITTEE AGREES THAT THE EXPENDITURES RECOMMENDED BY THE CAPITAL OUTLAY COMMITTEE ARE HIGH PRIORITY CAPITAL NEEDS. HOWEVER, DUE TO BUDGET CONSTRAINTS, IT RECOMMENDS THAT ALL AMOUNTS RECOMMENDED BY THE CAPITAL OUTLAY COMMITTEE FOR THE FY2016 CAPITAL BUDGET BE APPROPRIATED CONTINGENT UPON APPROVAL OF PROPOSITION 2½ BALLOT QUESTIONS.

At the annual meeting, the fire chief argued that the town's only ambulance was so antiquated that it was in danger of a complete breakdown. He urged the meeting to appropriate the funds needed to replace it whether a ballot question was approved or not.

The town has a by-law that states the Finance Committee's recommendation under any appropriation article constitutes the main motion on that article. A meeting member moves to amend the finance committee recommendation by striking the "contingency" language with respect to the appropriation for the ambulance. The meeting votes to so amend and then votes to "approve" the capital budget.

**Questions:**

1. Can the town vote the appropriation without the language making it contingent upon a Proposition 2½ ballot question?
2. What financing sources should the town clerk certify to the treasurer, assessors and accountant for the town's capital appropriations under this article and do those sources impact the type of ballot question that may be presented to the voters?

G.L. c. 59, § 23  
G.L. c. 59, § 21C(m)

## **CASE STUDY 5 SCHOOL BUDGETS**

The Greenwich Finance Committee asked all town departments, including the school department, to submit its FY2016 operating and capital budget requests in a new line item format. The new format includes an item for departmental equipment, minor facility repairs and similar types of capital outlays that would have been appropriated under a separate capital budget in previous years. The separate capital budget will now be reserved for major new capital projects. In addition, it includes an allocation by department of certain employee benefits, such as health insurance, that have traditionally been budgeted in a single appropriation in the operating budget. The finance committee also asks the school department to add a separate item for transportation costs previously appropriated within the school department appropriation.

The school committee has never submitted its budget request in a line item format and refuses to submit one for this year as well. It objects to having transportation expenses shown as a separate item and to the proposal of having the school capital items and employee benefits included in its budget. It submits a budget request expressly excluding those expenses. The school committee's requested budget is 10% more than last year's budget.

The town also belongs to the Greenwich Valley Regional High School District. Town officials ask the regional school committee to submit its budget in some type of a line item format, so they can review it in an informed manner. However, the total regional school budget of \$3 million is submitted to the members with only a breakdown of the proposed operating and capital costs used to establish members' assessments under the regional school agreement. Greenwich's assessment under the proposed budget is \$1.3 million, of which \$1.2 million is allocated for operating and \$100,000 for capital costs. This year's assessment is \$200,000 more than last year.

At town meeting, the finance committee recommends that both school budgets be level funded. The local school department budget is voted under an omnibus budget article that asks if the town will vote to appropriate funds "for departmental operating purposes, debt service and other town expenses in fiscal year 2016." The finance committee's recommendations are printed underneath the article for the convenience of voters, but they are not part of or incorporated into the article. The regional school budget is voted under a separate warrant article and the finance committee's recommendation is contained within the article. That article reads:

To see if the Town will approve the fiscal year 2016 budget for the Greenwich Valley High School District, and raise and appropriate, or transfer from available funds, \$1,100,000 for its assessed share of the operating costs and \$100,000 for its assessed share of capital costs of the district budget, or take any action relative thereto.

Both the town and regional school committees are upset that their budget requests are not being presented to town meeting in the finance committee's recommendations or the warrant article. Town officials assure them that they will have an opportunity to address town meeting about their requested funding levels.

At town meeting, the local school budget was acted on first. The school committee presented its budget request and renewed its objection to including certain expenditures in its budget. Despite those objections, the school budget was voted in the format proposed by the finance committee. The meeting also voted to appropriate the recommended amounts, with an increase of \$200,000 increase in the personal services line item. Under a separate article submitted by petition, the meeting also voted to appropriate \$5,000 for the school department to buy new uniforms for the high school band and another \$50,000 to replace science lab equipment at the middle school. The voted budget was as follows:

300	PUBLIC SCHOOLS	
	Personal Services	7,500,000
	Expenses	900,000
	Educational Materials and Equipment	600,000
	Facility Maintenance/Expenses	1,000,000
	Health Insurance/Employee Benefits	1,300,000
	Middle School Science Lab Equipment	50,000
	High School Band Uniforms	5,000
	Transportation	700,000
	Capital Outlay	200,000
	Fire Alarm Upgrade	
	Asphalt Replacement	
	Dump Truck	
	TOTAL PUBLIC SCHOOLS	12,255,000

When the regional school budget came before the meeting, the moderator ruled an amendment to increase the amount for the town's assessment to its full assessed share was outside the scope of the warrant article. The meeting then voted the amount included in the article, and went on to vote that the \$200,000 reduction in operating costs come from salaries.

1. Do the local and regional school committees have to present their budget requests to town officials in a line item format?
2. Do town officials have to present the school committees' requests to town meeting? Is the meeting precluded from considering and approving the requested regional school budget due to the wording of the warrant article? If Greenwich was a city, would the mayor have to submit it the requests to the city council? Can the council increase the amount recommended by the mayor for the local or regional school?
3. May a local school budget be voted with line items? If the school committee had presented a line item budget, can those items be changed by the appropriating body? May the meeting vote the regional school budget with line items or separately approve the operating and capital budgets? Are the school committees bound by the votes?
4. May all school related expenses be included in the local school department budget or must certain expenses, such as transportation, capital outlay and employee benefits, be budgeted elsewhere? Does including them in the school department budget make them available for the school committee to transfer to other school

department purposes? Can the school committee delegate its line item transfer authority to the school superintendent?

5. The town later learns that the original regional school budget was not approved, and the regional school committee reduced it. The town's assessment under the reduced budget is less than the \$1,200,000 it appropriated. Does it need to amend its appropriation?

G.L. c. 71 § 34

603 CMR 41.05 Department of Elementary and Secondary Education: Regional School District Budgets

## **CASE STUDY 6 BUDGET REDUCTIONS AND DELAYS**

Prescott must cut fiscal year 2016 spending from the tax levy by \$500,000 in order to have a balanced budget and be able to set a tax rate. In preparing for a special town meeting, the selectboard and finance committee decide to propose reductions in the school department budget. It was increased at the annual town meeting more than recommended by the finance committee and was the only department budget to receive an increase. However, under G.L. c. 70, school spending cannot be reduced more than \$150,000. Both the selectboard and finance committee feel that the additional \$350,000 in reductions cannot be obtained simply by making across the board cuts in other departments, most of which have been reduced or level funded in the past few years. Reluctantly, they conclude it will be necessary to close the town library in order to balance the budget.

Their budget reduction plan was included in the special town meeting warrant article, which reads as follows:

To see if the Town will vote to reduce school department appropriations by \$150,000 and to rescind entirely library department appropriations of \$350,000, as voted by the 2015 Annual Town Meeting, for the purpose of balancing the town's fiscal year 2016 budget, or take any action relative thereto.

The proposal was very controversial and unpopular among town meeting members. First, the town has some certified free cash and other available funds and their use was proposed in order to keep the library open for limited hours. That motion was ruled outside the scope of the warrant article. After much discussion, the meeting then concluded that the entire electorate should make such an important decision as closing down the town library. Therefore, it voted to rescind all operating appropriations for the library, "provided, however, that such vote shall not take effect if a referendum question under Proposition 2½ is approved." Finally, the meeting voted to make only \$50,000 of the proposed reductions in the school budget, despite the arguments of the selectboard that the vote meant another town meeting would be needed before a tax rate could be set, regardless of the results of any override election.

1. Can the town vote to make a budget reduction or rescission subject to a Proposition 2½ referendum? If so, how should the vote be worded?
2. Was the motion to use free cash proper? Does it matter if the town had not yet received certification of the free cash? Could the town have appropriated a percentage or up to an amount of free cash, contingent upon its certification? If not, what other options were available to the selectboard in preparing the warrant article that would have enabled it to present their budget reduction proposal, but permit the adoption of alternatives and avoid delay in setting a tax rate.

Assume instead that Prescott is a city. On June 30, 2015, which is the 45<sup>th</sup> day after the mayor has submitted the budget to the city council, the council votes to reduce the total budget by 5%.

1. Can the city council vote to reduce the total proposed budget by a specified percentage or dollar amount? What is the effect of that vote? If it wants to reduce the mayor's proposed budget, what is the procedure?
2. If instead, the mayor submitted the budget on June 1, 2015 and the council had not acted on it before July 1, 2015, is there an approved budget as of July 1? If not, can city department heads spend on July 1 based on 1/12 of the prior year's budget? The mayor's budget included a section establishing 10 departmental revolving funds and the council did not act separately on that section. Are those revolving funds in effect for fiscal year 2016?
3. When voting on the property tax levy percentages for the fiscal year, can the city council vote to reduce the tax levy by appropriating free cash or other available funds to reduce the levy, or vote to reduce the levy generally?

G.L. c. 44, § 32  
G.L. c. 44, § 53E½  
G.L. c. 59, § 23  
G.L. c. 59, § 21C(m)

## **CASE STUDY 7 RELATED VOTES**

Dana wants to renovate and expand its senior center so it will be available for other community uses as well. The project would be financed by borrowing and if it proceeded on schedule, the Council on Aging would need an increase in its FY2018 budget to accommodate the opening and operation of the renovated center. Town officials all agree that the new center cannot be constructed or operated unless the voters approve property tax increases under Proposition 2½.

Under its charter, Dana has a second "annual town meeting" in October 2015 before setting the tax rate. The senior center is a subject of an article on that warrant for that meeting. It proposes borrowing for the construction and appropriating a specific amount

from the FY2018 tax levy to operate the center. The selectboard plans to present the related debt exclusion and override to voters at the annual election in April 2016.

1. Can a city or town appropriate from the next year's tax levy before the current year's levy has been set?
2. Can the town make its authorization to borrow for the school contingent on the approval of both a debt service exclusion for the borrowing and an override for school operating expenses to be appropriated in the future?
3. If the town authorized the borrowing contingent on a debt exclusion and the exclusion is approved at the April 2016 election, is the borrowing effective? The debt exclusion? If so, for how long?

Assume the town voted to borrow \$10 million for the construction project contingent on the debt exclusion at the October 2015 meeting and a debt exclusion was timely approved. The borrowing vote also contained a condition that only \$250,000 of the authorization could be spent for design and specifications until such time as the town received a state grant for 25% of the project, i.e., \$2.5 million. The town contracts for the design work and issues \$250,000 in debt for that purpose. Two years later, the town learns it will not get the grant.

4. Can a city or town rescind a borrowing authorization? If so, what quantum of vote would be required to rescind the borrowing authorization?
5. What if the town learned about the grant immediately before it signed the contract for the design work. Can it vote to abandon or discontinue the loan issuance and appropriate the unexpended proceeds for another capital purpose at a special town meeting?

G.L. c. 44, § 20  
G.L. c. 59, § 23  
G.L. c. 59, § 21C(m)

## **CASE STUDY 8**

### **AMENDING COMMUNITY PRESERVATION BUDGET**

Enfield accepted the Community Preservation Act (CPA). The CPA budget voted for FY2016 was based on estimated FY2016 CP Fund annual revenues which included estimated state matching funds, as estimated by the Department of Revenue. Later, as a result of an outside section in the FY2016 state budget, \$10 million of the state's FY2015 budget surplus was transferred to the CPA Trust Fund for distribution in matching funds to CPA communities. On November 15, 2015, Enfield learns it has received significantly more in matching funds than originally estimated by DOR.

1. Can Enfield spend the additional matching funds in FY2016? Would it make a difference if the FY2016 tax rate had been set? If yes, what is the procedure to spend this additional money? What role does the Community Preservation

Committee (CPC) play? Is the town required to increase its appropriations to meet the 10% spending requirement for all three Community Preservation categories, i.e., (1) community housing, (2) open space including recreation and (3) historic preservation?

2. If the state matching funds are significantly lower than the original estimated amount, what can town officials do in response if the FY2016 tax rate has been set? Has not been set?

G.L. c. 44B, § 6  
G.L. c. 59, § 23

## **ANNUAL TOWN MEETING**

### **General Laws Chapter 39, § 9**

Section 9. Except as otherwise provided by special law or a charter adopted or revised or amended under Sections two, three, or four of Article LXXXIX of the Amendments to the Constitution of the Commonwealth which may provide for a different time for the election of town officials and other matters to be determined by ballot, the annual meeting of each town shall be held in February, March, April, May or June; and other meetings may be held at such times as the selectmen may order or the charter or by-law prescribe; provided, however, that, notwithstanding the provisions of this section or of any other law, by-law, or charter to the contrary, a town, by the vote of its board of selectmen or town council may delay the annual town meeting; and provided, further, that such a delayed annual town meeting shall complete its business on or before June thirtieth. Town meetings shall be held within the geographic limits of the town unless a special law, charter or by-law provides otherwise; provided, however, that any meeting for the election by ballot of federal, state or other officers or the determination of other matters that are to be determined by ballot at an election shall be held within the geographic limits of the town. Meetings may be adjourned from time to time and meet and adjourn to any place authorized by law provided that officers shall be elected, and matters required by law to be elected or determined by ballot, shall be so elected or determined during the hours during which polls shall remain open as hereinafter provided. If the day set for a town meeting by by-law or otherwise falls on a legal holiday, such meetings shall be held on the day following. A town may by by-law designate the hour at which the annual town meeting shall be called and subject to section sixty-four of chapter fifty-four by vote or by-law designate the hours during which polls shall remain open in meetings for the election of officers and the determination of other matters that are required by law to be determined by ballot.

## **TOWN MEETING WARRANTS**

### **General Laws Chapter 39, § 10**

Section 10. Every town meeting or town election, except as hereinafter provided, shall be called in pursuance of a warrant, under the hands of the selectmen, notice of which shall be given at least seven days before the annual meeting or an annual or special election and at

least fourteen days before any special town meeting. The warrant shall be directed to the constables or to some other persons, who shall forthwith give notice of such meeting in the manner prescribed by the by-laws, or, if there are no by-laws, by a vote of the town, or in a manner approved by the attorney general. The warrant for all town meetings shall state the time and place of holding the meeting and the subjects to be acted upon thereat. The town meeting may be held in one or more places; provided, that if it is held in more than one place, the places are connected by means of a public address system and loud speakers so that the proceedings in all such places may be heard and participated in by all the voters present therein. Whenever the moderator determines that voters are being excluded from the town meeting because there is no room for them in the places provided or that voters in attendance are being deprived of the opportunity to participate therein for any reason whatsoever, he shall either, on his own motion recess the meeting for any period during the day of the meeting or, after consultation with the members of the board of selectmen then present, adjourn the same to another date, not later than fourteen days following the date of said meeting, when places and facilities sufficient to accommodate all voters attending and to enable them to participate therein shall be available. The selectmen shall insert in the warrant for the annual meeting all subjects the insertion of which shall be requested of them in writing by ten or more registered voters of the town and in the warrant for every special town meeting all subjects the insertion of which shall be requested of them in writing by one hundred registered voters or by ten per cent of the total number of registered voters of the town whichever number is the lesser. The selectmen shall call a special town meeting upon request in writing, of two hundred registered voters or of twenty per cent of the total number of registered voters of the town, whichever number is the lesser; such meeting to be held not later than forty-five days after the receipt of such request, and shall insert in the warrant therefor all subjects the insertion of which shall be requested by said petition. No action shall be valid unless the subject matter thereof is contained in the warrant. Two or more distinct town meetings for distinct purposes may be called by the same warrant.

The written requests of registered voters for the insertion of subjects in town meeting warrants shall not be valid unless the required number of registered voters not only sign their names but also state their residence, with street and number, if any. The selectmen shall submit such written requests to the board of registrars of voters or the board of election commissioners who shall check and forthwith certify the number of signatures so checked which are names of voters in the town, and only names so checked and certified shall be counted. A greater number of names than are required in each case need not be certified.

## **TOWN BUDGET ESTIMATES**

### **General Laws Chapter 41, §§ 59 and 60**

Section 59. The selectmen and all boards, committees, heads of departments, or other officers of a town authorized by law to expend money shall furnish to the town accountant, or, if there is no town accountant, to the appropriation, advisory or finance committee, if any, otherwise to the selectmen, not less than ten days before the end of the calendar year, or not less than ninety days prior to the date of the start of the annual town meeting, whichever is later, detailed estimates of the amount necessary for the proper maintenance of the departments under their jurisdiction for the ensuing fiscal year, with explanatory statements as to any changes from the amounts appropriated for the same purposes in the then current fiscal year, and an estimate of amounts necessary for outlays or permanent

improvements. They shall also prepare estimates of any income likely to be received by the town during the ensuing fiscal year in connection with the town's business or property intrusted to their care. The selectmen shall include in their estimates the salaries and expenses connected with their own office, and the salaries of all other town officers shall be included in the estimates for the office, department or branch of the public service of which they are in charge. The treasurer shall, in addition to his estimate of the amount required for the maintenance of his own office, prepare a separate statement indicating the amounts required for the payment of interest on the town debt and for the payment of such portions of the town debt as may become due during the ensuing fiscal year.

Section 60. The town accountant shall immediately upon the close of each calendar year compile statements in tabulated form showing the amounts appropriated and the amounts expended from each appropriation during the preceding fiscal year, the amounts appropriated for the current fiscal year and the amounts expended from such appropriations during the first six months of such year and the amounts estimated to be expended from such appropriations during the second six months of such year, and the estimates for the next ensuing fiscal year, and shall forthwith furnish a copy thereof to the selectmen, or to such committee as the town may appoint to consider and report on proposed appropriations. The selectmen, or said committee when so appointed, shall after due consideration designate the amounts which in their opinion should be appropriated for the ensuing fiscal year, and shall accompany the same with such explanations and suggestions in relation thereto as they may deem desirable for the proper information of the inhabitants. The selectmen or, if such a committee has been appointed, the committee, shall print and distribute this document at or before the annual town meeting, and the town clerk shall transmit a copy thereof and of all town reports to the director of accounts.

## **BOND PROCEEDS**

### **General Laws Chapter 44, § 20**

Section 20. The proceeds of any sale of bonds or notes, except premiums and accrued interest, shall be used only for the purposes specified in the authorization of the loan, and may also be used for costs of preparing, issuing and marketing such bonds or notes, except as otherwise authorized by this section. If a balance remains after the completion of the project for which the loan was authorized, such balance may at any time be appropriated by a city, town or district for any purposes for which a loan may be incurred for an equal or longer period of time than that for which the original loan, including temporary debt, was issued. Any such balance not in excess of one thousand dollars may be appropriated for the payment of the principal of such loan. If a loan has been issued for a specified purpose but the project for which the loan was authorized has not been completed and no liability remains outstanding and unpaid on account thereof, a city by a two-thirds vote of all of the members of the city council, or a town or district, by a two-thirds vote of the voters present and voting thereon at an annual town or district meeting, may vote to abandon or discontinue the project and the unexpended proceeds of the loan may thereupon be appropriated for any purpose for which a loan may be authorized for an equal or longer period of time than that for which the original loan, including temporary debt, was issued. Any premium received upon such bonds or notes, less the cost of preparing, issuing and marketing them, and any accrued interest received upon the delivery of said bonds or notes shall be paid to the city, town or district treasury. Notwithstanding the provisions of this section, no appropriation from a loan or balance thereof shall be made which would increase the amount available from borrowed money for any purpose to an amount in

excess of any limit imposed by general law or special act for such purpose. Effective with the fiscal year 2005 tax rate approval process, additions to the levy limit for a debt exclusion are restricted to the true interest cost incurred to finance the excluded project. Premiums received at the time of sale shall be offset against the stated interest cost in computing the debt exclusion. The provisions of the preceding 2 sentences shall not apply to bond premiums received on or before July 31, 2003.

## **LIABILITIES IN EXCESS OF APPROPRIATIONS**

### **General Laws Chapter 44, § 31**

Section 31. No department financed by municipal revenue, or in whole or in part by taxation, of any city or town, except Boston, shall incur a liability in excess of the appropriation made for the use of such department, each item recommended by the mayor and voted by the council in cities, and each item voted by the town meeting in towns, being considered as a separate appropriation, except in cases of major disaster, including, but not limited to, flood, drought, fire, hurricane, earthquake, storm or other catastrophe, whether natural or otherwise, which poses an immediate threat to the health or safety of persons or property, and then only by a vote in a city of two-thirds of the members of the city council, and in a town by a majority vote of all the selectmen. Payments of liabilities incurred under authority of this section may be made, with the written approval of the director, from any available funds in the treasury, and the amounts of such liabilities incurred shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors who shall include the amounts so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has appropriated amounts specified to be for such liabilities; provided, that, if proceedings are brought in accordance with provisions of section fifty-three of chapter forty, no payments shall be made and no amounts shall be certified to the assessors until the termination of such proceedings. Payments of final judgments and awards or orders of payment approved by the industrial accident board rendered after the fixing of the tax rate for the current fiscal year may, with the approval of the director of accounts if the amount of the judgment or award is over ten thousand dollars, be made from any available funds in the treasury, and the payments so made shall be reported by the auditor or accountant or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the aggregate appropriations assessed in the determination of the next subsequent annual tax rate, unless the city or town has otherwise made provision therefor.

The provisions of this section, so far as apt, shall apply to districts, and the prudential committee, if any, otherwise the commissioners, shall act in place of the members of the city council or selectmen.

## **CITY BUDGETS**

### **General Laws Chapter 44, § 32**

Section 32. Within one hundred and seventy days after the annual organization of the city government in any city other than Boston, the mayor shall submit to the city council the annual budget which shall be a statement of the amounts recommended by him for

proposed expenditures of the city for the next fiscal year. The annual budget shall be classified and designated so as to show separately with respect to each officer, department or undertaking for which an appropriation is recommended:—

(1) Ordinary maintenance, which shall also include debt and interest charges matured and maturing during the next fiscal year, and shall be subdivided as follows:—

(a) Salaries and wages of officers, officials and employees other than laborers or persons performing the duties of laborers; and

(b) Ordinary maintenance not included under (a); and

(2) Proposed expenditures for other than ordinary maintenance, including additional equipment the estimated cost of which exceeds one thousand dollars.

The foregoing shall not prevent any city, upon recommendation of the mayor and with the approval of the council, from adopting additional classifications and designations.

The city council may by majority vote make appropriations for the purposes recommended and may reduce or reject any amount recommended in the annual budget. It shall not increase any amount in or the total of the annual budget nor add thereto any amount for a purpose not included therein except on recommendation of the mayor, and except as provided in section thirty-three; provided, however, that in the case of the school budget or in the case of a regional school district assessment, the city council, on the recommendation of the school committee or on recommendation of a regional district school committee, may by a two-thirds vote increase the total amount appropriated for the support of the schools or for the regional district schools over that requested by the mayor; and provided, further, that no such increase shall be voted if it would render the total annual budget in excess of the property tax limitations set forth in section twenty-one C of chapter fifty-nine. Except as otherwise permitted by law, all amounts appropriated by the city council, as provided in this section, shall be for the purposes specified. In setting up an appropriation order or orders based on the annual budget, the council shall use, so far as possible, the same classifications required for the annual budget. If the council fails to take action with respect to any amount recommended in the annual budget, either by approving, reducing or rejecting the same, within forty-five days after the receipt of the budget, such amount shall without any action by the council become a part of the appropriations for the year, and be available for the purposes specified.

If, upon the expiration of one hundred and seventy days after the annual organization of the city government, the mayor shall not have submitted to the city council the annual budget for said year, the city council shall, upon its own initiative, prepare such annual budget by June thirtieth of such year, and such budget preparation shall be, where applicable, subject to the provisions governing the annual budget of the mayor.

Within fifteen days after such preparation of the annual budget, the city council shall proceed to act by voting thereon and all amounts so voted shall thereupon be valid appropriations for the purposes stated therein to the same extent as though based upon a mayor's annual budget, but subject, however, to such requirements, if any, as may be imposed by law.

If the council fails to take action with respect to any amount recommended in the budget, either by approving, reducing or rejecting the same, within fifteen days after such preparation, such amount shall, without further action by the council, become a part of the appropriations for the year, and be available for the purposes specified.

Notwithstanding any provisions of this section to the contrary, the mayor may submit to the city council a continuing appropriation budget for said city on a month by month basis for a period not to exceed three months if said city has not approved an operating budget for the fiscal year because of circumstances beyond its control.

Nothing in this section shall prevent the city council, acting upon the written recommendation of the mayor, from voting appropriations, not in excess of the amount so recommended, either prior or subsequent to the passage of the annual budget.

The provisions of this section shall apply, in any city adopting the Plan E form of government under chapter forty-three, only to the extent provided by section one hundred and four of said chapter.

Neither the annual budget nor appropriation orders based thereon shall be in such detail as to fix specific salaries of employees under the direction of boards elected by the people, other than the city council.

The city council may, and upon written request of at least ten registered voters shall, give notice of a public hearing to be held on the annual budget, prior to final action thereon, but not less than seven days after publication of such notice, in a newspaper having general circulation in the city. At the time and place so advertised, or at any time or place to which such public hearing may from time to time be adjourned, the city council shall hold a public hearing on the annual budget as submitted by the mayor, at which all interested persons shall be given an opportunity to be heard for or against the proposed expenditures or any item thereof.

## **CITY BUDGETS**

### **General Laws Chapter 44, § 33**

Section 33. In case of the failure of the mayor to transmit to the city council a written recommendation for an appropriation for any purpose not included in the annual budget, which is deemed necessary by the council, after having been so requested by vote thereof, said council, after the expiration of seven days from such vote, upon its own initiative may make such appropriation by a vote of at least two thirds of its members, and shall in all cases clearly specify the amount to be expended for each particular purpose, but no appropriation may be voted hereunder so as to fix specific salaries of employees under the direction of boards elected by the people, other than the city council.

## **APPROPRIATION TRANSFERS**

### **General Laws Chapter 44, § 33B**

Section 33B. (a) On recommendation of the mayor, the city council may, by majority vote, transfer any amount appropriated for the use of any department to another appropriation for the same department. In addition, the city council may, by majority vote, on recommendation of the mayor, transfer within the last 2 months of any fiscal year, or during the first 15 days of the new fiscal year to apply to the previous fiscal year, an amount appropriated for the use of any department other than a municipal light department or a school department to the appropriation for any other department, but the amount

transferred from 1 department to another may not exceed, in the aggregate, 3 per cent of the annual budget of the department from which the transfer is made. Except as provided in the preceding sentence, no transfer shall be made of any amount appropriated for the use of any city department to the appropriation for any other department except by a 2/3 vote of the city council on recommendation of the mayor and with the written approval of the amount of the transfer by the department having control of the appropriation from which the transfer is proposed to be made. No transfer involving a municipal light department or a school department shall be made under the previous sentence without the approval of the amount of the transfer by a vote of the municipal light department board or by a vote of the school committee, respectively.

(b) A town may, by majority vote at any meeting duly held, transfer any amount previously appropriated to any other use authorized by law. Alternatively, the selectmen, with the concurrence of the finance committee or other entity establish under section 16 of chapter 39, may transfer within the last 2 months of any fiscal year, or during the first 15 days of the new fiscal year to apply to the previous fiscal year, any amount appropriated for the use of any department other than a municipal light department or a school department to the appropriation for any other department or within a department, but the amount transferred from 1 department to another or within a department may not exceed, in the aggregate, 3 per cent of the annual budget of the department from or within which the transfer is made or \$5,000, whichever is greater.

(c) No approval other than that expressly provided in this section shall be required for any transfer under this section.

## **DEPARTMENTAL REVOLVING FUND**

### **General Laws Chapter 44, § 53E<sup>1</sup>/<sub>2</sub>**

Section 53E<sup>1</sup>/<sub>2</sub>. 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 ANNUAL REVENUES**

### **General Laws Chapter 44B, § 6**

Section 6. In 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, 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 appropriations from the Community Preservation Fund as it deems necessary for the administrative and operating expenses of the community preservation committee 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 this chapter; provided, however, that the total of any administrative and operating expenses of the community preservation committee and the first year implementation expenses shall not exceed 5 per cent of the annual revenues in the Community Preservation Fund.

Funds that are set aside shall be held in the Community Preservation Fund and spent in that year or later years; 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. The community preservation funds shall not replace existing operating funds, only augment them.

## **PROPOSITION 2½ -CONTINGENT APPROPRIATIONS**

### **General Laws Chapter 59, § 21C (excerpt)**

Section 21C.

...

(m) A town may appropriate from the tax levy, from available funds, or from borrowing, contingent on the passage of a ballot question under paragraph (g), (i1/2) or (k), but: (1) the statement of the purpose of the appropriation shall be substantially the same as the statement of purpose in the ballot question; (2) the appropriation vote shall not be deemed to take effect until the approval of the ballot question; (3) no election at which the question appears on the ballot shall take place later than the September 15 following the date of an appropriation vote adopted at an annual town meeting, or 90 days after the date of the close of any other town meeting at which an appropriation vote was adopted; and (4) after a contingent appropriation from the tax levy, a tax rate for a town shall not be submitted for certification by the commissioner under section 23 until after a ballot question under paragraph (g), (i1/2) or (k) has been voted upon, or until the expiration of the time for holding an election at which the question appears on the ballot, whichever period is shorter.

## **DEFICITS AND AVAILABLE FUNDS**

### **General Laws Chapter 59, § 23**

Section 23. The assessors shall annually assess taxes to an amount not less than the aggregate of all amounts appropriated, granted or lawfully expended by their respective towns since the last preceding annual assessment and not provided for therein, of all amounts required by law to be raised by taxation by said towns during said year, of all debt and interest charges matured and maturing during the next fiscal year and not otherwise provided for, of all amounts necessary to satisfy final judgments against said towns, and of all abatements granted on account of the tax assessment of any year in excess of the overlay of that year and not otherwise provided for or any such deficits resulting from section fifty-three E of chapter forty-four; but such assessment shall not include liabilities for the payment of which towns have lawfully voted to contract debts.

Any estimate of interest charges attributable to variable interest rates on obligations issued pursuant to section twenty-two A of chapter forty-four shall be subject to the approval of the commissioner. The assessors shall deduct from the amount required to be assessed (a) the amount of all estimated receipts of their respective towns lawfully applicable to the payment of the expenditures of the next fiscal year, excluding sums to be received from the commonwealth or county for highway purposes, other than funds required to be distributed under section eighteen B of chapter fifty-eight, and excluding estimated receipts from loans and taxes, but including estimated receipts from the excise levied under chapter sixty A and receipts estimated by the commissioner under section twenty-five A of chapter fifty-eight, (b) the amount of all appropriations voted from available funds for the purpose of deduction, and (c) the amount of all other appropriations voted from available funds. Deductions made by the assessors under any provision of this section shall not be subject to the approval of the commissioner; provided, however, that deductions made under clause (a) on account of estimated receipts, other than those estimated by the commissioner, shall not exceed the aggregate amount of actual receipts received during the preceding fiscal year from the same sources, except with the written approval of the commissioner; and provided, further, that deductions made under clauses (b) and (c) shall not exceed the sums certified to the assessors and the commissioner by the director of accounts, after such examination of the accounts of the town as he may deem proper, as the amounts of available funds on hand on the preceding July the first with such additional funds as are hereinafter authorized not otherwise appropriated. Said director shall promulgate and from time to time revise rules and regulations for determining the available funds of a city or town in accordance with established accounting practices of said bureau of accounts. This section shall not be construed to require any approval for the use, application, transfer, appropriation or expenditure of any funds or accounts provision for which use, application, transfer, appropriation or expenditure is made under any other general or special law, beyond such approval or approvals as are required by such other general or special law.

In determining the amount of available funds to be deducted under the provisions of clauses (b) and (c), such available funds shall be the amount certified by the director of accounts as available on July the first next preceding the date of the appropriation, reduced by the amount of all intervening appropriations from available funds, and increased by the total of the proceeds from the sale of tax title possessions and the receipts from tax title redemptions, in addition to the real and personal property taxes of prior fiscal years, and such other amounts as the director may authorize, collected between said July first and a date which shall in no event be later than March thirty-first; provided, however, that no

increases to the amount of certified available funds shall be allowed unless such increases have received the written approval of the director prior to the appropriation of such amounts. Such amounts of available funds so certified by the director of accounts as available on the July first immediately preceding shall be reported by the town accountant to the board of selectmen, or by the city auditor to the mayor or city manager and to the city council or board of aldermen, and shall be subject to appropriation.

To the extent that appropriations for programs provided for under chapter seventy-one B have been made without taking into account any reimbursement to which the city or town is entitled during the fiscal year under section thirteen of said chapter seventy-one B, the amount of such reimbursement, but not in excess of such appropriations, shall be included with other estimated receipts by the board of assessors of every city or town when compiling the local tax rate under this section. Such board of assessors shall show as an offset when compiling such rate the amount which represents the excess of such reimbursement over such appropriations.

The auditor or similar accounting officer in each city or town shall certify as soon as may be to the board of assessors the total of the proceeds from the sale of tax title possessions and receipts from tax title redemptions, in addition to the total real and personal taxes of prior years collected from July the first of the current fiscal year up to and including March the thirty-first of the same year.

If, prior to June first the assessors of any city except Boston shall not have received from the city clerk a certificate under section fifteen A of chapter forty-one of the appropriations voted for the annual budget for the next fiscal year and if it appears to them, after inquiry of the city clerk, that such appropriations have not been voted, they shall forthwith assess a tax for said year in accordance with the provisions of this section, except that, in determining the amount of the tax to be assessed, there shall be considered as having been appropriated for the annual budget for said year an amount equal to the aggregate appropriations voted for the annual budget for the then current fiscal year.

Notwithstanding the provisions of any general or special law, the provisions of this section, so far as apt, shall apply to fire, water and improvement districts.

No city, town or district tax rate for any fiscal year shall be fixed by the assessors until such rate has been approved by the commissioner, and a rate shall not be approved until the commissioner determines that the deductions under this section and the overlay addition under section twenty-five are in full compliance of law and are reasonable in amount. No city, town or district tax rate for any fiscal year shall be changed after it has been approved by the commissioner and returned to the assessors.

## **SCHOOL APPROPRIATIONS**

### **General Laws Chapter 71, § 34**

Section 34. Every city and town shall annually provide an amount of money sufficient for the support of the public schools as required by this chapter, provided however, that no city or town shall be required to provide more money for the support of the public schools than is appropriated by vote of the legislative body of the city or town. In acting on appropriations for educational costs, the city or town appropriating body shall vote on the total amount of the appropriations requested and shall not allocate appropriations among accounts or place any restriction on such appropriations. The superintendent of schools in

any city or town may address the local appropriating authority prior to any action on the school budget as recommended by the school committee notwithstanding his place of residence. The city or town appropriating body may make nonbinding monetary recommendations to increase or decrease certain items allocating such appropriations.

The vote of the legislative body of a city or town shall establish the total appropriation for the support of the public schools, but may not limit the authority of the school committee to determine expenditures within the total appropriation.

## **DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION (DESE) Regulation 603 CMR 41.00: Regional School Districts (excepts)**

### **41.05: Regional School District Budgets**

#### **(1) Initial Adoption by the School Committee**

(a)The regional school committee shall propose, by a majority vote, a budget containing all proposed operating expenditures, capital expenditures, and debt service payments to be paid from general revenues of the regional school district. The budget shall be classified into such line items as the regional school committee shall determine, provided that such line items shall be consistent with but need not be to the same level of detail as the chart of accounts required for the end of year reporting of expenditures pursuant to 603 CMR 10.03(3).

(b)The budget shall identify each separate revenue source, and the amount estimated for each revenue source; shall specify whether members' assessments are to be calculated pursuant to the statutory assessment method or the alternative assessment method; and shall specify the total amounts to be assessed to the members for the support of the budget.

(c)The regional school committee may include a line item in the budget for a reserve for extraordinary and unanticipated expenditures.

(d)The regional school committee may include a line item in the budget for transfers into a stabilization fund established pursuant to M.G.L. c.71, § 16G½. Proposed expenditures from this stabilization fund shall not be included in the budget, but shall be governed by the requirements of M.G.L. c.71, § 16G½.

(e)Expenditures from grant funds, revolving funds, trust funds, and other funds that by law may be expended by the regional school committee without further appropriation, shall not be included in the budget. A summary of projected receipts and expenditures in such funds shall be provided to the members for informational purposes only along with the budget.

(g)The regional school committee shall hold a public hearing on the proposed budget and, following such hearing, shall adopt a budget by a two-thirds vote, incorporating such changes from the proposed budget as the regional school committee deems appropriate.

(h)The treasurer of the regional school district shall certify and transmit the budget and the assessments to each member within 30 days after the school committee's adoption of the budget and, in any event, no later than April 30.

#### **(2) Initial Action by the Local Appropriating Authorities**

(a)The budget as adopted by the regional school committee and the member's assessment as certified by the treasurer of the regional school district, shall be placed

before each local appropriating authority for its consideration. Notwithstanding provisions in the regional agreement to the contrary, approval of the budget shall require an affirmative vote of the appropriating authorities of two-thirds of the members. A vote by the local appropriating authority to appropriate the member's assessment shall constitute approval of the regional school district's budget. The use of the alternate assessment method shall require the approval of all of the members; such approval may be given by a separate vote of the appropriating authority, or if a separate vote is not taken, approval of a budget or assessment based on the alternate method shall be deemed approval of the method.

(b) If a local appropriating authority votes to appropriate a lower amount than the assessment as certified by the treasurer of the regional school district, such vote shall not constitute approval of the budget as submitted by the regional school committee. The regional school committee may consider such votes when it reconsiders the budget pursuant to 603 CMR 41.05(3).

(c) Approval of a budget based on the alternative assessment method shall be reported to the commissioner on the district's end of year financial returns.

### **(3) Reconsideration of Rejected Budgets**

(a) If the budget is not approved by two-thirds of the members, the regional school committee shall have 30 days from the date of disapproval by more than one-third of the members to reconsider, amend, and adopt a revised budget. With the approval of the Commissioner, this 30-day period may be extended an additional 15 days. Where the local appropriating authority is a town meeting and the annual town meeting is dissolved prior to voting on the budget, the budget shall be deemed disapproved by that member as of the date of such dissolution.

(b) The revised budget adopted by the regional school committee and the assessments corresponding to such budget may be less than, equal to, or greater than the amounts in the previously adopted budget.

(c) Within seven days following the regional school committee's adoption of a revised budget, the treasurer of the regional school district shall calculate and certify the assessment of each member and shall transmit the assessments and a copy of the revised budget to the members. Each member's local appropriating authority shall have 45 days from the date of the regional school committee's vote to meet and consider the revised budget.

(d) The approval of a revised budget shall be as set forth in 603 CMR 41.05(2)(a). If a local appropriating authority does not vote on the revised budget within the 45-day period, that member shall be deemed to have approved the revised budget.

(e) In a regional school district comprised of three or more members, if the revised budget is not approved, the regional school committee shall again reconsider, amend, and adopt a revised budget. The revised budget shall be resubmitted to the members pursuant to the provisions of 603 CMR 41.05(3).

(f) In a regional school district comprised of two members, if the revised budget is not approved by both members, the regional school committee shall again reconsider, amend, and adopt a revised budget and shall convene a district-wide meeting, at which the revised budget shall be placed before all voters eligible to vote at said meeting. If a majority of voters at this district-wide meeting votes to approve the revised budget, such vote shall constitute approval. If a majority of voters at this meeting votes to approve a greater or lesser amount for the budget, such amount shall be placed before the regional school committee for its ratification. If the regional school committee by a two-thirds vote ratifies this amount, it shall constitute approval. If the regional school committee rejects such greater or lesser amount, it shall again reconsider, amend, and adopt a revised budget

and shall reconvene a district-wide meeting pursuant to the provisions of 603 CMR 41.05(3)(f).

(g) A district-wide meeting convened in accordance with 603 CMR 41.05(3)(f) shall only consider budgets based on the statutory assessment method.

(h) A regional school committee may reconsider, amend, and adopt a revised budget at any time prior to the approval of a previously adopted budget.

(i) If a local appropriating authority votes to approve an adopted budget subsequent to the required date for such action but prior to the regional school committee's revision of the budget, such vote shall be deemed valid.

(j) Whenever a member's assessment is reduced to a smaller amount than previously appropriated by the local appropriating authority, that appropriation shall automatically be reduced to the lesser amount.

#### **(4) Establishment of Budgets by the Commissioner**

(a) If the operating budget for a regional school district has not been approved by July 1, the superintendent of schools shall notify the Commissioner, and the Commissioner shall establish an interim monthly budget for the regional school district. The interim monthly budget shall be one-twelfth of the regional school district's budget for the prior fiscal year or such higher amount as the Commissioner may determine. The interim monthly budget shall remain in effect until an operating budget is approved pursuant to 603 CMR 41.05(3) or December 1, whichever comes earlier.

(b) If a regional school district's budget has not been approved by December 1 of the fiscal year, the Commissioner shall assume fiscal control of the regional school district pursuant to M.G.L. c.71, §16B, and 603 CMR 41.07, and shall establish the final budget for the fiscal year.

(c) Whenever the Commissioner establishes an interim or final budget for a regional school district under the provisions of this section, the treasurer of the regional school district shall calculate and certify to the members their respective assessments. Every member shall pay its respective assessment in accordance with the payment schedule in the regional agreement. The appropriation of funds to pay an assessment ordered by the Commissioner under 603 CMR 41.05(4) shall not be deemed approval by the municipality of the district's budget.

#### **(5) Amendments to Approved Budgets**

(a) A regional school committee may propose, with a two-thirds vote, an amendment to a previously approved budget. If such amendment results in an increase in the total amount of the budget or an increase in assessment for any member, such amendment shall be submitted to the local appropriating authorities for their approval. The treasurer of the regional school district shall submit the proposed amendment to the members within 7 days from the date of the regional school committee vote. The local appropriating authority of every member shall have 45 days from the date of the regional school committee's vote to meet and consider the amendment. The proposed amendment shall be effective if it is approved by two-thirds of the local appropriating authorities and by the local appropriating authority of any member whose assessment is increased.

(b) If a local appropriating authority does not vote on the proposed amendment within the 45-day period and that local appropriating authority has previously appropriated funds for its assessment in an amount greater than or equal to the member's assessment for the amended budget, that member shall be deemed to have approved the amended budget.

(c) If a proposed amendment to a previously approved budget does not increase the total amount of the budget and reduces or leaves unchanged the assessment for every

member, the amendment shall not require approval by the local appropriating authorities and shall be effective upon a two-thirds vote of the regional school committee.

(d) If the Commissioner adjusts the required local contribution of any member or members subsequent to the approval of the budget, the regional school committee shall propose an amendment to the budget to reflect such adjustments.

(e) Whenever a member's assessment is reduced to a smaller amount than previously appropriated by the local appropriating authority, the appropriation shall automatically be deemed to be reduced to such lesser amount.

(f) Transfers from one budget line item to another shall require and be effective upon approval of the regional school committee. Such approval shall be by a majority vote of the regional school committee unless otherwise specified in the regional agreement. Authority for such transfers may not be delegated.

...

#### **41.06: Excess and Deficiency Funds**

(1) Every regional school district shall maintain an excess and deficiency fund on its books of account. At the end of every fiscal year, any surplus or deficit in the district's general fund shall be closed to the excess and deficiency fund.

(2) On or before October 31 of each year, every regional school district shall submit to the Department of Revenue the forms and schedules as the Department of Revenue requires for the purpose of reviewing and certifying the balance in the regional school district's excess and deficiency fund. At the discretion of the Commissioner, the Department may withhold release of all or some part of the quarterly state school aid for the regional school district if the regional school district has not filed the required forms and schedules by such date.

(3) A regional school committee may use all or part of the certified balance in the excess and deficiency fund as a revenue source for its proposed budget. If the certified balance exceeds five percent of the proposed budget, the regional school committee shall use the amount in excess of five percent as a revenue source for its proposed budget.

#### **41.07: Fiscal Control of Regional School Districts by the Commissioner**

(1) When the Commissioner is required to assume fiscal control of a district pursuant to M.G.L. c.71, §16B, and 603 CMR 41.05(4)(b), the following actions taken by the regional school committee, the superintendent of schools, or any other official of the school district shall be effective only with the written approval of the Commissioner:

(a) Adoption or reconsideration of the district budget pursuant to 603 CMR 41.05(1) and (3).

(b) Transfer of budgetary authority between line items.

(c) Encumbrance or expenditure of funds not included in the general fund budget.

(d) Borrowing.

(e) Execution of new or amended collective bargaining agreements.

(f) Execution of new contracts or amendments to existing contracts with a value of \$25,000 or more.

(g) Establishment, increase, or decrease of user fees.

(2) During the period of fiscal control, the Commissioner may impound any unencumbered funds for such period of time as he determines.

(3) In addition to the powers enumerated in 603 CMR 41.07(1) and (2), the Commissioner may undertake any initiatives that he deems necessary to secure the financial stability of the district.

(4) The superintendent of schools and other officials of the district shall promptly provide such information and reports as may be requested by the Commissioner.

(5) The Commissioner's fiscal control shall continue until the end of the fiscal year or until the member towns have approved a budget for the subsequent fiscal year, whichever is later.

(6) The Commissioner may designate a person to act on his behalf with respect to his responsibilities under 603 CMR 41.07.

**Regulatory Authority**

603 CMR 41.00: M.G.L. c. 69, §1B; c. 71, §14B and §16D; c. 150E, §1.

Most Recently Amended by the Board of Education: May 19, 2009

## SAMPLE ENTERPRISE VOTE

**MOTION:** I move that the Town appropriate \$ \_\_\_ from \_\_\_ Enterprise Revenues and \$ \_\_\_ from \_\_\_ Enterprise Retained Earnings to defray \_\_\_ direct costs, and that \$ \_\_\_ be used for \_\_\_ indirect costs as appropriated under Article X., all to fund the total costs of operations of the \_\_\_ Enterprise as follows:

### SOURCES OF FUNDING FOR \_\_\_ ENTERPRISE COSTS (*Informational only*)

#### *Estimated Enterprise Revenues:*

User Charges  
Betterments  
Investment Income  
*Total Estimated Enterprise Revenues*  
Certified Enterprise Retained Earnings  
*Other*

(e.g., Taxation, Free Cash)

### *TOTAL SOURCES OF FUNDING Appropriated in Enterprise and General Funds*

### \_\_\_ DIRECT EXPENSES Appropriated in Enterprise Fund in this Article

Personal Services  
Expenses  
Debt Service\*  
Capital Outlay\*  
Extraordinary/Unforeseen Expenses  
Budgeted Reserve  
Prior Year Deficit

### *Total Direct Costs appropriated in Enterprise Fund*

\*May be budgeted as direct or indirect costs

### \_\_\_ INDIRECT EXPENSES Appropriated in General Fund in Annual Budget Article X (*Informational only*)

#### *Shared Personnel*

Accounting Department  
Collecting Department  
Treasury Department  
*Shared Facilities*  
*Fixed Costs*  
Employee Benefits (Health Insurance, Pensions)  
FICA/Medicare  
Risk Management (Insurance)

### *Total Indirect Costs appropriated in General Fund*

### *Total Direct Enterprise Costs*

### *Total Indirect General Fund Costs*

### *TOTAL ENTERPRISE COSTS*

## SAMPLE ENTERPRISE VOTE

**MOTION:** I move that the Town appropriate \$467,000 from Sewer Enterprise Revenues and \$50,000 from Sewer Enterprise Retained Earnings to defray Sewer service direct costs, and that \$147,000 be used for Sewer service indirect costs appropriated under Article X, all to fund the total costs of operations of the Sewer Enterprise as follows:

<b>SEWER ENTERPRISE</b>	
<b><u>Sewer Enterprise Funding Sources</u></b>	
Estimated Sewer Enterprise Revenues	\$575,000
User fees	25,000
Betterments	14,000
Investment Income	<u>14,000</u>
<b>Total Estimated Sewer Enterprise Revenues</b>	<b>\$614,000</b>
Retained Earnings	50,000
<b>Total Funding Sources Appropriated in Enterprise and General Fund</b>	<b>\$664,000</b>
<b><u>Sewer Direct Expenses Appropriated in this Article</u></b>	
Personal Services	\$254,000
Expenses	8,000
Debt Service	125,000
Capital Outlay	45,000
Extraordinary/Unforeseen Expenses	10,000
Budgeted Reserve	75,000
<b>Total Direct Costs appropriated in Enterprise Fund</b>	<b>\$517,000</b>

<b><u>Sewer Indirect Expenses appropriated in General Budget -Article X (Informational only)</u></b>	
Accounting Dept.	\$15,000
Collecting Dept.	\$32,000
Treasury Dept.	\$7,000
Health Insurance	\$61,000
FICA	\$3,000
Pensions	\$29,000
<b>Total Indirect Costs appropriated in General Fund</b>	<b>\$147,000</b>

**TOTAL ENTERPRISE COSTS** **\$664,000**

# 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, 2015, 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, 2015, 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>FY2016 Spending Limit</u>	<u>Disposition of FY2015 Fund Balance</u>	<u>Spending Restrictions or Comments</u>
<b>Hazardous Materials</b>	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	
<b>Title V Inspection</b>	Board of Health	Septic system inspection fees	Salaries of inspectors or contractual services related to septic system inspections	\$40,000	Balance available for expenditure	
<b>Teen Center</b>	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.
<b>Senior Citizens Bus</b>	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.
<b>TOTAL SPENDING<sup>2</sup></b>				<b>\$120,000</b>		

<sup>1</sup> FY2015 per department spending limit is \$100,000 (1% of FY2014 levy of \$10,000,000)

<sup>2</sup> FY2015 total spending limit is \$1,000,000 (10% of FY2014 levy of \$10,000,000)

**Appendix C, D, E from:  
Proposition 2½ Ballot Questions – Requirements and Procedures (October 2008)**

**Appendix C**

**LEVY LIMIT OVERRIDE APPROACHES**

**I. SINGLE QUESTION OVERRIDE**

Presents voters with a single choice of additional funding for general or specific spending purposes. The following are examples of single question overrides:

**Example 1. General Purposes**

Shall the Town of Yourtown be allowed to assess an additional \$2,000,000 in real estate and personal property taxes for the purposes of funding the operating budgets of the Town and the Public Schools for the fiscal year beginning July 1, \_\_\_\_?

**Example 2. General Categories**

Shall the Town of Yourtown be allowed to assess an additional \$2,000,000 in real estate and personal property taxes for the purposes of funding local and regional school, public safety, library, highway, parks and recreation and general government expenses for the fiscal year beginning July 1, \_\_\_\_?

**Example 3. Multiple Departmental Purposes with Allocation**

Shall the Town of Yourtown be allowed to assess an additional \$2,000,000 in real estate and personal property taxes for the purposes of funding the following departmental expenses: School Department (\$750,000), Police Department (\$250,000), Fire Department (\$250,000), Public Works Department (\$250,000), Public Library (\$250,000), Parks and Recreation Department (\$150,000), Council on Aging (\$25,000) and Financial Offices, including Assessors, Collector-Treasurer, Accountant, (\$75,000) for the fiscal year beginning July 1, \_\_\_\_?

**Example 4. Single Departmental Budget**

Shall the Town of Yourtown be allowed to assess an additional \$200,000 in real estate and personal property taxes for the purposes of funding the Fire Department for the fiscal year beginning July 1, \_\_\_\_?

### **Example 5. Specific Positions/Programs/Services**

Shall the Town of Yourtown be allowed to assess an additional \$200,000 in real estate and personal property taxes for the purposes of funding four full-time firefighter positions for the fiscal year beginning July 1, \_\_\_\_?

## **II. MULTIPLE QUESTION OVERRIDES**

Presents voters with multiple choices of additional funding for general or specific spending purposes. There are two multiple question approaches: "menu" and "pyramid" overrides.

### **A. "MENU" OVERRIDE**

The "menu" approach presents two or more questions each of which will fund different services or programs. Each question stands on its own merits. Therefore, if the voters approve more than one question, the community's levy limit is increased by the total of the amounts specified in all approved questions.

The following is an example of a "menu" override:

Shall the Town of Yourtown be allowed to assess an additional \$1,000,000 in real estate and personal property taxes for the purposes of funding the Yourtown Public and Yourtown Valley Regional High Schools for the fiscal year beginning July 1, \_\_\_\_?

Shall the Town of Yourtown be allowed to assess an additional \$250,000 in real estate and personal property taxes for the purposes of funding the Fire Department for the fiscal year beginning July 1, \_\_\_\_?

Shall the Town of Yourtown be allowed to assess an additional \$250,000 in real estate and personal property taxes for the purposes of funding the Police Department for the fiscal year beginning July 1, \_\_\_\_?

Shall the Town of Yourtown be allowed to assess an additional \$100,000 in real estate and personal property taxes for the purposes of funding the Public Library for the fiscal year beginning July 1, \_\_\_\_?

### **B. "PYRAMID" OVERRIDE**

The "pyramid" approach provides voters with a choice of two or more different funding levels for general spending purposes or for specific services or programs. A separate question is presented for each funding level. The funding levels are presented as alternative, not independent, proposals, which means a higher funding level proposed in a question also includes all lower ones. Therefore, if the voters approve more than one question, the approved question stating the highest dollar amount prevails and the community's levy limit is increased by that amount.

The following are examples of "pyramid" overrides:

**Example 1. General Purpose**

- 1A Shall the Town of Yourtown be allowed to assess an additional \$1,000,000 in real estate and personal property taxes for the purposes of operating the Municipal Government and Public Schools for the fiscal year beginning July 1, \_\_\_\_?
- 1B Shall the Town of Yourtown be allowed to assess an additional \$500,000 in real estate and personal property taxes for the purposes of operating the Municipal Government and Public Schools for the fiscal year beginning July 1, \_\_\_\_?
- 1C Shall the Town of Yourtown be allowed to assess an additional \$250,000 in real estate and personal property taxes for the purposes of operating the Municipal Government and Public Schools for the fiscal year beginning July 1, \_\_\_\_?

**Example 2. Multiple Purposes with Allocation**

- 1A Shall the Town of Yourtown be allowed to assess an additional \$1,000,000 in real estate and personal property taxes for the purposes of funding the school (\$500,000), police (\$250,000) and fire (\$250,000) departments for the fiscal year beginning July 1, \_\_\_\_?
- 1B Shall the Town of Yourtown be allowed to assess an additional \$500,000 in real estate and personal property taxes for the purposes of funding the school (\$250,000), police (\$125,000) and fire (\$125,000) departments for the fiscal year beginning July 1, \_\_\_\_?
- 1C Shall the Town of Yourtown be allowed to assess an additional \$250,000 in real estate and personal property taxes for the purposes of funding the school (\$125,000), police (\$62,500) and fire (\$62,500) departments for the fiscal year beginning July 1, \_\_\_\_?

**Example 3. Multiple "Pyramids"**

- 1A Shall the Town of Yourtown be allowed to assess an additional \$500,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools for the fiscal year beginning July 1, \_\_\_\_?
- 1B Shall the Town of Yourtown be allowed to assess an additional \$250,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools for the fiscal year beginning July 1, \_\_\_\_?
- 1C Shall the Town of Yourtown be allowed to assess an additional \$125,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools for the fiscal year beginning July 1, \_\_\_\_?

- 2A Shall the Town of Yourtown be allowed to assess an additional \$300,000 in real estate and personal property taxes for the purposes of operating the Police Department for the fiscal year beginning July 1, \_\_\_\_?
- 2B Shall the Town of Yourtown be allowed to assess an additional \$200,000 in real estate and personal property taxes for the purposes of operating the Police Department for the fiscal year beginning July 1, \_\_\_\_?
- 2C Shall the Town of Yourtown be allowed to assess an additional \$100,000 in real estate and personal property taxes for the purposes of operating the Police Department for the fiscal year beginning July 1, \_\_\_\_?

**Example 4. Specific Positions/Programs**

- 1A Shall the Town of Yourtown be allowed to assess an additional \$400,000 in real estate and personal property taxes for the purposes of funding 8 firefighter positions for the fiscal year beginning July 1, \_\_\_\_?
- 1B Shall the Town of Yourtown be allowed to assess an additional \$200,000 in real estate and personal property taxes for the purposes of funding 4 firefighter positions for the fiscal year beginning July 1, \_\_\_\_?
- 1C Shall the Town of Yourtown be allowed to assess an additional \$100,000 in real estate and personal property taxes for the purposes of funding 2 firefighter positions for the fiscal year beginning July 1, \_\_\_\_?

**Example 5. "Tiered" Pyramid**

- 1A Shall the Town of Yourtown be allowed to assess an additional \$2,000,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools and to fund instructional staff (8 positions), textbooks, technology support (including 1 position) and equipment for Yourtown High School and to fund instructional staff (14 positions), textbooks and technology support and equipment for the other schools for the fiscal year beginning July 1, \_\_\_\_?
- 1B Shall the Town of Yourtown be allowed to assess an additional \$1,000,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools and to fund instructional staff (8 positions), textbooks, technology support (including 1 position) and equipment for Yourtown High School for the fiscal year beginning July 1, \_\_\_\_?
- 1C Shall the Town of Yourtown be allowed to assess an additional \$500,000 in real estate and personal property taxes for the purposes of operating the Yourtown Public Schools for the fiscal year beginning July 1, \_\_\_\_?

**SEQUENCING OPTIONS**

<p><u>Number 1</u> <b>Election - Appropriation</b></p>	<p><u>Number 2</u> <b>Appropriation - Election</b></p>	<p><u>Number 3</u> <b>Contingent Appropriation - Election Towns Only</b></p>
<p>Referendum election held</p> <ul style="list-style-type: none"> <li>• Annual or special municipal</li> <li>• State biennial</li> </ul>	<p>Appropriation made by town meeting or city/town council</p> <ul style="list-style-type: none"> <li>• Annual or special</li> </ul>	<p>Appropriation made by town meeting</p> <ul style="list-style-type: none"> <li>• Annual or special</li> </ul>
<p>Appropriation made by town meeting or city/town council</p> <ul style="list-style-type: none"> <li>• Annual or special</li> </ul>	<p>Referendum election held</p> <ul style="list-style-type: none"> <li>• Annual or special municipal</li> <li>• State biennial</li> </ul>	<p>Referendum election held</p> <ul style="list-style-type: none"> <li>• Annual or special municipal, state biennial</li> <li>• Referendum deadline:                             <ul style="list-style-type: none"> <li>• September 15 for appropriations made at annual town meeting</li> <li>• 90 days after special town meeting dissolves for appropriations made at that meeting</li> </ul> </li> </ul>
<p>If referendum passes and appropriation fails</p> <ul style="list-style-type: none"> <li>• Referendum is valid</li> <li>• If override/capital exclusion, have until tax rate set to appropriate for same purpose</li> <li>• If debt exclusion, have reasonable time to authorize debt for same project</li> </ul>	<p>If referendum passes and appropriation fails</p> <ul style="list-style-type: none"> <li>• Referendum is valid</li> <li>• If override/capital exclusion, have until tax rate set to appropriate for same purpose</li> <li>• If debt exclusion, have reasonable time to authorize debt for same project</li> </ul>	<p>If referendum passes</p> <ul style="list-style-type: none"> <li>• No further action required - appropriation validated and tax increase approved to cover expenditure</li> </ul>
<p>If appropriation passes and referendum fails</p> <ul style="list-style-type: none"> <li>• Appropriation is valid</li> <li>• Budget must be adjusted within levy limit by time tax rate set (to balance budget, town meeting or city/town council may cut any budget item, not just referendum purpose, and/or community may raise non-tax revenues)</li> <li>• Referendum may be presented again</li> </ul>	<p>If appropriation passes and referendum fails</p> <ul style="list-style-type: none"> <li>• Appropriation is valid</li> <li>• Budget must be adjusted within levy limit by time tax rate set (to balance budget, town meeting or city/town council may cut any budget item, not just referendum purpose, and/or community may raise non-tax revenues)</li> <li>• Referendum may be presented again</li> </ul>	<p>If referendum fails</p> <ul style="list-style-type: none"> <li>• No further action required - appropriation null and void</li> <li>• Referendum may be presented at other elections, but must be approved by:                             <ul style="list-style-type: none"> <li>• September 15 for appropriations made at annual town meeting</li> <li>• 90 days after special town meeting dissolves for appropriations made at that meeting</li> </ul> </li> </ul>
<p>If referendum and appropriation both pass or both fail</p> <ul style="list-style-type: none"> <li>• No further action required</li> </ul>	<p>If referendum and appropriation both pass or both fail</p> <ul style="list-style-type: none"> <li>• No further action required</li> </ul>	<p>If referendum not held by deadline</p> <ul style="list-style-type: none"> <li>• Appropriation null and void</li> </ul>

**Appendix E**  
**EXAMPLES**  
**CONTINGENT APPROPRIATION ARTICLES AND MOTIONS**

**OMNIBUS BUDGET ARTICLES**

**APPROACH 1: SINGLE MOTION FOR CONTINGENT AND NON-CONTINGENT AMOUNTS**

**ARTICLE \_\_:** TO ACT ON THE REPORT OF THE FINANCE COMMITTEE ON THE FISCAL YEAR \_\_\_ BUDGET AND TO RAISE AND APPROPRIATE OR TRANSFER FROM AVAILABLE FUNDS MONEY FOR THE OPERATION OF THE TOWN'S DEPARTMENTS AND THE PAYMENT OF DEBT SERVICE AND ALL OTHER NECESSARY AND PROPER EXPENSES FOR THE YEAR, OR TAKE ANY OTHER ACTION RELATIVE THERETO.

**MOTION:** I move that the town vote to raise and appropriate or transfer from available funds the amounts recommended by the Finance Committee for departmental operating purposes, debt service and other town expenses in fiscal year \_\_\_\_, with each item to be considered a separate appropriation and the amounts shown in the column captioned "Contingent Appropriations" to be appropriated contingent upon passage of a Proposition 2½ referendum question under General Laws Chapter 59, § 21C.

**PROPOSED FISCAL YEAR \_\_\_ BUDGET**

THE FINANCE COMMITTEE RECOMMENDS THAT THE AMOUNTS SHOWN IN THE COLUMN CAPTIONED "NON-CONTINGENT APPROPRIATIONS" BE APPROPRIATED FROM THE TAX LEVY, UNLESS OTHERWISE SPECIFIED, FOR FISCAL YEAR \_\_\_ DEPARTMENTAL OPERATING PURPOSES, DEBT SERVICE AND OTHER TOWN EXPENSES, AND THAT THE AMOUNTS SHOWN IN THE COLUMN CAPTIONED "CONTINGENT APPROPRIATIONS" BE APPROPRIATED FROM THE TAX LEVY CONTINGENT UPON THE PASSAGE OF A PROPOSITION 2½ REFERENDUM QUESTION UNDER GENERAL LAWS CHAPTER 59, § 21C.

<u>PURPOSE</u>	<u>NON-CONTINGENT APPROPRIATIONS</u>	<u>CONTINGENT APPROPRIATIONS</u>
Selectmen's Office		
Salaries	\$ 45,000	\$ 6,000
Expenses	18,000	4,000
School Department	2,800,000	300,000
Town Planner		
Salary	0	35,000
Expenses	0	12,000
Cemetery Commission		
Salaries	8,000	
Expenses	10,000	
	(Includes \$8,000 transfer from Sale of Lots Fund)	
...	...	...
<b>TOTAL</b>	<b>\$ 8,000,000</b>	<b>\$ 890,000</b>

**APPROACH 2: SEPARATE MOTIONS FOR CONTINGENT AND NON-CONTINGENT AMOUNTS**

**MOTION:** I move that the town vote to raise and appropriate or transfer from available funds the amounts recommended by the Finance Committee for departmental operating purposes, debt service and other town expenses in fiscal year \_\_\_\_, with each item to be considered a separate appropriation.

**PROPOSED FISCAL YEAR \_\_\_\_ BUDGET**

THE FINANCE COMMITTEE RECOMMENDS THAT THE FOLLOWING AMOUNTS BE APPROPRIATED FROM THE TAX LEVY, UNLESS OTHERWISE SPECIFIED, FOR FISCAL YEAR \_\_\_\_ DEPARTMENTAL OPERATING PURPOSES, DEBT SERVICE AND OTHER TOWN EXPENSES:

<u>PURPOSE</u>	<u>RECOMMENDED</u>
Selectmen's Office	
Salaries	\$ 45,000
Expenses	18,000
School Department	2,800,000
Town Planner	
Salary	0
Expenses	0
Cemetery Commission	
Salaries	8,000
Expenses	10,000
	(Includes \$8,000 transfer from Sale of Lots Fund)
...	...
<b>TOTAL</b>	<b>\$ 8,000,000</b>

**MOTION:** I move that the town vote to raise and appropriate any additional amounts recommended by the Finance Committee for the departmental operating purposes and other town expenses in fiscal year \_\_\_\_, contingent upon passage of a Proposition 2½ referendum question under General Laws Chapter 59, § 21C.

**PROPOSED FISCAL YEAR \_\_\_\_ CONTINGENT BUDGET**

THE FINANCE COMMITTEE RECOMMENDS THAT THE FOLLOWING AMOUNTS BE APPROPRIATED FROM THE TAX LEVY FOR FISCAL YEAR \_\_\_\_ DEPARTMENTAL OPERATING PURPOSES AND OTHER TOWN EXPENSES CONTINGENT UPON PASSAGE OF A PROPOSITION 2½ REFERENDUM QUESTION UNDER GENERAL LAWS CHAPTER 59, § 21C.

<u>PURPOSE</u>	<u>RECOMMENDED</u>
Selectmen's Office	
Salaries	\$ 6,000
Expenses	4,000
School Department	300,000
Town Planner	
Salary	35,000
Expenses	12,000
...	...
TOTAL CONTINGENT APPROPRIATIONS	\$ 890,000

### BALLOT QUESTIONS

Under either approach, the town has the choice whether to bundle all the contingent appropriations for operating expenditures for the fiscal year into a single override question for the \$890,000 in this example, or to put separate questions on the ballot for different departments or groups of departments: for instance, one question for \$300,000 for school department operating expenses and another question for \$590,000 for operating expenses of all other town departments. The choice of how to structure the ballot questions is within the discretion of the selectmen. If the selectmen do decide to include more than one contingent appropriation in a question, the purpose of each appropriation the question is intended to fund would have to be stated in the question.

### OTHER APPROPRIATION ARTICLES

#### **REGIONAL SCHOOL BUDGET ARTICLE - (Levy Limit Override)**

ARTICLE \_\_: TO SEE IF THE TOWN WILL APPROVE THE \_\_\_\_\_ REGIONAL SCHOOL DISTRICT BUDGET FOR FISCAL YEAR \_\_\_\_ AND RAISE AND APPROPRIATE OR TRANSFER FROM AVAILABLE FUNDS \$(FULL ASSESSMENT) TO PAY ITS ASSESSED SHARE OF THAT BUDGET, OR TO TAKE ANY OTHER ACTION RELATIVE THERETO.

MOTION: I move that the town raise and appropriate \$(non-contingent portion) to pay its assessed share of the \_\_\_\_\_ Regional School District Budget for fiscal year \_\_\_\_ and that it raise and appropriate the additional \$(contingent portion) required to fully fund the assessment and thereby approve the district's budget for the year, provided that this additional appropriation be contingent on the approval of a Proposition 2½ levy limit override under General Laws Chapter 59, § 21C(g) (or passage of a Proposition 2½ ballot/referendum question).

## **REGIONAL SCHOOL BUDGET ARTICLE - (Capital Outlay Expenditure Exclusion)**

ARTICLE \_\_: TO SEE IF THE TOWN WILL APPROVE THE \_\_\_\_\_ REGIONAL SCHOOL DISTRICT BUDGET FOR FISCAL YEAR \_\_\_\_ AND RAISE AND APPROPRIATE OR TRANSFER FROM AVAILABLE FUNDS \$(FULL ASSESSMENT) TO PAY ITS ASSESSED SHARE OF THAT BUDGET, OR TO TAKE ANY OTHER ACTION RELATIVE THERETO.

MOTION: I move that the town raise and appropriate \$(non-contingent portion) to pay its assessed share of the \_\_\_\_\_ Regional School District Budget for fiscal year \_\_\_\_ and that it raise and appropriate the additional \$(contingent portion) attributable to its share of the budget for capital spending not funded by debt so as to fully fund the assessment and thereby approve the district's budget for the year, provided that this additional appropriation be contingent on the approval of a Proposition 2½ capital outlay expenditure exclusion under General Laws Chapter 59, § 21C(i½) (or passage of a Proposition 2½ ballot/referendum question).

## **SEPARATE DEPARTMENTAL "CONTINGENT BUDGET" ARTICLE**

ARTICLE \_\_: TO SEE IF THE TOWN WILL RAISE AND APPROPRIATE OR TRANSFER FROM AVAILABLE FUNDS A SUM TO SUPPLEMENT THE FIRE DEPARTMENT'S OPERATING BUDGET FOR FISCAL YEAR \_\_\_\_ CONTINGENT UPON THE PASSAGE OF A PROPOSITION 2½ REFERENDUM QUESTION, OR TAKE ANY OTHER ACTION RELATIVE THERETO.

MOTION: I move that the town raise and appropriate an additional \$\_\_\_\_\_ for the Fire Department's fiscal year \_\_\_\_ operating budget to be allocated as follows: \$\_\_\_\_\_ for salaries and \$\_\_\_\_\_ for expenses, provided that such additional appropriations be contingent on the passage of a Proposition 2½ referendum (or passage of a Proposition 2½ ballot/referendum question).

## **BORROWING ARTICLE**

ARTICLE \_\_: TO SEE IF THE TOWN WILL APPROPRIATE A SUM OF MONEY BY BORROWING TO DESIGN AND CONSTRUCT A SENIOR CENTER AND TO AUTHORIZE THE TREASURER, WITH THE APPROVAL OF THE SELECTMEN, TO ISSUE ANY BONDS OR NOTES THAT MAY BE NECESSARY FOR THAT PURPOSE, OR TAKE ANY OTHER ACTION RELATIVE THERETO.

MOTION: I move that the town appropriate and borrow \$10,000,000 for the design and construction of a Senior Center and authorize the treasurer 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 44, § 7(3a), or any other general or special law, for a period not to exceed the maximum period authorized by law, provided, however, that this appropriation and debt authorization be contingent upon passage of a Proposition 2½ debt exclusion referendum under General Laws Chapter 59, § 21C(k) (or passage of a Proposition 2½ ballot/referendum question).

Note: In Proposition 2½ Ballot Questions, the purpose in this borrowing example is a school project. The form of a vote for a school construction project being financed in part by school building assistance grant funds is now prescribed by the Massachusetts School Building Authority.

## Colleary, Kathleen

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**From:** Colleary, Kathleen  
**Sent:** Tuesday, June 16, 2015 1:02 PM  
**To:** 'meg.lamay@carverma.org'  
**Cc:** 'Michael.Milanoski@carverma.org'  
**Subject:** 2015-515 School Budget Transfer Authority

Dear Ms. LaMay:

You asked a number of questions about the powers and duties of a local school committee regarding its general management of the amount appropriated annually for the support of the schools, and more specifically, its authority to allocate that amount among different spending purposes under G.L. c. 71, § 34. Please be advised, however, that you will need to consult the Department of Elementary and Secondary Education (DESE) as well. Since your questions concern interpretations of G.L. c. 71, other state laws governing schools or DESE regulations, only DESE can give you a definitive and authoritative opinion. The information we provide below reflects our understanding of those laws and municipal finance laws generally, but we must defer to DESE to the extent any of this information is inconsistent with its guidance on matters within its exclusive regulatory purview.

### **School Committee Fiscal Autonomy**

Unlike other municipal departments, the school committee may transfer monies within the total appropriated annually "for the support of the public schools," i.e. it is not bound by any line-item restrictions placed on its appropriation by the legislative body, and may allocate and reallocate monies within the total appropriated for that purpose during the fiscal year. G.L. c. 71, § 34. It has long been our view that the school committee cannot delegate its authority to allocate or reallocate its appropriation to the superintendent or other person, but we defer to DESE on that issue.

1. As indicated, the school committee's fiscal autonomy applies to all amounts appropriated annually "for the support of the public schools." G.L. c. 71, § 34. This generally means school operating or educational expenses.
2. The school committee's fiscal autonomy does not extend to capital spending, but does include spending for equipment and materials, such as classroom computers, projectors and the like, used in the instruction of students that might otherwise be considered capital expenses. See *Ring v. Woburn*, 311 Mass. 679 (1942). (Note that the proceeds from any debt issued for instructional equipment would not be subject to the school committee's fiscal autonomy because the proceeds are restricted by G.L. c. 44, § 20.)
3. Historically, student transportation has been considered a municipal business function not within the school committee's area of exclusive control under G.L. c. 71. Consequently, the courts have held that the fiscal autonomy of the school committee under G.L. c. 71, § 34 did not extend to those expenses. See *Graves v. Fairhaven*, 338 Mass. 290 (1959); *Ring v. Woburn*, 311 Mass. 679 (1942); *Eastern Mass. Street Railway Company v. Mayor of Fall River*, 308 Mass. 232 (1941). For obvious reasons of coordination with school schedules, however, most cities and towns place the responsibility for transporting students with their school departments and they include funding for that purpose within the department's total annual appropriation. If a city or town separately appropriates funds for school transportation, however, the cases cited above indicate to us that

the school committee cannot transfer from transportation appropriations to other school purposes or transfer from its operating appropriation into the transportation appropriations.

4. With respect to employee benefits or expenses (life and health insurance, retirement, worker's compensation, unemployment insurance and payroll taxes, etc.), most communities do not include these expenses in any department's budget. For administrative and other reasons, they are usually budgeted in general benefits line-items. If a municipality allocates and votes these benefits as part of departmental budgets, however, we have concluded they must be paid from those budgets. Arguably, the legislative body cannot make separate line-items for those expenses that are binding on the school committee. However, the accounting officer has the authority to encumber the anticipated amounts necessary to pay these benefits for the entire fiscal year based on the committee's statutory and contractual obligations. See 2 below. If there are new hires, added insurance benefits, etc. during the year, then the additional amounts must be encumbered as well. Encumbered amounts cannot be spent or committed for other purposes until such time as they are unencumbered due to attrition, retirements, cancellation of the insurance, etc. We would defer to DESE, but it appears to us that the school committee may use any such unencumbered funds for other school operating or educational expenses.

### **Departmental Budget Management**

In most other respects, the school department is no different than any municipal department and is subject to the same laws and rules governing departmental spending and financial procedures, such as spending within its budget, documentation of bills and payrolls, monitoring expenditures, reports and the like.

1. No municipal department, including the school department, may incur liabilities in excess of its annual appropriation. G.L. c. 44, § 31. Annual departmental appropriations are intended to provide for operating expenditures for the entire fiscal year. Therefore, after the adoption of the municipality's budget for any fiscal year, the school committee has a legal obligation to conform its spending plan to the "bottom" line amount actually appropriated for support of the schools. In doing so, we believe the school committee should vote to allocate that amount to line-items in the number and level of detail it considers appropriate for budgetary control purposes during the year and notify the municipal accounting officer of the line-items it has established. At the beginning of each fiscal year, the accountant should send all department heads, including the school committee, a reminder of their obligations under state law regarding incurring liabilities in excess of appropriation and any applicable charter provision, ordinance or policy regarding budgetary matters.
2. At the beginning of each fiscal year, we believe the accounting officer can and should encumber departmental appropriations in the amount necessary to pay employee salaries, fixed or contractual expenses, etc., based on the department's statutory and contractual commitments for the entire fiscal year. (See *McHenry v. City of Lawrence*, 295 Mass. 119 (1936), in which the Supreme Judicial Court determined that the hiring of additional police officers and firefighters by the city's director of public safety violated G.L. c. 44, § 31 because the department's appropriation for salaries was not sufficient to pay the additional employees and all persons already employed in the department their full annual salaries for the rest of the fiscal year. The court effectively treated the salaries of existing employees as encumbrances against the amount appropriated.) This applies to the line-item appropriations voted by the legislative body, or in the case of the school department, the items voted by the school committee. During the year, all department heads should keep the accounting officer informed whenever employees retire or leave service or

obligations under contracts are completed, so the accounting officer can adjust these encumbrances accordingly.

3. Since, unlike other municipal department heads, the school committee may vote to transfer unspent and unencumbered funds from any of the line-items it established to other school operating purposes, we believe it must notify the accounting officer of all such transfers. Ordinarily, any transfers must be voted by the legislative body and the municipal clerk would certify them to the accounting officer. G.L. c. 41, § 15A.
4. The accounting officer should send all department heads, including the school committee, a report at least once a month showing the amount allocated to each line-item for the fiscal year (original appropriation, transfers to and transfers from), the amounts spent and encumbered year to date, and the unspent and unencumbered balance available for the remainder of the year against which the department head may incur new obligations, i.e., make new contracts or order any additional goods and services under existing contracts.
5. If in monitoring departmental spending rates, the accounting officer determines that a department, including the school department, is not going to have enough to pay salaries and any fixed and existing contractual obligations for the rest of the year, the accounting officer should immediately notify the department head (and selectboard in a town) that no new obligations may be incurred and immediate action must be taken to bring spending within available appropriations for the year. G.L. c. 41, §§ 56 and 58.
6. If the accounting officer determines at any time that a departmental line-item, including an item voted by the school committee, is fully spent or committed, the officer should immediately inform the department head (and selectboard in a town) that no further payments chargeable to that item will be approved until other funds become available for that purpose (e.g., by supplemental municipal appropriations, grants, or in the case of the school department, school committee transfers of uncommitted funds from other items). G.L. c. 41, §§ 56 and 58.
7. We are not aware of any state law that exempts the school department from a municipality's purchase order and encumbrance system.

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



July 15, 2008

Daniel M. Funk, Esq.  
City Solicitor  
City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Re: City Budget  
Our File No. 2008-281

Dear Attorney Funk:

This is in reply to your letter asking our view about the status of revisions to the proposed fiscal year 2009 budget that were submitted by the mayor while the budget was under consideration by the board of aldermen. You advised us that the mayor submitted the proposed annual budget to the board on May 5, 2008. While the budget was before the board, the mayor also submitted two sets of revisions, the first on June 5, 2008 and the second on June 17, 2008. Due to a charter objection raised by four members of the board on June 17, 2008, no action could be taken on the budget until July 14, 2008. As a result, the mayor's budget went into effect on June 20, 2008. You asked whether that budget includes the June 5 and 17 revisions. If this matter was governed by the general laws, we doubt that any of the recommended revisions are in effect. We do not have regulatory authority to interpret the Newton charter, however, so we defer to the city as to whether the charter requires the same result.

Under the general city budget statute, G.L. c. 44, § 32, mayors must submit a proposed annual budget to the city council (or board of aldermen or other legislative body) within 170 days of the organization of the city government. The mayor's proposed budget must contain a minimum level of line-item detail for each department's appropriations. With respect to those items, the statute provides, in relevant part, that the council

may by majority vote make appropriations for the purposes recommended and may reduce or reject any amount recommended in the annual budget. It shall not increase any amount in or the total of the annual budget nor add thereto any amount for a purpose not included therein except upon recommendation of the mayor, and except as provided in section thirty-three.... If the council fails to take action with respect to any amount recommended in the annual budget, either by approving, reducing or rejecting the same, within forty-five days after the receipt of the budget, such amount shall without any action by the council become a part of the appropriations for the year. (Emphasis added).

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City Solicitor  
City of Newton  
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The statute also provides for the submission and approval of supplemental appropriations at any time as follows:

Nothing in this section shall prevent the city council, acting upon the written recommendation of the mayor, from voting appropriations, not in excess of the amount so recommended, either prior or subsequent to the passage of the annual budget. (Emphasis added).

In contrast to the situation with the annual budget, the 45 day default rule is not applicable to supplemental appropriations.

Neither the statute nor the case law expressly addresses the effect of revisions to the proposed budget that are submitted by the mayor while the budget is still pending before the city council. The question arises then whether they 1) create an entirely new budget submission and a new 45 day period for action, (2) constitute amendments to the original budget submission that must be acted on within the original 45 day period, or (3) constitute a supplemental budget submission that does not have to be acted on within any particular deadline.

We do not think the revisions create a new budget submission. Once the mayor submits a budget meeting the statutory requirements as to time and content, then it seems to us that the 45 day period for action on the line items in that submission begins. It makes little difference under the general laws whether recommendations for additional or reduced spending submitted after that submission are characterized as amendments to the annual budget or as supplemental budget proposals where the city council acts on them as part of the original submission, which we understand has been the usual practice in Newton in prior years. However, for purposes of the 45 day default rule, we do not think treating a subsequent recommendation as an amendment to the original budget submission is consistent with the statute.

As a practical matter, we recognize that the mayor's submission of the budget initiates an informal negotiation process with the council about spending priorities for the year and the council's ability to influence those spending priorities derives primarily from its power to propose reductions or rejections in order to obtain higher spending or other concessions from the mayor in other areas. In many cases, therefore, the budget amendments submitted by the mayor are in direct response to concerns raised by council members during their preliminary budget deliberations. In some cases, the amendments may be only de minimus in amount or in the nature of clerical or technical corrections. Nevertheless, if the additional recommendations are treated as amendments to the budget

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City Solicitor  
City of Newton  
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that relate back to the original date of submission, then the council would not have the 45 days contemplated by the statute in which to consider the budget in its entirety and act on each particular spending proposal for the upcoming year. A significant recommendation might be made after the last scheduled meeting of the council before the expiration of the 45 days, which might deprive the council of any opportunity to reduce or eliminate any proposed additional spending. This could substantially vitiate the council's statutory rights under the statute to "have a fair opportunity to study the various items in the budget and determine what appropriations should be made" for the year. *Bell v. Assessors of Cambridge*, 306 Mass. 249, 254 (1940).

It may be argued, that the city council is presumed to be fully cognizant of any charter or procedural rules that govern its action on the budget and therefore, is able to ensure that it can reject any late recommendations so as to prevent them from going into effect before it can give them adequate consideration. Given that G.L. c. 44, § 32 does not require any affirmative action by the council on the annual budget as a whole or on any particular item within the 45 day period, however, we think the better view is that the amendments do not relate back to the original budget submission. The only legally effective action the council can take is to reduce or eliminate the amounts recommended for particular line items, and it has a full 45 days from which the budget was submitted in which to take such action before the recommended amounts are approved by default. We do not think the statute contemplates that the mayor can submit revisions and leave the council without the time specified to consider each proposal for the year. In *Bell*, the court held that neither a budget summary submitted by the mayor within the statutory deadline of 60 days from the annual organization of the city, nor a more detailed line item submission made after that time and acted on by the council, was a valid budget for purposes of a default tax assessment rule in effect at that time. In its discussion, the court emphasized the importance of the council having the full period allocated by the statute to consider each item before it became part of the budget by default. While the *Bell* court's concern was whether a mayor could submit proposals after the statutory deadline, it seems to us that its concern about leaving the council with little time to consider particular spending proposals for the year applies just as strongly where the proposals are submitted within the statutory deadline.

A charter could of course change the allocation of budgetary powers between the mayor and the legislative body. In most respects, the Newton charter does not appear to differ from the general laws. Section 5-1 of the charter provides for the mayor to submit to the board of aldermen a proposed budget within the time required by state law. As under the general laws, the board may delete or decrease programs or amounts, but not increase them. Failure to act on any item within 45 days of receipt of the budget puts that appropriation into effect for the fiscal year.

Daniel M. Funk, Esq.  
City Solicitor  
City of Newton  
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The charter also provides that the board of aldermen acts on measures, which it defines as any ordinance, order, resolution, vote or other proceeding that could be passed by the board. You advise that since adoption of the budget results in an order, you believe the annual budget is a measure under the charter. You further advise that there has been a consistent practice of treating any amendments submitted by the mayor as part of a single annual budget measure to be acted on by the board. As noted above, we think that affirmative action by a legislative body on additional budget recommendations would make it unimportant under G.L. c. 44, § 32 whether the recommendations were characterized as supplemental budgets or amendments to the annual budget, because there is no need to determine that the additional recommendations take effect by default. Unlike the general laws, however, the charter provides that the aldermen "shall adopt the budget, with or without amendments, within forty-five days following the day budget is received by it." It then goes on to state the nature of the amendments the aldermen may make and the legal effect of the aldermen's failure to "take action" with respect to items in the budget within that time period. Whether this provision contemplating affirmative action on the proposed budget, coupled with the treatment of the budget as a single measure under the charter, makes the 45 day default rule in your charter applicable to budget recommendations submitted after the original submission is a matter on which we would have to defer to the city.

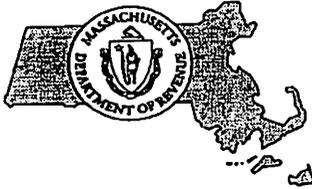
If you have any further questions, please do not hesitate to contact us again.

Very truly yours,



Kathleen Colleary, Chief  
Bureau of Municipal Finance Law

KC



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

Harry Grossman  
Acting Deputy Commissioner

May 20, 1996

Daniel M. Funk, Esq.  
Law Department  
City Hall  
1000 Commonwealth Avenue  
Newton, Centre, MA 02159      FAX 969-7872

Re: Mayor's Recommendation of Funding Source for Appropriations  
Our File No.96-501

Dear Mr. Funk:

This is in reply to your letter to your questions about the extent of a city council's discretion over the funding sources recommended by the mayor to pay for school capital projects. The mayor has recommended that free cash be used for a substantial part of the project, with the balance funded by borrowing; the council wishes to borrow the entire cost of the project.

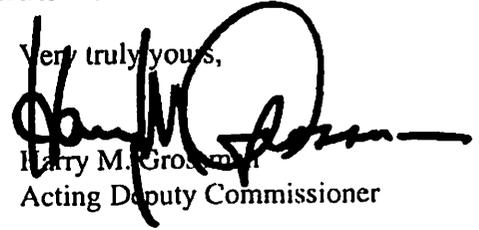
Although the city budget statute (G.L. Ch.44 §32) does not offer any explicit guidance on the question, we think the logic of the budget process in cities requires that a mayor's recommendation of a funding source be binding on a city council or board of aldermen. The choice whether to fund a proposed expenditure from the tax levy, with debt or from available funds such as free cash is so integral a part of municipal budgeting that we think it would make no sense to suppose that the legislature meant to withhold that from §32's broad grant of budgetary powers to mayors.

The suggestion that the aldermen might approve the mayor's recommendation conditionally, with the condition being that the mayor change the funding sources, raises several problems. In the first place, §32 speaks of the city council, approving, rejecting or reducing any amount recommended by the mayor. The natural reading of that language is that those are the city council's - or aldermen's - only choices. Moreover, under G.L. Ch.39 §4, action under Ch.44 §32 does not go back to the mayor for his approval or veto, so there is no mechanism for the mayor formally to accept or reject the aldermen's conditional alteration of the funding sources.

It seems to us that the aldermen can raise the issue of the funding source only by rejecting the mayor's recommendation, leading to either an impasse or a new recommendation with different funding sources. This is analogous to what commonly happens when councils or boards of aldermen wish to see more money appropriated for certain purposes than the mayor recommends.

Please do not hesitate to contact us if we may be of further assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Harry M. Grossman", written over the typed name and title.

Harry M. Grossman  
Acting Deputy Commissioner