



# Informational Guideline Release

Bureau of Accounts  
Informational Guideline Release (IGR) No. 17-14  
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(Supersedes IGR 03-208 and Inconsistent Prior Written Statements)

## **SPECIAL REVOLVING FUNDS FOR OUTSIDE CONSULTANT FEES**

**(G.L. c. 44, § 53G)**

This Informational Guideline Release (IGR) informs local officials of changes made by the recent Municipal Modernization Act that expand the municipal boards, commissions, committees and officials that may deposit any fees they impose on applicants in order to offset any professional assistance obtained to review the applications into a special project revolving fund and spend them without appropriation to pay the outside consultants.

Topical Index Key:

Accounting Policies and Procedures  
Fees and Charges  
Special Funds

Distribution:

Accountants/Auditors  
Treasurers  
Mayors/Selectmen  
City/Town Managers/Exec. Secys.  
Finance Directors  
City/Town Councils  
City Solicitors/Town Counsels

(Supersedes IGR 03-208 and Inconsistent Prior Written Statements)

## **SPECIAL REVOLVING FUNDS FOR OUTSIDE CONSULTANT FEES**

([G.L. c. 44, § 53G](#))

### **SUMMARY:**

These guidelines explain amendments to the special revolving fund under [G.L. c. 44, § 53G](#) for fees charged applicants for permits or approvals for the specific purpose of hiring expert consultants to assist certain regulatory boards, commissions, committees and officials in reviewing the applications. The fees paid by the applicant are deposited into a separate project account, which may be spent without appropriation by the board, committee, commission or official to cover the professional services needed to review the particular application. Interest on the fees remains with the individual project account. The accounts remain open until the project is completed. The unspent balance, including interest, is refunded to the applicant at the end of the review process.

The Municipal Modernization Act amended [G.L. c. 44, § 53G](#) to expand the use of these special outside consultant revolving funds to all municipal regulatory boards, commissions, committees or officials that grant or issue permits, licenses or approvals. [St. 2016, c. 218, § 91](#). Previously, these revolving accounts were available only to zoning boards of appeal (or other special permit granting authorities designated by zoning by-laws or ordinances), planning boards, boards of health and conservation commissions. Any outside consultant fees imposed and received by other permitting or licensing authorities on or after November 6, 2016 may now also be credited to an outside consultant revolving fund consistent with these guidelines.

These guidelines are in effect and supersede Informational Guideline Release No. 03-208, *Special Revolving Funds for Hiring Outside Consultants*, and any inconsistent prior written statements or documents.

### **GUIDELINES:**

#### **A. OUTSIDE CONSULTANT FEES AND SELECTION**

##### **1. Fees**

Applicants for licenses, permits and approvals from any municipal regulatory board, commission, committee or official authorized by any statute, ordinance or bylaw to issue licenses, permits or approvals may be charged reasonable fees for the specific purpose of defraying the cost of hiring the outside consultants needed by the board, commission, committee or official to perform its legal duties in reviewing the applications. The fees to be paid by applicants for particular licenses, permits and approvals must be established by rules and regulations of the board, commission, committee or official.

Licenses, permits and approvals for which outside consultant fees are often charged by the permit or licensing authority under statutory or other regulatory authority, include but are not limited to the following:

- Zoning Permits and Variances ([G.L. c. 40A, §§ 9 and 12](#)) (Zoning Board of Appeals)
- Comprehensive Permits, ([G.L. c. 40B, § 21](#)) (Zoning Board of Appeals)
- Building Permits ([G.L. c. 143](#)) (Building Inspector)
- Earth Removal Permit (Local by-law or ordinance) (Building Inspector, or other designated authority)
- Order of Conditions and Wetlands Permits ([G.L. c. 131, § 40](#), [G.L. c. 40, § 8C](#)); (Local Wetlands By-Law or Ordinance) (Conservation Commission)
- Definitive Plan of Subdivision ([G.L. c. 41, § 81Q](#)) (Planning Board)
- Title V Septic System Approval (Title 5, 310 CMR 15.000) (Board of Health)
- Trench Permit, Private Property ([G.L. c. 82A, § 2](#); Local by-law or ordinance) (Department of Public Works, or other designated authority).

## **2. Selection**

A board, commission, committee and official charging fees for hiring outside consultants must establish rules for choosing the consultants in order to use the special project funds. The selection must also be consistent with any applicable charter, by-law, ordinance or statutory provisions, e.g., the Uniform Procurement Act, [G.L. c. 30B](#).

The rules must set qualifications for the outside consultants. At a minimum those qualifications must include: (a) an educational degree in or related to the field at issue or (b) three or more years of practice in the field at issue or a related field.

## **3. Appeal**

The rules must provide the applicant paying the fee with an administrative appeal of the selected outside consultant. The appeal is to the selectboard or city council and is limited to claims that the consultant has a conflict of interest or does not possess the minimum required qualifications.

The time required for action by the board, commission, committee or official on the application for a permit, license or approval is extended pending the appeal. The selection by the board, commission, committee or official stands unless the selectboard or city council decides otherwise within one month following the filing of the appeal.

An administrative appeal does not preclude judicial review, if otherwise permitted by law, on the matter.

**B. ACCOUNTING PROCEDURES**

**1. Fee Turnover**

The board, commission, committee or official must turn over all outside consultant fees received to the treasurer. The fees should be paid over as soon as possible, but at least weekly. The turnover should be accompanied by a report identifying by applicant the amount paid for each project. A copy of the report must also be forwarded to the accounting officer.

**2. Investment and Interest**

The treasurer may invest all fees collected in the same manner as general funds. The treasurer does not have to establish a separate bank account for the fees paid by an applicant for each project. The treasurer may pool all fees collected with other cash or establish a separate, common bank account for the fees, but must allocate any interest earned on the fees charged to each project, however. The interest remains with the fees and accrues to the benefit of the applicant.

**3. Project Account**

The accounting officer must establish and maintain a separate account for the fees paid by the applicant for each project.

**4. Annual Reports**

The accounting officer must make an annual report of any special project accounts to the town administrator or town manager and selectboard in a town or the mayor or city manager and city council in a city. This report must also be published in the annual report of the municipality.

All financial activities related to the special project accounts are also reported annually to the Director of Accounts in Schedule A.

**C. EXPENDITURE OF FEES**

**1. Allowable Use**

The board, commission, committee or official may spend the fees, including any interest earned, without appropriation to engage outside consultants to assist in carrying out its legal responsibilities with respect to that particular project. The fees may not be used to compensate or otherwise pay for the services of municipal employees.

For example, the planning board may use the fees to hire an expert consultant to do a traffic study needed for a proposed project. The fees could not be used to defray the cost of a town planner who conducts the study.

2. **Outside Consultant Bills**

The board, commission, committee or official must use the same process used for payment of other departmental expenses to obtain payment of all bills being charged to the revolving fund. A payment voucher with appropriate supporting documentation is submitted to the accounting officer for placement of the bill on the treasury warrant.

D. **REFUND OF UNSPENT FEES**

1. **Account Report**

The board, commission, committee or official must notify the accounting officer when each consulting project is completed and all bills have been submitted for payment. The accounting officer must prepare a final report of the account activities for the applicant.

2. **Refund Payment**

Upon completion of the consulting project, any balance remaining in the project account, including any interest, must be refunded to the applicant. If a refund is due, the board, commission, committee or official should submit a voucher to the accounting officer for placement on the treasury warrant. Upon approval of the warrant, the treasurer will issue the refund to the applicant.