



Treasurer, Collector and Accountant Issues

**Other Post-employment Benefits
(OPEB) Fund**

**Collection of
Non-tax Municipal Charges**

and

**Accounting Treatment of
Short-term Rental Local Option Impact Fees and
Cannabis, Casino and Transportation Network
Companies (TNC)**

**Workshop B
2019**

TABLE OF CONTENTS

Workshop B

	<u>Page</u>
DISCUSSION QUESTIONS	1
MASSACHUSETTS CONSTITUTION	
Home Rule Amendment, Article 89	8
Anti-Aid Amendment, Article XLVI	8
GENERAL LAWS	
Chapter 32B, § 20	9
Chapter 40, § 5B	13
Chapter 40, § 21E	14
Chapter 40, § 39M	15
Chapter Ch. 40, § 42A-42E	16
Chapter 40, § 42G	18
Chapter 40, § 58	18
Chapter 40U	19
Chapter 44, § 53	22
Chapter 44, § 53A	22
Chapter 44, § 53F½	24
Chapter 60, § 23	24
Chapter 60, § 77C	25
Chapter 61A, § 18	26
Chapter 64G, § 3A	26
Chapter 64G, § 3D	27
Chapter 80, § 12	28
Chapter 83, § 16	28
Chapter 83, § 16A	29
Chapter 83, § 27	29
Chapter 139, § 3A	30
Chapter 183A, § 14	31
SPECIAL ACTS	
St. 2016, c. 187	31
OTHER DEPT OF REVENUE MATERIALS	47
Informational Guideline Release 2019-10	
Local Finance Opinion 2018-1	
Local Finance Opinion 2018-3	

Discussion Questions

OPEB TRUST FUNDS

In January of 2016, the Town of Asgard met to consider how to start funding their long-term liabilities. To that end, Town Meeting voted to accept General Law Chapter 32B, § 20 and establish an Other Post-Employment Benefit (OPEB) Trust Fund. Town Meeting designated their treasurer, Thor, as the custodian of the Fund and appropriated \$100,000 into it. No action has been taken since. All this occurred prior to the passage of the Municipal Modernization Act and G.L. c. 32B, § 20 has not been re-accepted since.

G.L. c. 32B, § 20. IGR 2019-10.

1. Wealthy local resident, Tony Stark, wishes to make a significant gift to Asgard's OPEB fund. In addition, he convinces the federal SHIELD Agency to match whatever amount he contributes with a grant of their own for the same purpose. Given the above facts, is Asgard permitted to accept this gift and grant for their OPEB Fund?
2. Asgard is a member of the Hydra School District. Is it permissible to appropriate an amount to the Town's OPEB Fund for the town's share of the RSD's OPEB liability (for RSD employees)?
3. With a booming downtown area, commonly referred to as Titan, Asgard is starting to see some significant increases in moneys received from the local sales tax on restaurant meals, pursuant to G.L. c. 64L, § 2. Can this money be dedicated to the OPEB Fund?
4. A rising star in Asgard's local political scene, Loki, is trying to rally support behind appropriating the \$100,000 currently in the Fund to another purpose. Can Town Meeting re-purpose this money?
5. Thor has been discussing Asgard's OPEB Fund with Odin, who, as the custodian and trustee of his Town's OPEB Fund, invests in the OPEB Fund of another government unit. Thor is strongly considering doing the same for Asgard. Can he?
6. In evaluating the initial Town Meeting vote, Asgard's counsel realized that their 2016 vote did not actually have quorum. As such, counsel has determined that the 2016 Town Meeting vote was not validly taken. He has informed Asgard of the need for Town Meeting to re-accept G.L. c. 32B, § 20. Is Asgard permitted to re-accept the older version of G.L. c. 32B, § 20?
7. Asgard's counsel has now been charged with researching the effects of re-accepting G.L. c. 32B, § 20. Where can counsel find the old version of the statute?
8. What do "health insurance benefits" include?
9. A new wave of candidates, known locally as the "Avengers," takes over a majority of the Board of Selectmen seats. Once in power, they tell Thor he can only invest in a fund that is approved by them and several recommendations are made for him

to consider. Thor on the other hand wishes to invest with the State Retiree Benefits Trust Fund. Can the Board of Selectmen veto Thor's investment decision? If this occurred under the revised G.L. c. 32B, § 20 would the result be any different?

COLLECTION OF NON-TAX MUNICIPAL CHARGES

1. Robert Harper is the sole owner of a single-family house. He is married but has separated from his wife, Mary, who resides in the house with a young child. Harper lives elsewhere in town. Robert has an agreement with his wife that he will pay the real estate taxes and Mary, on her part, will pay the utility bills.
 - A. Mary has not paid her water bills. The bills due November 15, 2018 and May 15, 2019 are outstanding. The town Water Department sent a demand letter to Robert who told town officials that his wife was responsible for payment of the water bills under their separation agreement. Can the unpaid bills be added to Robert's fiscal year 2020 real estate tax bill?
 - B. Assume the unpaid water bills were not added to the FY 2020 real estate tax bill. Can they be added to the FY 2021 real estate tax bill? Could there be a problem with the water liens for unpaid bills?
 - C. What is the rule on interest for delinquent water charges?

G.L. Ch. 40, § 42A-42B; G.L. Ch. 40, § 21E

2. Seven houses are located on Hiawatha Lane in the Town of York, Massachusetts. The households do not receive water or sewer service from the Town of York. The owners petitioned the neighboring town of Brussels, Massachusetts to allow the owners to connect to the Brussels water and sewer system.
 - A. The Town of Brussels is receptive to the extension of water and sewer service. Brussels, however, wants to be paid. Can the Town of Brussels impose water and sewer special assessments on the York houses to pay for the extension of the water and sewer pipes? If not, how will Brussels be paid?
 - B. The seven houses were ultimately connected to the Brussels water and sewer system. The owners in York paid their water and sewer bills promptly for a few years. Now, some of the owners are not paying their bills. Can the Town of Brussels place liens on the York houses? How can Brussels collect the amounts owed?

G.L. Ch. 83, § 16A

3. John Green recently purchased a house in town. At the time of closing a municipal lien certificate did not disclose any water liens.
 - A. Shortly after he moved into the house, the Water Department informed him there was an unpaid balance for water service. Can the town legally assert

money is owed to the water department? Can the unpaid amount be added to the ensuing fiscal year real estate tax bill?

- B. A year later, Green saw heavy construction equipment being delivered to his neighborhood. He learned that the town was installing sewer lines and sewer betterment assessments would be owed by each house on the street. Green quickly called his closing attorney and asked whether he would be liable for his share of the cost of construction. His attorney informed him that the town had no lien for the sewer project because of the issuance and recording of the erroneous municipal lien certificate. Does the town have a valid lien on Green's property for the sewer betterment?

G.L. Ch. 60, § 23; G.L. Ch. 40, § 42B; G.L. Ch. 83, § 27; G.L. Ch. 80, § 12

4. On a cold wintry December day, the Patriots were fighting for a play-off berth. Richard Barnes, an avid football fan, hurriedly cleared snow from his sidewalk and then rushed to his den to watch the game. A town resident who was walking home slipped on the sidewalk in front of Barnes' house. The injured man used his cellphone to contact the police department. A town ambulance was sent to the scene and the victim was transported to the hospital.

- A. The town has established fines for uncleared snow. If Barnes refuses to pay the fine, can the town enforce the fine by placing a lien on the house?
- B. The accident victim has failed to pay his ambulance bill. Can the town place a lien on Barnes' house for the unpaid ambulance bill?

G.L. Ch. 40U; G.L. Ch. 40, § 58

5. Questions have been raised about the collection of liens and assessments in connection with condominiums.
- A. A condominium with 60 units receives water and sewer service from the town. There is only one meter for the building. The Public Works Department sent a bill to the condominium association which has not sent payment. How can the town collect the water/sewer bill? Can the town lien the condominium?
- B. A statement was recorded establishing a lien on an undeveloped parcel in another section of town for a sewer line extension. Subsequently, a condominium in three phases was declared under the recorded master deed. When the town assessed the costs for the sewer project, only one phase of the condominium with 20 units had been completed. The developer retains the right to build two additional phases for 20 units each. Can the town allocate costs to potential units that will not have their percentage interests fixed until amendments to the master deed are filed? What recommendation would you make to town officials?
- C. The town made sewer assessments on the potential units. The developer later abandoned plans to build the remaining two phases. Can the town collect the assessments on the unbuilt units?

G.L. Ch. 40, §§ 42A-E; G.L. Ch. 183A, § 14

6. The fire department has raised certain issues with the selectmen.
 - A. The fire chief is concerned about the number of false fire alarms received by his department each year. He would like to assess commercial property which repeatedly issues false fire alarms. The fire chief would also like to lien unpaid alarm charges to the tax bill. How would you advise the fire chief?
 - B. The board of selectmen has ordered a business owner to remove a fire damaged mill building. The owner has failed to comply. The town demolishes the building. What can the selectmen do if the owner fails to pay for demolition?
 - C. What should the town do if the above described mill building is in tax title with the land worth \$75,000 and the cost of demolition is \$100,000?

G.L. Ch. 40, § 58; G.L. Ch. 139, § 3A; G.L. Ch. 60, § 77C

7. Town officials plan to extend water service to an outlying section of town which contains residences, a nonprofit school and a farm with a farmhouse and 350 acres of classified farmland under Chapter 61A.
 - A. Would the nonprofit school be exempt from a water betterment assessment and water user fees? What would be your answer if it was a regional high school?
 - B. How would the betterment assessment be calculated for the farmhouse and the 350 acres of land?
 - C. A few years later, the farmer records a subdivision plan dividing the land into 350 house lots. He informed town officials and the town has opted not to exercise its right of first refusal. What happens to the assessment on the vacant farmland? Can the town agree to subordinate its lien to a mortgage from the developer's bank?

G.L. Ch. 61A, § 18; Williams College v. Williamstown, 219 Mass. 46 (1914)

8. A car dealership on a large parcel has been sold to a developer who plans to build a mall and a hotel. The town deemed the existing 8-inch diameter water main built in the 1930s to be inadequate for this large commercial development. The town constructed several improvements to the water system including the installation of 10,000 linear feet of a new 16-inch diameter water main in front of the dealership.
 - A. Can the town impose a water betterment assessment on the parcel for the improvements?
 - B. Instead of an assessment, can the town impose surcharges on the new owner's water bills?

- C. How else can the town offset the infrastructure costs associated with the new development?

G.L. Ch. 40, § 42G; Seiler v. Board of Sewer Commissioners of Hingham, 353 Mass. 452 (1968); Morton v. Town of Hanover, 43 Mass. App. Ct. 197 (1997)

9. Global warming is a subject which is discussed throughout the world. In the Town of New Castle, Massachusetts the selectmen are concerned about flooding causing severe property damage and contaminating both public and private water supplies. The selectmen seek to construct stormwater drainage facilities to avert such a disaster.

- A. Can the town impose a fee or a betterment to offset the cost of construction of stormwater facilities? If so, how would they do this? Could the community impose a real estate tax surcharge for stormwater infrastructure assets?

- B. How would stormwater fees be calculated? If an owner failed to pay the new stormwater fee, how would the unpaid amount be collected?

- C. How would the community account for stormwater revenues?

G.L. Ch. 83, § 16; G.L. Ch. 40, § 39M; G.L. Ch. 83, § 27; G.L. Ch. 40, § 39M; G.L. Ch. 44, § 53F½

SHORT TERM RENTALS

Small town, Gotham, does not have any hotels or motels. When visitors stay in town they usually reserve a room at the only, but well-managed and well-liked, bed and breakfast. Given the popularity of the bed and breakfast and a lack of a more general commercial lodging market demand, Gotham hasn't voted to adopt the local occupancy excise. However, lately, the owner of the bed and breakfast, Bruce Wayne, has noticed a steep decline in his reservations. He learns that several Air BnB rentals have popped up in town and are taking much of his business. Since the bed and breakfast is a local institution and Bruce Wayne is a prominent citizen of Gotham, Town Meeting votes to implement a tax on the Air BnB occupancies, exclusively. They also vote to accept only the second of two short-term rental local option impact fees which applies to short-term rental units located within a two- or three-family dwelling that includes operator's primary residence, imposing further costs upon certain types of short-term rentals.

An idea takes hold at Town Meeting to dedicate 100% of the short-term local option impact fees receipts to a newly created special purpose stabilization fund to purchase crime enforcement gear and dedicate 20% of the general Air BnB occupancy tax to Gotham's OPEB Stabilization Fund.

Bruce Wayne also proposes a by-law to further regulate the Air BnB rental market. The by-law requires certain local licenses, inspections and limits the number of potential short-term rental operators. It also requires operators pay their taxes directly to the Town, in cash. The by-laws are passed by Town Meeting as written. The Meeting took place on May 31, 2019 and the language of all votes indicated they would go into effect immediately (assuming Attorney General approval under M.G.L. c. 40, § 32).

What, if anything, did Gotham do wrong and right here?

G.L. c. 64G, § 3A; G.L. c. 64G, § 3D(a); G.L. c. 64G, § 3D(b); G.L. c. 64G, § 3D(c)

MARIJUANA REVENUES

There has been much public discussion about the money that a city or town can receive with the presence of marijuana establishments in the community.

What kinds of revenue can a city or town receive?

What is the accounting treatment of the revenue?

G.L. Ch. 64N, § 3; G.L. Ch. 94G, § 3(d)

CASINO REVENUES

Gambling was legalized throughout the Commonwealth and the first approved casino will be in Stephen King City, which directly abuts the Town of Derry. The Town Administrator of Derry, seeing the chance to remedy some of the fears of the citizenry, along with their other surrounding communities, starts to negotiate a “Surrounding Community Agreement” with the casino. The idea was to mitigate the casino’s impact on Derry and contribute to Derry’s efforts in turning its Town around. The agreement calls for, among other things, the following:

- An annual payment of \$325,000.00 to enable Derry to promote the use of its MBTA Station as a "transportation hub" for casino guests, invitees, employees and/or vendors through mutually agreed upon promotional materials and improvements (including, without limitation, safety upgrades, improved lighting, fixtures, signage and beautification efforts). This will also include significant upgrades to its sewer system.
- An annual payment of \$100,000.00 to assist businesses in effectuating aesthetic upgrades and enable them to participate in the opportunities that will be available because of the "transportation hub.”
- An annual payment of \$250,000.00 to fund staffing and other public safety initiatives.
- An annual payment of \$125,000.00 to the Pennywise Community Fund. The Administrator of the Town of Derry agrees to establish a Committee tasked with reviewing requests for assistance from qualified organizations and making determinations on the awarding of any portion of the Community Fund Payment.
- For general street and sidewalk repair, caused by exploding red balloons, a one-time payment of \$1,000,000.00.
- An annual payment of \$25,000.00 to a charity of choice by the Board of Selectmen, (whose favorite cause currently is related to cure for amnesia).
- On-going general annual payment of \$250,000.

1. Can these payments be handled in a separate special revenue account?
2. Can these payments be considered gifts?
3. How else could these payments be treated?
4. Can these payments be treated as estimated receipts?
5. What, if any, concerns do you have about the payments to assist businesses in effectuating aesthetic upgrades and the Pennywise Community Fund?
6. What are folks' thoughts on the annual payment to a charity of choice?

G.L. c. 40, § 5B; G.L. c. 44, § 53; G.L. c. 44, § 53A

TRANSPORTATION NETWORK (TNC) REVENUES

We are all familiar with ride-hailing services like Uber and Lyft. These companies also generate revenue for many municipalities.

How is revenue from these companies derived?

What is the accounting treatment of the revenue?

Are there restrictions on expenditures?

Are there reporting requirements?

Chapter 187 of the Acts of 2016

MASSACHUSETTS CONSTITUTION

HOME RULE AMENDMENT

Mass. Const. Amend. Article 89

Section 6. Governmental Powers of Cities and Towns. - Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court by section eight, and which is not denied, either expressly or by clear implication, to the city or town by its charter. This section shall apply to every city and town, whether or not it has adopted a charter pursuant to section three.

Section 8. Powers of the General Court. - The general court shall have the power to act in relation to cities and towns, but only by general laws which apply alike to all cities or to all towns, or to all cities and towns, or to a class of not fewer than two, and by special laws ... This section shall apply to every city and town whether or not it has adopted a charter pursuant to section three.

ANTI-AID AMENDMENT

Mass. Const. Amend. Article XLVI

(In place of article XVIII of the articles of amendment of the constitution ratified and adopted April 9, 1821, the following article of amendment, submitted by the constitutional convention, was ratified and adopted November 6, 1917.)

Article XVIII.

Section 1. No law shall be passed prohibiting the free exercise of religion.

Section 2. All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the commonwealth for the support of common schools shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is expended; and no grant, appropriation or use of public money or property or loan of public credit shall be made or authorized by the commonwealth or any political division thereof for the purpose of founding, maintaining or aiding any other school or institution of learning, whether under public control or otherwise, wherein any denominational doctrine is inculcated, or any other school, or any college, infirmary, hospital, institution, or educational, charitable or religious undertaking which is not publicly owned and under the exclusive control, order and superintendence of public officers or public agents authorized by the commonwealth or federal authority or both, except that appropriations may be made for the maintenance and support of the Soldiers' Home in Massachusetts and for free public libraries in any city or town, and to carry out legal obligations, if any, already entered into; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society.]

Section 3. Nothing herein contained shall be construed to prevent the commonwealth, or any political division thereof, from paying to privately controlled hospitals, infirmaries, or institutions for the deaf, dumb or blind not more than the ordinary and reasonable compensation for care or support actually rendered or furnished by such hospitals, infirmaries or institutions to such persons as may be in whole or in part unable to support or care for themselves.

Section 4. Nothing herein contained shall be construed to deprive any inmate of a publicly controlled reformatory, penal or charitable institution of the opportunity of religious exercises therein of his own faith; but no inmate of such institution shall be compelled to attend religious services or receive religious instruction against his will, or, if a minor, without the consent of his parent or guardian.

Section 5. This amendment shall not take effect until the October first next succeeding its ratification and adoption by the people. [See Amendments, Arts. XLVIII, The Initiative, Sec. 2., LXII, XCV, section 1 and CIII.]

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 unit 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.

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, cooperative 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.

MUNICIPAL CHARGES AND BILLS; DUE DATES; INTEREST

General Laws Chapter 40, § 21E

Section 21E. Any city or town may, by ordinance or by-law, and any district by vote of the district meeting, establish due dates for the payment of municipal charges and bills, and may fix a rate at which interest shall accrue if such charges remain unpaid after such due dates; provided, however, that the rate of interest shall not exceed the rate at which interest may be charged on tax bills under the provisions of section fifty-seven of chapter fifty-nine.

WATER INFRASTRUCTURE SURCHARGE ON REAL PROPERTY

General Laws Chapter 40, § 39M

Section 39M. (a) Notwithstanding chapter 59 or any other general or special law to the contrary, any city or town, which accepts this section in accordance with subsection (f), may impose a water infrastructure surcharge on real property at a rate up to, but not exceeding, 3 per cent of the real estate tax levy against real property, as determined annually by the board of assessors. The amount of the surcharge shall not be included in a calculation of total taxes assessed for purposes of section 21C of said chapter 59.

(b) All exemptions and abatements of real property authorized by said chapter 59, or any other law for which a taxpayer qualifies as eligible, shall not be affected by this section. A taxpayer receiving an exemption of real property under a clause of section 5 of said chapter 59 specifically listed in section 59 of said chapter 59 shall be exempt from any surcharge on real property established under this section. The surcharge to be paid by a taxpayer receiving any other exemption or abatement of tax on real property authorized by said chapter 59 or any other law shall be reduced in proportion to the amount of such exemption or abatement.

(c) Any amount of the surcharge not paid by the due date shall bear interest at the rate per annum provided in section 57 of said chapter 59.

(d) A person claiming an exemption provided under this subsection may apply to the board of assessors, in writing, on a form approved by the commissioner of revenue, on or before the deadline for an application for exemption under section 59 of chapter 59. Any person aggrieved by a decision of the assessors or by their failure to act upon such application may appeal, as provided in sections 64 to 65B, inclusive, of said chapter 59. Applications for exemption under this section shall be open for inspection only as provided in section 60 of said chapter 59.

(e) Notwithstanding section 53 of chapter 44 or any other general or special law to the contrary, a city or town that accepts this section shall establish a separate account to be known as the Municipal Water Infrastructure Investment Fund. All monies collected from the surcharge, under this section, shall be deposited into said fund. The municipal treasurer shall be the custodian of the fund. The treasurer may invest the monies of the fund in separate accounts in the manner authorized by sections 55 and 55A of said chapter 44. Any interest earned thereon shall be credited to and become part of such separate account. The authority to approve expenditures from the fund shall be limited to the local legislative body and the municipal treasurer shall pay such expenses in accordance with chapter 41. The expenditures of revenues from the fund shall be exclusively used for maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets.

(f) This section shall only take effect in a city or town upon the approval of the legislative body and the acceptance of the voters of a city or town on a ballot question at the next regular municipal or state election; provided, however, that this section shall take effect on July 1 of the fiscal year after such acceptance or a later fiscal year as the city or town may designate.

(g) Upon acceptance of this section and upon the assessors' warrant to the tax collector, the accepted surcharge shall be imposed.

(h) After receipt of the warrant, the tax collector shall collect the surcharge in the amount and according to the computation specified in the warrant and shall pay the amounts so collected, quarterly or semi-annually, according to the schedule for collection of property taxes for the tax on real property, to the city's or town's treasurer. The tax collector shall cause appropriate books and accounts to be kept with respect to the surcharge, which shall be subject to public examination upon reasonable request.

(i) The remedies provided by chapter 60 for the collection of taxes upon real estate shall apply to the surcharge on real property pursuant to this section.

(j) A city or town that has accepted this section may revoke its acceptance, or amend the amount of the surcharge, in the manner outlined in subsection (f); provided, however, that it may not amend the applicable surcharge rate more often than once in any 12 month period. Any monies remaining in the fund upon revocation shall be expended in a manner consistent with this section.

COLLECTION OF RATES AND CHARGES FOR SUPPLYING OF WATER

General Laws Chapter 40, § 42A-42E

Section 42A. If the rates and charges due to a city, town or water district, which accepts this section and sections forty-two B to forty-two F, inclusive, by vote of its city council or of the voters in town or district meeting and, by its clerk, files a certificate of such acceptance in the proper registry of deeds, for supplying or providing for water or rendering service or furnishing materials in connection therewith to or for any real estate at the request of the owner or tenant are not paid on or before their due date as established by local regulations, ordinances or by-laws, which due dates shall be so established as to require payments at least as often as semi-annually, such rates and charges, together with interest thereon and costs relative thereto, shall be a lien upon such real estate as provided in section forty-two B. The register of deeds shall record such certificate of acceptance in a book to be kept for the purpose, which shall be kept in an accessible location in the registry. Sections forty-two B to forty-two F, inclusive, shall also apply to a water district which has accepted sections forty-two A to forty-two F, inclusive, and whose clerk has so filed the certificate of acceptance. Wherever in said sections the words "board or officer in charge of the water department" or their equivalent appear, they shall also mean and include the officers exercising similar duties in any city, town or district. A fire district authorized to supply water shall, for the purposes of sections forty-two A to forty-two F, inclusive, be deemed to be a water district.

Section 42B. Such lien shall take effect by operation of law on the day immediately following the due date of such rate or charge, and, unless dissolved by payment or abatement, shall continue until such rate or charge has been added to or committed as a tax under section forty-two C, and thereafter, unless so dissolved, shall continue as provided in section thirty-seven of chapter sixty; provided, however, that if any such rate or charge is not added to or committed as a tax under section forty-two C for the next fiscal year

commencing after the inception of the lien under this section, then said lien shall terminate on October first of the third year following the year in which such charge becomes due.

Notwithstanding such lien any such overdue rate or charge may be collected through any legal means, including the shutting off of water, which may be deemed advisable; provided, that after the termination of such a lien, no city, town or water district shall attempt to enforce, by shutting off the water, collection of such rate or charge from any person, not liable therefor, who has succeeded to the title or interest of the person incurring such rate or charge. All such rates and charges excluded by court decree under section seventy-six B of chapter sixty shall, to the extent that they were properly chargeable to the person owning, or to the tenant occupying, the premises for which such rates and charges were incurred, be recoverable from such person or tenant, as the case may be, in an action of contract or otherwise. If at the time of the entry of such decree such person or tenant is still the owner or tenant of the premises, whether through redemption or otherwise, such rates and charges to the extent that they were properly chargeable to him, may be enforced in any other manner provided or available for collection and enforcement of water rates and charges.

Section 42C. If a rate or charge for which a lien is in effect under section forty-two B has not been added to or committed as a tax and remains unpaid when the assessors are preparing a real estate tax list and warrant to be committed by them under section fifty-three of chapter fifty-nine, the board or officer in charge of the water department, or the town collector of taxes, if applicable under section thirty-eight A of chapter forty-one, shall certify such rate or charge to the assessors, who shall forthwith add such rate or charge to the tax on the property to which it relates and commit it with their warrant to the collector of taxes as a part of such tax. If the property to which such rate or charge relates is tax exempt, such rate or charge shall be committed as the tax.

Section 42D. Except as otherwise provided, the provisions of chapters fifty-nine and sixty shall apply, so far as pertinent, to all rates and charges certified to the assessors under section forty-two C. Without limiting the generality of the foregoing, upon commitment as a tax or part of a tax under section forty-two C, all such rates and charges shall be subject to the provisions of law relative to interest on the taxes of which they become, or, if the property were not tax exempt would become, a part; and the collector of taxes shall have the same powers and be subject to the same duties with respect to such rates and charges as in the case of annual taxes upon real estate, and the provisions of law relative to the collection of such annual taxes, the sale or taking of land for the non-payment thereof and the redemption of land so sold or taken shall, except as otherwise provided, apply to such rates and charges.

Section 42E. An owner of real estate aggrieved by a charge imposed thereon under sections forty-two A to forty-two F, inclusive, in addition to such remedy as he may have under section ten of chapter one hundred and sixty-five, may apply for an abatement thereof by filing a petition with the board or officer having control of the water department within the time allowed by law for filing an application for abatement of the tax of which such charge is, or, if the property were not tax exempt, would have been, a part, and if such board or officer finds that such charge is more than is properly due, a reasonable abatement shall be made; and except as otherwise provided herein, the provisions of chapter fifty-nine relative to the abatement of taxes by assessors shall apply, so far as applicable, to abatements hereunder. If such petition is denied in whole or in part, the petitioner may

appeal to the appellate tax board upon the same terms and conditions as a person aggrieved by the refusal of the assessors of a city or town to abate a tax.

DISTRIBUTION OF WATER; PAYMENT OF COSTS BY SPECIAL ASSESSMENT

General Laws Chapter 40, § 42G

Section 42G. Any city, town or district having a water supply or water distributing system which, in the case of a city or town, accepts this section and the two following sections in cities other than Plan E cities by vote of the city council subject to the city charter, or Plan E cities by vote of the city council, in towns or districts by vote of its inhabitants at an annual town or district meeting called therefor, may provide by ordinance, by-law or vote for the levy of special assessments to meet the whole or part of the cost thereafter incurred of laying pipes in public and private ways for the conveyance or distribution of water to its inhabitants. Such city, town or district may provide that an owner of land which receives benefit from the laying of water pipes in public and private ways upon which his land abuts or which by more remote means receives benefit through the supply of water to his land or buildings shall pay a proportionate part of the cost not already assessed of extending such water supply to his land.

The amount to be charged against each parcel of land receiving such benefit shall include the cost of the pipes and other material and of the labor in laying them and other expenses incidental thereto and shall be ascertained, assessed and certified by the water commissioners or the other officers in charge of the supply and distribution of water in such city, town or district.

MUNICIPAL CHARGES LIEN

General Laws Chapter 40, § 58

Section 58. Any city or town may impose a lien on real property located within the city or town for any local charge or fee that has not been paid by the due date, said lien shall be known as the "municipal charges lien"; provided, that a separate vote at a town meeting, or by a city or town council is taken for each type of charge or fee.

A municipal charges lien authorized under this section shall take effect upon the recording of a list of unpaid municipal charges and fees by parcel of land and by the name of the person assessed for the charge or fee in the registry of deeds of the county or district where the land subject to the lien lies.

If a charge or fee which is secured by a municipal charges lien remains unpaid when the assessors are preparing a real estate tax list and warrant to be committed under section fifty-three of chapter fifty-nine, the board or officer in charge of the collection of the municipal charge or fee, or the town collector of taxes, if applicable under section thirty-eight A of chapter forty-one, shall certify such charge or fee to the assessors, who shall forthwith add such charge or fee to the tax on the property to which it relates and commit it with their warrant to the collector of taxes as part of such tax.

If the property to which such charge or fee relates is tax exempt, such charge or fee shall be committed as the tax. A lien under this section may be discharged by filing a certificate from the tax collector that all municipal charges or fees constituting the lien, together with any interest and costs thereon, have been paid or legally abated. All costs of recording or discharging a lien under this section shall be borne by the owner of the property.

MUNICIPAL FINES

General Laws Chapter 40U

Section 1. "Municipal hearing officer", a person appointed by the appointing authority of a municipality to conduct hearings of alleged code violations pursuant to this chapter.

"Unpaid charge", an unpaid fine incurred as a result of a violation of a rule, regulation, order, ordinance or by-law related to the use of property for short-term rental use or regulating a housing, sanitary or municipal snow and ice removal requirement.

Section 2. This chapter shall take effect in a municipality upon its acceptance.

Section 3. A municipality that adopts this chapter shall, in the manner provided in this chapter adopt procedures for the payment of the municipal fines provided in this chapter and may revoke or rescind any such acceptance.

Section 4. The adoption of procedures for the payment of certain municipal fines under this chapter shall be by majority vote of the city council or town meeting

Section 5. A municipality shall by ordinances and by-laws provide for the removal of snow and ice from sidewalks within such portions of the municipality as they consider expedient by the owner of land abutting such sidewalks. Such ordinances and by-laws shall determine the time and manner of removal and shall affix penalties, not exceeding \$200, for each such violation. Such ordinances and by-laws shall be specific as to the width of the area to be cleared and the standards for clearance.

Section 6. A municipality shall appoint a municipal hearing officer. The officer shall hear appeals of violation notices issued within the municipality. The municipal hearing officer may be the same person appointed as a municipal hearing officer pursuant to chapter 148A.

Section 7. A municipality may implement a system for the administrative disposition of noncriminal violations pursuant to section 21D of chapter 40.

Section 8. Every officer and inspector who takes notice of a violation of a rule, regulation, order, ordinance or by-law regulating the housing, sanitary or snow and ice removal requirement shall provide the offender with a notice forthwith, which shall be in tag form, to appear before the municipal hearing officer or the hearings officer's designee during regular office hours, not later than 21 days after the date of such violation. All tags shall be prepared in triplicate or by the use of an automated ticketing device and shall be pre-numbered.

Section 9. The tag shall be affixed securely to the building or, for a building with an onsite professionally-managed property office, delivered to the office during normal business hours and shall contain, but shall not be limited, to: the date, time and place of the violation, the specific violation charged, the name and badge number of the officer or inspector and his division, a schedule of payment for established fines and instructions for return of the tag.

Section 10. Within 3 business days after completion of each shift, the officer or inspector shall give to his superior those copies of each notice of a violation issued during such shift. The superior shall retain and preserve 1 copy and shall, not later than the beginning of the next business day after receipt of the notice, deliver another copy to the municipal hearing officer before whom the offender has been notified to appear, unless the ticket was produced by an automated ticketing device, in which case no duplicate copies need be retained. The municipal hearing officer shall maintain a docket of all such notices to appear.

Section 11. The municipality shall, by ordinance or by-law, establish a schedule of fines for violations subject to this chapter committed within the municipality; provided, however, that all such fines shall be uniform for the same offense committed in the same zone or district, if any. A fine established under this chapter shall not exceed the maximum allowable amount under the relevant sections of the housing or sanitary code or municipal snow and ice removal requirement, excluding late fees.

Section 12. Where a notice of violation is issued for a code violation, the alleged violator, within 21 days, shall return the notice of violation by mail, personally or by an authorized person, to the municipal hearing officer and shall either: (1) pay in full the scheduled fine by check, postal note, money order or other legal tender; or (2) request a hearing before the municipal hearing officer. Each violation issued shall contain a statement explaining the procedure to adjudicate the violation by mail. Any amounts paid shall be payable to the municipality. If a fine remains unpaid for 21 days and no hearing has been requested, a letter shall be sent to the property owner of record's mailing address and, if appropriate to the local individual or property management company responsible for the maintenance of the property, with a processing fee of not more than \$10, notifying him that the fine shall be paid within 30 days after receipt of that notice unless within 14 days of receiving that notice the property owner requests a hearing before the municipal hearing officer and swears in writing under the pains and penalties of perjury that the property owner did not receive the notice of violation. If the fine remains unpaid after that 30 day period, additional penalties and interest may be attached. Thereafter, any fine and additional penalties and interest that may be attached and which remain unpaid shall become an additional assessment on the property owner's tax bill. Such amount and cost relative thereto may also be a lien upon such real estate as provided in section 42B of chapter 40. A municipality's determination of whether to place a lien on the property may involve the number of and the dollar amount of the violations on the property. The property owner of record shall be notified by certified mail of the lien on the property. No lien shall be removed without notice from the tax collector that all such matters have been disposed of in accordance with law. Additional charges equal to the amount required to file the lien and the amount required to release the lien shall be assessed against the owner of record for the purpose of ensuring that all costs associated with filing and release are recovered.

Section 13. Any person notified to appear before the municipal hearing officer, as provided herein may, without waiving the right to a hearing provided by this chapter and without

waiving judicial review as provided in section 14 of chapter 30A, challenge the validity of the violation notice and receive a review and disposition of the violation from the municipal hearing officer by mail. The alleged violator may, upon receipt of the notice to appear, send a signed statement of objections to the violation notice as well as signed statements from witnesses, police officers, government officials and other relevant parties. Photographs, diagrams, maps and other documents may also be sent with the statements. Any statements or materials sent to the municipal hearing officer for review shall have attached the person's name and complete address as well as the ticket number and the date of the violation. The municipal hearing officer shall, within 21 days after receipt of such material, review the material and dismiss or uphold the violation and notify the alleged violator by mail of the disposition of the hearing. If the outcome of the hearing is against the alleged violator, the municipal hearing officer shall explain the reasons for the outcome on the notice. Such review and disposition conducted by mail shall be informal, the rules of evidence shall not apply and the decision of the municipal hearing officer shall be final, subject to any hearing provisions provided by this chapter or to judicial review as provided in said section 14 of said chapter 30A.

Section 14. Notwithstanding section 21D of chapter 40, a person who desires to contest a violation of any ordinance or by-law of a municipality alleged in a notice to appear, pursuant to violations issued by a municipality in accordance with said section 21D of said chapter 40, shall request in writing a hearing before a municipal hearing officer. The notice to appear shall be in the format specified in said section 21D of said chapter 40, except that the third copy of the notice shall be submitted to the municipal hearing officer unless the ticket was produced by an automated ticketing device.

If the alleged violator requests a hearing before the municipal hearing officer in a timely manner, the municipal hearing officer shall schedule a hearing not later than 45 days after receiving the hearing request. The municipal hearing officer shall duly notify the alleged violator of the date, time and location of the hearing. Hearings shall be held on at least 2 evenings each month. When a hearing notice is sent, the alleged violator shall be given an opportunity to request a rescheduled hearing date. The municipal hearing officer so designated shall not be an employee or officer of the department associated with the issuance of the notice of violation.

The municipal hearing officer shall receive annual training in the conduct of administrative hearings. The hearing and disposition shall be informal and shall follow the rules set forth in chapter 30A. Rules for judicial proceedings shall not apply. In conducting the hearing, the municipal hearing officer shall determine whether the violation occurred and whether it was committed by the person notified to appear.

Section 15. A person aggrieved by a decision of the municipal hearing officer may appeal to the district court, housing court or other court of competent jurisdiction pursuant to section 21D of chapter 40, on a form provided by the municipality, and shall be entitled to a de novo hearing before a clerk magistrate of the court. The court shall consider such appeals under a civil standard. The aggrieved person shall file the appeal within 10 days after receiving notice of the decision from the municipal hearing officer who conducted the hearing.

Section 16. Any person who has received a notice of violation issued in accordance with this chapter who, within the prescribed time, fails to pay the same or fails to request a hearing before the municipal hearing officer or who fails to appear at the time and place of

the hearing, shall be deemed responsible for the violation as stated in the notice of violation. Such finding of responsibility shall be considered prima facie evidence of the violation in a civil proceeding regarding that violation and shall be admissible as evidence in a subsequent criminal proceeding. If a person fails to appear at the scheduled hearing without good cause, the appeal shall be dismissed and the violator shall waive any further right of appeal. If the condition which caused the notice of violation to issue continues to exist, the finding of responsibility may also be used by a municipality as prima facie evidence of the existence of a violation in any proceeding to suspend or revoke any license, permit or certificate issued by such municipality relative to that building, structure or premises pending the correction of the condition.

Section 17. All fines, penalties or assessments in actions under this chapter shall be paid to the general fund of the municipality.

Section 18. In a municipality that has accepted this chapter, this chapter shall supersede any local ordinances or by-laws to the contrary.

MUNICIPAL REVENUES

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.

GIFTS AND GRANTS

General Laws Chapter 44, § 53A

Section 53A. An officer or department of any city or town, or of any regional school or other district, may accept grants or gifts of funds from the federal government and from a charitable foundation, a private corporation, or an individual, or from the commonwealth, a

county or municipality or an agency thereof, and in the case of any grant or gift given for educational purposes may expend said funds for the purposes of such grant or gift with the approval of the school committee, and in the case of any other grant or gift may expend such funds for the purposes of such grant or gift in cities having a Plan D or Plan E form of government with the approval of the city manager and city council, in all other cities with the approval of the mayor and city council, in towns with the approval of the board of selectmen, and in districts with the approval of the prudential committee, if any, otherwise the commissioners. In the case of grants from the federal government or from the commonwealth, a county or municipality or agency or instrumentality thereof, upon receipt of an agreement from the grantor to provide advance payment or reimbursement to the city, town or district, the officer or department may spend the amount of the advance payment, or the amount to be reimbursed, for the purposes of the grant, subject to the approvals required by this section. Any advance payment or reimbursement shall be applied to finance the grant expenditures; provided, however, that any expenditures outstanding at the close of the fiscal year after the fiscal year in which the grantor approved the agreement shall be reported by the auditor or accountant of the city, town or district, 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. Notwithstanding the provisions of section fifty-three, any amounts so received by an officer or department of a city, town or district shall be deposited with the treasurer of such city, town or district and held as a separate account and may be expended as aforesaid by such officer or department receiving the grant or gift without further appropriation. If the express written terms or conditions of the grant agreement so stipulate, interest on the grant funds may remain with and become a part of the grant account and may be expended as part of the grant by such officer or department receiving the grant or gift without further appropriation. Any grant, subvention or subsidy for educational purposes received by an officer or department of a city, town or school district from the federal government may be expended by the school committee of such city, town or district without including the purpose of such expenditure in, or applying such amount to, the annual or any supplemental budget or appropriation request of such committee; provided, however, that this sentence shall not apply to amounts so received to which section twenty-six C of chapter seventy-one of the General Laws, and chapter six hundred and twenty-one of the acts of nineteen hundred and fifty-three, as amended, and chapter six hundred and sixty-four of the acts of nineteen hundred and fifty-eight, as amended, apply; and, provided further, that notwithstanding the foregoing provision, this sentence shall apply to amounts so received as grants under the Elementary and Secondary Education Act of 1965, (Public Law 89-10). After receipt of a written commitment from the federal government approving a grant for educational purposes and in anticipation of receipt of such funds from the federal government, the treasurer, upon the request of the school committee, shall pay from the General Fund of such municipality compensation for services rendered and goods supplied to such federal grant programs, such payments to be made no later than ten days after the rendition of such services or the supplying of such goods; provided, however, that the provisions of such federal grant would allow the treasurer to reimburse the General Fund for the amounts so advanced.

ENTERPRISE FUNDS

General Laws Chapter 44, § 53F¹/₂

Section 53F¹/₂. Notwithstanding the provisions of section fifty-three or any other provision of law to the contrary, a city or town which accepts the provisions of this section may establish a separate account classified as an "Enterprise Fund", for a utility, cable television public access, health care, recreational or transportation facility, and its operation, as the city or town may designate, hereinafter referred to as the enterprise. Such account shall be maintained by the treasurer, and all receipts, revenues and funds from any source derived from all activities of the enterprise shall be deposited in such separate account. The treasurer may invest the funds in such separate account in the manner authorized by sections fifty-five and fifty-five A of chapter forty-four. Any interest earned thereon shall be credited to and become part of such separate account. The books and records of the enterprise shall be maintained in accordance with generally accepted accounting principles and in accordance with the requirements of section thirty-eight.

No later than one hundred and twenty days prior to the beginning of each fiscal year, an estimate of the income for the ensuing fiscal year and a proposed line item budget of the enterprise shall be submitted to the mayor, board of selectmen or other executive authority of the city or town by the appropriate local entity responsible for operations of the enterprise. Said board, mayor or other executive authority shall submit its recommendation to the town meeting, town council or city council, as the case may be, which shall act upon the budget in the same manner as all other budgets.

The city or town shall include in its tax levy for the fiscal year the amount appropriated for the total expenses of the enterprise and an estimate of the income to be derived by the operations of the enterprise. If the estimated income is less than the total appropriation, the difference shall be added to the tax levy and raised by taxation. If the estimated income is more than the total appropriation, the excess shall be appropriated to a separate reserve fund and used for capital expenditures of the enterprise, subject to appropriation, or to reduce user charges if authorized by the appropriate entity responsible for operations of the enterprise. If during a fiscal year the enterprise incurs a loss, such loss shall be included in the succeeding fiscal year's budget.

If during a fiscal year the enterprise produces a surplus, such surplus shall be kept in such separate reserve fund and used for the purposes provided therefor in this section.

For the purposes of this section, acceptance in a city shall be by vote of the city council and approval of the mayor, in a town, by vote of a special or annual town meeting and in any other municipality by vote of the legislative body.

A city or town which has accepted the provisions of this section with respect to a designated enterprise may, in like manner, revoke its acceptance.

FILING CERTIFICATES; RELEASING LIENS, ETC

General Laws Chapter 60, § 23

Section 23. The collector of taxes for any city, or for any town having more than five thousand inhabitants, as determined by the last preceding national or state census, shall, on written application by any person, and within ten days thereafter, excluding Saturdays, Sundays and holidays, furnish to such applicant a certificate of all taxes and other assessments, including water rates and charges, and charges due to municipal lighting plants, under the provisions of sections fifty-eight B to fifty-eight F, inclusive, of chapter one hundred and sixty-four which at the time constitute liens on the parcel of real estate specified in such application and are payable on account of such real estate. The collector of taxes for any town having five thousand inhabitants or less as determined by the last preceding national or state census shall, on written application by any person, and within twenty days thereafter, excluding Saturdays, Sundays and holidays, furnish to such applicant such a certificate. Such certificate shall be itemized and shall show the amounts then payable on account of all such taxes and assessments, rates and charges, so far as such amounts are fixed and ascertained, and if the same are not then ascertainable, it shall so be expressed in the certificate. Any town officer or board doing any act toward establishing any such tax, assessment, lien or charge upon any real estate in the town shall transmit a notice of such act to the collector of taxes. Such collector of taxes shall charge twenty-five dollars for each certificate so issued, and the money so received shall be paid into the city or town treasury. The collector of taxes for any town having fewer than five thousand inhabitants as determined by the last preceding national census may, if permitted by local by-law, keep such certificate fee for his personal services. A certificate issued on or after January first, nineteen hundred and eighty-one, under this section may be filed for record or registration, as the case may be, within one hundred and fifty days after its date, and if so filed shall operate to discharge the parcel of real estate specified from the liens for all taxes, assessments, or portions thereof, rates and charges which do not appear by said certificate to constitute liens thereon, except taxes, assessments, or portions thereof, rates and charges with respect to which there has been filed for record or registration evidence of a taking or a sale by the municipality or concerning which a statement or order creating or continuing such lien has been so filed under any provision of law, if said lien can be discharged by the recording or registration of an instrument other than a certificate under this section; but a certificate issued under this section shall not affect the obligation of any person liable for the payment of any tax, assessment, rate, or charge by reason of being the assessed owner of such parcel of real estate at the time any such lien became effective. The register of deeds as such or as assistant recorder of the land court shall receive and record or register such certificate upon the payment of a fee of \$50.

No register of deeds or assistant recorder of the land court shall accept for recording or registration, as the case may be, a definitive subdivision plan unless it is accompanied by a municipal lien certificate, indicating that all taxes, assessments, and charges then assessed against the land shown on the plan have been paid in full. Failure to comply with this section shall not affect the validity of the subdivision plan, the recording of the plan, or any deed of any part or all of the land shown on the plan.

DEEDS ACCEPTED BY MUNICIPALITIES IN LIEU OF FORECLOSURE; TAXES

General Laws Chapter 60, § 77C

Section 77C. Cities and towns, acting through their legislative bodies, may accept a deed, in which all persons who have an interest in title join as grantors, in lieu of foreclosure to

any parcel of land within the city or town which meet the requirements set forth in this section. Upon acceptance and recording of that deed, any real estate taxes and other municipal charges and liens shall be treated as having been paid, and shall be accounted for by the city or town in the same manner as if a tax title foreclosure had been completed. The procedure provided for in this section shall apply only to property upon which there are no other liens or encumbrances other than the liens of the city or town. No grantor under this section may purchase or otherwise acquire from the city or town any parcel of land acquired by the city or town under this section.

ASSESSMENT AND TAXATION OF AGRICULTURAL AND HORTICULTURAL LAND SPECIAL OR BETTERMENT ASSESSMENTS; PAYMENT; INTEREST

General Laws Chapter 61A, § 18

Section 18. Land qualifying for valuation, assessment and taxation under this chapter shall be subject to special assessments or betterment assessments to such pro rata extent as the service or facility financed by such assessment is used for improving the agricultural or horticultural use capability of said land or for the personal benefit of the owner thereof. Any such assessment shall, however, upon application, be suspended during the time the land is in agricultural or horticultural use and shall become due and payable as of the date when the use of such land is changed. In the event only a portion of a tract of land which benefits from a suspension of payment is changed from such use, the assessment shall become due and payable as of the date when the use was changed only to the extent of and in the proportion that the frontage of such portion bears to the street frontage of the entire tract of land which originally benefited from a suspension of payment. Upon full payment of a portion of a suspended assessment, the tax collector may dissolve the lien for the assessment insofar as it affects the portion of the land changed from agricultural or horticultural use. The lien for the portion of the original assessment which remains unpaid shall continue and remain in full force and effect until dissolved in accordance with law. A request for such release shall be made in writing to the tax collector, and shall be accompanied by a plan and such other information as is required in the case of a request for a division of an assessment pursuant to section fifteen.

Payment of the assessment and interest on it shall be made in accordance with section 13 of chapter 80, but any interest shall be computed from the date of the change in use.

ROOM OCCUPANCY EXCISE: LOCAL EXCISE TAX

General Laws Chapter 64G, § 3A

Section 3A. A city or town that accepts this section may impose a local excise upon the transfer of occupancy of a room in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel located within that city or town by an operator at a rate of not more than 6 per cent of the total amount of rent for each such occupancy; provided, however, that the city of Boston may impose such local excise upon the transfer of occupancy of a room in a bed and breakfast establishment, hotel, lodging house, short-term rental or motel located within the city by an operator at the rate of not more than 6.5 per cent of the total amount of rent of each such occupancy. No excise shall be imposed if the

total amount of rent is less than \$15 per day or its equivalent or if the accommodation is exempt under section 2. An operator shall pay the local excise imposed under this section to the commissioner at the same time and in the same manner as the excise due to the commonwealth. All sums received by the commissioner under this section as excise, penalties or forfeitures, interest, costs of suit and fines shall at least quarterly be distributed, credited and paid by the state treasurer upon certification of the commissioner to each city or town that has adopted this section in proportion to the amount of such sums received from the transfer of occupancy in each such city or town. Acceptance of this section shall be: (i) by a majority vote of the city council with the approval of the mayor in the case of a city with a mayor elected to serve as the chief executive officer of the city; (ii) by a majority vote of the city council in every other city; (iii) by a majority vote of the annual town meeting or a special meeting called for that purpose in the case of a municipality with a town meeting form of government; or (iv) by a majority vote of the town council in the case of a municipality with a town council form of government. This section shall take effect on the first day of the calendar quarter following 30 days after its acceptance or on the first day of a later calendar quarter as the city or town may designate. The city or town, in accepting this section, shall not revoke or otherwise amend the applicable local tax rate more often than once in a 12-month period.

The commissioner shall make available to a city or town requesting such information the total amount of room occupancy tax collected in the preceding fiscal year in the city or town requesting the information.

ROOM OCCUPANCY EXCISE: COMMUNITY IMPACT FEES

General Laws Chapter 64G, § 3D

Section 3D. (a) A city or town that accepts section 3A may, by a separate vote and in the same manner of acceptance as set forth in said section 3A, impose a community impact fee of not more than 3 per cent of the total amount of rent upon each transfer of occupancy of a professionally managed unit that is located within that city or town.

(b) A city or town that votes to impose a community impact fee under subsection (a) may, by a separate additional vote and in the same manner of acceptance as set forth in section 3A, also impose the community impact fee upon each transfer of occupancy of a short-term rental unit that is located within a two-family or three-family dwelling that includes the operator's primary residence.

(c) An operator shall pay the community impact fees imposed under this section to the commissioner at the same time and in the same manner as the excise due to the commonwealth under section 3. All sums received by the commissioner under this section as excise, penalties or forfeitures, interest, costs of suit and fines shall, not less than quarterly, be distributed, credited and paid by the state treasurer upon certification of the commissioner to the city or town. A city or town shall dedicate not less than 35 per cent of the community impact fees collected under this section to affordable housing or local infrastructure projects.

LIEN STATUS OF ASSESSMENT; DURATION OF LIEN

General Laws Chapter 80, § 12

Section 12. Assessments made under this chapter shall constitute a lien upon the land assessed. The lien shall take effect upon the recording of the order stating that betterments are to be assessed for the improvement. Notwithstanding any other provision of this section or chapter eighty-three, if a county, city, town, or district elects to send notice to the owner of the land assessed indicating the amount of the assessment for the betterment, and said owner pays the amount due, no lien shall be recorded. The assessors shall indicate on the next tax bill that the amount of the betterment assessment has been paid and no further notation or demand shall be made on land so assessed. Except as otherwise provided, such lien shall terminate at the expiration of two years from October first in the year in which the assessment is first placed on the annual tax bill under section thirteen or, if an assessment has been apportioned, from October first in the year in which the last portion is so placed upon the annual tax bill, whichever is later, if in the meantime in either case the estate has been alienated and the instrument alienating the same has been recorded. If there is no recorded alienation within such period, the lien shall continue until there is a recorded alienation. If the validity of an assessment made under this chapter is called in question in any legal proceeding to which the board which made the assessment or the body politic for the benefit of which it was made is a party, instituted prior to the expiration of the lien therefor, the lien shall continue until one year after the validity of the assessment is finally determined, even though an alienation be recorded in the meantime. If at any time while a lien established by this section is in force, a sale or taking cannot in the opinion of the collector be legally made because of any federal or state law or because of any injunction or other action of, or proceeding in, any federal or state court or because of the action of any administrative body, the lien shall, if the statement provided for in section thirty-seven A of chapter sixty is filed, continue as provided in said section thirty-seven A, subject, however, to any lawful action under any paramount authority conferred by the constitution or laws of the United States or the constitution of the commonwealth. If the time for payment of an assessment is extended under section thirteen A or under any general or special law, the lien shall, if the statement provided for in section thirty-seven A of chapter sixty is filed, continue as provided in said section thirty-seven A. A lien under this section may be dissolved by filing for record in the registry of deeds of the county or district where the land subject to the lien lies a certificate, in a form approved by the commissioner of revenue, from the collector of taxes that the assessment, constituting the lien, together with any interest and costs thereon, has been paid or legally abated. The collector of taxes shall charge four dollars for each certificate so issued, and the money so received shall be paid into the town treasury.

CHARGE FOR USE OF SEWERS

General Laws Chapter 83, § 16

Section 16. The aldermen of any city or the sewer commissioners, selectmen or road commissioners of a town, may from time to time establish just and equitable annual charges for the use of common sewers and main drains and related stormwater facilities, which shall be paid by every person who enters his particular sewer therein. The money so received may be applied to the payment of the cost of maintenance and repairs of such sewers or of any debt contracted for sewer purposes. In establishing quarterly or annual charges for the use of main drains and related stormwater facilities, the city, town, or

district may either charge a uniform fee for residential properties and a separate uniform fee for commercial properties or establish an annual charge based upon a uniform unit method; but, the charge shall be assessed in a fair and equitable manner. The annual charge shall be calculated to supplement other available funds as may be necessary to plan, construct, operate and maintain stormwater facilities and to conduct stormwater programs. The city, town or district may grant credits against the amount of the quarterly or annual charge to those property owners who maintain on-site functioning retention/detention basins or other filtration structures as approved by the stormwater utility, conservation commission, or other governmental entity with appropriate authority.

CERTIFICATE OF ACCEPTANCE; EFFECT; RECORDATION

General Laws Chapter 83, § 16A

Section 16A. If the rates and charges due to a city, town, municipality, or sewer district, which accepts this section and sections sixteen B to sixteen F, inclusive, and by its clerk, files a certificate of such acceptance in the proper registry of deeds, and files a copy of said certificate with the collector of taxes of the city or town in which the lien hereinafter mentioned is to take effect, for supplying or providing for a sewer system or rendering service or furnishing materials in connection therewith to or for any real estate at the request of the owner or tenant are not paid on or before their due date as established by local regulations, ordinances or by-laws, which due date shall be so established as to require payments at least as often as annually, such rates and charges, together with interest thereon and costs relative thereto, shall be a lien upon such real estate as provided in section sixteen B. The register of deeds shall record such certificate of acceptance in a book to be kept for the purpose, which shall be kept in an accessible location in the registry. Sections sixteen B to sixteen F, inclusive, shall also apply to a sewer district which has accepted sections sixteen A to sixteen F, inclusive, and whose clerk has so filed the certificate of acceptance. Wherever in said sections the words "board or officer in charge of the sewer department" or their equivalent appear, they shall also mean and include the officers exercising similar duties in any city, town or district. A fire or water district authorized to provide a sewer system shall, for the purposes of sections sixteen A to sixteen F, inclusive, be deemed to be a sewer district.

RECORDING OF STATEMENTS; ASSESSMENT LIENS

General Laws Chapter 83, § 27

Section 27. Whenever the aldermen of a city or the sewer commissioners, selectmen or road commissioners of a town lay out or determine to construct a sewer or drain in a public way, or in a way opened or dedicated to the public use which has not become a public way, or adopt an order for the establishment or reconstruction of a sidewalk for such a way, and assessments may be made or charges imposed under this chapter for the construction of such improvement or the use thereof, they shall forthwith cause to be recorded in the registry of deeds of the county or district in which such city or town is situated a statement of their action, which shall specify the ways in which such sewer, drain or sidewalk is located. All assessments made or charges imposed under this chapter upon land which abuts upon any such way in which such sewer, drain or sidewalk is located shall constitute

a lien upon such land from the time such statement is recorded and all charges authorized by section sixteen shall from the time of assessment constitute a lien upon the land connected with the common sewer. Liens under this section shall continue for the same period and under the same conditions as a lien established under chapter eighty.

**DEMOLITION OR REMOVAL OF BUILDING OR
STRUCTURE OR SECURING OF VACANT LAND;
OWNER'S LIABILITY
General Laws Chapter 139, § 3A**

Section 3A. If the owner or his authorized agent fails to comply with an order issued pursuant to section three and the city or town demolishes or removes any burnt, dangerous or dilapidated building or structure or secures any vacant parcel of land from a trespass, a claim for the expense of such demolition or removal, including the cost of leveling the lot to uniform grade by a proper sanitary fill, or securing such vacant parcel shall constitute a debt due the city or town upon the completion of demolition, removal, or securing and the rendering of an account therefor to the owner or his authorized agent, and shall be recoverable from such owner in an action of contract.

Any such debt, together with interest thereon at the rate of six per cent per annum from the date such debt becomes due, shall constitute a lien on the land upon which the structure is or was located if a statement of claim, signed by the mayor or the board of selectmen, setting forth the amount claimed without interest is filed, within ninety days after the debt becomes due, with the register of deeds for record or registration, as the case may be, in the county or in the district, if the county is divided into districts, where the land lies. Such lien shall take effect upon the filing of the statement aforesaid and shall continue, unless dissolved by payment or abatement, until such debt has been added to or committed as a tax pursuant to this section, and thereafter, unless so dissolved, shall continue as provided in section 37 of chapter 60; provided, however, that if any such debt is not added to or committed as a tax pursuant to this section for the next fiscal year commencing after the filing of the statement, then the lien shall terminate on October 1 of the third year next following the date of such filing. If the debt for which such a lien is in effect remains unpaid when the assessors are preparing a real estate tax list and warrant to be committed under section fifty-three of chapter fifty-nine, the mayor or the board of selectmen, or the town collector of taxes, if applicable under section thirty-eight A of chapter forty-one, shall certify such debt to the assessors, who shall forthwith add such debt to the tax on the property to which it relates and commit it with their warrant to the collector as part of such tax. If the property to which such debt relates is tax exempt, such debt shall be committed as the tax. Upon commitment as a tax or part of a tax, such debt shall be subject to the provisions of law relative to interest on the taxes of which they become, or, if the property were not tax exempt would become, a part; and the collector of taxes shall have the same powers and be subject to the same duties with respect to such debts as in the case of annual taxes upon real estate, and the provisions of law relative to the collection of such annual taxes, the sale or taking of land for the non-payment thereof, and the redemption of land so sold or taken shall, except as otherwise provided, apply to such claims. A lien under this section may be discharged by filing with the register of deeds for record or registration, as the case may be, in the county or in the district, if the county is divided into districts, where the land lies, a certificate from the collector of the city or town that the debt constituting

the lien, together with any interest and costs thereon, has been paid or legally abated. All costs of recording or discharging a lien under this section shall be borne by the owner of the property.

TAXATION AND BETTERMENT ASSESSMENTS; LIEN

General Laws Chapter 183A, § 14

Section 14. Each unit and its interest in the common areas and facilities shall be considered an individual parcel of real estate for the assessment and collection of real estate taxes but the common areas and facilities, the building and the condominium shall not be deemed to be a taxable parcel. Except as provided in section 53E3/4 of chapter 44 and section 127B1/2 of chapter 111, betterment assessments or portions thereof, annual sewer use charges, water rates and charges and all other assessments, or portions thereof, rates and charges of every nature due to a city, town or district with respect to the condominium or any part thereof, other than real estate taxes, may be charged or assessed to the organization of unit owners; provided, however, that any lien of the city, town or district provided by law therefor shall attach to the units in proportion to the percentages, set forth in the master deed on record, of the undivided interests of the respective units in the common areas and facilities.

AN ACT REGULATING TRANSPORTATION NETWORK COMPANIES

Chapter 187 of the Acts of 2016

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Subsection (a) of section 172 of chapter 6 of the General Laws, as amended by section 3 of chapter 10 of the acts of 2015, is hereby further amended by adding the following clause:-

(33) The department of public utilities and its departments or divisions may obtain from the department all available criminal offender record information, as defined in section 167, to determine the suitability of an applicant to obtain a transportation network driver certificate pursuant to chapter 159A½. Information obtained pursuant to this section shall not be disseminated for any purpose other than to further public protection and safety.

SECTION 2. Chapter 25 of the General Laws is hereby amended by adding the following section:-

Section 23. (a) There shall be established within the department a division that shall be under the general supervision and control of the commission and shall be under the control of a director. The division shall promulgate rules and regulations and shall perform such functions as necessary for the administration, implementation and enforcement of chapter 159A½.

(b) To fund the division's activities, the division shall assess a surcharge on each transportation network company, as defined in section 1 of chapter 159A½. Each transportation network company shall annually report by March 31 its intrastate operating revenues for the previous calendar year to the division. The surcharge shall be apportioned according to each transportation network company's intrastate operating revenues as

determined and certified annually by the division in order to reimburse the commonwealth for funds expended for the division's activities. If a transportation network company fails to report its intrastate operating revenues to the division by March 31, the division may estimate a transportation network company's intrastate operating revenues to assess the surcharge.

Each transportation network company shall pay the surcharge not later than 30 days from the date of the notice of the surcharge amount from the division. Failure to pay the surcharge within 30 days may, at the discretion of the division, constitute cause to suspend or revoke a transportation network company permit pursuant to chapter 159A½.

Funds that are not expended in a fiscal year for the operation of the division shall be credited against the surcharge to be made the following fiscal year and the surcharge amount in the following fiscal year shall be reduced by the unexpended amount.

SECTION 3. Section 7A of chapter 90, as appearing in the 2014 Official Edition, is hereby amended by inserting after the sixth paragraph the following paragraph:-

The registrar shall establish rules and regulations, in consultation with the division established in section 23 of chapter 25, providing for an inspection of transportation network vehicles operated under a certificate issued pursuant to chapter 159A½. Such inspections shall be in addition to the emissions testing requirements and the periodic staggered inspection as required by this section; provided however, that the transportation network vehicle inspection shall be available at the same time as the emissions testing and the periodic staggered inspection. At a minimum, and subject to other requirements that the registrar may establish, such inspections shall ensure that the safety mechanisms of the vehicle are fully functioning and shall include a review of the vehicle's braking system and suspension.

SECTION 4. The General Laws are hereby amended by inserting after chapter 159A the following chapter:-

CHAPTER 159A½.

TRANSPORTATION NETWORK COMPANIES.

Section 1. As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

"Background check clearance certificate", verification issued by the division to a transportation network company and driver applicant, electronically or otherwise, that a driver applicant successfully completed the background check required under section 3 and is suitable to provide transportation network services.

"Cruising", the driving of a vehicle on the streets, alleys or public places of motorized travel in search of or soliciting hails from a person in the street.

"Department", the department of public utilities.

"Digital network", any online-enabled application, software, website or system offered or utilized by a transportation network company that enables pre-arranged rides with transportation network drivers.

"Division", the division established in section 23 of chapter 25.

"Pre-arranged ride", a period of time that begins when a transportation network driver accepts a requested ride through a digital network, continues while the driver transports the transportation network company rider and ends when the rider safely departs from the vehicle.

"Transportation network company", a corporation, partnership, sole proprietorship or other entity that uses a digital network to connect riders to drivers to pre-arrange and provide transportation.

“Transportation network company permit” or “permit”, a document that may be issued by the division to a qualifying transportation network company pursuant to this chapter.

“Transportation network driver” or “driver”, a driver certified by a transportation network company.

“Transportation network driver certificate” or “driver certificate”, an authorization to provide transportation network services issued by the transportation network company to a transportation network driver.

“Transportation network rider” or “rider”, a passenger in a pre-arranged ride provided by a transportation network driver, provided that the passenger personally arranged the ride or an arrangement was made on the rider’s behalf.

“Transportation network services” or “services”, the offering or providing of pre-arranged rides for compensation or on a promotional basis to riders or prospective riders through the transportation network company’s digital network, covering the period beginning when a transportation network driver is logged onto the transportation network company’s digital network and is available to receive a pre-arranged ride or while in the course of providing a pre-arranged ride.

“Transportation network vehicle” or “vehicle”, a vehicle that is used by a transportation network driver to provide transportation network services.

Section 2. (a) The division shall have jurisdiction over transportation network companies to ensure the safety and convenience of the public, as expressly set forth in this chapter.

(b) In consultation with the registry of motor vehicles, the division shall provide for the establishment of removable decals to be issued by transportation network companies, in a form and manner prescribed by the division, to transportation network drivers to designate a vehicle as a transportation network vehicle for law enforcement and public safety purposes. The decal shall be applied to both the front and back panels of a vehicle at all times while the vehicle is providing transportation network services. A transportation network driver who provides transportation network services using the digital network of more than 1 transportation network company shall display the respective decals for each transportation network company while the vehicle is providing transportation network services. A transportation network driver who ceases to be certified to provide transportation network services for any reason shall return the decal within 14 days of that cessation to the respective transportation network company in the manner and form prescribed by the division.

(c) In consultation with the commissioner of insurance, the division shall implement the insurance policy requirements established in section 228 of chapter 175.

(d) A transportation network company shall provide clear and conspicuous transportation fare estimates to riders at all times, including during surge pricing, high volume and high demand times. Fare estimates shall include a clear rate estimate or the amount of the price increase resulting from surge pricing or increased demand.

(e) A transportation network company and driver shall not raise base fares during a federal or a governor-declared state of emergency.

(f) In consultation with state police, local law enforcement and the registry of motor vehicles, the division shall ensure the safety and annual inspection of transportation network vehicles, including a transportation network vehicle inspection pursuant to section 7A of chapter 90. A transportation network driver shall obtain a transportation network vehicle inspection at the driver’s next annual emissions testing or within 12 months of obtaining a transportation network driver certificate, whichever comes first.

(g) The division shall ensure the accommodation of riders with special needs. A transportation network company shall not impose additional charges or increase fares when providing services to persons with disabilities and all transportation network drivers shall

comply with applicable laws, rules and regulations relating to the accommodation of service animals.

(h) A transportation network company shall not be subject to the department's rate or common carrier requirements pursuant to chapters 159, 159A or 159B.

(i) A transportation network company shall provide a driver's name, picture and the license plate number of the vehicle in use to a rider on any digital network used to facilitate a pre-arranged ride.

(j) In consultation with the division, the Massachusetts Department of Transportation's highway division shall provide for the issuance of electronic toll transponders set at the commercial vehicle rate to be issued by transportation network companies to transportation network drivers. The electronic toll transponders shall be used each time a transportation network driver provides transportation network services on a toll road, bridge or tunnel; provided, however, that the issuance of an electronic toll transponder pursuant to this subsection shall not prohibit a transportation network driver from establishing or maintaining an electronic toll transponder account for personal use.

(k) In consultation with the division, a transportation network company shall provide its ride data to the Massachusetts Department of Transportation and the department shall cross-reference that data with its toll data to ensure that tolls incurred by a driver providing transportation network services through a digital network are paid at the commercial rate through the pay by plate system and through the electronic transponder system.

(l) A transportation network company shall notify the division upon receipt of information that a driver utilizing its network has violated a law or rule or regulation related to the provision of transportation network services or that the driver is not suitable to provide transportation network services.

(m) If, after the division issued a background check clearance certificate, the division is notified by a transportation network company, law enforcement or government entity that a driver is unsuitable and the division verifies the unsuitability, the division shall immediately revoke or suspend the background check clearance certificate and shall notify the driver and each transportation network company who issued the driver a driver certificate that the background check clearance certificate has been revoked or suspended. The division shall issue rules and regulations to establish a process for a driver to appeal a revocation or suspension. The rules or regulations shall include an opportunity for a hearing.

A driver aggrieved by a final order or decision of the division pursuant to this subsection or subsection (d) of section 3 may institute proceedings for judicial review in the superior court within 30 days after receipt of such order or decision. Any proceedings in the superior court shall, insofar as applicable, be governed by section 14 of chapter 30A, and may be instituted in the superior court for the county: (i) where the parties or any of them reside or have their principal place of business within the commonwealth; (ii) where the division has its principal place of business; or (iii) of Suffolk. The commencement of such proceedings shall not, unless specifically ordered by the court, operate as a stay of the division's order or decision.

Section 3. (a) All transportation network companies and transportation network drivers shall provide services in the form of a pre-arranged ride using a digital network. A driver providing transportation network services shall not solicit, accept, arrange or provide transportation in another manner, including cruising unless otherwise authorized by law.

(b) A transportation network company shall apply for a permit to be issued and annually renewed by the division. No transportation network company shall operate without a permit issued to it by the division.

(c) No application for a permit may be granted or renewed unless the division determines that the rendering of transportation network services by the applicant is

consistent with the public interest. At a minimum, each applicant for a permit shall verify the following:

(i) that the applicant has an oversight process in place to ensure that the applicant and every transportation network driver using the transportation network company's digital network possesses adequate insurance coverage, as required by this chapter and section 228 of chapter 175, and otherwise complies with all laws, rules and regulations concerning transportation network vehicles and drivers;

(ii) that the applicant has an oversight process in place to ensure that each driver using the applicant's digital network has, pursuant to section 4, successfully completed a background check, maintains a valid background check clearance certificate, is a suitable driver and has a transportation network driver certificate;

(iii) that the digital network used by the applicant to pre-arrange rides employs a clear and conspicuous explanation of the total cost and pricing structure applicable to each pre-arranged ride before the ride begins;

(iv) that transportation network companies and drivers do not use excessive minimum or base rates;

(v) that the applicant has an oversight process in place to ensure that tolls incurred by a driver providing transportation network services through its digital network are paid at the commercial rate including the utilization of the electronic toll transponder issued pursuant to subsection (j) of section 2 and the data cross-reference pursuant to subsection (k) of said section 2;

(vi) that the applicant has an oversight process in place to ensure that the applicant and drivers using the applicant's digital network accommodate riders with special needs, including riders requiring wheelchair accessible vehicles, in all areas served by transportation network companies, comply with all applicable laws regarding nondiscrimination against riders or potential riders and ensure the accommodation of riders with special needs including, but not limited to, all applicable laws, rules and regulations relating to the accommodation of service animals;

(vii) that the applicant has a process in place to ensure that it shall: (1) maintain and update, pursuant to regulations promulgated by the division, a roster of each transportation network driver certified by the applicant to provide pre-arranged rides using the transportation network company's digital network; (2) upon request and with appropriate legal process, provide those rosters to the division, the registry of motor vehicles and to state and local law enforcement; (3) maintain and update those rosters as required by the division; (4) comply with all requests for information from the division regarding the roster, including verification of completion of a background check as required pursuant to clause (ii);

(viii) that the applicant has established a toll-free customer service hotline that shall be capable of responding to consumer, driver and rider questions and complaints and that the hotline number shall be conspicuously posted along with the hours of operation on the applicant's website and within the applicant's digital network application;

(ix) that the applicant has established procedures governing the safe pickup, transfer, and delivery of individuals with visual impairments and individuals who use mobility devices, including but not limited to wheelchairs, crutches, canes, walkers, and scooters; and

(x) that the applicant has an oversight process in place to ensure that transportation network drivers with vehicles registered outside of the commonwealth meet the requirements of this chapter.

(d) After obtaining the information required under clause (ii) of subsection (c) of section 4, the division shall determine whether the driver applicant has committed an offense that would disqualify the driver applicant from providing transportation network

services, according to the division's rules, orders and regulations. The division shall determine if the driver applicant is suitable and, if determined to be suitable, shall provide the transportation network company and the driver applicant with a background check clearance certificate. The division shall conduct a background check pursuant to clause (ii) of subsection (c) of section 4 not less than annually. If the division finds that a driver is not suitable under the annual background check, the division shall notify the driver and each relevant transportation network company that the background check clearance certificate is revoked or suspended.

(e) The division shall calculate and the secretary of administration and finance shall determine, pursuant to section 3B of chapter 7, the cost associated with the division's review of an application for a transportation network company permit, for renewal of the permit and to issue background check clearance certificates. The division may charge the transportation network company a reasonable fee to cover the costs.

Section 4. (a) A driver who seeks to utilize the digital network of a transportation network company to provide pre-arranged rides shall apply to a transportation network company for a transportation network driver certificate. A person shall not provide transportation network services in the commonwealth without a valid background check clearance certificate and a transportation network driver certificate. The transportation network driver certificate shall be in a form prescribed by the division which shall include the name, picture of the driver and the license plate number of the vehicle in use and shall post a certificate for each transportation network company that has certified the driver in a location in the vehicle that is visible to the rider while transportation network services are being provided. A transportation network company shall not issue a transportation network driver certificate to a driver applicant unless the transportation network company has verified that the driver has received a background check clearance certificate from the division.

(b) At a minimum, and subject to such other requirements as the division may establish by regulation, a transportation network company shall only issue a transportation network driver certificate to a driver who:

- (i) is at least 21 years of age;
- (ii) has access to a vehicle that has been registered in the commonwealth and inspected pursuant to section 7A of chapter 90 and regulations promulgated under said section 7A of said section 90 at a facility licensed by the registry of motor vehicles; or has access to a vehicle that has been registered in another state, and the vehicle complies with the inspection requirement of the state where the vehicle is registered;
- (iii) complies with insurance requirements established in this chapter or in section 228 of chapter 175;
- (iv) provides notice to all insurers of the vehicle that the applicant intends to use the vehicle to provide transportation network services;
- (v) is determined to be suitable to perform transportation network services pursuant to subsections (c) and (d);
- (vi) does not appear on the National Sex Offender Registry;
- (vii) has not had a conviction in the past 7 years for: (1) a sex offense or violent crime as defined in section 133E of chapter 127; (2) a crime under section 24 of chapter 90 or been assigned to an alcohol or controlled substance education, treatment or rehabilitation program by a court; (3) leaving the scene of property damage or personal injury caused by a motor vehicle; (4) felony robbery; or (5) felony fraud; and
- (viii) has a driving record that does not include more than 4 traffic violations or any major traffic violation, as defined by the division of insurance, in the preceding 3 year period.

(c) Prior to providing transportation network services, a driver applicant shall be subject to a 2-part background check process to determine if the driver applicant is suitable. The transportation network company shall: (i) conduct a background check and disqualify applicants on the basis of a suitability standard to be determined in regulations promulgated by the division; and (ii) submit identifying information regarding an applicant to the division, which shall refer that information to the department of criminal justice information services, which shall obtain all available criminal offender record information, as defined in section 167 of chapter 6, and pursuant to section 172 of said chapter 6 and sex offender registry information.

(d) Not less than 2 times per year, the transportation network company shall conduct a background check pursuant to clause (i) of subsection (c) and shall immediately remove a driver from its digital network if the driver is found not suitable pursuant to the suitability standards to be determined in regulations promulgated by the division.

(e) The transportation network company shall immediately suspend a transportation network driver's certificate, and notify the division of the suspension, upon learning of and verifying a driver's arrest for a crime or a driver's citation for a driving infraction that would render the driver unsuitable to provide transportation network services. A transportation network company shall report such suspension, in a form and manner prescribed by the division, to the division, which shall ensure all transportation network companies that certified that driver take appropriate action. Any such suspension may be limited to the period of time necessary to determine whether continued provision of transportation network services by the driver is consistent with the public interest.

(f) In accordance with this section, the division shall quarterly audit the driver certification and criminal background check processes of a transportation network company. Non-compliance with this section shall constitute cause for the division to suspend or revoke a transportation network company permit pursuant to section 6.

Section 5. (a) Each transportation network company shall carry adequate insurance, as required by this chapter and section 228 of chapter 175, for each vehicle being used to provide transportation network services through a transportation network company's digital network.

(b) A transportation network driver shall carry adequate insurance for each vehicle being used to provide transportation network services in association with a transportation network driver's certificate and shall carry proof of adequate insurance, as required by section 228 of chapter 175, at all times while providing transportation network services. In the event of an incident giving rise to personal injury or property damage, a transportation network driver shall provide insurance coverage information to directly interested parties, automobile insurers and law enforcement. Upon request, a transportation network driver shall disclose to directly interested parties, automobile drivers, automobile insurers and law enforcement whether the driver was providing transportation network services at the time of the incident.

(c) Automobile liability insurance providers offering coverage to a transportation network company or transportation network driver to comply with subsection (a) or (b) shall recognize that a driver is a transportation network driver who uses a vehicle to transport riders for compensation and cover the driver while the driver is logged on to the transportation network company's digital network or while the driver is engaged in a pre-arranged ride.

(d) A transportation network company shall disclose, in writing, to a prospective transportation network driver, before certifying the driver to provide transportation network services through the transportation network company's digital network: (i) the insurance coverage, including the types of coverage and the limits for each coverage, that the transportation network company provides while the transportation network driver

provides transportation network services; and (ii) a statement that the transportation network driver's own automobile insurance policy may not provide coverage while the driver is providing transportation network services, depending on the terms of the policy.

(e) In a claims coverage investigation, a transportation network company, a transportation network driver and an insurer responding to a claim involving transportation network services shall disclose to each other a clear description of the coverage, exclusions and limits provided under an automobile insurance policy maintained under this section and shall cooperate to facilitate the exchange of relevant information with directly involved parties including, but not limited to, the precise times that a transportation network driver logged on and off of the transportation network company's digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident.

Section 6. (a) If the division determines, after notice and a hearing, that a transportation network company is in violation of this chapter or any rule or regulation promulgated under this chapter, the division shall issue a monetary penalty, suspend or revoke a transportation network company permit or take other action that the division deems necessary. In determining the amount of the monetary penalty, the division shall consider, without limitation, the size of the transportation network company based on a transportation network company's intrastate operating revenues for the previous calendar year, the gravity of the violation including noncompliance with the payment of commercial rate tolls as required in clause (v) of subsection (c) of section 3, the degree to which the transportation network company exercised good faith in attempting to achieve compliance or to remedy non-compliance and previous violations by the transportation network company cited by the division.

The division shall issue rules and regulations to establish a process for administrative appeal of any penalty, suspension or revocation imposed in accordance with this section.

(b) Any party aggrieved by a final order or decision of the division pursuant to this section may institute proceedings for judicial review in the superior court within 30 days after receipt of such order or decision. Any proceedings in the superior court shall, insofar as applicable, be governed by the provisions of section 14 of chapter 30A, and may be instituted in the superior court for the county (i) where the parties or any of them reside or have their principal place of business within the commonwealth; (ii) where the division has its principal place of business; or (iii) of Suffolk. The commencement of such proceedings shall not, unless specifically ordered by the court, operate as a stay of the division's order or decision.

Section 7. (a) A driver providing transportation network services who is not in compliance with subsection (b) of section 2 or sections 4 or 5 shall be deemed to have committed a civil motor vehicle infraction, as defined in section 1 of chapter 90C. State or local law enforcement officials may issue a citation for any such violation in the manner provided for in said chapter 90C. If the driver is cited under this subsection, every transportation network company that allows the driver to provide transportation network services shall be subject to a fine of \$500.

(b) A driver providing transportation network services who knowingly or willfully allows another individual to use that driver's certificate or identity to provide transportation network services or a driver who is using a transportation network driver certificate belonging to another individual or is misrepresenting a driver's identity to riders or potential riders by means of a digital network shall be punished by a fine of not more than \$500 for a first offense, by a fine of not more than \$750 for a second offense and by a fine of not more than \$1,000 or by imprisonment in the house of correction for not more than 6 months for a third or subsequent offense.

(c) A driver who violates section 3 or any other person who, by soliciting, accepting, arranging or providing transportation network services in any other manner, including through street hails, cruising or street solicitations, shall be deemed to have committed a civil motor vehicle infraction, as defined in section 1 of chapter 90C. State or local law enforcement officials may issue a citation for any such violation in the manner provided for in said chapter 90C to the transportation network driver and may assess a fine of \$500.

(d) A driver who fails to produce proof of a transportation network driver certificate and a background check clearance certificate upon request by law enforcement shall be punished by a fine of not more than \$100 for a first offense, by a fine of not more than \$500 for a second offense and not more than \$1,000 for a third or subsequent offense.

Section 8. (a) The division shall require a transportation network company to maintain certain records, in addition to the records required by clause (vii) of subsection (c) of section 3 including, but not limited to, records pertaining to incidents reported to the transportation network company relative to a driver or rider, records pertaining to accessibility and records pertaining to pricing; provided, however, that the division shall issue guidelines on the content and maintenance of incident reports. A transportation network company shall retain the incident reports for not less than 7 years. Each transportation network company or applicant for a transportation network company permit shall furnish all information and documents related to the condition, management and operation of the company upon the division's request; provided, however, that any such request shall be reasonably related to the requirements set forth in this chapter and the rules and regulations promulgated under this chapter. The failure to maintain or furnish information to the division within a timeline to be determined by the division may, at the discretion of the division, constitute cause to not issue, suspend or revoke a transportation network company permit pursuant to section 6.

(b) A transportation network company shall provide to the division a detailed monthly accounting of driver and passenger complaints received under clause (viii) of subsection (c) of section 3 and the actions the company has taken, if any, to resolve said complaints.

(c) In response to a specific complaint alleging criminal conduct against any transportation network company driver or passenger, a transportation network company shall, upon request and after being served with appropriate legal process, provide information to a requesting law enforcement agency necessary to investigate the complaint, as determined by the law enforcement agency.

Transportation network companies shall, after being served with appropriate legal process, provide information related to an alleged criminal incident including, but not limited to, trip specific details regarding origin and destination, length of trip, GPS coordinates of route, driver identification and, if applicable, information reported to the transportation network company regarding the alleged criminal activity by a driver or passenger, to the appropriate law enforcement agency upon receipt of a specific complaint alleging criminal conduct against any transportation network company driver or passenger.

(d) Any record furnished to the division shall exclude information identifying drivers or riders, unless the division explains, in writing, to the transportation network company why the information is necessary for the enforcement processes established in this chapter.

(e) Any record furnished to the division or other state agency by a transportation network company pursuant to this chapter including, but not limited to, the roster of permitted transportation network drivers, shall not be considered a public record as defined in clause Twenty-sixth of section 7 of chapter 4 or chapter 66. An application for a transportation network company permit submitted pursuant to this chapter shall be a public record as defined in said clause Twenty-sixth of said section 7 of said chapter 4 or said chapter 66; provided, however, that such an application may be withheld from disclosure,

in whole or in part, for reasons set forth in said clause Twenty-sixth of said section 7 of said chapter 4 or said chapter 66.

Section 9. Nothing in this chapter shall require a transportation network company to issue a driver certificate to a driver applicant who meets the requirements of this chapter or prevent the transportation network company from suspending, revoking or otherwise terminating a driver from its digital network.

Section 10. Except where expressly set forth in this chapter, no municipality or other local or state entity, except the Massachusetts Port Authority, may: (i) impose a tax on or require any additional license for a transportation network company, a transportation network driver or a vehicle used by a transportation network driver where the tax or licenses relate to facilitating or providing pre-arranged rides; (ii) require any additional license for a transportation network company or transportation network driver; or (iii) subject a transportation network company to the municipality's or other local or state entity's rates or other requirements, including but not limited to entry or operational requirements; provided, however, that a municipality or other local or state entity may regulate traffic flow and traffic patterns to ensure public safety and convenience.

Section 11. The division shall promulgate regulations necessary for the implementation, administration and enforcement of this chapter.

SECTION 5. Section 168 of chapter 175, as appearing in the 2014 Official Edition, is hereby amended by inserting after the word "liability", in lines 23 and 24, the following words:- , with the exception of motor vehicle policies for transportation network vehicles,.

SECTION 6. Said chapter 175 is hereby further amended by adding the following section:-

Section 228. (a) As used in this section, the words "digital network", "division", "pre-arranged ride" and "transportation network company" shall have the same definitions as set forth in section 1 of chapter 159A½ unless the context clearly requires otherwise.

(b) The insurance requirements in this section shall constitute adequate insurance for transportation network drivers and shall satisfy the financial responsibility requirement for a motor vehicle established by section 34A of chapter 90 and section 113L; provided, however, that the insurance requirements in this section shall only satisfy the financial responsibility requirements for a motor vehicle established by said section 34A of said chapter 90 and said section 113L with respect to the provision of transportation network services in a vehicle operated by a transportation network driver. A transportation network driver shall also comply with said section 34A of said chapter 90 and said section 113L and maintain insurance coverage for the vehicle during those periods of time when the vehicle is being operated, but is not providing transportation network services.

(c) A transportation network driver who is logged onto the transportation network company's digital network and is available to receive transportation requests, but is not engaged in a pre-arranged ride shall have automobile liability insurance that provides per occurrence, per vehicle coverage amounting to at least \$50,000 of coverage per individual for bodily injury, \$100,000 of total coverage for bodily injury, \$30,000 of coverage for property damage, uninsured motorist coverage, to the extent required by said section 113L, and personal injury protection, to the extent required by section 34A of chapter 90. The insurance may be held by the transportation network driver, the transportation network company or a combination thereof.

(d) When a transportation network driver is engaged in a pre-arranged ride, the driver shall have automobile liability insurance that provides at least \$1,000,000 in per occurrence, per vehicle coverage for death, bodily injury and property damage, uninsured motorist coverage, to the extent required by section 113L, and personal injury protection, to the extent required by section 34A of chapter 90. The insurance may be held by the

transportation network driver, the transportation network company, or a combination thereof.

(e) In every instance where insurance maintained by a transportation network driver to fulfill the insurance requirements in subsections (c) and (d) has lapsed, failed to provide the required coverage, denied a claim for the required coverage or otherwise ceased to exist, insurance maintained by a transportation network company shall provide the coverage required by said subsections (c) and (d), beginning with the first dollar of a claim, and shall have the duty to investigate and defend that claim.

(f) Coverage under an automobile insurance policy maintained by the transportation network company shall not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurer be required to first deny a claim.

(g) Insurance required by this section shall be placed with an insurer authorized to do business in the commonwealth or, if such coverage is not available, from any admitted carrier, then with a surplus lines insurer eligible pursuant to section 168.

(h) Insurers that write automobile insurance may exclude any and all coverage afforded under the policy issued to an owner or operator of a vehicle for any loss or injury that occurs while a driver is providing transportation network services or while a driver provides a pre-arranged ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy including, but not limited to: (i) liability coverage for bodily injury and property damage; (ii) personal injury protection coverage as defined in section 34A of chapter 90; (iii) uninsured and underinsured motorist coverage; (iv) medical payments coverage; (v) comprehensive physical damage coverage; and (vi) collision physical damage coverage.

Such exclusions shall apply notwithstanding any requirement of said section 34A of said chapter 90 and section 113L. Nothing in this section implies or requires that a personal automobile insurance policy provide coverage while the transportation network driver is logged on to the transportation network company's digital network, while the transportation network driver is engaged in a pre-arranged ride or while the transportation network driver otherwise uses a vehicle to transport riders for compensation.

Nothing shall preclude an insurer from providing coverage for the transportation network driver's vehicle if the insurer so chooses to do so by contract or endorsement.

Automobile insurers that exclude the coverage described in this section shall not have a duty to defend or indemnify any claim expressly excluded by a policy. Nothing in this section shall invalidate or limit an exclusion contained in a policy, including any policy in use or approved for use in the commonwealth before the enactment of this section that excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public. An automobile insurer that defends or indemnifies a claim against a transportation network driver that is excluded under the terms of its policy shall have a right of contribution against other insurers that provide automobile insurance to the same transportation network driver in satisfaction of the coverage requirements of this section at the time of loss.

(i) The commissioner of insurance, in consultation with the division of transportation network companies established in section 23 of chapter 25, shall issue an annual report concerning the coverage minimums required for transportation network vehicles during the period of time where the transportation network driver is logged onto the digital network but is not engaged in a pre-arranged ride. The report shall include, at a minimum: (i) an examination, based on actuarial data, of whether the existing coverage requirements provide adequate protection for riders, transportation network drivers and the general public; (ii) whether it is presently feasible for a transportation network company to obtain an insurance policy providing coverage of \$1,000,000 per occurrence, per vehicle during the relevant time period; (iii) if such a policy is available, whether the coverage minimums

should be raised so that all transportation network vehicles carry \$1,000,000 of coverage per occurrence, per vehicle, at all times while operating as a transportation network company; (iv) whether a strategy can be developed to raise the coverage requirements during this period through the use of admitted motor vehicle insurance carriers, the surplus lines market and technological innovations in the insurance industry such as the use of telematics to improve risk assessment; and (v) any recommended action by the division of insurance, the division of transportation network companies established in said section 23 of said chapter 25, the legislature or other government entity that would encourage the insurance market to provide policies with higher insurance limits while transportation network companies are not engaged in a pre-arranged ride.

The commissioner of insurance shall file an annual report detailing any recommendations together with actuarial analysis with the clerks of the senate and house of representatives, the chairs of the house and senate committees on ways and means and the chairs of the joint committee on financial services not later than February 15.

SECTION 7. There shall be a ride for hire task force established to review the current laws, regulations and local ordinances governing licensed hackneys, taxis, livery and transportation network companies in the commonwealth and to make recommendations concerning public safety, consumer protection and the economic fairness and equity of the regulatory structure governing the ride for hire industry.

The task force shall be comprised of the following members or their designees: the director of the division that oversees transportation network companies established in section 23 of chapter 25; the commissioner of insurance; the secretary of transportation; the secretary of public safety and security; 2 members of the house of representatives, 1 of whom shall be appointed by the minority leader; 2 members of the senate, 1 of whom shall be appointed by the minority leader; and 6 persons to be appointed by the governor, 1 of whom shall be a representative of the Disability Law Center, Inc., 1 of whom shall be a representative of the Massachusetts Municipal Association, Inc., 1 of whom shall be a representative of the Massachusetts Chiefs of Police Association Incorporated, 1 of whom shall be a representative of the transportation network companies, 1 of whom shall be a representative of the hackney and taxi industry and 1 of whom shall be a member of the livery industry.

As part of the task force's review, the task force shall consider:

(i) the feasibility of establishing a Massachusetts Accessible Transportation Fund credited with annual surcharges from ride for hire companies that do not, as determined by the task force, provide sufficient wheelchair-accessible service;

(ii) potential methods for allowing ride for hire vehicles to engage in "surge pricing" based on supply and demand that conform to the practice of "surge pricing" that is currently utilized by transportation network companies;

(iii) expanding the oversight of ride for hire companies' compliance during insurance claims investigations arising from traffic accidents, including an examination of whether there is a need for greater involvement of the division of insurance or attorney general's office in order to ensure that ride for hire companies are not unnecessarily furtive in providing information during discovery;

(iv) whether the practice of depositing funds with the state treasurer's office in lieu of procuring a motor vehicle liability policy or bond, as permitted by section 34D of chapter 90 of the General Laws, should be abolished for ride for hire vehicles or abolished for vehicles altogether;

(v) whether there should be a limit on the number of transportation network company digital networks that a transportation network driver may be connected to at a time to protect rider and public safety;

(vi) the potential impact of autonomous cars in the ride for hire industry, including the possible effect that autonomous cars may have on vehicle safety and fairness to existing drivers;

(vii) the environmental impacts that the provision of transportation network services may have and the feasibility of incentivizing the use of zero emission vehicles in the ride for hire industry;

(viii) an examination of the automobile financing programs offered by transportation network companies to transportation network drivers in order to determine whether the programs are predatory in nature;

(ix) the feasibility of transportation network companies providing within their user interface an emergency safety alert feature, which may include an option to connect a call to the police, the sending of alerts about trip and driver to local authorities, contact information for the company's incident response team and the sending of automated messages to preselected emergency contacts that details the trip and allows for real time global positioning system monitoring;

(x) the establishment of municipal licensing commissions to regulate development and oversight of the local ride for hire industry;

(xi) any other matters which the task force finds may improve public safety, consumer protection and economic fairness in the ride for hire industry;

(xii) the sufficiency of current motor vehicle liability policy minimums for licensed hackneys, taxis and livery;

(xiii) an examination of transportation networks' policies on fees charged to riders for cancelled rides and occasions when the rider is late to meet a transportation network driver at the pre-arranged pick-up location;

(xiv) easing regional restrictions on taxi service by allowing taxi medallion owners to pick up non-hail customers via smart phone application outside of the borders of the licensing municipality;

(xv) allowing medallion owners to set meter rates lower than rates established by the licensing municipality as long as the rates are clearly disclosed in advance to the customer; and

(xvi) examining and making recommendations on ways in which the division established under section 23 of chapter 25 can make statistical reports relative to the number and type of incidents reported to transportation network companies relating to drivers and riders.

The ride for hire task force shall file a report, which shall include its findings along with recommendations and accompanying proposed legislation, not later July 1, 2017 with the clerks of the senate and house of representatives, who shall forward the report to the house and senate chairs of the joint committee on financial services, the house and senate chairs of the joint committee on transportation and the house and senate chairs of the joint committee on public safety and homeland security.

SECTION 8. (a) There shall be a Transportation Infrastructure Enhancement Trust Fund. The director of the division within the department of public utilities established in section 23 of chapter 25 of the General Laws shall be the trustee of the fund and shall expend money in the fund to address the impact of transportation network services, as defined in section 1 of chapter 159A½ of the General Laws. There shall be credited to the fund: (i) any per-ride assessment collected pursuant to subsection (b); and (ii) any interest earned on money in the fund. Amounts credited to the fund shall be expended by the director pursuant to subsection (c) without further appropriation. Money remaining in the fund at the end of a fiscal year shall not revert to the General Fund.

(b) Annually, not later than February 1, each transportation network company shall submit to the director of the division established in section 23 of chapter 25 the number of

rides from the previous calendar year that originated within each city or town and a per-ride assessment of \$0.20. A transportation network company shall not charge a transportation network rider or a transportation network driver, as defined in section 1 of chapter 159A½, for the cost of the per-ride assessment. Not later than June 30, the director shall post on the division's website the aggregate number of rides from the previous calendar year originating within each city or town.

(c) The division shall: (i) proportionately distribute ½ of the amount received from the fund to a city or town based on the number of rides from the previous calendar year that originated within that city or town to address the impact of transportation network services on municipal roads, bridges and other transportation infrastructure or any other public purpose substantially related to the operation of transportation network services in the city or town including, but not limited to, the complete streets program established in section 1 of chapter 90I of the General laws and other programs that support alternative modes of transportation; (ii) distribute ¼ of the amount collected to the Massachusetts Development Finance Agency established in section 2 of chapter 23G of the General Laws to provide financial assistance to small businesses operating in the taxicab, livery or hackney industries to encourage the adoption of new technologies and advanced service, safety and operational capabilities and support workforce development; and (iii) distribute ¼ of the amount collected to the Commonwealth Transportation Fund established in section 2ZZZ of chapter 29 of the General Laws.

(d) Annually, a city or town receiving money from the Transportation Infrastructure Enhancement Trust Fund shall submit a report to the director of the division not later than December 31 detailing the projects and the amount used or planned to be used for transportation-related projects as described in subsection (c). The director shall compile the reports and post the projects and amounts of money used on the website of the division.

SECTION 9. Section 8 is hereby amended by striking out subsection (c) and inserting in place thereof the following subsection:-

(c) The division shall: (i) proportionately distribute ½ of the amount collected to a city or town based on the number of rides from the previous calendar year that originated within that city or town to address the impact of transportation network services on municipal roads, bridges and other transportation infrastructure or any other public purpose substantially related to the operation of transportation network services in the city or town including, but not limited to, the complete streets program established in section 1 of chapter 90I of the General Laws and other programs that support alternative modes of transportation; and (ii) distribute ½ of the amount collected to the Commonwealth Transportation Fund established in section 2ZZZ of chapter 29 of the General Laws.

SECTION 10. Section 8 is hereby repealed.

SECTION 11. The Massachusetts Port Authority, established in section 2 of chapter 465 of the acts of 1956, may not permit a transportation network vehicle that is not registered as a livery vehicle to accept a prearranged ride through a digital network at the General Edward Lawrence Logan International Airport terminal until such time as the authority promulgates rules for the operation of transportation network vehicles, consistent with federal regulations, to ensure the safety of passengers and effective operation of transportation services to and from the airport.

SECTION 12. The Massachusetts Convention Center Authority may establish rules for the operation of transportation network company vehicles and taxicabs at the Boston convention and exhibition center, including, but not limited to, regulating traffic flow, including pickup locations, and traffic patterns to ensure public safety and convenience.

SECTION 13. Notwithstanding chapter 159A½ of the General Laws, all transportation network drivers and transportation network companies operating in the commonwealth prior to the promulgation of regulations issued by the division created in section 23 of

chapter 25 of the General Laws may continue to provide transportation network services, but shall apply for all permits and certificates required under chapter 159A½ of the General Laws not less than 120 days after the effective date of the division's regulations.

SECTION 14. Not later than August 1, 2017, the department of public utilities and the registry of motor vehicles shall submit a report to the clerks of the senate and house of representatives examining the feasibility of: (i) conducting statewide criminal offender record information checks for each operator of a ride for hire vehicle; and (ii) establishing a statewide roster of all livery and taxicab drivers, along with a convenient means for municipalities to notify the division of any livery or taxicab drivers registered within their municipality, including reciprocal reporting between municipalities and the department regarding any driving infractions, criminal convictions, suspension or ban of all livery drivers and taxicab drivers on the statewide roster.

SECTION 15. The division of the department of public utilities established in section 23 of chapter 25 of the General Laws shall promulgate regulations to implement chapter 159A½ of the General Laws not later than 12 months after the effective date of this act.

SECTION 16. The registrar of motor vehicles shall establish rules and regulations for the transportation network vehicle inspection required under the seventh paragraph of section 7A of chapter 90 of the General Laws not more than 180 days after the effective date of this act.

SECTION 17. Section 9 shall take effect on January 1, 2022.

SECTION 18. Section 10 shall take effect on January 1, 2027.

Approved, August 5, 2016



Informational Guideline Release

Bureau of Accounts
Informational Guideline Release (IGR) No. 19-10
May, 2019

OTHER POST-EMPLOYMENT BENEFITS LIABILITY TRUST FUND

([G.L. c. 32B, §§ 20](#) and [20A](#))

This Informational Guideline Release (IGR) informs local officials about changes made by the Municipal Modernization Act in the Other Post-employment Benefits (OPEB) Trust Fund. The IGR also explains the finance provisions of the fund, including the procedure required to create a fund.

Topical Index Key:

Accounting Policies and Procedures
Appropriations
Budgets
Financial Management
Special Funds

Distribution:

Accountants/Auditors
Treasurers
Mayors/Selectboards
Managers/Administrators/Exec. Secys.
Finance Directors
School Superintendents
City Solicitors/Town Counsels

OTHER POST-EMPLOYMENT BENEFITS LIABILITY TRUST FUND

(G.L. c. 32B, §§ 20 and 20A)

SUMMARY:

These guidelines explain the municipal finance provisions of the Other Post-employment Benefits Liability Trust Fund (OPEB Fund) under [G.L. c. 32B, § 20](#) and [20A](#), as amended by Sections 15 and 238 of the Municipal Modernization Act (Act), [Chapter 218 of the Acts of 2016](#).

The Act amended local acceptance G.L. c. 32B, § 20 to address a number of issues about the nature of the fund. These included whether the statute authorized local governmental units to create a trust fund for monies reserved for retiree health insurance and other post-employment benefits that complies with legal requirements for trusts and with Governmental Accounting Standards Board (GASB) standards. Under the amendments, the statute:

1. Establishes the OPEB Fund as a trust fund with a trustee and declaration of trust;
2. Requires that assets of the OPEB Fund be held solely to meet the current and future liabilities of the governmental unit for group health insurance benefits for retirees and their dependents;
3. Establishes procedures for the appointment of a trustee, adoption of a declaration of trust and appropriations of funds into and out of the OPEB Fund;
4. Defines housing authorities, redevelopment authorities, regional councils of government, regional school districts and educational collaboratives as political subdivisions and governmental entities able to establish OPEB trust funds; and
5. Allows a governmental unit to participate in the OPEB fund of another governmental unit.

These guidelines explain the method of acceptance of the statute, procedures to be followed to establish the OPEB Fund, custodial and trust requirements, investment standards, procedures for appropriating funds into and out of the OPEB Fund and accounting and reporting requirements.

An OPEB Fund established by a city, town, district or municipal light plant under a special act or [G.L. c. 32B, § 20](#) before the November 7, 2016 effective date of the Act continues to operate under the terms originally established unless the governmental unit accepts or reaccepts [G.L. c. 32B, § 20](#) after that date. Upon acceptance or reacceptance, the OPEB Fund will operate under the terms of [G.L. c. 32B, § 20](#), as amended by the Act.

BUREAU OF ACCOUNTS

MARY JANE HANDY, DIRECTOR

However, the actuarial reporting requirements found in [G.L. c. 32B, § 20A](#), which was added by the Act, apply to any OPEB Fund established under [G.L. c. 32B, § 20](#) regardless of the date of the governmental unit's acceptance of [G.L. c. 32B, § 20](#) and apply to an OPEB Fund established by a special act unless otherwise provided in the special act.

GUIDELINES:

I. LOCAL ACCEPTANCE

A. Acceptance Procedure

1. Eligible Governmental Units

A city, town, county, district, regional school district, municipal lighting plant, local housing or redevelopment authority, regional council of government established under [G.L. c. 34B, § 20](#) and educational collaborative as defined in [G.L. c. 40, § 4E](#), may accept [G.L. c. 32B, § 20](#) and establish an OPEB Fund. [G.L. c. 32B, § 20\(a\)](#). Governmental units considering acceptance of [G.L. c. 32B, § 20](#) should consult with their financial advisors and municipal counsel regarding the establishment and implementation of an OPEB Fund.

A governmental unit with an OPEB Fund established by special act or with an OPEB Fund established under [G.L. c. 32B, § 20](#) before November 7, 2016 may accept or reaccept [G.L. c. 32B, § 20](#) after November 7, 2016. Upon acceptance or reacceptance, the unit's OPEB fund will operate under the amended [G.L. c. 32B, § 20](#). Otherwise, the OPEB Fund will continue under the terms the fund was originally established, not the amended [G.L. c. 32B, § 20](#). [G.L. c. 32B, § 20\(m\)](#). [Section 238 of Chapter 218 of the Acts of 2016](#). Governmental units with such OPEB Funds should consult with their financial and accounting advisors and municipal counsel regarding whether to accept or reaccept [G.L. c. 32B, § 20](#).

2. Acceptance Vote

A governmental unit accepts the amended [G.L. c. 32B, § 20](#) by:

- a. In a city or town, in the manner provided in [G.L. c. 4, § 4](#), vote of the legislative body, subject to the charter of the city or town;
- b. In a county, vote of the county commissioners;
- c. In a regional school district, vote of the regional school committee; or
- d. In a district or other governmental unit, vote of the district meeting or other appropriating body.

[G.L. c. 32B, § 20\(l\)](#). (See attached Sample Vote 1 - Acceptance.)

B. Effective Date

An OPEB Fund is established upon acceptance, unless the acceptance vote designates a later time.

C. Revocation of Acceptance

A governmental unit cannot revoke its acceptance. There is no revocation procedure in the statute. In addition, [G.L. c. 4, § 4B](#), which generally establishes a procedure for cities and towns to revoke their acceptance of local option statutes, does not apply to actions taken under [G.L. c. 32B, G.L. c. 4, § 4B\(c\)](#).

D. Notification of Acceptance

The clerk of the governmental unit must notify the Division of Local Services (DLS) Data Analytics and Resource Bureau if the unit accepts [G.L. c. 32B, § 20](#). (For notification form, please go to DLS [“Notification of Acceptance of Local Option Statutes” webpage](#).) The notification should be made as soon as possible after the votes.

II. OPEB FUND

A. Purpose

An OPEB Fund is a trust fund established by a governmental unit for the deposit of appropriations, gifts, grants and other funds for the:

1. Benefit of retired employees and their dependents;
2. Payment of required contributions by the governmental 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 governmental unit for those benefits.

Group health insurance benefits may include hospital, surgical, medical, dental and other health insurance benefits if the governmental unit offers that coverage to retirees.

B. Expendable Trust Fund

An OPEB Fund is an expendable trust fund, subject to appropriation, that is managed by a trustee or board of trustees. The assets of the trust are held solely to meet the current and future liabilities of the governmental unit for group health insurance benefits for retirees and their dependents.

All monies in the OPEB Fund must be accounted for separately from other funds of the governmental unit and are not subject to the claims of any general creditor of the governmental unit.

C. Custodian

The treasurer of the governmental unit is the custodian of the OPEB Fund and must be bonded in any additional amounts required to protect fund assets.

D. Governing Body

The governing body of a governmental unit is the:

1. Legislative body in a city or town;
2. County commissioners in a county;
3. Regional district school committee in a regional school district; or
4. District meeting or other appropriating body in any other governmental unit.

E. Chief Executive Officer

The chief executive officer of a governmental unit is the:

1. Mayor in a city or selectboard in a town, unless the charter designates another municipal officer as the chief executive officer;
2. County commissioners in a county;
3. Regional district school committee of a regional school district; or
4. Governing board, commission or committee in a district or other governmental unit.

F. Trustee

1. Designation of Trustee by Governing Body

The governing body of the governmental unit may by majority vote designate as trustee of the OPEB Fund:

- a. The treasurer of the governmental unit;
- b. The retirement board of the governmental unit; or
- c. An independent board of trustees it establishes as follows:

(1) Number of Trustees and Membership

The OPEB Fund board of trustees must have 5 to 13 members. The board must include (a) one or more individuals with investment experience as specified by the governing body, (b) one or more citizens of the governmental unit, (c) one employee of the governmental unit, (d) one or more retirees of the governmental unit, and (e) one or more officers of the governmental unit.

(2) Selection of Trustees

The governmental unit employee trustee is selected by current employees of the unit by ballot and the retiree trustees are selected by current retirees of the unit by ballot. All other trustees are appointed by the chief executive officer of the governmental unit.

(3) Term of Office

The trustees serve for terms of three or five years, as determined by the governing body. If a vacancy occurs, a trustee may be elected or selected in the same manner to serve for the remainder of the term. Trustees are eligible for reappointment.

(See attached Sample Vote 2 - Establishing Independent Board of Trustees.)

2. Trustee in Absence of Governing Body Designation

The treasurer of the governmental unit is the trustee of the OPEB Fund if the governing body does not designate a trustee.

3. Powers and Duties of Trustee or Board of Trustees

a. Trustee as Fiduciary

The trustee or board of trustees must:

- (1) Act in a fiduciary capacity for the primary purpose of enhancing the value of the OPEB Fund;
- (2) Act with the care, skill, prudence and diligence under the circumstances 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 at that time; and
- (3) 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.

b. Trustee as Investing Authority

The trustee or board of trustees is the investing authority and has general supervision of the management, investment and reinvestment of the OPEB Fund using the investment standard or investment vehicle described in Section II-I below.

c. Power to Employ Investment Consultants

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 OPEB Fund, if authorized by majority vote of the governing body. See Section II-J-1 below. (See attached Sample Vote 3 – To Authorize Trustee of OPEB Fund to Employ Investment Consultants.)

d. Other Duties and Obligations

Any other duties and obligations of the trustee or board of trustees must be set forth in a declaration of trust to be adopted by the trustee or board of trustees. All duties and obligations established by the declaration of trust must be consistent with [G.L. c. 32B, § 20](#). See Section II-G below.

4. Indemnification of Trustee

If a civil action is brought against a trustee or the board of trustees, acting within the scope of official duties, and legal counsel for the governmental unit defends or settles the action, the trustee or employee must be indemnified from the OPEB Fund for all expenses incurred in the defense of the action and damages to the same extent as provided for public employees generally. See [G.L. c. 258](#).

However, no trustee or employee may be indemnified for expenses incurred or damages awarded in a civil action in which there is: (a) a breach of fiduciary duty, (b) an act of willful dishonesty or (c) an intentional violation of law by the trustee or employee.

G. Declaration of Trust

1. Adoption

The trustee or board of trustees must adopt a declaration of trust stating the duties and obligations of the trustee or board of trustees. The declaration of trust and any later amendments must be filed with the chief executive officer and clerk of the governing body of the governmental unit. The declaration or amendment takes effect 90 days after the filing date unless the governing body votes to disapprove the declaration or amendment within that period of time.

As soon as possible after receipt of a declaration of trust or amendment, the clerk should post a notice that the declaration or an amendment has been filed under [G.L. c. 32B, § 20\(d\)](#). The posting should be made in the same manner as notices of meetings under the Open Meeting Law. [G.L. c. 30A, §§ 18 – 25](#). The notice should remain posted until the 90-day period has elapsed.

2. Terms

The duties and obligations of the trustee or board of trustees set forth in the declaration of trust cannot be inconsistent with [G.L. c. 32B, § 20](#).

H. Fund Monies

The following monies are credited to the OPEB Fund:

1. Appropriations to the OPEB Fund

The governing body may, by majority vote, appropriate monies to the OPEB Fund. (See attached Sample Vote 4 – Appropriations to OPEB Fund.)

In a regional school district, appropriations to the OPEB Fund may be made only in the annual budget submitted to the member cities and towns for approval.

2. Gifts, Grants and Other Contributions

The treasurer of the governmental unit, as custodian of the OPEB Fund, may accept gifts, grants and other contributions to the fund.

3. Income

Any interest or other income generated by investment of the OPEB Fund becomes part of the OPEB Fund. See Section II-I-below.

4. Medicare Part D Funds

The governing body may, by majority vote, dedicate to the OPEB Fund reimbursements that the governmental unit receives as a sponsor of a Medicare Part D qualified retiree prescription drug plan. 42 U.S.C. § 1395w-132. (See attached Sample Vote 5 – Dedication of Medicare Part D Drug Plan Reimbursements to OPEB Fund.)

I. Fund Investment

Monies in the OPEB Fund that are not needed for expenditures or anticipated expenditures within the investment period must be invested and reinvested by the treasurer as directed by the trustee or board of trustees from time to time. The treasurer may employ an outside custodial service to hold the monies in the OPEB Fund consistent with the procedures and standards described below.

1. State Retiree Benefits Trust Fund

The trustee or board of trustees may, with the approval of the State Retiree Benefits Trust Fund board of trustees, direct the treasurer to invest the OPEB Fund in the State Retiree Benefits Trust Fund established under [G.L. c. 32A, § 24](#). In that case, fund monies are invested under [G.L. c. 32A, §§ 24](#) and [24A](#).

2. Other Investments

Where the trustee or board of trustees does not direct the treasurer to invest the OPEB Fund in the State Retiree Benefits Trust Fund, investments must be made as follows:

a. Retirement Board as Board of Trustees

Where the retirement board is the board of trustees, investments are made under [G.L. c. 32, § 23](#).

b. Treasurer or OPEB Fund Board as Trustees

Where the treasurer is the trustee or an OPEB Fund board of trustees has been established by the governing body, investments are made in the same manner as municipal trust funds under [G.L. c. 44, § 54](#).

However, the governing body may, by majority vote, authorize investments under the prudent investor standard for private trusts under [G.L. c. 203C](#). (See attached Sample Vote 6 – Authorization to Invest OPEB Fund under Prudent Investor Rule.)

J. Appropriations from OPEB Fund

An appropriation by a two-thirds vote of the governing body is required to spend any monies in the OPEB Fund.

In a regional school district, appropriations from the OPEB Fund may be made only in the annual budget submitted to the member cities and towns for approval.

Appropriations may be made from the OPEB Fund for:

1. OPEB Fund Expenses

The governing body may, by a two-thirds vote, approve an appropriation from the OPEB Fund for the payment of OPEB Fund expenses, including expenses incurred by the trustee or board of trustees for the employment of reputable and knowledgeable investment consultants to assist the trustee or board of trustees in determining appropriate investments. (See attached Sample Vote 7 - Appropriations from the OPEB Fund – OPEB Fund Expenses. See also Section

II-F-3-c above for more information on the power of the trustee or board of trustees to employ investment consultants.)

The appropriation may be spent by the trustee or board of trustees for the OPEB fund expenses.

2. Health Insurance Benefits of Retirees

a. Procedure Before Appropriation

The treasurer of the governmental unit after consulting with the chief executive officer must determine the amount to be appropriated from the OPEB 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 must take diligent steps to certify that those funds are available for appropriation by the governing body, or will be available by the time the appropriation would become effective. If funds are not available, the trustee or board of trustees must provide the treasurer with an explanation why the funds are or will not be available or should not be made available.

b. Appropriation

The governing body may, by a two-thirds vote, appropriate amounts in the OPEB Fund to pay the governmental unit's share of health insurance benefits for retirees and their dependents upon certification by the trustee or board of trustees that the amounts are available in the OPEB Fund. Upon appropriation, the funds must be transferred to the annual budget for retiree health insurance. (See attached Sample Vote 8 - Appropriations from the OPEB Fund for Retiree Health Insurance Costs.)

K. Municipal Lighting Plants

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

III. FUND ACCOUNTING AND REPORTING

A. Separate Fund

The accounting officer must establish and maintain the OPEB Fund as a separate accounting fund and record all activity in the OPEB Fund.

B. GASB Requirements

The governmental unit is responsible for completing an actuarial valuation of its liabilities for health care and other post-employment benefits for its retired employees and their dependents and funding schedule that conform to the Governmental Accounting Standards Board (GASB) requirements.

C. PERAC Reporting

When a governmental unit obtains an actuarial valuation report in accordance with GASB requirements containing statements of the liabilities of the unit for health care and other post-employment benefits for its retired employees and their dependents, it must submit a copy to the Public Employee Retirement Administration Commission (PERAC). The report must be submitted no later than 90 days after the governmental unit receives the report. PERAC may require that the governmental unit provide additional information related to its liabilities, normal cost and benefit payments, as specified by the Executive Office for Administration and Finance, in consultation with PERAC. In that case, the governmental unit must also submit the additional information to PERAC. A copy of such report and additional information, if any, must also be submitted to the Bureau of Accounts at the time of its submission to PERAC. [G.L. c. 32B, § 20A.](#)

These reporting requirements apply to all governmental units whether or not they have established an OPEB fund under the general laws or a special act.

D. Regional School Districts

The annual report a regional school district submits to its member cities and towns under [G.L. c. 71, § 16\(k\)](#) must include a statement of the balance in the OPEB Fund and all additions to and appropriations from the fund during the period covered by the report.

IV. PARTICIPATION IN OPEB FUND OF ANOTHER GOVERNMENTAL UNIT

A governmental unit that accepts [G.L. c. 32B, § 20](#) may participate in the OPEB Fund established by another governmental unit.

A. Authorization

1. OPEB Fund Procedures

Participation of one governmental unit in the OPEB Fund of another governmental unit must comply with the procedures and criteria established by the trustee or board of trustees of the OPEB Fund.

2. Approval of Both Governmental Units

A governmental unit that accepts [G.L. c. 32B, § 20](#) may participate in the OPEB Fund established by another governmental unit upon approval by majority vote of the governing bodies of:

- a. The governmental unit wishing to participate in the OPEB Fund of the other governmental unit; and
- b. The governmental unit that has established the OPEB Fund in which the other governmental unit wishes to participate.

B. Obligations of Each Governmental Unit

Each governmental unit participating in the OPEB Fund remains 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.

C. Appropriations to the OPEB Fund

A participating governmental unit may appropriate or otherwise contribute amounts to the OPEB Fund as provided in Section II-H above.

D. Appropriations from the OPEB Fund

A participating governmental unit may appropriate amounts from the OPEB Fund as provided in Section II-J above. However, when a participating governmental unit is appropriating for its retiree health insurance expenses as described in Section II-J-2 above, at the time the treasurer of the governmental unit gives notice to the trustee or board of trustees of the OPEB Fund of the amount to be appropriated from the OPEB Fund to the annual budget of the participating governmental unit for retiree health insurance, notice must also be given to the treasurer of the governmental unit maintaining the OPEB Fund. The trustee or board of trustees of the OPEB Fund must take diligent steps to certify that those funds are available for appropriation by the participating governmental unit, or will be available by the time the appropriation would become effective. If funds are not available, the trustee or board of trustees of the OPEB Fund must provide the treasurer of the participating governmental unit with an explanation why the funds are or will not be available or should not be made available. Upon a certification of the funds available for appropriation, the treasurer of the governmental unit maintaining the fund must transfer the amount appropriated to the participating governmental unit for credit to its annual budget for retiree health insurance.

E. Accounting

A participating governmental unit is separately credited for its contributions 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.

OTHER POST-EMPLOYMENT BENEFITS LIABILITY TRUST FUND SAMPLE VOTES

(Sample votes are for a city or town, but may be adapted for other governmental units.
They should not be used or adapted without the advice of the unit's legal counsel.)

SAMPLE VOTE 1 - ACCEPT OPEB TRUST FUND

(Majority vote required)

ARTICLE/ORDER: To see if the city/town will accept [General Laws Chapter 32B, Section 20](#), and establish an Other Post-Employment Benefits Liability Trust Fund (OPEB Fund), effective _____, or take any other action relative thereto.

MOTION: Moved/ordered that the city/town accept [General Laws Chapter 32B, Section 20](#), and establish an Other Post-Employment Benefits Liability Trust Fund (OPEB Fund), effective _____.

SAMPLE VOTE 2 - ESTABLISH OPEB FUND BOARD OF TRUSTEES

(Majority vote required)

ARTICLE/ORDER: To see if the city/town will establish an Other Post-Employment Benefits Liability Fund (OPEB Fund) Board of Trustees under [General Laws Chapter 32B, Section 20](#), with _____ (5 – 13) members consisting of the following: one person with the following investment experience (describe experience here); _____ (one or more) citizen(s) of the city/town; one employee of the city/town; _____ (one or more) retirees of the city/town; and _____ (one or more) city/town officials, with each member trustee serving for a term of _____ (3 or 5) years, or take any other action relative thereto.

MOTION: Moved/ordered that the city/ town establish an Other Post-Employment Benefits Liability Fund (OPEB Fund) Board of Trustees pursuant to [General Laws Chapter 32B, Section 20](#), with _____ (5 – 13) members consisting of the following: one person with the following investment experience (describe experience here); _____ (one or more) citizen(s) of the city/town; one employee of the city/town; _____ (one or more) retirees of the city/town; and _____ (one or more) city/town officials, with each member trustee serving for a term of _____ (3 or 5) years.

SAMPLE VOTE 3 – AUTHORIZE TRUSTEE OF OPEB FUND TO EMPLOY INVESTMENT CONSULTANTS

(Majority vote required)

ARTICLE/ORDER: To authorize the Trustee/OPEB Fund Board of Trustees of the OPEB Fund established under G.L. c. 32B, § 20 to employ reputable and knowledgeable investment

consultants to assist in determining appropriate investments and pay for those services from the OPEB Fund, or take any other action relative thereto.

MOTION: Moved/ordered that the Trustee/OPEB Fund Board of Trustees of the OPEB Fund established under G.L. c. 32B, § 20 is authorized to employ reputable and knowledgeable investment consultants to assist in determining appropriate investments and pay for those services from the OPEB Fund.

SAMPLE VOTE 4 - APPROPRIATE TO OPEB FUND

(Majority vote required)

ARTICLE/ORDER: To see if the city/town will raise and appropriate or transfer from available funds a sum into the Other Post-Employment Benefits Liability Trust Fund (OPEB Fund) established under [General Laws Chapter 32B, Section 20](#), or take any other action relative thereto. (Majority vote required.)

MOTION: Moved/ordered that the city/town raise and appropriate the sum of \$ _____ into the Other Post-Employment Benefits Liability Trust Fund (OPEB Fund) established under [General Laws Chapter 32B, Section 20](#).

SAMPLE VOTE 5 - DEDICATE MEDICARE PART D RETIREE PRESCRIPTION DRUG PLAN REIMBURSEMENTS

(Majority vote required)

ARTICLE/ORDER: To see if the city/town will dedicate to the Other Post-Employment Benefits Liability Trust Fund (OPEB Fund) established under [General Laws Chapter 32B, Section 20](#) any and all monies received and to be received in the future by the city/town as a sponsor of a Medicare Part D qualified retiree prescription drug plan, or take any other action relative thereto.

MOTION: Moved/ordered that the city/town dedicate to the Other Post-Employment Benefits Liability Trust Fund (OPEB Fund) established under [General Laws Chapter 32B, Section 20](#) any and all amounts received and to be received in the future by the city/town as a sponsor of a Medicare Part D qualified retiree prescription drug plan.

SAMPLE VOTE 6 - AUTHORIZE INVESTMENT OF OPEB FUND UNDER PRUDENT INVESTOR RULE

(Majority vote required)

ARTICLE/ORDER: To authorize the Custodian-Trustee/OPEB Fund Board of Trustees of the OPEB Fund established under G.L. c. 32B, § 20 to invest monies in the OPEB Fund under the prudent investor rule established in G.L. c. 203C, or take any other action relative thereto.

MOTION: Moved/ordered that the Custodian-Trustee/OPEB Fund Board of Trustees of the OPEB Fund established under G.L. c. 32B, § 20 be authorized to invest monies in the OPEB Fund pursuant to the prudent investor rule established in G.L. c. 203C.

**SAMPLE VOTE 7 - APPROPRIATE FROM OPEB FUND
OPEB Fund Expenses
(Two-thirds vote required)**

ARTICLE/ORDER: To see if the city/town will appropriate the sum of \$ _____ from the OPEB Fund established under [General Laws Chapter 32B, Section 20](#) for OPEB Fund expenses (if applicable - including expenses of consultants employed by the trustee/board of trustees to assist in determining appropriate investments), or take any other action relative thereto.

MOTION: Moved/ordered that the city/town appropriate the sum of \$ _____ from the OPEB Fund established under [General Laws Chapter 32B, Section 20](#) for OPEB Fund expenses (if applicable - including expenses of consultants employed by the trustee/board of trustees to assist in determining appropriate investments).

**SAMPLE VOTE 8 – APPROPRIATE FROM OPEB FUND
RETIREE HEALTH INSURANCE COSTS – CITY/TOWN
(Two-thirds vote required)**

ARTICLE/ORDER: To see if the city/town will appropriate the sum of \$ _____ from the OPEB Fund established under [General Laws Chapter 32B, Section 20](#) for the payment of retiree health insurance costs and that such amount shall be transferred to the city/town's annual budget for retiree health insurance, or take any other action relative thereto.

MOTION: Moved/ordered that the city/town appropriate the sum of \$ _____ from the OPEB Fund established under [General Laws Chapter 32B, Section 20](#) for the payment of retiree health insurance costs and that such amount shall be transferred to the city/town's annual budget for retiree health insurance.

OPEB FUND ROLES OF RELEVANT PARTIES

(The below is a summary and does not substitute for the above guidelines.)

Governing Body - 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

Majority votes required unless otherwise noted.

- Designate the trustee of the OPEB Fund from the following:
 - Treasurer (OPEB Fund custodian)
 - Retirement board
 - Independent OPEB Fund board of trustees
 - Establish number of trustees (5 – 13)
 - Establish membership of trustee board
 - One person with investment experience (determine investment experience desired)
 - One or more citizens of governmental unit
 - One employee of governmental unit
 - One or more retirees of governmental unit
 - One or more officers of governmental unit
 - Establish trustee term of office (3 or 5 years)

Note – In absence of designation of trustee, the treasurer is the trustee

- Authorize (or not) investments under prudent investor rule (G.L. c. 203C) if the treasurer is trustee or OPEB Fund board of trustees is established
- Authorize (or not) trustee or board of trustees to employ reputable and knowledgeable investment consultants to assist in determining appropriate investments and pay for those services from the OPEB Fund
- Dedicate Medicare prescription reimbursements received and to be received by the governmental unit to the OPEB Fund and have those monies become part of the OPEB Fund
- Disapprove (or not) the declaration of trust and amendments filed by the trustee or board of trustees with the chief executive officer and clerk within 90 days of filing
- Appropriate monies to the OPEB Fund
 - For Regional School Districts, appropriations of amounts to the OPEB Fund may be made only in the annual budget submitted to the member cities and towns for approval
- Appropriate monies from the OPEB Fund – 2/3 vote required
 - To fund expenses of the OPEB Fund (including the expenses of consultants employed by the trustee or board of trustees to assist in determining appropriate investments if such employment has been authorized by the governing body)
 - To fund retiree health insurance costs – transfer to the city/town's annual budget for retiree health insurance
 - For Regional School Districts, appropriations from the OPEB Fund may be made only in the annual budget submitted to the member cities and towns for approval

Trustee or Board of Trustees - Treasurer, Retirement Board or OPEB Fund Board of Trustees

- Acts in fiduciary capacity
- Adopts declaration of trust and amendments containing duties and obligations of trustee or board of trustees (must be consistent with G.L. c. 32B, § 20) and files with CEO and clerk
- Employs investment consultants to assist in determining appropriate investments and pays for those services from the OPEB Fund if authorized by the governing body
- Spends funds from appropriation(s) approved by governing body for OPEB Fund expenses
- Manages, invests and reinvests the OPEB Fund using the required investment standard or investment vehicle:
 - Directs, with approval of the State Retiree Benefits Trust Fund board of trustees, custodian to invest the OPEB Fund in the State Retiree Benefits Trust Fund
 - If OPEB Fund not invested in the State Retiree Benefits Trust Fund, investments are based upon who the trustee or board of trustees is:
 - If retirement board is board of trustees – investment standard same as retirement investments - G.L. c. 32, § 23
 - If custodian or OPEB Fund board of trustees is trustee - investments are under G.L. c. 44, § 54, unless the governing body has authorized the prudent investor rule of G.L. c. 203C
- Certifies annually the amount available in the OPEB Fund for appropriation by governing body for retiree health insurance costs

Custodian - Treasurer of governmental unit

- Maintains custody of OPEB Fund
- Obtains bond in sufficient amount to cover additional amounts of OPEB Fund
- Invests funds under general direction of the trustee or board of trustees consistent with the appropriate investment standard

Treasurer

- Consults with CEO early in annual budget cycle to determine amount to be appropriated from the OPEB Fund as a financing source in the annual budget for retiree health insurance costs
- Notifies trustee or board of trustees of the amount to be appropriated
- Accepts gifts, grants and other contributions to the OPEB Fund
- Pays bills and payrolls as authorized under procedure applicable to governmental unit

Chief Executive Officer (CEO) - Mayor in a city or selectboard in a town, unless the charter designates another officer as the chief executive officer, county commissioners in a county, regional district school committee of a regional school district and governing board, commission or committee in a district or other governmental unit

- Appoints the following members of the OPEB Fund board of trustees established by the governing body:
 - Person with requisite investment experience
 - One or more citizens
 - One or more governmental officers
- Accepts and reviews filing of declaration of trust or amendments by trustee or board of trustees
- Consults with treasurer on amount to be appropriated from the OPEB Fund to the annual budget for retiree health insurance costs
- Approves payments of expenses under procedure applicable to governmental unit

Accounting Officer

- Establishes and maintains the OPEB Fund as a separate account and records all activity in the OPEB Fund
- Approves payments of expenses under procedure applicable to governmental unit

Governmental Unit

- Completes actuarial valuation of its liabilities for health care and other post-employment benefits for its retired employees and their dependents and funding schedule that conform to GASB requirements
- Submits actuarial report to PERAC, with any other information required by PERAC, and a copy to Director of Accounts

Clerk

- Accepts filing of declaration of trust or amendments by trustee or board of trustees
- Posts notice of filing of declaration and amendments as soon as possible after receipt for 90-day period



Local Finance Opinion

LFO-2018-1
July 11, 2018

TOPIC: Transportation Network Company Per-ride Assessment Distribution

ISSUE: Municipal finance and accounting treatment of money received from the Commonwealth Transportation Infrastructure Fund

This LFO addresses questions relating to the municipal finance and accounting treatment of moneys distributed to a city, town or district from the Commonwealth Transportation Infrastructure Fund.

1. What is the Commonwealth Transportation Infrastructure Fund?

Under Chapter 187 of the Acts of 2016, certain transportation network companies must submit to the Transportation Network Company Division of the Department of Public Utilities (DPU) the number of rides from the previous calendar year that originated within each city or town and a per-ride assessment of \$0.20. The assessment is credited to the Commonwealth Transportation Infrastructure Fund (Fund), which was established by the Act. [St. 2016, c. 187, § 8\(a\)](#). Each year, one half of the amount credited to the Fund will be distributed by the DPU proportionately to each city and town based on the number of rides that originated in that city or town. [St. 2016, c. 187, § 8\(c\)\(i\)](#).

2. What is the general rule related to the receipt of money by a city, town or district officer or department?

All money received or collected from any source by a city, town or district belongs to its general fund and can only be spent after appropriation unless a general or special law provides an exception, *i.e.*, expressly restricts use for a particular purpose or allows expenditure by a department or officer without appropriation. [G.L. c. 44 § 53](#).

3. Is there an exception to the general rule for money received from the Commonwealth Transportation Infrastructure Fund?

Yes. Money distributed to cities and towns from the Commonwealth Transportation Infrastructure Fund is special revenue earmarked for use by cities and towns “to address the impact of transportation network services on municipal roads, bridges and other transportation infrastructure or any other public purpose substantially related to the operation of transportation network services in the city or town including, but not limited to, the complete streets program established in section 1 of chapter 90I of the General Laws and other programs that support alternative modes of transportation.” [St. 2016, c. 187, § 8\(c\)\(i\)](#). However, the statute establishing the distribution does not authorize any particular department or officer to spend the distributed money without “specific” or “further” appropriation for any of those

statutory purposes. See, *e.g.*, [G.L. c. 40, § 3](#) (municipal and school rental revenues); [G.L. c. 44, § 53A](#) (money gifts and grants); [G.L. c. 44, § 53E½](#) (departmental fees and charges); and [G.L. c. 71, § 47](#) (school activity fees and charges). Therefore, the general rule requiring an appropriation in order to use the money still applies. The accounting officer must establish a receipts reserved for appropriation account for this distribution and credit the money received to that account. To use the money for any allowable purpose, the legislative body must appropriate from available funds in the account.

Additionally, please note that each city or town receiving a distribution from the Commonwealth Transportation Infrastructure Fund must submit a report to the Transportation Network Company Division of the DPU not later than December 31 of each year that details the allowable transportation-related projects conducted, including amounts used or planned to be used for those projects. [St. 2016, c. 187, § 8\(d\)](#). The Division is required to compile the reports and post the projects and amounts of money used on its website. [St. 2016, c. 187, § 8\(d\)](#).



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Local Finance Opinion

LFO-2018-3
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TOPIC: Money from Marijuana Establishments and Medical Marijuana Treatment Centers

ISSUE: Accounting treatment of local option excises on retail sales of marijuana for adult use and impact fees and any other payments required or received from marijuana establishments and medical marijuana treatment centers in connection with their operation

This LFO addresses questions and provides guidance regarding the municipal finance law and accounting treatment of money from marijuana establishments and medical marijuana treatment centers. It does not address how payments by those establishments or treatment centers are treated for purposes of host community agreements.

1. What is the general rule about accounting for money received by a city, town or district officer or department?

All money received or collected by a city, town or district from any source is credited to its general fund and can only be spent after appropriation unless a general or special law provides for an exception and different treatment, *i.e.*, a general or special law expressly reserves the revenue stream for expenditure for a particular purpose or allows expenditure by a municipal or district department or officer without appropriation. [G.L. c. 44 § 53](#).

2. What money could a marijuana establishment or a medical marijuana treatment center generate for a municipality?

Municipalities may (1) impose a local excise on the retail sales of marijuana for adult use and (2) negotiate impact fees or other payments under a community host or other agreement with a marijuana establishment or medical marijuana treatment center in connection with its siting and operation in the municipality.

3. How does a municipality impose a local excise on retail sales of marijuana for adult use?

A city or town may impose a local excise on the retail sale of marijuana for adult use by accepting [G.L. c. 64N, § 3](#). Acceptance is by majority vote of the community's legislative body, subject to charter. The maximum excise rate communities may impose is 3%. If a city or town in which a marijuana retailer is located accepts G.L. c. 64N, § 3, all sales by the marijuana retailer that are subject to the state excise on marijuana retail sales will also be subject to the host community's local excise. The excise does not apply to the sale of marijuana or marijuana products by a medical marijuana treatment center. [G.L. c. 64N, § 4](#). See [Bulletin 2018-3, Local Excise on Retail Sales of Marijuana for Adult Use](#).

4. How does a municipality obtain impact fees or other payments from a marijuana establishment or medical marijuana treatment center?

A marijuana establishment or a medical marijuana treatment center that wants to operate or continue to operate in a municipality must execute a community host agreement with the municipality. [G.L. c. 94G, § 3\(d\)](#). The community host agreement must include, but is not limited to, all responsibilities of both parties with respect to the operation of the establishment or center within the municipality. The agreement may include payment of a community impact fee by the marijuana establishment or medical marijuana treatment center in order to mitigate the costs imposed upon the municipality by the operation of the establishment or treatment center within its borders. [G.L. c. 94G, § 3\(d\)](#).

5. Is there an exception to the general rule for money related to the operation of a marijuana establishment or medical marijuana treatment center?

No. There is no general law that establishes a different accounting treatment for (1) revenues generated by the local sales excise on retail sales of marijuana for adult use or (2) payments made under community host or other agreements with marijuana establishments or medical marijuana treatment centers. Therefore, the money belongs to the general fund and can only be spent by appropriation. [G.L. c. 44 § 53](#).

6. How do accounting officers treat money related to the operation of a marijuana establishment or medical marijuana treatment center?

Accounting officers must credit all of the following to the general fund:

1. Collections from local option excises on retail sales of marijuana for adult use and
2. Payments made by a marijuana establishment or medical marijuana treatment center regardless of the characterization of the payments by the parties.

State law governs the municipal finance and accounting treatment of payments made by a marijuana establishment or medical marijuana treatment center, not a host community or other agreement between the municipality and the establishment or treatment center. It is not within our regulatory purview to determine the nature of those payments for purposes of [G.L. c. 94G, § 3\(d\)](#). For municipal finance law purposes, however, payments made by an establishment or treatment center under a host community or other agreement in connection with, or to mitigate the costs imposed by, the location and operation of the establishment or treatment center within the municipality are in the nature of exactions or mitigation payments that belong to the general fund. They cannot be reserved in or credited to a separate gift or grant account, trust fund, revolving fund or other special revenue fund and cannot be spent without appropriation or appropriated as an available fund. They belong to the general fund because no general law establishes a different accounting treatment for money related to the operation of these establishments or treatment centers specifically or from exactions or mitigation payments generally.

We understand that some of these agreements have characterized all or some of the payments as gifts or gifts in the nature of trusts. However, a payment made by a private party to a municipality in connection with a regulated activity, contract or other municipal action is not a gift, donation or grant within the meaning of and for the purposes of [G.L. c. 44, § 53A](#). Therefore, it may not be accounted for in a separate account and spent without appropriation. These payments lack the donative intent that is an essential characteristic of the genuine gift required by that statute. A gift is ordinarily defined as a

voluntary payment of money or transfer of property made without consideration. Although a private party's decision to engage in a regulated activity or contract with a municipality may be one of choice, it is doing so with the expectation of receiving valuable consideration in return, *i.e.*, a privilege or benefit, or some municipal action or authorization. In this case, the execution of a host agreement is a condition precedent to being able to operate or continue to operate as a licensed marijuana establishment or registered medical marijuana treatment center. It is doubtful that any payments the establishment or treatment center agree to make are for a purpose other than to obtain the necessary host agreement. "[T]he nature of a monetary exaction must be determined by its operation rather than its specially descriptive phrase." [Emerson College v. Boston](#), 391 Mass. 415, at 424 (1984), quoting [Thomson Electric Welding Company v. Commonwealth](#), 275 Mass. 426, at 429 (1931).

7. Is there a way under state law that a municipality may dedicate payments made by a marijuana establishment or medical marijuana treatment center for later appropriation for particular purposes?

Yes. A municipality may use a local acceptance option to dedicate all, or a portion of at least 25%, of the collections of the excise on retail sales of marijuana or payments from a community host and other agreement payments to a general or special purpose stabilization fund established under [G.L. c. 40 § 5B](#). For the procedure that must be followed to accept and use this local option, see Section II of [Informational Guideline Release \(IGR\) No. 17-20, Stabilization Funds](#). Under this option, these collections and payments may be dedicated to stabilization funds because they are not earmarked for a particular purpose under current state law. In addition, the excise on marijuana retail sales is not a locally assessed tax or excise specifically excluded from dedication.

8. How will the Bureau of Accounts treat balance sheet reservations of payments from a marijuana establishment or medical marijuana treatment center when certifying free cash?

The Bureau of Accounts will close balance sheet reservations of payments from marijuana establishments or medical marijuana treatment centers when calculating the available funds of a municipality (free cash). [G.L. c. 59, § 23](#). This is consistent with its policy with respect to similar payments made under host, development or other agreements with other private parties that also belong to the general fund.

9. What agency has regulatory jurisdiction over issues related to the operation of marijuana establishments or medical marijuana treatment centers?

The state's [Cannabis Control Commission](#) determines whether marijuana establishments or medical marijuana treatment centers meet licensing or registration standards required to operate. Questions regarding the interpretation of the statute, regulations and other guidance related to the implementation of marijuana for adult use or medical purposes should be directed to the Commission.



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