



Accountant Issues

Special Revenue Funds Recent Legislation

Prepayment

Encumbrances

and

**Borrowing Amount Covered by an Approved
Proposition 2½ Debt Exclusion**

**Workshop C
2022**

Workshop C References

GENERAL LAWS

[G.L. c. 40, § 4E](#)
[G.L. c. 40, § 5B](#)
[G.L. c. 41, § 56](#)
[G.L. c. 41, § 58](#)
[G.L. c. 44, § 31](#)
[G.L. c. 44, § 53](#)
[G.L. c. 44, § 53E1/2](#)
[G.L. c. 44, § 53F1/2](#)
[G.L. c. 44, § 65](#)
[G.L. c. 44, § 66](#)
[G.L. c. 71, § 40](#)
[G.L. c. 71, § 49A](#)
[G.L. c. 71, § 71D](#)
[G.L. c. 94G, § 3](#)

OTHER DEPT OF REVENUE MATERIALS

[Informational Guideline Release 2022-14 PROPOSITION 2½ DEBT EXCLUSIONS](#)
[City and Town Ask DLS: Treatment of Opioid Settlement Payments](#)
[City and Town Municipal Finance and Governance Legislation](#)
[City and Town Ask DLS: End of Fiscal Year – Part 1](#)
[City and Town Ask DLS: Prepayment](#)
[City and Town Ask DLS: Encumbrances](#)
[Local Finance Opinion 2022-3 Transportation Network Company Funds](#)
[Informational Guideline Release 2021-23 Departmental Revolving Funds](#)
[Informational Guideline Release 2021-11 Enterprise Funds](#)
[Informational Guideline Release 2017-20 Stabilization Funds](#)

ACTS

[Chapter 176 of the Acts of 2022](#)
[Chapter 180 of the Acts of 2022](#)
[Chapter 198 of the Acts of 2022](#)

Commonwealth of Massachusetts



DLS

DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE
Supporting a Commonwealth of Communities

What's New in Municipal Law Workshop C

October 2022

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What's New in Municipal Law



Special Revenue Funds

Definition

- Special revenue funds: Funds, established by statute only, containing revenues that are earmarked for and restricted to expenditures for specific purposes. Special revenue funds include receipts reserved for appropriation, revolving funds, grants from governmental entities, and gifts from private individuals or organizations.

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What's New in Municipal Law



AN ACT RELATIVE TO MASSACHUSETTS'S TRANSPORTATION RESOURCES AND CLIMATE, Chapter 176 of the Acts of 2022

Transportation Network Company Per-ride Assessment Distribution

- LFO-2022-3
- TNC Receipts: receipts reserved for appropriation account
- New Rule: starting with distributions received on or about June of 2023, if \$25,000 or less, CEO may expend the funds for the statutory purposes without further appropriation

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**AN ACT RELATIVE TO MASSACHUSETTS'S TRANSPORTATION
RESOURCES AND CLIMATE, Chapter 176 of the Acts of 2022**

**Transportation Network Company Per-ride Assessment
Distribution**

- New Reporting Rule: starting in FY24 (so need to submit usual annual report this year by 12/31):

If Receive More Than 25K	Report That Year (always by Dec 31)
If Cumulative Total More than \$25,000 Since Last Report	Report The Year Cumulative Value is More than \$25,000
If Cumulative Total NOT More than \$25,000 since its Last Report	Report 5 Years After Last Report

- TNC Division will withhold future disbursements until the reporting requirements are satisfied

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**An Act relative to equity in the cannabis industry, Chapter 180 of the
Acts of 2022**

Municipal Finance Changes To Cannabis Industry

- Effective Date – Signed 8/11/22, in effect 11/09/22
- Receipts, generally, include (1) a local excise on the retail sales of marijuana for adult use (2) negotiated impact fees under a community host agreement and (3) social equity business distributions pursuant to G.L. c. 64N, § 2
- Allowed to waive host community agreement requirement
- MUST establish initial equity procedures or policies required by paragraph (5) of subsection (d) and (f) of section 3 of chapter 94G of the General Laws not later than July 1, 2023

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**An Act relative to equity in the cannabis industry, Chapter 180 of the
Acts of 2022**

Municipal Finance Changes To Cannabis Industry

- The fee must be reasonably related to the costs imposed on the municipality
- Documentation must be provided to the marijuana business from the community of these costs and must be provided within one month after the 1-year anniversary of the annual renewal of a final license
- The fee is paid annually and not until after the 1st annual renewal
- The legislation also specifically provides that a licensee may bring a cause of action in contract law if it believes the information documented and transmitted by a host community is not reasonably related to the actual costs imposed upon the host community
- The fee cannot exceed 3% of gross sales AND
- The fee is not applicable after the marijuana establishment or medical marijuana treatment center's 8th year of operation
- Effective Date 11/09/22

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An Act relative to school operational efficiency, Chapter 198 of the Acts of 2022

**Effective Date – Signed 8/26/22, in effect 11/24/22
(practically most sections not applicable until FY24)**

Sections 1-6:

- Concern procurement (not DLS)

Section 7:

- Amends G.L. c. 41, § 56 – Allows prepayment for “(i) school travel prior to the date of travel, or (ii) the payment of software licenses, software maintenance agreements or online subscription services for school curriculum prior to the fiscal year in which services will be rendered.”

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An Act relative to school operational efficiency, Chapter 198 of the Acts of 2022

Sections 8-9:

- Amends G.L. c. 44, § 53F1/2 – Enterprise Funds
- Permits “school transportation service” to be a legal purpose for which an Enterprise Fund may be established
- The School Committee submits this Enterprise Fund budget to the executive authority

Section 10:

- Amends G.L. c. 71, § 49A – Allows payment after annual appropriations made for the ensuing FY for schools for “materials, supplies and equipment and may contract for services”
- Change from only being able to contract for – still must be received per G.L. c. 41, § 56

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An Act relative to school operational efficiency, Chapter 198 of the Acts of 2022

Section 11:

- Amends G.L. c. 71 – Adds § 98 Special Fund
- Establishment – by school district
- Receipts – Commonwealth reimbursements for transportation
- Expenditures – By School Committee for school transportation; only carries forward one fiscal year

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An Act relative to school operational efficiency, Chapter 198 of the Acts of 2022

Hypotheticals:

- School orders pencils after the budget is passed at the May Town Meeting....receives pencils on June 7...sends you invoice of same on June 8...can you pay it?
- Town budget passes in May...includes 50K for school curriculum subscriptions...in June school enters into a contract for curriculum subscriptions for the next 5 years with a one-time upfront payment of 50K (which nets them a discount of 10K)...can it be paid in June?
- Can it be paid July 1?

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An Act relative to school operational efficiency, Chapter 198 of the Acts of 2022

Hypotheticals:

- Same facts as last question but the subscription was only for one year, could it be paid in June?
- What if the budget passes in May and there is only 10K for school curriculum subscriptions...in June school enters into contract for curriculum subscriptions for the next 5 years with a one-time upfront payment of 50K (which, again, nets them a discount of 10K)...can it be paid on July 1?

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Opioid Revenue Treatment

Opioid Settlement Funds:

- Currently general fund revenue
- Legislation proposed to allow special revenue fund treatment
- If received funds prior to start of FY23 then cannot appropriate until free cash is certified
- If received after start of FY23 then can amend budget and appropriate (if tax rate not set) or ask for free cash to be updated and appropriate
- Stabilization Fund option

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Proposed Legislation Concerning Special Revenue Funds

Proposed Legislation:

- Amendments to G.L. c. 44, § 53
- Insurance Proceeds
- Special Revenue Funds
- Mitigation/Exaction Funds
- Revolving Funds
- Special Purpose Stabilization Funds

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Exceptions to the General Rule Against Prepayment

1. Do the following expenses violate the rule against prepayment?
 - a. Attorney's retainer.
 - b. Attorney's invoice for services rendered.
 - c. A deposit to Referees R Us, which takes town money and pays officials who referee sports, games, and the like. Referees R Us acts as a clearinghouse requiring a minimum account balance on deposit from Town.
 - d. Advance payment for a police officer to attend an FBI training on active shooter prevention and response in Pennsylvania.
 - e. Partytown, Massachusetts would like to prepay for event space for the town's anniversary celebration.
 - f. Town would like to purchase gift cards for purchasing supplies for two town activities.
 - g. Green Oak Town Park Division wants to pay upfront or prepay deposits and full payments to hold camp spots for camps that will be conducted in August, in the next fiscal year.

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Exceptions to the General Rule Against Prepayment

1. Do the following expenses violate the rule against prepayment? (Cont.'d)
 - h. Technology Town agreed in a written signed contract with Apple to prepay for 100 computers to update town hall's technology. May the upfront payment be made?
 - i. Member of the town building committee requested payment from the accountant to the contractor as a "mobilization fee" so the contractor could move supplies and eventually install a roof on a municipal building as part of agreement with the town.
 - j. The school department needs to order tents to be delivered sometime in September. The vendor refuses to reserve the order unless he receives a check in advance for approximately \$8,000. The vendor does not accept purchase orders because many municipalities have cancelled at the last minute. Is this an acceptable charge due to unusual circumstances?

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Exceptions to the General Rule Against Prepayment

2. Bill Nye the science teacher at Rocky Road Elementary School has requested his salary payments be made during the summer. May the school oblige this request?
3. Town would receive a more advantageous price if it prepaid for a new fire engine. May Town prepay for the fire engine?
4. A DEP grant of \$5,000 was awarded to the local DPW for the purchase of water kiosks for residents due to high levels of PFAS in the community's water. According to the grant terms, the funds must be spent by June 30, 2023, or the town loses the grant funds. Assume it is June 15, 2023 and DPW is wondering whether it can prepay for the water kiosks so the grant money does not expire.

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Exceptions to the General Rule Against Prepayment

5. Alexander Hamilton School would like to prepay for the costs of special education tuition for students for three months into the next fiscal year.
6. School committee would like to prepay money for an education collaborative program.
7. The town of Relaxville would like to prepay its employees up to two weeks of vacation pay each year.

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Encumbrances

8. One sunny January morning after a fresh powdery snowfall, three skiers load themselves into a gondola while traveling up the slopes of the Matterhorn in the Swiss Alps. They exchange pleasantries and discover that they are all accountants. The discussion becomes heated as they discuss the proper treatment related to year end closing of municipal books in Massachusetts. Which accountant's analysis is correct?
 - a. The smug Big Accounting Firm partner emphatically declares that municipal books in Massachusetts must close on December 31 as that is the last day of the year and that financials need to be dated as of December 31, but that amendments may be made thereto until January 31.
 - b. The Regional Accounting Firm associate claims that the appropriate date is June 30, explicating further that the Treasurer must encumber all items for the payment of bills incurred and salaries and wages earned during the previous fiscal year by June 30 and that all transfers need to be made by June 30 in order to avoid any year-ending appropriation deficits.
 - c. The newly hired Assistant Town Accountant in Scenictown Massachusetts states that the appropriate date to close the books is June 30. Further stating that July 15 is the deadline by which any obligations arising through June 30 are determined for purposes of charging or encumbering operating appropriations. It is also the date by which any transfers needed to avoid any year-ending appropriation deficits must be made by (1) the legislative body, (2) the school committee from the line items it established within its annual appropriation, (3) the finance committee from the finance committee reserve fund or (3) the selectboard and finance committee under the alternative year-end transfer procedure.

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Encumbrances

9. May a department's current year appropriation be encumbered for the following expenses:
- a. Office supplies ordered at the end of the year for use next year.
 - b. Salt and sand for snow operations ordered at the end of the year for use next year.
 - c. Services to be performed entirely next year.
 - d. Recurring expenses of subscriptions or leases spanning both the current fiscal year and into next fiscal year.
 - e. Prepayment of special education or educational collaborative tuitions.
10. If money was included in departmental salary appropriation items to cover expected raises from collective bargaining agreements during the year and the year ends without ratified agreements, may the funds be encumbered until the contracts are settled?
11. Town has a special purpose appropriation to purchase a new ambulance. Does the full amount of the special purpose appropriation need to be encumbered?

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Encumbrances

12. Town is planning to spend \$100,000 to upgrade a computer software system. Responses to the RFP from vendors are not due to be received until August 1 and a contract will be made at that time with the lowest responsive and responsible bidder. May the \$100,000 be encumbered?
13. May a town encumber funds to pay for utility services such as electricity bills?
14. May a town encumber funds where no appropriation exists, but the town and vendor have entered into a contract for the services?

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Municipal Law Seminar
IGR 22-14 Proposition 2 ½ Debt Exclusions

October 2022

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IGR 22-14 Proposition 2 ½ Debt Exclusions

Worcester

Worcester and Lowell both have school building projects millions of dollars over budget; Is this a new trend?

Published May 08 2022 5:55 am



GBH NEWS

Material costs are inflating price tags for municipal projects like schools and roads



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IGR 22-14 Proposition 2 ½ Debt Exclusions



VINEYARD GAZETTE

HOME / VINEYARD GAZETTE / LOCAL INTEREST / THE VIEW / COAST THE OUTRIDGE



The school's expansion and renovation costs for the Tisbury School have ballooned to nearly double.

By Tracy

Tisbury School Project Costs Swell 54 Per Cent to \$82 Million

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IGR 22-14 Proposition 2 ½ Debt Exclusions



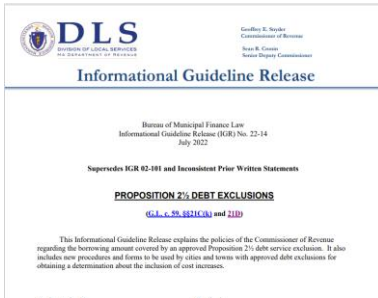
What is a debt exclusion? [G.L. c. 59, § 21C\(k\)](#)

- Under Proposition 2½, a city or town may present a debt exclusion referendum to voters. An approved debt exclusion provides a temporary increase in the amount the community can levy to fund the payment of debt service costs. Each year until the described debt is retired, the amount of the debt service payment due for that year is added to the levy limit to establish the maximum amount the community can levy.
- Debt exclusions are usually for major construction projects and often the details and costs change as the projects progress. Even though a dollar amount is not included in the referendum question approved by the voters for these projects, the exclusion is not unlimited and does not necessarily cover all cost increases. **An exclusion covers the debt service costs on the borrowing amount authorized or contemplated for the described purpose or purposes at the time of the referendum vote.** Debt service on any borrowing above that fixed amount is not excluded unless (1) it is a modest amount attributable to inflation, new regulatory requirements or minor project changes, or (2) another exclusion is approved by the voters.
- The Director of Accounts will determine the borrowing amount covered by a debt exclusion using the standards and procedures set forth as allowed by [G.L. c. 59, § 21D](#).

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IGR 22-14 Proposition 2 ½ Debt Exclusions



IGR 22-14 Proposition 2 ½ Debt Exclusions

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IGR 22-14 Proposition 2 ½ Debt Exclusions



Prior process

- DLS looked at inflation indices such as Consumer Price Index and others
- Municipality completed an application
- If the requested increase was within inflationary increases, and not due to scope increases, we approved

Current Process

- Needed to address the materiality of the dollar amounts
- Wanted to hear explanations/analyses from construction experts
- Wanted attestations that additional costs were not due to scope increases
- Local governing body needed to take ownership of the decisions
- Votes to request DE-2 permission and accept the cost estimator's reports taken at public meeting

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IGR 22-14 Proposition 2 ½ Debt Exclusions



Specifically, IGR 22-14 requires:

- Application for permission to include additional borrowing in the original debt exclusion must be made by the mayor, city/town manager, or the selectboard
- The form DE-2 must be completed and signed by the city council president and mayor or city manager, if applicable, or majority of the selectboard
- A certified copy of a vote taken by the city council or selectboard in public session indicating acceptance of the architect's, cost estimator's or owner's project manager's (OPM) report must be submitted
- Said report must be submitted with the DE-2 application.

The architect's, cost estimator's or OPM's report must provide the following:

- a) A letter from the architect, cost estimator or OPM detailing the circumstances for the cost increase;
- b) A report showing original project costs by major category at the time of the original debt exclusion vote with revised costs by major category (the variance should approximate the requested increase amount);
- c) An analysis of inflationary circumstances currently impacting the project cost;
- d) A statement from the architect, cost estimator or OPM indicating that the cost increase is not related to a change in scope from the project originally approved by the electorate at the time the debt exclusion was approved; and
- e) A statement from the architect, cost estimator or OPM detailing any changes made since the project was originally approved to reduce the cost of the same.

The application must include the requested additional amount of borrowing.

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IGR 22-14 Proposition 2 ½ Debt Exclusions



Then what?

DLS reviews the application and other required materials to make a determination.

If approved, the municipality may do one of two things:

1. Go to a meeting of the legislative body to get authorization to borrow the additional funds and not have an additional exclusion ballot vote based on DLS' permission, or
2. Call a meeting of the legislative body to get authorization to borrow the additional funds and have additional exclusion ballot vote, despite DLS' permission to include the additional borrowing in the original exclusion vote.

If the community opts to forgo an additional exclusion ballot vote, the electorate can still reject the additional spending, and therefore, exclusion amount by voting down the additional borrowing authorization.

A municipality can opt to not apply for DE-2 permission from DLS and just have an additional exclusion ballot vote.

There must always be a 2/3 vote of the legislative body to borrow the additional project funds

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IGR 22-14 Proposition 2 ½ Debt Exclusions



Practically speaking, what did we actually do?

- We reviewed the submitted documentation.
- We read the OPM or cost estimator's report.
- We watched the selectboard meeting to make sure the appropriate vote was taken and to hear the discussion had in open meeting.
- We listened to hear if there was discussion regarding the additional impact to the average single family tax bill.

We have approved 2 DE-'s since the new IGR was issued.

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Discussion Questions

EXCEPTIONS TO THE GENERAL RULE AGAINST PREPAYMENT

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G.L. c. 41, § 56

G.L. c. 44, § 31

G.L. c. 44, § 66

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G.L. c. 71, § 40

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G.L. c. 44, § 31