



Snow Time Like the Present to Discuss Budgeting for Winter

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Important Dates & Information

Send Us Your Questions! 2018 "What's New in Municipal Law" to Feature Morning Q&A

The Division of Local Services Legal Staff will offer its annual seminar "What's New in Municipal Law" for local officials on Thursday, September 27, 2018 at The Lantana in Randolph and Thursday, October 4, 2018 at the Log Cabin Banquet & Meeting House in Holyoke.

Please click the following for the [agenda](#) and [registration form](#). Registrations must be received

According to Mark Twain, "If you don't like the weather in New England, just wait a few minutes." At DLS we spend much more time focused on financial rather than atmospheric forecasting, but we can say with some certainty that there will likely be snow and ice in Massachusetts in a few months. While no city or town department may incur a liability or expend in excess of appropriation for the fiscal year ([G.L. c. 44, § 31](#)), we want to take some time before the first snowflakes hit the ground to highlight the one exception to this rule.

[G.L. c. 44, § 31D](#) allows cities and towns to expend funds in excess of appropriation for snow and ice removal provided certain preconditions are met. The following article will provide a brief history of how the current snow and ice removal law came to be, will illustrate an example of the current law, and will look at budget and expenditure data obtained from annual reports submitted to the Bureau of Accounts.

Chapter 33 of 1976

In 1976, the General Court of Massachusetts passed Chapter 33, *An Act Providing for Certain Emergency Snow and Ice Removal in Cities and Towns*. This act added [M.G.L. Chapter 44, §31D](#) and gave cities and town's the authority to deficit spend their snow and ice removal appropriations and to include the deficit on the next annual tax rate without appropriation provided the following two conditions were met.

1. The appropriation for snow and ice removal in the year the deficit occurred equaled or exceeded the appropriation for snow and ice removal in the prior fiscal year.
2. The deficit spending was approved by the town manager and finance committee in a town having a town manager, selectmen and finance or advisory committee in any other town, city manager and city council in a city having a city manager or the mayor and city council in any other city.

This new law gave municipalities added flexibility to manage their snow and ice removal expenditures provided they met the legal conditions.

by Wednesday, September 19, 2018. Pre-registration is required. Attendees with questions for the DLS legal staff related to municipal tax or finance should submit them by Wednesday, September 19, 2018 to dlsregistration@dor.state.ma.us

The Massachusetts Association of Assessing Officers (MAAO) will grant four (4) hours of continuing education credits to assessors attending this program.

New Signature Requirements for Tax Rate Submission

The DLS Bureau of Accounts (BOA) now requires a majority of the Board of Assessors to electronically sign both the LA-5 form and the Tax Rate Recap form. Attaching a scanned copy of the paper form is no longer permitted.

Please contact your local Gateway Administrator or [DLS Gateway Support](#) to open a Gateway account. Contact your BOA Field Representative with questions about the form submission requirements. To view the DLS Staff Directory, please [click here](#).

If You've Adopted the CPA, Don't Forget to Submit to DLS!

Communities that have adopted the CPA must complete and submit both the CP-1 Surcharge Commitment Report and CP-3 Project Inventory by September 15th in order to receive the CPA state match in November. If you need assistance or have questions, please contact the Municipal Databank at databank@dor.state.ma.us or (617) 626-2384.

IG's Office Offers Certified Public Purchasing Official

Chapter 45 of 1996

After an exceptionally heavy snowfall during the winter of 1995/96, Chapter 45 of 1996, a supplemental appropriations bill, included the first revision to G.L. c. 44, § 31D. Among other provisions, Chapter (1) authorized \$21 million of additional municipal aid for snow and ice removal and (2) required every city and town to submit an annual snow and ice report to the Division of Local Services (DLS).

Chapter 10, § 58 of 2015

After another exceptionally heavy snowfall during the winter of 2014/15, another supplemental appropriation bill, Chapter 10 of 2015, included temporary authorization for cities and towns to amortize their FY2015 snow and ice removal account deficits for up to three fiscal years beginning in FY2016. Twenty-eight communities adopted an amortization schedule totaling \$50.6 million while all other communities with such a deficit provided for it in FY2016.

Chapter 218 of 2016 (Municipal Modernization Bill)

In an effort to further simplify the snow and ice deficit spending process, the Municipal Modernization Act provided the second and most recent revision to [G.L. c. 44, § 31D](#) in 2016. This act modified the approval procedure for snow and ice deficit spending so that only the community's chief administrative officer (CAO) is required to approve deficit spending for snow and ice removal. For the purposes of this act, the CAO is defined as the "mayor of a city and the board of selectmen in a town unless some other local office is designated to be the chief administrative officer under the provisions of a local charter."

The Current Law - Chapter 44, § 31D

Under current law, if a city or town appropriation for snow and ice removal in the year of a proposed deficit equals or exceeds the appropriation for snow and ice removal in the prior fiscal year, the city or town appropriation may legally be deficit spent for snow and ice removal upon approval of the city or town's CAO and the deficit must be included in the next tax rate without appropriation, unless otherwise provided for.

An annual snow and ice report must be submitted to the Bureau of Accounts by the municipality by September 30th.

If the conditions required to permit deficit spending under [G.L. c. 44, § 31D](#) are not met, then the fundamental rule of municipal finance under [G.L. c. 44, § 31](#) applies and liabilities and expenditures in excess of appropriation (deficit spending) are prohibited.

Illustrated example:

(MCPPO) Program

The Massachusetts Certified Public Purchasing Official (MCPPO) program class schedule for fall 2018 is available at www.mass.gov/trainingmcpo. The classes are designed to educate public purchasing officials about excellence in public procurement and compliance with state and local bidding laws. The Office provides a variety of classes on public contracting, design and construction laws, and boards and commissions.

Please note that some classes are eligible for continuing professional education credits, professional development points, or American Institute of Architects credits. For more information, please contact the Office of the Inspector General at (617) 727-9140.

AG'S Office Providing Refreshers on Open Meeting Law

Hoping to better educate elected officials and the public on the requirements of the state's open meeting law, Attorney General Maura Healey announced Wednesday that her office will hold five training sessions on the law this fall, as well as online trainings. The sessions are open to the public and are being offered without charge.

The trainings will be held in Natick on Wednesday, Sept. 12; in Orange on Monday, Sept. 24; in Winchester on Wednesday, Oct. 10; in Spencer on Thursday, Oct. 18; and in Harvard on Thursday, Nov. 15. Online webinars will be held Thursday, Sept. 20 and Tuesday, Oct. 16.

Those interested in attending

The accounting officer informs the CAO that the snow and ice removal budget may need an extra \$100,000 by fiscal year end. The CAO asks whether this year's total snow and ice removal appropriation is equal to or more than last year's and determines that this fiscal year's annual budget appropriation for snow and ice removal was \$1,000,000, supplemented with an additional appropriation of \$50,000 during the fiscal year and that last fiscal year's annual budget appropriation was also \$1,000,000, supplemented with an additional appropriation of \$200,000 during the fiscal year.

The accounting officer explains that it is the position of the Division of Local Services (DLS) that it is the previous fiscal year's original appropriation for snow and ice removal that must be equaled or exceeded by this year's original appropriation. The CAO then grants approval to deficit spend by the \$100,000. The actual amount deficit spent as of June 30th is \$95,000. Because the deficit spending is authorized under [G.L. c. 44, § 31D](#), the legal \$95,000 deficit is reported by the accounting officer to the assessors to be raised on the Tax Rate Recapitulation (tax recap) for the next fiscal year, if not otherwise provided for.

Had the current fiscal year's appropriation been less than \$1,000,000, the \$95,000 deficit would not have been authorized under [G.L. c. 44, § 31D](#) and would have been an illegal appropriation deficit. In the case of an illegal appropriation deficit, unless corrected prior to year-end through transfer or appropriation of unexpended reserves, the deficit would be reported by the accounting officer to the assessors to be raised on the tax recap for the next fiscal year and it would also be a reduction to the community's next free cash calculation. (For more information, see the DLS publication [Revenue and Appropriation Deficits](#).) The annual snow and ice report is submitted to the Bureau of Accounts by September 30th.

In the above example, note that:

- The accounting officer requested permission from the CAO to deficit spend
- After determining that the amount of the current fiscal year's appropriation for snow and ice removal was equal to or exceeded the previous fiscal year's appropriation, the CAO granted approval to deficit spend up to a certain amount.
- The original fiscal year's annual budget appropriation for snow and ice removal was compared to last fiscal year's original annual budget appropriation without including any supplemental appropriations
- The accounting officer reported the \$95,000 deficit to the assessors for inclusion in the next fiscal year's tax rate without appropriation (if the \$95,000 deficit is otherwise provided for, the accounting officer would have also reported this to the assessors, however ***the amount***

the sessions or participating in the webinars are asked to register in advance by calling (617) 963-2925 or by emailing OMLTraining@state.ma.us. A complete list of training sessions is available at the Attorney General's [website](#).



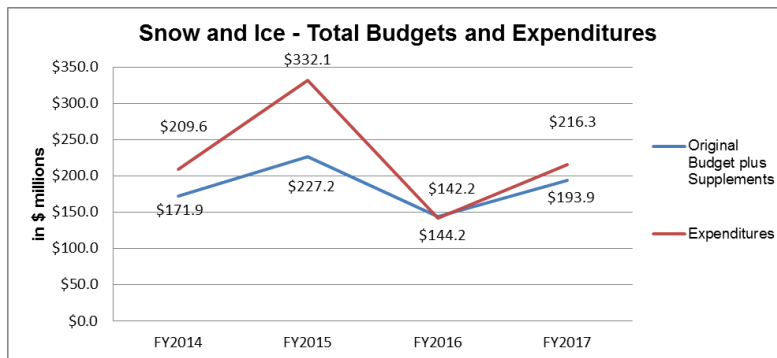
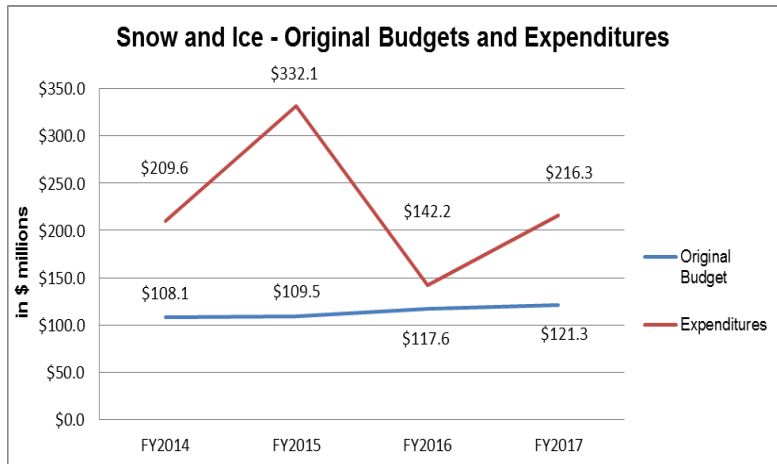
Other DLS Links:

- [Local Officials Directory](#)
- [Information Guideline Releases \(IGRs\)](#)
- [Bulletins](#)
- [Publications & Training Center](#)
- [Tools and Financial Calculators](#)

would not be added to the tax recap by the assessors when setting the next year's tax rate.

Snow and Ice Removal Dollars: Budgeted and Spent

The following two graphs display FY2014 through FY2017 snow and ice removal dollars budgeted and spent. The first graph compares amounts originally budgeted to expenditures. The second graph compares amounts originally budgeted plus supplemental appropriations to expenditures.



In the first graph, the total original budgets remained relatively flat and were millions of dollars below expenditures. However, in the second graph, after supplemental appropriations, the variance between totals is millions of dollars less. In FY2016, original budgets and supplemental appropriations exceeded expenditures by only approximately \$2 million.

Snow and Ice Removal Deficits

Cities and towns that do not sufficiently supplement their original snow and ice appropriation may end the fiscal year with an appropriation deficit that must be eliminated prior to the setting of the next tax rate.

The following Table shows for all cities and towns that had a deficit as of June 30th the total dollar value of the deficit, including deficit amounts remaining to be amortized from FY2015, if applicable.

Snow and Ice Removal Account Deficits				
	<u>FY2014</u>	<u>FY2015</u>	<u>FY2016</u>	<u>FY2017</u>
	(\$ shown in millions)			
\$ Deficit on June 30	\$39.2	\$107.5*	\$22.6	\$28.8
# of Cities and Towns with Deficit	111	149*	76	92

Source: DLS Databank (*includes deficit prior to amortization allowed by Chapter 10, § 58 of 2015, and FEMA reimbursement)

Deficits that were not eliminated by appropriating a revenue source to offset it, or by applying a federal or state grant distributed for this specific purpose, must be provided for on the next Tax Rate Recap without appropriation. Over the last four fiscal years, the number of municipalities providing for a snow and ice removal deficit on the next fiscal year's Tax Rate Recap without appropriation ranged from a low of 73 in FY2017 to a high of 120 in FY2016.

Using data from FY2018 Tax Rate Recaps, we determined that of the 92 cities and towns with snow and ice removal account deficits as of June 30, 2017, four eliminated the deficit prior to setting the FY2018 tax rate and 88 provided for it without appropriation on the FY2018 Tax Rate Recap. Of the 88 deficits, seven were greater than \$1 million, eight were between \$500,000 and \$1 million, 44 were between \$100,000 and \$500,000, and 29 were less than \$100,000.

Conclusion

Whether it ends up snowing this winter at a record level or not, your city or town benefits greatly from a formal snow and ice removal policy. The policy's goal should be to clearly communicate to employees and citizens what their responsibilities will be in the event of a storm. In this context, it's also extremely important to establish a shared understanding of how to properly fund weather-impacted snow and ice budgets.

If you have any questions regarding your municipality's snow and ice budget, please contact your Bureau of Accounts (BOA) representative. For a full list of BOA representatives, please [click here](#).

Ask DLS: Betterments and Special Assessments

This month's *Ask DLS* features frequently asked questions about the authority to assess betterments and special assessments. Additional questions about betterments and special assessments will be featured in future editions of *City & Town*. Please let us know if you have other areas of interest or send a question to cityandtown@dor.state.ma.us. We would like to hear from you.

What is a betterment or special assessment?

A betterment or special assessment is a special property tax that is permitted where real property within a limited and determinable area receives a special benefit or advantage, other than the general advantage to the community, from the construction of a public improvement. See [Berriault v. Wareham Fire District](#), 360 Mass 160, 168 (1971); [Opinion of the Justices](#), 261 Mass. 556, 608 (1927). If properties abutting or nearby the improvement are specially benefited, all or a portion of the costs of making that improvement may be assessed on those properties. [Union Street Railway, v. Mayor of New Bedford](#), 253 Mass. 304 (1925).

A special benefit is defined as an enhancement of the value or use of property due to the construction of the improvement. See [Sears. v. Boston](#), 173 Mass. 71, 75-77 (1899). It is generally measured by how much the particular improvement has increased the fair market value of the property, as between a willing buyer and seller considering all present and future uses to which the property is or may be reasonably adapted in the hands of any owner. [Driscoll v. Northbridge](#), 210 Mass. 151, 155 (1911); [Union Street Railway](#), 253 Mass. at 309-312.

What is the authority for assessing betterments?

Because betterments and special assessments are a form of tax, the Commonwealth, a county, city, town or district must have express statutory authority to impose them for a public improvement. True betterments authorized by [M.G.L. c. 80, § 1](#) are generally used in conjunction with improvements laid out by a public body that include eminent domain takings, such as street layouts. See [Berriault v. Wareham Fire District](#), 360 Mass 160, 166-168 (1971). Other statutes authorize special assessments on property owners for the benefits conferred by the construction of sewer systems ([M.G.L. c. 83, § 15](#), water distribution infrastructure ([M.G.L. c. 40, §§ 42G-I](#) and [42K](#)) and sidewalks ([M.G.L. c. 83, § 26](#)). Note that the procedures for assessing, collecting and administering special assessments authorized under these statutes and other statutes are generally governed by [M.G.L. c. 80](#).

Do any exemptions apply to betterments or special assessments?

Any property owned by governmental entities and devoted to public purposes is exempt from taxation, including betterments and special assessments. [Worcester County v. Worcester](#), 116 Mass. 193 (1874). However, individuals and organizations eligible for full or partial exemptions from their annual real estate taxes are not exempt. [Williams College v. Williamstown](#), 219 Mass. 46 (1914). The rationale is that a betterment or special assessment is assessed in order to reimburse the governmental entity for the cost of constructing a public improvement that advantages abutting or nearby properties by enhancing their value or use. If an exemption were to be granted, the other abutting property

owners would have to pay a greater share of that cost and the exempted owners would receive a greater benefit from the improvement than the other abutters.

Are betterments the only way to finance public improvements?

No. Public improvements may be financed and the costs recouped in a number of ways. Expenses can be covered, in whole or in part, by an appropriation from the tax levy, a grant or another available financing source. Even where a special assessment might have been made for the improvement, the cost can be recovered instead in user charges for the service, including a surcharge for those users specially benefited by the improvement. See [Morton v. Hanover](#), 43 Mass. App. Ct. 197, 204 (1997), and the cases cited. However, the financing plan should be designed so that the total collected from all financing sources does not exceed the cost of the public improvement, including all direct, indirect, and incidental expenses.

Data Highlight of the Month: Municipal Debt

Anthonia Bakare - DLS Municipal Databank

The Division of Local Services (DLS) offers a wide variety of municipal, financial and socioeconomic information. This month's data highlight focuses on [Municipal Debt](#).

Long-term debt consists of Bonds, USDA Rural Development Loans, Serial Notes and Refunding Notes. Short term debt consists of Bond Anticipation Notes (BAN), Federal Aid Anticipation Notes (FAAN), Revenue Anticipation Notes (RAN) and State Anticipation Notes (SAAN).

Most long-term debt issues range from five and 20 years, while short-term issues are typically for one year or less. A community's debt limit equals five percent of the most recent EQV. Prior to FY05, the municipal debt limit was 2.5 percent for cities and five percent for towns. The Municipal Relief Act (Chapter 46, Section 32 of the Acts of 2003) changed the debt limit to five percent for all cities and towns. With the approval of the Municipal Finance Oversight Board (MFOB), however, a city or town may authorize indebtedness in excess of the five percent limit, but not in excess of ten percent [G.L. c. 44, § 10](#).

The long-term retired column refers to bond issues that have either matured or been "called in." The long-term interest, short-term interest and other interest columns refer to interest payments made this year on bond issues. Total Outstanding Debt refers to the remaining principal payments that have not been paid off as of July 1 of the current fiscal year.

Databank reports feature the [Municipal Finance Trend Dashboard](#) which includes trends in outstanding debt, debt service, bond ratings, and authorized but unissued debt data under [Category Six](#) - Debt. This data is presented through several charts that can be exported to PDF.

We hope you become better acquainted with the data the Division of Local Services has to offer through the *Data Highlight of the Month*. For more information, contact us directly at databank@dor.state.ma.us or (617) 626-2384.

September Municipal Calendar

15	Assessors	Submit Property Sales Report (recommended date)
15	Accountant and Assessors	Jointly Submit CPA Surcharge Report This is the deadline to submit Form CP-1 (statement of the prior year's net CPA surcharge levy) to MDM in order to receive matching funds from the State Treasurer's distribution on November 15.
15	CPA Committee	Submit CPA Projects Report This is the deadline to enter new CPA projects and update existing ones in the MassGIS CPA projects database in order to receive matching funds from the State Treasurer's distribution on November 15.
30	Accountant and Treasurer	Submit Balance Sheet and other Documents for Free Cash Certification The Accountant and Treasurer coordinate to submit a balance sheet to BOA along with: <ul style="list-style-type: none">• Statement of Indebtedness• Treasurer's Year-end Cash Report• Cash Reconciliation Form• Schedule of Outstanding Receivables
30	Accountant, Superintendent and School Committee	Jointly Submit End of Year Report to DESE DESE uses this report to determine the community's compliance with prior-year and current-year NSS requirements.
30	Accountant	Submit Snow & Ice Report
30	State Treasurer	Notification of Monthly Local Aid Distributions Monthly breakdown by program is available here .

Editor: Dan Bertrand

Editorial Board: Sean Cronin, Anthonia Bakare, Linda Bradley, Paul Corbett, Theo Kalivas, Patricia Hunt and Tony Rassias

Contact *City & Town* with questions, comments and feedback by emailing us at cityandtown@dor.state.ma.us.

To unsubscribe to *City & Town* and all DLS alerts, email dls_alerts@dor.state.ma.us