



Bulletin

BUL-2020-01

Emergency Expenditures and Borrowing

TO: Local Officials
FROM: Marie Jane Handy, Director of Accounts
DATE: March 20, 2020
SUBJECT: **Emergency Expenditures Related to COVID-19 under G.L. c. 44, § 31 and
Emergency Short-term Borrowing under G.L. c. 44, § 8(9)**

This Bulletin provides guidance to local officials on emergency expenditures related to COVID-19 under G.L. c. 44, § 31. The provisions of G.L. c. 44, § 31 apply to cities, towns and special purpose districts as defined under G.L. c. 44, § 1, but do not apply to regional school districts.

Note – Legislation is pending which may affect the information contained in this Bulletin. If such legislation is approved, the Director will issue further guidance.

I. Emergency Liabilities in Excess of Appropriation

Under G.L. c. 44, § 31, no department financed by municipal revenue, or in whole or in part by taxation, of any city, town or special purpose district, except Boston, may incur liabilities in excess of 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 upon a declaration by the governor of a state of emergency with respect to the disaster” On March 10, 2020, the Governor declared a state of emergency with regard to COVID-19. As a result, cities, towns and special purpose districts may expend from any available funds in the treasury in relation to the emergency without an appropriation by following the procedure described below.

II. Payment of Liabilities After Director’s Approval

Emergency liabilities in excess of appropriation may only be paid after written approval by the Director of Accounts (Director) of the Division of Local Services (DLS). Requests for written approval must be made by the entity’s chief executive officer (CEO). Under G.L. c. 4, § 7, clause Fifth B, the CEO is the mayor in a city and the selectboard in a town unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter. In a district, the prudential committee, if any, otherwise the commissioners shall act as the CEO. The request must include the following:

- a spending estimate to address the emergency situation
- a description of the types of expenditures anticipated to be made.

Payments may be made from any available funds in the treasury. The Director's written payment authorization will deem these expenditures to be legal overdrafts. The spending estimate may be increased upon approval by the Director, if needed. The Director's approval provides immediate spending authority until other financing sources, such as emergency borrowing or appropriations from available funds, can be put in place to cover the spending.

Even if the entity intends to emergency borrow as will be shown in this Bulletin, the Director's payment approval is still necessary so as to not negatively affect the calculation of free cash.

III. Allowable and Non-Allowable Liabilities

Allowable liabilities in excess of appropriation which may be incurred include personnel costs, overtime and other costs associated with the emergency, including but not limited to, costs related to extraordinary cleaning of public buildings, maintaining the health and safety of employees or the public, including the purchase of personal protective supplies and equipment, and costs to implement remote participation of local boards or committees in meetings under the Open Meeting Law as described in the Governor's Order dated March 12, 2020 – Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, § 20.

IV. Accounting for Expenditures

After receiving the Director's written payment authorization, the local accounting officer may either:

- establish a COVID-19 emergency account to charge expenditures (recommended); or
- charge any applicable existing account(s). If this option is chosen, by fiscal year end, the Director's authorized payments may be transferred by the local accounting official without appropriation to a COVID-19 emergency account as indicated above. If a sufficient balance remains in the account(s) as of June 30, such a transfer may be deemed unnecessary.

V. Providing for an Emergency Account Deficit

An emergency account deficit may be provided for in the current fiscal year's Tax Rate Recap, with or without appropriation from the tax levy, if the tax rate has not yet been set. Otherwise, the deficit must be provided for in the next fiscal year's Tax Rate Recap unless otherwise indicated by the Director. Additional options include:

- appropriating from certified free cash or other allowable available funds;
- transferring under G.L. c. 44, § 33B;
- applying applicable insurance reimbursements;
- borrowing short or long term under G.L. c. 44, § 8(9), and/or G.L. c. 44, § 8(9a), the proceeds from which must be received prior to tax rate certification for the deficit to be deemed provided for

VI. Reporting of Expenditures

Emergency payments as of June 30th which have not been provided for are reported by the accounting officer or treasurer to the board of assessors to include in the next annual Tax Rate Recap unless otherwise provided for, so long as any proceedings brought under G.L. c. 40, § 53 regarding restraint of illegal appropriations are terminated.

VII. Emergency Short-term Emergency Borrowing under G.L. c. 44, § 8(9)

Cities, towns and special purpose districts may borrow through short-term notes to fund emergency payments approved by the Director under G.L. c. 44, § 31 for a period not more than 2 years or such longer period up to 10 years as the Director shall determine after considering the ability of the city, town or district to provide other essential public services and pay, when due, the principal and interest on its debts, the amount of federal and state payments likely to be received for the purpose of the appropriations and such other factors as the Director may deem necessary or advisable.

To use this short-term emergency borrowing option, the municipality or district must (1) authorize the borrowing and (2) obtain the approval of the borrowing from the Director. The borrowing may be authorized (1) in the regular manner by two-thirds vote of the municipality or district's legislative body, and in a city with the approval of the mayor if required by charter, or (2) under an expedited procedure authorized by the treasurer of the city, town or district, with the approval of the chief executive officer in a city or town, or the prudential committee, if any, or by the commissioners in a district.

Short-term borrowing may be paid down at maturity by applying without appropriation any FEMA or similar reimbursements received regarding the emergency expenditures or insurance reimbursements received regarding the emergency expenditures less than \$150,000 with approval of the chief executive officer under G.L. c. 44, § 53.

For purposes of 8(9), emergency means:

“a sudden, unavoidable event or series of events which could not reasonably have been foreseen or anticipated at the time of submission of the annual budget for approval; provided, further, that emergency shall not include the funding of collective bargaining agreements or items that were previously disapproved by the appropriating authority for the fiscal year in which the borrowing is sought;”

For more information on this borrowing option, please contact Bill Arrigal in the DLS Public Finance Section at (617) 626-2399 email: arrigal@dor.state.ma.us. For other questions regarding this Bulletin, please contact your Bureau of Accounts field representative.