



Local Treasury Management and Debt

Municipal Modernization Act Implementation

Workshop B 2017

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Workshop B

LOCAL TREASURY MANAGEMENT AND DEBT

Municipal Modernization Act Implementation

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Discussion Questions

BORROWING - PREMIUMS

1. At its May, 2015 Annual Town Meeting (ATM), Anytown's legislative body voted to authorize the treasurer to borrow \$2 million for the construction of a new police station. On November 7, 2016, the treasurer sold the permanent debt, issuing a 20-year bond, and received a considerable premium. How is the premium to be treated?

Borrowing – Premiums

G.L. c. 44, § 20, *After* Municipal Modernization Act

Premiums and accrued interest on bonds or notes sold on or after 11/7/2016 are not general fund revenue. They must either be:

1. **Applied to the costs of the project being financed by the bonds or notes and reduce the amount authorized to be borrowed for the project by like amount (only if the legislative body borrowing vote so authorizes); or**
2. **Reserved in separate fund for appropriation for capital projects:**
 - **Project must be one for which may borrow for equal or longer period than loan for which premium received**
 - **Premium arising from restricted funds project remains subject to any applicable restriction**
 - **If borrowing is the subject of an approved Proposition 2½ debt exclusion, there may be a reduction in the annual excluded amount because G.L. c. 44, § 20 requires “[a]dditions to the levy limit for a debt exclusion are restricted to the true interest cost incurred to finance the excluded project.”**

2. Are there any options available to a city or town before permanent debt is issued if the vote authorizing the debt did not include authorization to apply premiums to pay project costs and reduce the amount of the borrowing?
3. What action should treasurers take when selling bonds or notes to ensure that the city or town will be able to reduce the size of a bond or note by the amount of any premium received?

4. Multi-purpose bonds in the amount of \$20,000,000 are sold after 11/7/16, for four projects:

Project 1 - \$500,000 Acquisition of vehicles – 5 years	Project 3 - \$18,000,000 Acquisition of land – 30 years
Project 2 - \$500,000 Acquisition FD Pumper Truck – 20 years	Project 4 - \$1,000,000 Municipal building construction – 20 years

The legislative body votes authorizing the borrowings for projects 1, 2 and 4 included authority to apply premiums to project costs and reduce the amount of the borrowing authorization by like amount. A premium of \$1,000,000 is received. How is the premium treated?

5. Same multi-purpose bonds as in the previous question in the amount of \$20,000,000 are sold after 11/7/16, for the same four projects, but none of the legislative body votes authorizing the borrowings included authority to apply premiums to project costs and reduce the amount of the borrowing authorization. A premium of \$1,000,000 is received. (a) How is the premium treated? (b) What if the land acquisition borrowing is financed with community preservation funds?
6. Should all legislative body borrowing authorization votes include the authority to apply any net premium and accrued interest received to the costs of the project and reduce the amount of the borrowing authorization by a like amount?
7. The legislative body authorizes a \$2 million borrowing for construction of police station and authorizes application of any net premium to project costs and reducing the amount of the borrowing authorization by like amount. A \$1.5 million 20-year bond is sold after 11/7/16 and a net premium of \$100,000 is received. There is still \$500,000 in project costs to be funded and \$500,000 remaining in borrowing authority. The treasurer forgot to reduce the principal amount of the \$1.5 million borrowing by the amount of the net premium. There is still \$500,000 in both unfunded project costs and available borrowing authorization for the project. Can the treasurer apply the \$100,000 net premium to the project costs and reduce the amount of the remaining borrowing authorization by \$100,000 to \$400,000?
8. What if the facts in the previous question are changed as follows: a \$2 million bond is sold and a net premium of \$150,000 is received, but the treasurer forgets to reduce the amount of the borrowing by the amount of the net premium? What happens to the \$150,000 net premium?
9. What if the facts in the previous two questions are changed as follows: the treasurer issues \$2 million in bond anticipation notes in anticipation of issuing the permanent debt for the police station construction and receives a \$200,000 net premium.

- a. What should the treasurer do with the premium?
 - b. What will happen to the borrowing authorization?
 - c. What is the amount of the permanent debt to be issued?
10. Legislative body authorizes a \$2 million borrowing for construction of police station and authorizes application of any net premium to project costs and reducing the amount of the borrowing authorization by like amount. In this case, however, the voters have approved a debt exclusion for the borrowing under Proposition 2½. A \$2 million 20-year bond is sold after 11/7/16 and a net premium of \$200,000 is received. How will the premium be treated?

Borrowing – Premiums Received on Debt Excluded under Proposition 2½
See IGR 17-22 - *Premiums and Surplus Proceeds for Proposition 2½ Excluded Debt*

Same two options for premiums received on excluded debt as for premiums received on non-excluded debt. (See text box under question 1 above.) However, for excluded debt, G.L. c. 44, § 20 requires “[a]dditions to the levy limit for a debt exclusion are restricted to the true interest cost incurred to finance the excluded project.”

As a result, for excluded debt:

- 1. If premium is applied to project costs and borrowing reduced, there is no reduction to the annual debt exclusion.**
- 2. But, if premium is reserved for appropriation, the annual debt exclusion will be reduced as follows, depending upon the amount of the premium received:**
 - a. Total net premium \leq \$50,000 – no reduction to annual debt exclusion (de minimis rule)**
 - b. Total net premium $>$ \$50,000 – reduction to the annual debt exclusion (see calculation in next text box below.)**

Note – There is no option to use the premium for the payment of debt service. (This is unlike for premiums received on bonds or notes issued on excluded debt sold before November 7, 2016.)

11. City or town sells 20-year permanent bonds on a debt-excluded borrowing in the principal amount of \$18,000,000 and receives \$800,000 net premium. The legislative body vote authorizing the borrowing did not include authorization to apply the net premium to the costs of the project being financed by the bonds or notes and reduce the amount authorized to be borrowed for the project by like amount. What happens to the premium? What happens to the annual debt exclusion?

Calculation of Reduction to Annual Debt Exclusion

When net premium received on debt-excluded borrowing is > \$50,000 and is reserved for appropriation for capital projects

Example: City or town sells 20-year permanent bonds on a debt excluded borrowing in the principal amount of \$18,000,000 and receives \$800,000 net premium, which is reserved for appropriation of capital projects. Total interest payable over life of borrowing is \$10,000,000. 1st fiscal year interest payment is \$600,000. The calculation to determine reduction of interest for the fiscal year debt exclusion is as follows:

<u>Calculation of Premium as Percentage of Interest Cost</u>	
Net Premium	\$800,000
Divided by total interest over life of issue	\$10,000,000
Premium as % of interest	8%

<u>Calculation of Adjustment of Interest for Debt Exclusion</u>		
Fiscal Year Interest Due	Premium Adjustment	Debt Exclusion Reduction
\$600,000	8%	\$48,000

The amount of the gross debt service excludable for the fiscal year (principal and interest) and the amount of the exclusion reduction (\$48,000) are entered on the DE-1. The net excluded debt service will equal the gross debt service excludable minus \$48,000.

The city or town must continue to apply this adjustment to reduce the amount of the annual debt exclusion throughout the life of the borrowing.

12. What is the treatment for premiums received from the sale of refunding bonds under G.L. c. 44, § 21A?

Note: Premiums on Refunding Bonds

- **G.L. c. 44, § 21A – governs refunding bond premiums**
 - **Requires all “proceeds” of refunding bonds be used to pay off bonds to be refunded, including principal, interest, redemption premium**
 - **“Proceeds” of refunding bonds includes premiums**

BORROWING – SURPLUS PROCEEDS

13. Anytown authorized a \$2 million borrowing at its May, 2014 ATM to construct a new police station. Permanent debt was issued and sold in the amount of \$2 million. The project was completed in March, 2016 and a surplus remained of \$75,000. At a September, 2016 Special Town Meeting, \$25,000 of that surplus was appropriated for another capital project for which the town could borrow for a similar period of time. May the town now apply the remaining \$50,000 of surplus to pay debt service with its CEO approval?

Surplus Proceeds – Completed Project

Surplus Proceeds of a completed project are available funds for restricted purposes under G.L. c. 44, § 20:

- **Surplus proceeds in any amount may be appropriated for purpose for which loan may be incurred for equal or longer period than original loan**
- **Surplus of \$50,000 or less may be applied to pay any debt service with approval of CEO**
- **Surplus is difference between amount borrowed and amount spent for each purpose for which the city or town has authorized debt (does not matter if sold in multi-purpose bond)**
- **Amount of surplus is determined at time of completion**
- **Surplus arising from restricted funds project (e.g., enterprise or CPA funds) remains subject to restriction**

14. Same facts as above except that the \$2 million borrowing was the subject of an approved Proposition 2 ½ debt exclusion and the entire \$75,000 surplus has been appropriated to a non-debt-excluded project for which the town could borrow for a similar period of time. Will the annual amount of the debt exclusion be impacted?

Surplus Proceeds – Completed Project Subject to Prop 2 ½ Debt Exclusion

See IGR 17-22 - Premiums and Surplus Proceeds for Proposition 2½ Excluded Debt

If surplus proceeds of a completed project subject to a Proposition 2 ½ debt exclusion:

- **Do not exceed \$50,000, there will not be a reduction to the annual excluded amount whether surplus is applied to the payment of debt service or appropriated to a non-debt-excluded project (de minimis rule)**
- **Exceed \$50,000 and are appropriated for another project that is also debt-excluded, there will not be a reduction to the annual excluded amount**
- **Exceed \$50,000 and any part of the surplus is appropriated for another project which is not debt-excluded, there will be a reduction in the annual excluded amount as shown in the following text box.**

Calculation of Reduction to Annual Debt Exclusion

When surplus proceeds of completed project subject to a Prop 2 1/2 debt exclusion are > \$50,000 and appropriated for non-debt-excluded project

Example – City or town sells 20-year permanent bonds in the principal amount of \$18,000,000. The total interest payable over the life of the borrowing will be \$10,000,000. After completion of the project and payment of all expenses, \$180,000 in surplus proceeds remains. The legislative body appropriates the \$180,000 for one or more capital projects. Each project is for a purpose for which the city or town may borrow for an equal or greater term than the term for which the original loan was issued. However, none of the projects are debt-excluded. The interest payable for the fiscal year is \$600,000. The adjustment (reduction) of interest for the debt exclusion reported for the fiscal year is calculated as follows:

Surplus Proceeds	\$180,000
Divided by total amount borrowed	\$18,000,000
Surplus Adjustment	1 %

Calculation of adjustment of interest for debt exclusion		
Fiscal Year Interest Due	Surplus Adjustment	Debt Exclusion Reduction
\$600,000	1%	\$6,000

The amount of the gross debt service excludable for the fiscal year (principal and interest) and the amount of the exclusion reduction (\$6,000) are entered on the DE-1. The net excluded debt service is the gross debt service excludable minus \$6,000.

The city or town will be required to continue to apply this surplus adjustment to reduce the amount of the annual debt exclusion throughout the life of the borrowing.

Surplus Proceeds – Abandoned/Discontinued Project

G.L. c. 44, § 20: If loan has been issued, but project not completed and no liability remains outstanding, city or town may, by 2/3 vote, abandon or discontinue the project. Unexpended loan proceeds may be appropriated for purpose for which loan may be authorized for equal or longer period of time than original loan. There is no option to apply proceeds (if \$50,000 or less) to payment of debt service as with surplus proceeds after project completion.

For debt-excluded borrowings, if proceeds after abandonment/discontinuance

- Do not exceed \$50,000, appropriation(s) for a non-debt-excluded project, will not result in a reduction to the annual excluded amount (de minimis rule)**
- Exceed \$50,000, appropriations for a non-debt-excluded project, will result in a reduction to the annual excluded amount. The reduction is calculated in the same manner as when a project is completed.**

See IGR 17-22 – *Premiums and Surplus Proceeds for Proposition 2 1/2 Excluded Debt*

OTHER POST-EMPLOYMENT BENEFITS LIABILITY TRUST FUND

CASE STUDY 1

In January of 2014, the City Council of Hogsmeade voted to establish an “Other Post-Employment Benefits (OPEB) Stabilization Fund.” The purpose of the fund was the benefit of retired employees and their dependents. The City Council, in each fiscal year subsequent, appropriated \$500,000.00 into the fund. Now that the 2nd wizarding war is over, Hogsmeade is looking to establish a funding schedule to fully address their employees’ post-employment benefits.

At Hogsmeade’s biennial* actuarial valuation of their post-retirement benefits program, Weasley Actuarial Services, LLC explained the following:

- Good news: Hogsmeade’s unfunded actuarial liability decreased from \$163,903,670 to \$132,944,757 from fiscal years 2015 to 2017.
 - This was due to fewer participants in the plan, less than expected increases in premiums and retirees electing less expensive plan options.
- However, Hogsmeade is currently a “pay-as-you-go” City with a presumed discount rate in the calculation of their liability of 3.5%.
- The Weasleys discuss how establishing an OPEB Trust Fund per G.L. c. 32B, § 20 would allow a “prefunding” calculation with a discount rate of up to 8%.
- To illustrate the impact of prefunding, the Weasley’s use the below graph.

	Pay-As-You-Go 3.50%	Full Prefunding 8.00%	Difference
a) Actual Valuation Date	06/30/2017	06/30/2017	
b) Actuarial Value of Assets	\$0	\$0	\$0
c) Actuarial Accrued Liability “AAL”			
• Active Participants	\$68,796,871	\$28,952,725	\$39,844,146
• Inactive Participants	<u>\$69,354,055</u>	<u>\$44,610,380</u>	<u>\$24,743,675</u>
• Total AAL	\$138,150,926	\$73,563,105	\$64,587,821
d) Unfunded Actuarial Liability “UAL” [c - b]	\$138,150,926	\$73,563,105	\$64,587,821
e) Normal Cost for FY 2017*	\$3,975,501	\$1,276,098	\$2,699,403
f) Amortization of UAL FY 2017	\$4,290,485	\$4,020,423	\$270,062
g) Annual Required Contribution “ARC” FY [e + f]	\$8,265,986	\$5,296,521	\$2,969,465
Est. Contrib. City FY 16	\$4,342,324	\$4,342,324	
*30-yr amortization; increase 4% per year			

Questions:

1. Is Hogsmeade required to establish an OPEB Trust Fund?

2. How is an OPEB Trust Fund established?
3. Does the OPEB Trust Fund need a declaration of trust?
4. How is the OPEB Trust Fund funded?
5. Does a city or town need a defined funding schedule to establish an OPEB Trust Fund?
6. Who runs the fund?
7. How are funds spent?
8. What expenditures are allowable from the OPEB Trust Fund?
9. What happens to Hogsmeade's current stabilization fund?
10. Are there any reporting requirements?
11. What would be the financial effect of Hogsmeade deciding to start fully prefunding their OPEB liability?

G.L. c. 40, § 5B

G.L. c. 32B, § 20

G.L. c. 32B, § 20A

*Biennial valuations are recommended in GASB 75 (which replaced GASB 45 where biennial or triennial were recommended based on a 200 employee threshold) and annual valuations are encouraged.

CASE STUDY 2

In January of 2015, the Town of Godric's Hollow voted to establish an "Other Post-Employment Benefits (OPEB) Trust Fund" under G.L. c. 32B, § 20. There was no declaration of trust nor a person designated to manage the fund.

Upon its creation, the Town appropriated \$100,000 into the Trust Fund. No expenditure has since been made from the fund. Godric's Hollow's counsel, Sirius Black, brought the recent amendments to G.L. c. 32B, § 20 to the Town's attention but doesn't know exactly how to make a successful transition, should the Town decide to move in that direction. Granger Actuarial Services, LLC sends the Town their biennial valuation, a chart of which is copied below.

	Pay-As-You-Go 3.50%	Full Prefunding 8.00%	Difference
a) Actual Valuation Date	06/30/2017	06/30/2017	
b) Actuarial Value of Assets	\$0	\$0	\$0
c) Actuarial Accrued Liability "AAL"			
• Active Participants	\$68,796,871	\$28,952,725	\$39,844,146
• Inactive Participants	<u>\$69,354,055</u>	<u>\$44,610,380</u>	<u>\$24,743,675</u>
• Total AAL	\$138,150,926	\$73,563,105	\$64,587,821
d) Unfunded Actuarial Liability "UAL" [c - b]	\$138,150,926	\$73,563,105	\$64,587,821
e) Normal Cost for FY 2017*	\$3,975,501	\$1,276,098	\$2,699,403
f) Amortization of UAL FY 2017	\$4,290,485	\$4,020,423	\$270,062
g) Annual Required Contribution "ARC" FY [e + f]	\$8,265,986	\$5,296,521	\$2,969,465
Est. Contrib. City FY 16	\$4,342,324	\$4,342,324	
*30-yr amortization; increase 4% per year			

Questions:

12. Does Godric's Hollow's 2015 Fund qualify as a formal trust?
13. How are potential issues with the initial trust rectified by the changes in the Municipal Modernization Act?
14. Should Godric's Hollow decide to move forward with the revised statute, do they need to re-accept G.L. c. 32B, § 20?
15. Can Godric's Hollow keep operating their 2015 Fund as is?
16. What actions would subsequently need to be taken per the Municipal Modernization Act if G.L. c. 32B, § 20 was re-accepted by Godric's Hollow?

G.L. c. 32B, § 20

G.L. c. 32B, § 20A

TAX EXEMPT LEASE PURCHASE FINANCING AGREEMENTS (TELP)

1. What is a TELP?
2. Beautytown entered into a TELP Financing Agreement recommended by its CEO and approved by a 2/3 legislative body vote - to finance the purchase of a new fire truck. It procured the desired fire truck under G.L. c. 30B and then assigned its purchase order for the fire truck to Fly-by-Night Financing Company which bought the truck and then leased it to Beautytown with pretty good financing terms. At the end of the lease term, the agreement requires Fly-by-Night to transfer title to the truck to Beautytown. Two years after making payments, interest rates drop drastically and the once desirable TELP terms are now undesirable. Can Beautytown issue refunding bonds and pay off the TELP Agreement? What other information do you first need to know to answer this question?

TELP agreement under G.L. c. 44, § 21C:

- **Purpose to acquire equipment or improve a capital asset, when the acquisition or improvement could be financed with debt**
- **Term of TELP cannot exceed useful life of asset to be acquired or capital asset improvement**
- **Recommended by CEO (mayor/selectboard)**
- **Legislative Body approval of agreement - 2/3 vote (should identify equipment, maximum agreement term and department. authorized to enter into agreement)**
- **Legislative body appropriation for 1st year agreement payments (majority vote required for appropriation; can be in same vote as authorization vote or in separate vote – i.e., in capital budget or operating budget)**
- **If above requirements are met, agreement is binding obligation as if authorized debt**

OTHER POST-EMPLOYMENT BENEFITS LIABILITY TRUST FUND

General Laws Chapter 32B, § 20

[Text of section effective until November 7, 2016.

For text effective November 7, 2016, see below.]

Section 20. (a) A city, town, district, county or municipal lighting plant that accepts this section may establish an Other Post-Employment Benefits Liability Trust Fund, and may appropriate amounts to be credited to the fund. Any interest or other income generated by the fund shall be added to and become part of the fund. Amounts that a governmental unit receives as a sponsor of a qualified retiree prescription drug plan under 42 U.S.C. section 1395w-132 may be added to and become part of the fund. All monies held in the fund shall be segregated from other funds and shall not be subject to the claims of any general creditor of the city, town, district, county or municipal lighting plant.

(b) The custodian of the fund shall be (i) a designee appointed by the board of a municipal lighting plant; (ii) the treasurer of any other governmental unit; or (iii) if designated by the city, town, district, county or municipal lighting plant in the same manner as acceptance prescribed in this section, the State Retiree Benefits Trust Fund board of trustees established in section 24A of chapter 32A, provided that the board of trustees accepts the designation. The custodian may employ an outside custodial service to hold the monies in the fund. Monies in the fund shall be invested and reinvested by the custodian consistent with the prudent investor rule established in chapter 203C and may, with the approval of the State Retiree Benefits Trust Fund board of trustees, be invested in the State Retiree Benefits Trust Fund established in section 24 of chapter 32A.

(c) This section may be accepted in a city having a Plan D or Plan E charter, by vote of the city council; in any other city, by vote of the city council and approval of the mayor; in a town, by vote of the town at a town meeting; in a district, by vote of the governing board; in a municipal lighting plant, by vote of the board; and in a county, by vote of the county commissioners.

(d) Every city, town, district, county and municipal lighting plant shall annually submit to the public employee retirement administration commission, on or before December 31, a summary of its other post-employment benefits cost and obligations and all related information required under Government Accounting Standards Board standard 45, in this subsection called "GASB 45", covering the last fiscal or calendar year for which this information is available. On or before June 30 of the following year, the public employee retirement administration commission shall notify any entity submitting this summary of any concerns that the commission may have or any areas in which the summary does not conform to the requirements of GASB 45 or other standards that the commission may establish. The public employee retirement administration commission shall file a summary report of the information received under this subsection with the chairs of the house and senate committees on ways and means, the secretary of administration and finance and the board of trustees of the State Retiree Benefits Trust Fund.

**OTHER POST-EMPLOYMENT BENEFITS
LIABILITY TRUST FUND
General Laws Chapter 32B, § 20**

[Text of section as amended by St. 2016, c. 218, § 15 effective November 7, 2016.
For text effective until November 7, 2016, see above.]

Section 20. (a) As used in this section, and section 20A, the following words shall have the following meanings unless the context clearly requires otherwise:

"Chief executive officer", the mayor in a city or the board of selectmen in a town, unless some other municipal office is designated to be the chief executive officer pursuant to a local charter, the county commissioners in a county and the governing board, commission or committee in a district or other governmental unit.

"Commission" or "PERAC", the public employee retirement administration commission established pursuant to section 49 of chapter 7.

"GASB", the Governmental Accounting Standards Board.

"Governing body", the legislative body in a city or town, the county commissioners in a county, the regional district school committee in a regional school district, or the district meeting or other appropriating body in any other governmental unit.

"Governmental unit" or "unit", any political subdivision of the commonwealth, including a municipal lighting plant, local housing or redevelopment authority, regional council of government established pursuant to section 20 of chapter 34B and educational collaborative, as defined in section 4E of chapter 40.

"State Retiree Benefits Trust Fund board of trustees", the board of trustees established by section 24A of chapter 32A.

"Other Post-Employment Benefits Liability Trust Fund" or "OPEB Fund"; a trust fund established by a governmental unit pursuant to this section for the deposit of gifts, grants, appropriations and other funds for the: (1) benefit of retired employees and their dependents, (2) payment of required contributions by the unit to the group health insurance benefits provided to employees and their dependents after retirement and (3) reduction and elimination of the unfunded liability of the unit for such benefits.

"OPEB Fund board of trustees"; an independent board of trustees selected by the governmental unit with investing authority for the OPEB Fund.

"OPEB investing authority" or "investing authority"; the trustee or board of trustees designated by the governmental unity to invest and reinvest the OPEB Fund using the investment standard or investment vehicle established pursuant to this section.

(b) A governmental unit that accepts this section shall establish on its books and accounts the Other Post-Employment Benefits Liability Trust Fund, the assets of which shall be held solely to meet the current and future liabilities of the governmental unit for group health insurance benefits for retirees and their dependents. The governmental unit may appropriate amounts to be

credited to the fund and the treasurer of the governmental unit may accept gifts, grants and other contributions to the fund. The fund shall be an expendable trust subject to appropriation and shall be managed by a trustee or a board of trustees as provided in subsection (d). Any interest or other income generated by the fund shall be added to and become part of the fund. Amounts that a governmental unit receives as a sponsor of a qualified retiree prescription drug plan pursuant to 42 U.S.C. section 1395w-132 may be dedicated to and become part of the fund by vote of the governing body of the governmental unit. All monies held in the fund shall be accounted for separately from other funds of the governmental unit and shall not be subject to the claims of any general creditor of the governmental unit.

(c) The treasurer of the governmental unit shall be the custodian of the OPEB Fund and shall be bonded in any additional amounts necessary to protect fund assets.

(d) The governing body of the governmental unit shall designate a trustee or board of trustees, which shall have general supervision of the management, investment and reinvestment of the OPEB Fund. The governing body may designate as the trustee or board of trustees: (i) the custodian; (ii) the governmental unit's retirement board as the board of trustees; or (iii) an OPEB Fund board of trustees established by the governmental unit pursuant to subsection (e). If no designation is made, the custodian of the fund shall be the trustee and shall manage and invest the fund. The duties and obligations of the trustee or board of trustees with respect to the fund shall be set forth in a declaration of trust to be adopted by the trustee or board, but shall not be inconsistent with this section. The declaration of trust and any amendments thereto shall be filed with the chief executive officer and the clerk of the governing body of the governmental unit and take effect 90 days after the date filed, unless the governing body votes to disapprove the declaration or amendment within that period. The trustee or board of trustees may employ reputable and knowledgeable investment consultants to assist in determining appropriate investments and pay for those services from the fund, if authorized by the governing body of the governmental unit. The trustee or board of trustees may, with the approval of the State Retiree Benefits Trust Fund board of trustees, invest the OPEB Fund in the State Retiree Benefits Trust Fund established in section 24 of chapter 32A.

(e) The governing body of the governmental unit may vote to establish a separate OPEB Fund board of trustees to be the investing authority. The board of trustees shall consist of 5 to 13 individuals, including a person or persons with the investment experience desired by the governmental unit, a citizen or citizens of the governmental unit, an employee of the governmental unit, a retiree or retirees of the governmental unit, and a governmental unit officer or officers. The governmental unit employee trustee shall be selected by current employees of the unit by ballot, and the retiree trustee or trustees shall be selected by current retirees of the unit by ballot. The remainder of the trustees shall be appointed by the chief executive officer of the governmental unit. The trustees will serve for terms of 3 or 5 years, as determined by the governing body of the governmental unit, and if a vacancy occurs, a trustee may be elected or selected in the same manner to serve for the remainder of the term. Trustees shall be eligible for reappointment.

(f) The trustee or board of trustees shall: (i) act in a fiduciary capacity, (ii) discharge its duties for the primary purpose of enhancing the value of the OPEB Fund, (iii) act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise with like character and with like aims and (iv) diversify the investments in the fund to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In any civil action brought against a trustee, the board of trustees, acting within the scope of official duties, the defense or settlement of which is made by legal counsel for the governmental unit, the trustee or employee shall be indemnified from the OPEB Fund for all expenses incurred in the defense thereof and for damages to the same extent as provided for public employees in chapter 258. No trustee or employee shall be indemnified for expenses in an action or damages awarded in such action in which there is: (i) a breach of fiduciary duty, (ii) an act of willful dishonesty or (iii) an intentional violation of law by the trustee or employee.

(g) Monies in the OPEB Fund not required for expenditures or anticipated expenditures within the investment period, shall be invested and reinvested by the custodian as directed by the investing authority from time to time; provided such investment or reinvestment is made in accordance with: (i) section 54 of chapter 44, if the treasurer or OPEB Fund board of trustees is the investing authority, unless the governing body of the governmental unit authorizes investment under the prudent investor rule established in chapter 203C; (ii) section 23 of chapter 32, if the retirement board is the investing authority; or (iii) sections 24 and 24A of chapter 32A, if the OPEB Fund is invested in the State Retiree Benefits Trust Fund.

(h) Amounts in the OPEB Fund may be appropriated by a two-thirds vote of the governing body of the governmental unit to pay the unit's share of health insurance benefits for retirees and their dependents upon certification by the trustee or board of trustees that such amounts are available in the fund. The treasurer of the governmental unit after consulting with the chief executive officer of the unit shall determine the amount to be appropriated from the fund to the annual budget for retiree health insurance and notify the trustee or board of trustees of that amount at the earliest possible opportunity in the annual budget cycle. Upon notification, the trustee or board of trustees shall take diligent steps to certify those funds as available for appropriation by the governmental unit, or will be available by the time the appropriation would become effective or provide an explanation why the funds are or will not be available or should not be made available.

(i) In a regional school district, appropriations of amounts to the OPEB Fund may be made only in the annual budget submitted to the member cities and towns for approval. The annual report submitted to the member cities and towns pursuant to clause (k) of section 16 of chapter 71 shall include a statement of the balance in the fund and all additions to and appropriations from the fund during the period covered by such report.

(j) A municipal lighting plant that establishes an OPEB fund shall pay the premiums and assume the liability for the municipal share of retiree healthcare benefits attributable to lighting plant employees and their dependents.

(k) A governmental unit that accepts this section may participate in the OPEB Fund established by another governmental unit pursuant to this section upon authorization of the governing boards of both units and in accordance with the procedures and criteria established by the trustee or board of trustees of the fund. Each governmental unit shall remain responsible for all costs attributable for the health care and other post-employment obligations for its retired employees and their dependents and for completing an actuarial valuation of its liabilities and funding schedule that conforms to GASB requirements.

The participating governmental unit may appropriate or otherwise contribute amounts to the OPEB Fund as provided in subsection (b). Amounts from the fund may be appropriated by the participating unit for its retiree health insurance expenses in the manner authorized in subsection

(h) upon a determination by the treasurer of the unit, after consulting with the chief executive officer of the unit, of the necessary amount and notification of the treasurer of the governmental unit maintaining the fund and the trustee or board of trustees of that amount. The trustee or board of trustees shall certify those funds available for appropriation, as provided in subsection (h), and the treasurer of the governmental unit maintaining the fund shall transfer the amounts certified to the participating governmental unit.

The participating governmental unit shall be separately credited for any contributions made to and appropriations from the OPEB Fund, and interest or other income generated by the fund, in the accounting of the relative liabilities of each governmental unit for its retirees and their dependents.

(l) This section may be accepted in a city or town in the manner provided in section 4 of chapter 4; in a county, by vote of the county commissioners; in a regional school district, by vote of the regional school committee; and in a district or other governmental unit, by vote of the district meeting or other appropriating body.

(m) This section shall also apply to the OPEB Fund established by a governmental unit under a special law, notwithstanding any provision to the contrary, upon the acceptance of this section by the governmental unit.

ACTUARIAL VALUATION REPORT ON LIABILITIES FOR HEALTH CARE AND OTHER POST-EMPLOYMENT BENEFITS FOR RETIRED EMPLOYEES General Laws Chapter 32B, § 20A

[Text of section added by St. 2016, c. 218, § 15 effective November 7, 2016.]

Section 20A. When a governmental unit obtains an actuarial valuation report in accordance with GASB containing statements of the liabilities of the unit for health care and other post-employment benefits for its retired employees and their dependents, it shall submit a copy to PERAC no later than 90 days after receipt of such report. PERAC may require that the governmental unit provide additional information related to such liabilities, normal cost and benefit payments, as specified by the executive office for administration and finance, in consultation with PERAC. The governmental unit shall file the report and additional information with PERAC and the division of local services in the department of revenue. PERAC shall file a summary report of the information received pursuant to this section with the chairs of the house and senate committees on ways and means, the secretary of administration and finance and the board of trustees of the State Retiree Benefits Trust Fund established pursuant to section 24A of chapter 32A.

STABILIZATION FUNDS General Laws Chapter 40, § 5B

Section 5B. Cities, towns and districts may create 1 or more stabilization funds and appropriate any amount into the funds. Any interest shall be added to and become part of the fund.

The treasurer shall be the custodian of all stabilization funds and may deposit the proceeds in a trust company, co-operative bank or savings bank, if the trust company or bank is organized or exists pursuant to the laws of the commonwealth or any other state or may transact business in the commonwealth and has its main office or a branch office in the commonwealth; a national bank, federal savings bank or federal savings and loan association, if the bank or association may transact business and has its main office or a branch office in the commonwealth; provided, however, that a state-chartered or federally-chartered bank shall be insured by the Federal Deposit Insurance Corporation or its successor; or may invest the funds in participation units in a combined investment fund pursuant to section 38A of chapter 29 or in securities that are legal investments for savings banks.

At the time of creating any stabilization fund the city, town or district shall specify, and at any later time may alter, the purpose of the fund, which may be for any lawful purpose, including without limitation, an approved school project pursuant to chapter 70B or any other purpose for which the city, town or district may lawfully borrow money. The specification and any alteration of purpose, and any appropriation of funds from any such fund, shall be approved by a two-thirds vote, except as provided in paragraph (g) of section 21C of chapter 59 for a majority referendum vote. Subject to said section 21C of said chapter 59, any such vote shall be of the legislative body of the city, town or district, subject to charter.

Notwithstanding section 53 of chapter 44 or any other general or special law to the contrary, a city, town or district that accepts this paragraph may dedicate, without further appropriation, all, or a percentage not less than 25 per cent, of a particular fee, charge or other receipt to any stabilization fund established pursuant to this section; provided, however, that the receipt is not reserved by law for expenditure for a particular purpose. For purposes of this paragraph, a receipt shall not include taxes or excises assessed pursuant to chapter 59, 60A, 60B, 61, 61A or 61B or surcharges assessed pursuant to section 39M or chapter 44B. A dedication shall be approved by a two-thirds vote of the legislative body of the city, town or district, subject to charter, and may be terminated in the same manner. A vote to dedicate or terminate a dedication shall be made before the fiscal year in which the dedication or termination is to commence and shall be effective at least for 3 fiscal years.

PURPOSES FOR BORROWING MONEY WITHIN DEBT LIMIT

General Laws Chapter 44, § 7

Section 7. Cities and towns may incur debt, by a two-thirds vote, within the limit of indebtedness prescribed in section 10, for the following purposes and payable within the periods hereinafter specified not to exceed 30 years or, except for clauses (2), (3), (6) and (7), within the period determined by the director to be the maximum useful life of the public work, improvement or asset being financed under any guideline issued under section 38:

(1) For the acquisition of interests in land or the acquisition of assets, or for the following projects: the landscaping, alteration, remediation, rehabilitation or improvement of public land, the dredging, improvement, restoration, preservation or remediation of public waterways, lakes or ponds, the construction, reconstruction, rehabilitation, improvement, alteration, remodeling, enlargement, demolition, removal or extraordinary repair of public buildings, facilities, assets, works or infrastructure, including: (i) the cost of original equipment and furnishings of the buildings, facilities, assets, works or infrastructure; (ii) damages under chapter 79 resulting from

any such acquisition or project; and (iii) the cost of engineering, architectural or other services for feasibility studies, plans or specifications as part of any acquisition or project; provided that the interest in land, asset acquired or project shall have a useful life of at least 5 years; and provided further, that the period of such borrowing shall not exceed the useful life of the interest in land, asset acquired or project.

(2) For a revolving loan fund established under section 53E3/4; to assist in the development of renewable energy and energy conservation projects on privately-held buildings, property or facilities within the city or town, 20 years.

(3) For the payment of final judgments, 1 year or for a longer period of time approved by a majority of the members of the municipal finance oversight board after taking into consideration 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 and such other factors as the board may deem necessary or advisable.

(4) In Boston, for the original construction, or the extension or widening, with permanent pavement of lasting character conforming to specifications approved by the Massachusetts Department of Transportation established under chapter 6C and under the direction of the board of park commissioners of the city of Boston, of ways, other than public ways, within or bounding on or connecting with any public park in said city, including land damages and the cost of pavement and sidewalks laid at the time of said construction, or for the construction of such ways with stone, block, brick, cement concrete, bituminous concrete, bituminous macadam or other permanent pavement of similar lasting character under specifications approved by said department of highways, 10 years.

(5) For the cost of repairs to private ways open to the public under section 6N of chapter 40, 5 years.

(6) For the payment of charges incurred under contracts authorized by section 4D of chapter 40, but only for those contracts for purposes comparable to the purposes for which loans may be authorized under this section. Each authorized issue shall constitute a separate loan, and the loans shall be subject to the conditions of the applicable clauses of this section.

(7) For the cost of feasibility studies or engineering or architectural services for plans and specifications for any proposed project for which a city, town or district is authorized to borrow, 5 years if issued before any other debt relating to the project is authorized, otherwise the period for the debt relating to the project.

(8) For energy audits as defined in section 3 of chapter 25A, if authorized separately from debt for energy conservation or alternative energy projects; 5 years.

(9) For the development, design, purchase and installation of computer hardware or software and computer-assisted integrated financial management and accounting systems; 10 years.

(10) For the cost of cleaning up or preventing pollution caused by existing or closed municipal facilities not referenced in clause (20) of section 8, including cleanup or prevention activities taken pursuant to chapter 21E or chapter 21H, 10 years; provided, however, that no indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to and approved by the department of environmental protection.

(11) For any other public work, improvement or asset with a maximum useful life of at least 5 years and not otherwise specified in this section, 5 years.

PURPOSES FOR BORROWING MONEY OUTSIDE DEBT LIMIT General Laws Chapter 44, § 8

Section 8. Cities and towns may incur debt, by a two-thirds vote, outside the limit of indebtedness prescribed in section 10, for the following purposes and payable within the periods hereinafter specified or, except with respect to clauses (1), (2), (3A), (9) and (18), within such longer period not to exceed 30 years determined by the director to be the maximum useful life of the public work, improvement or asset being financed under any guidelines issued under section 38:

(1) For temporary loans under sections 4, 6, 6A and 17, the periods authorized by those sections.

(2) For maintaining, distributing and providing food, other common necessities of life and temporary shelter for their inhabitants upon the occasions and in the manner set forth in section 19 of chapter 40, 2 years.

(3) For establishing or purchasing a system for supplying a city, town, or district and its inhabitants with water, for taking or purchasing water sources, either from public land or private sources, or water or flowage rights, for the purpose of a public water supply, or for taking or purchasing land for the protection of a water system, 30 years.

(3A) For conducting groundwater inventory and analysis of the community water supply, including pump tests and quality tests relating to the development of using said groundwater as an additional source or a new source of water supply for any city, town or district, 10 years.

(4) For the construction or enlargement of reservoirs, the construction of filter beds, the construction or reconstruction or making extraordinary repairs to standpipes, buildings for pumping stations including original pumping station equipment, and buildings for water treatment, including original equipment therefor, and the acquisition of land or any interest in land necessary in connection with any of the foregoing, 30 years.

(4A) For remodeling, reconstructing or making extraordinary repairs to reservoirs and filter beds, 30 years; provided, however, that no indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to the department of environmental protection, and the approval of said department has been granted therefor.

(5) For constructing or reconstructing, laying or relaying aqueducts or water mains or for the extension of water mains, or for lining or relining such mains, and for the development or construction of additional well fields and for wells, 40 years.

(6) For the purchase and installation of water meters, 10 years.

(7) For the payment of the city, town or district share of the cost to increase the storage capacity of any reservoir, including land acquisition, constructed by the water resources commission for flood prevention or water resources utilization, 20 years.

(7A) For the purchase, replacement or rehabilitation of water departmental equipment, 10 years.

(8) For establishing, purchasing, extending, or enlarging a municipally owned gas or electric lighting plant, community antenna television system, or telecommunications system, 20 years.

(8A) For remodeling, reconstructing, or making extraordinary repairs to a municipally owned gas or electric lighting plant, community antenna television system, or telecommunications system, when approved by a majority of the members of the municipal finance oversight board, for the number of years not exceeding 10, as said board shall fix. Each city or town seeking approval by the board of a loan under this clause shall submit to said board all plans and other information considered by the board to be necessary for a determination of the probable extended use of such plant, community television antenna system or telecommunications system likely to result from the remodeling, reconstruction, or repair, and in considering approval under this clause of a requested loan and the terms thereof, special consideration shall be given to that determination.

(9) For emergency appropriations that are approved by the director, not more than 2 years or such longer period not to exceed 10 years as determined by the director after taking into consideration 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; provided, however, that for the purposes of this clause, "emergency" shall mean 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; and provided, further, that for the purposes of this clause, debt may be 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.

(9A) For emergency appropriations approved by a majority of the members of the municipal finance oversight board, up to the period fixed by law for the debt as determined by the board; provided, however, that this clause shall apply only to appropriations for capital purposes including, but not limited to, the acquisition, construction, reconstruction or repair of any public building, work, improvement or asset, and upon a demonstration by the city, town or district that the process for authorizing debt in the manner otherwise provided by law imposes an undue hardship in its ability to respond to the emergency; provided further, that for purposes of this clause, "emergency" shall mean 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; and provided, further, that for the purposes of this clause, debt may be 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.

(10) For acquiring land or constructing buildings or other structures, including the cost of original equipment, as memorials to members of the army, navy, marine corps, coast guard, or air force, 20 years.

The designation of any such memorial shall not be changed except after a public hearing by the board of selectmen or by the city council of the municipality wherein said memorial is located, notice of the time and place of which shall be given, at the expense of the proponents, by the

town or city clerk as the case may be, by publication not less than 30 days prior thereto in a newspaper, if any, published in such town or city; otherwise, in the county in which such town or city lies; and notice of which shall also have been given by the proponents, by registered mail, not less than 30 days prior to such hearing, to all veterans' organizations of such town or city.

(11) For acquiring street railway or other transportation property under sections 143 to 158, inclusive, of chapter 161, operating the same, or contributing toward the sums expended or to be expended by a transportation area for capital purposes, 10 years.

(12) For the acquisition, construction, establishment, enlargement, improvement or protection of public airports, including the acquisition of land, 10 years. The proceeds of indebtedness incurred hereunder may be expended for the acquisition, construction, establishment, enlargement, improvement or protection of such an airport, including the acquisition of land, jointly by 2 or more municipalities.

(13) For the financing of a program of eradication of Dutch elm disease, including all disbursements on account of which reimbursement is authorized or may be authorized by the commonwealth, county, any city or town, or by any manner of assessment or charges, pursuant to and consistent with chapter 132, 5 years.

(14) For the construction of sewers, sewerage systems and sewage treatment and disposal facilities, or for the lump sum payment of the cost of tie-in to such services in a contiguous city or town, for a period not exceeding 30 years; provided, however, that either: (i) the city or town has an enterprise or special revenue fund for sewer services, and that the accountant, auditor or other officer having similar duties in the city or town shall have certified to the treasurer that rates and charges have been set at a sufficient level to cover the estimated operating expenses and debt service related to the fund; or (ii) the issuance of the debt is approved by a majority of the members of the municipal finance oversight board.

(15) For the construction and rehabilitation of municipal golf courses, including the acquisition and reconstruction of land, installation and replacement of irrigation systems, the construction and rehabilitation of buildings, and the cost of equipment and furnishings, 20 years.

(16) For the payment of charges incurred under contracts authorized by section 4D of chapter 40, but only for those contracts for purposes comparable to the purposes for which loans may be authorized under this section. Each authorized issue shall constitute a separate loan, and the loans shall be subject to the conditions of the applicable clauses of this section.

(17) For the construction of a regional incinerator for the purpose of disposing solid waste, refuse and garbage by 2 or more communities, 20 years.

(18) For the lending or granting of money to industrial development financing authorities and economic development and industrial corporations, with the approval of the Massachusetts office of business development and the director of housing and community development, 20 years.

(19) For the purposes of implementing a project financed in whole or in part by the Farmers Home Administration of the United States Department of Agriculture, pursuant to Chapter 50 of Title 7 of the United States Code, up to 40 years. Regional school districts established under any general or special law shall be authorized to incur debt for the purposes and within the limitations described in this clause.

(20) For the cost of cleaning up or preventing pollution caused by existing or closed landfills or other solid waste disposal facilities, including clean up or prevention activities taken pursuant to chapter 21E or chapter 21H, 30 years; provided, however, that no indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to the department of environmental protection and the approval of said department has been granted therefor.

(21) For the construction of incinerators, refuse transfer facilities, recycling facilities, composting facilities, resource recovery facilities or other solid waste disposal facilities, other than landfills, for the purpose of disposing of waste, refuse and garbage, 25 years; provided, however, that no indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to the department of environmental protection and the approval of said department has been granted therefor.

(22) For remodeling, reconstructing or making extraordinary repairs to incinerators, refuse transfer facilities, recycling facilities, resource recovery facilities or other solid waste disposal facilities, other than landfills, owned by the city, town or district, and used for the purpose of disposing of waste, refuse and garbage, 10 years; provided, however, that no indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to the department of environmental protection and the approval of said department has been granted therefor.

(23) For the purpose of closing out a landfill area, opening a new landfill area, or making improvements to an existing landfill area, 25 years; provided, however, that no indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to the department of environmental protection and the approval of said department has been granted therefor.

(24) For the acquisition of a dam or the removal, repair, reconstruction and improvements to a dam owned by a municipality, as may be necessary to maintain, repair or improve such dam, 40 years; provided, however, that this clause shall include dams as defined in section 44 of chapter 253 acquired by gift, purchase, eminent domain under chapter 79 or otherwise and located within a municipality, including any real property appurtenant thereto, if the dam and any appurtenant real property is not at the time of such acquisition owned or held in trust by the commonwealth.

DEBT LIMIT

General Laws Chapter 44, § 10

Section 10. Except as otherwise provided by law, a city or town shall not authorize indebtedness to an amount exceeding 5 per cent of the equalized valuation of the city or town. A city or town may authorize indebtedness in excess of 5 per cent but not in excess of 10 per cent, of the aforesaid equalized valuation; provided, however, that the amount of indebtedness so authorized shall be subject to the approval of the members of the municipal finance oversight board, which approval may be given either before or after such authorization.

In determining the debt limit for Boston hereunder the provisions of chapter ninety-three of the acts of eighteen hundred and ninety-one and of section one of chapter one hundred and ninety-one of the acts of nineteen hundred and three shall apply.

The debt limit for a district shall be based on an amount determined by applying to the equalized valuation of the town the same ratio which the assessors' valuation of the taxable property of the district for the preceding fiscal year bears to the assessors' valuation of the taxable property of the town for the preceding fiscal year. In the case of the district which is located in two or more towns, said debt limit shall be based on the total amount determined by applying to the equalized valuation of each of the towns in which any part of the district is located the same ratio which the assessors' valuation of the taxable property of the district in the respective towns for the preceding fiscal year bears to the assessors' valuation of the taxable property of said town for the preceding fiscal year.

All authorized debts, except those expressly authorized by law to be incurred outside the debt limit, shall be reckoned in determining the limit of indebtedness under this section.

TEMPORARY LOANS; REFUND; REPAYMENT

General Laws Chapter 44, § 17

If a city, town or district votes to issue bonds, notes or certificates of indebtedness in accordance with law, the officers authorized to issue the same may, in the name of such city, town or district, make a temporary loan for a period of not more than 2 years in anticipation of the money to be derived from the sale of such bonds, notes or certificates, and may issue notes therefor. A city, town or district may refund, by the issue of other notes, a temporary loan issued under the authority of the first sentence; provided, however, that the period from the date of issue of the original loan to the date of maturity of the refunding loan shall not exceed 2 years, unless such temporary loan is paid in part from revenue funds of the city, town or district as hereinafter provided for, in which case the period from the date of issue of the original loan to the date of maturity of the refunding loan shall not exceed 10 years. A temporary loan refunded under this section shall be paid in part from revenue funds of the city, town or district at or before the maturity date of any such refunding loan that is issued to mature more than 2 years, but not more than 3 years, from the date of issue of the original loan. A like payment from revenue funds shall be made at or before the maturity date of any such refunding loan that is issued to mature more than 3 years, but not more than 4 years, from the date of issue of the original loan and again at or before the maturity date of any such refunding loan that is issued to mature more than 4 years but not more than 5 years; more than 5 years but not more than 6 years; more than 6 years but not more than 7 years; more than 7 years but not more than 8 years; more than 8 years but not more than 9 years, from the date of the original loan, and again at or before the maturity date of any such refunding loan that is issued to mature more than 9 years from the date of issue of the original loan. Each such payment from revenue funds shall be at least equal to the minimum annual payment which would have been required if such temporary loan had been converted to a serial loan prior to its first refunding that required a payment from revenue funds under this section, and the authorized amount of the serial loan shall be reduced by the aggregate amount of all such payments. Each payment made by a city, town or district as provided in the preceding sentence shall be reported by the auditor or accountant of the city or town 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 determination of the next annual tax rate, unless the city, town or district has otherwise made provision therefor. The amount of a payment from revenue funds made by a regional school district or regional refuse disposal district as provided herein shall be included in the next annual district operating and maintenance budget, unless the regional district committee has otherwise made provision therefor. The time within which a serial loan shall be

due and payable shall not be extended by reason of the making of a temporary loan hereunder beyond the time fixed by law. If a balance remains in the proceeds of a temporary loan issued in anticipation of a serial loan at the time when the serial loan is issued, said balance may be applied to the payment of such temporary loan.

Notes issued under sections four, six and six A for a shorter period than is permitted by said sections may be refunded by the issue of other notes within the required period; provided, however, that the period from the date of issue of the original loan to the date of maturity of the refunding loan shall be not more than the statutory authorization; and provided, further, that no notes shall be refunded under this section except under authority of such vote, if any, as is required for the original borrowing.

PROCEEDS FROM SALE OF BONDS; RESTRICTIONS ON USE; DISPOSITION OF PREMIUMS General Laws Chapter 44, § 20

Section 20. The proceeds of any sale of bonds or notes shall be used only for the purposes specified in the authorization of the loan; provided, however, that such proceeds may also be used for costs of preparing, issuing and marketing the 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, the 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 balance not in excess of \$50,000 may be applied, with the approval of the chief executive officer, for the payment of indebtedness. 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 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 the sale of the bonds or notes, less the cost of preparing, issuing and marketing them, and any accrued interest received upon the delivery of the bonds or notes shall be: (i) applied, if so provided in the loan authorization, to the costs of the project being financed by the bonds or notes and to reduce the amount authorized to be borrowed for the project by like amount; or (ii) appropriated for a project for which the city, town or district has authorized a borrowing, or may authorize a borrowing, for an equal or longer period of time than the original loan, including any temporary debt, was issued, thereby reducing the amount of any bonds or notes authorized to be issued for the project by like amount. Notwithstanding this section, no appropriation from a loan or balance thereof shall be made that 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 that purpose. Additions to the levy limit for a debt exclusion are restricted to the true interest cost incurred to finance the excluded project.

REFUNDING BONDS; ISSUANCE; PRESENT VALUES

General Laws Chapter 44, § 21A

Section 21A. The city council of a city, the board of selectmen of a town and the prudential committee, if any, otherwise, the commissioners of a district, may authorize and provide for the issuance of refunding bonds or notes of the city, town or district for the purpose of paying or refunding all or any designated part of an issue of bonds or notes then outstanding, including the amount of any redemption premium thereon; provided, however, that no such refunding bonds or notes shall be payable over a period longer than the period during which the original bonds or notes so refunded must be paid pursuant to law; and provided, further, that, notwithstanding any provision of any general or special law, city charter, city ordinance or city council rule or order to the contrary, any vote of the city council of a city authorizing and providing for the issuance of refunding bonds or notes of the city may be introduced and given final passage at 1 meeting of the city council, shall not be subject to any publication requirement, shall not be subject to any referendum provision, and shall be effective upon passage. The first annual payment of principal on account of an issue of refunding bonds or notes shall not be later than the last day of the fiscal year in which any of the bonds or notes being refunded would otherwise have been payable and the annual payments thereafter shall be arranged in accordance with the provisions of section 19; provided, however, that any annual payment earlier than the date on which the first annual payment is required to be made, may be in any amount. Except as otherwise provided in this section, the issuance of such refunding bonds or notes shall be governed by the applicable provisions of this chapter. Refunding bonds or notes issued under this section shall be subject to the same limit of indebtedness, if any, as the bonds or notes refunded by them; provided, however, that upon the issuance of such refunding bonds or notes, the bonds or notes refunded shall no longer be counted in determining any limit of indebtedness of the city, town or district under this chapter or any other applicable provision of law. If such refunding bonds or notes are issued prior to the maturity or redemption date of the original bonds or notes refunded, an amount of the proceeds of the refunding bonds or notes and other moneys then available or to become available to the city, town or district, which moneys may include income to be derived from the investment of such proceeds, sufficient to pay or provide for the payment of the principal, redemption premium, if any, and interest on the bonds or notes so refunded to the date fixed for their payment or redemption shall be held in a separate fund and in trust solely for the payment of such principal, redemption premium and interest. The funds so held may be invested pursuant to section 55 and the income derived from such investment may be expended by the treasurer to pay the principal, redemption premium, if any, and interest on the bonds or notes refunded until they are paid or redeemed; provided, however, that notwithstanding any limitations on the maturity of investments under section 55, any such investment may have a maturity not later than the date fixed for the payment or redemption of the bonds or notes refunded.

The present value of the principal and interest payments due on refunding bonds issued under this section shall not exceed the present value of the principal and interest payments to be paid on the bonds to be refunded, except as otherwise provided in this section. The city, town, or regional school district shall notify the department of education in the event that bonds or notes issued for an approved school project under chapter 645 of the acts of 1948 are refunded under this section and the amount of the state construction grant payable to the city, town, or regional school district shall not be affected by any increase in the amount of interest payable on the refunding bonds or notes, but shall be affected by any decrease in the amount of interest payable on the refunding bonds or notes for school building projects approved after July 1, 1995. Upon

receipt of notification from a city, town or regional school district of a decrease in the amount of interest payable related to such projects, the department of education shall recalculate the amount of the state construction grant that is payable to such city, town or regional school district.

If the mayor or city manager in a city, the board of selectmen of a town or the prudential committee of a district determines that the issuance of refunding bonds is reasonable and necessary in order to maintain the tax-exempt status of outstanding bonds or notes of the city, town or district, the official, board or committee may authorize refunding bonds for that purpose, even if the present value of the principal and interest payments due on the refunding bonds exceeds the present value of the principal and interest payments otherwise payable on the bonds to be refunded.

LEASE PURCHASE FINANCING AGREEMENTS

General Laws Chapter 44, § 21C

Section 21C. A city, town or district may by a two-thirds vote of its legislative body, if recommended by its chief executive officer, authorize any department of the city, town or district to enter into a lease purchase financing agreement to acquire equipment or improve a capital asset that may be financed by the issuance of debt under this chapter or otherwise authorized by law, for a term up to the useful life of the property to be procured as determined by its chief executive officer. Any lease purchase financing agreement under this section shall be considered a binding obligation of the city, town or district as if it were a debt authorization under this chapter, provided an appropriation available for the purpose has been made in the first fiscal year in which the lease becomes effective. Any city, town or district that follows the procedure in this section with respect to entering into a lease purchase financing agreement for the procurement of any personal property for the governmental entity, may refinance the purchase with the issuance of refunding bonds under section 21A to pay the balance of the lease obligation.

CITY, TOWN OR DISTRICT FUNDS; USE AND DISPOSITION

General Laws Chapter 44, § 53

Section 53. All moneys received by any city, town or district officer or department, except as otherwise provided by special acts and except fees provided for by statute, shall be paid by such officers or department upon their receipt into the city, town or district treasury. Any sums so paid into the city, town or district treasury shall not later be used by such officer or department without specific appropriation thereof; provided, however, that (1) sums allotted by the commonwealth or a county to cities or towns for highway purposes and sums allotted by the commonwealth to cities, towns or districts for water pollution control purposes shall be available therefor without specific appropriation, but shall be used only for the purposes for which the allotment is made or to meet temporary loans issued in anticipation of such allotment as provided in section six or six A, (2) sums not in excess of \$150,000 recovered under the terms of a fire or physical damage insurance policy or received in restitution for damage done to such city, town or district property may, with the approval of the chief executive officer, be used by the officer or department having control of the city, town or district property for the restoration or replacement of such property without specific appropriation during the fiscal year in which they are received or 120 days after receipt, whichever is later, and (3) sums recovered from pupils in the public schools for loss of or damage to school books, materials, electronic devices or other learning aids

provided by the school committee, or paid by pupils for materials used in the industrial arts projects, may be used by the school committee for the restoration or replacement of such books or materials without specific appropriation.

DEPARTMENT OF REVENUE MATERIALS
Additional Resources

DLS website - www.mass.gov/dls

Borrowing Resources

- **IGR 17-21- *Borrowing***
- **IGR 17-22 - *Premiums and Surplus Proceeds for Proposition 2½ Excluded Debt***
- **DLS Bureau of Accounts State House Notes Program and Other Borrowing Guidelines**
- **DLS Borrowing Purposes Crosswalk – Before and After the Municipal Modernization Act**
- **DLS Guidelines - Asset Useful Life Schedules And Maximum Borrowing Terms**

Flow Chart - Treatment of Net Premiums and Accrued Interest Received on Bonds or Notes Sold on or after November 7, 2016 - See IGR 17-21 and IGR 17-22

Under G.L. c. 44, § 20 (*after* the Municipal Modernization Act), net premiums and accrued interest on bonds or notes sold on or after 11/7/2016 are not general fund revenue. They must either be:

1. Applied to the costs of the project being financed by the bonds or notes and reduce the amount authorized to be borrowed for the project by like amount (only if the legislative body borrowing vote so authorizes); or
2. Reserved in separate fund for appropriation for capital projects:
 - Project must be one for which may borrow for equal or longer period than loan for which premium received
 - Premium arising from restricted funds project remains subject to restriction
 - If borrowing is the subject of an approved Proposition 2½ debt exclusion, there may be a reduction in the annual excluded amount because G.L. c. 44, s. 20 requires “[a]dditions to the levy limit for a debt exclusion are restricted to the true interest cost incurred to finance the excluded project.”

FLOW CHART

1	Was the borrowing a <u>refunding bond</u> issued under G.L. c. 44, § 21A? If yes, go to 7. If no, go to 2.
2	Was the borrowing a <u>single purpose borrowing</u> ? If yes, go to 3. If no, go to 8.
3	Did the legislative body vote that authorized the borrowing include authority to apply the net premium and any accrued interest to the costs of the project being financed by the bonds or notes and reduce the amount authorized to be borrowed for the project by like amount? If yes, go to 4. If no, go to 5.
4	Treasurer is to apply the net premium and any accrued interest to pay costs of the project being financed by the bonds or notes and reduce the amount authorized to be borrowed for the project by like amount.
5	<p>Net premium and accrued interest must be reserved for appropriation for a project for which the city, town or district has authorized a borrowing, or may authorize a borrowing, for an equal or longer period of time than the original loan:</p> <ol style="list-style-type: none"> a. AND - If the borrowing was funded through <u>restricted funds</u>, e.g., community preservation funds or enterprise funds, the reserved net premium and accrued interest remain subject to relevant restriction. The funds may be appropriated for capital projects for which the restricted funds may be spent and for which a loan has been, or may be, authorized for an equal or longer period of time than the loan for which the premiums were received. If the original borrowing is financed with community preservation funds, a recommendation of the community preservation committee is also required for any appropriation of the reserved premiums; b. AND - If the borrowing was the <u>subject of an approved Proposition 2½ debt exclusion</u>, go to 6.
6	<p>When net premiums and accrued interest received on a borrowing subject to an approved Proposition 2 ½ debt exclusion are reserved for appropriation for capital projects for which a loan has been, or may be, authorized for an equal or longer period of time than the loan for which the premiums were received, then the amount of the annual debt exclusion will be reduced by a premium adjustment as follows:</p> <ol style="list-style-type: none"> a. When the total net premium and accrued interest received at the time of sale is \$50,000 or less, there will be no reduction in the annual excluded amount. (de minimis exception). b. When the total net premium and accrued interest received at the time of the sale is more than \$50,000, there will be a reduction in the excluded amount calculated as show in Exhibit A* below. <p>Note: Net premiums and accrued interest reserved for appropriation are <u>not</u> available for appropriation for the payment of annual debt service of the project.</p>

Flow Chart - Treatment of Net Premiums and Accrued Interest Received on Bonds or Notes Sold on or after November 7, 2016 - See IGR 17-21 and IGR 17-22

7	Refunding Bonds - G.L. c. 44, § 21A governs premiums received on refunding bond and requires all “proceeds” of refunding bonds be used to pay off the bonds to be refunded. “Proceeds” of refunding bonds include premiums and accrued interest. Therefore, they must be used to pay off the bonds to be refunded.
8	Multi-Purpose Borrowings - For multi-purpose borrowings, the net premium and accrued interest are allocated to each individual borrowing based upon the proportion that the individual borrowing bears to the total amount borrowed. How a pro-rated premium is treated depends upon the borrowing to which it is allocated. If the borrowing is a refunding bond, see number 7 above for its treatment. For other borrowings, start with number 3 above and work your way through the flow chart.

*Exhibit A
Calculation of Premium Adjustment and Debt Exclusion Reduction

A city or town, on or after November 7, 2016, sells permanent bonds payable in 20 years in the total principal amount of \$18,000,000. It receives a net premium as part of the sale in the amount of \$800,000 which is reserved for the appropriation of capital projects. The total interest payable over the life of the borrowing will be \$10,000,000. The interest payable for the fiscal year is \$600,000. The calculation to determine the adjustment of interest for the fiscal year debt exclusion is as follows:

Calculation of Premium as Percentage of Interest Cost

Net Premium	\$800,000
Divided by total interest over life of issue	\$10,000,000
Premium as % of interest	8%

Calculation of adjustment of interest for debt exclusion:

Fiscal Year Interest Due	Premium Adjustment	Debt Exclusion Adjustment (Reduction)
\$600,000	8%	\$48,000

The amount of the gross debt service excludable for the fiscal year (principal and interest) and the amount of the exclusion reduction (\$48,000) are entered on the DE-1. The net excluded debt service will be the gross debt service excludable minus \$48,000.

The city or town will be required to continue to apply this premium adjustment to reduce the amount of the annual debt exclusion throughout the life of the borrowing.