

**Division of Local Services
Department of Revenue**

**2011
“What’s New in Municipal Law”
Seminar**

RECENT LEGISLATION

**Local Tax
Administration**

FY2012 State Budget
Chapter 68 of the Acts of 2011
Effective 7/1/2011 [1:4]

§§ 59-61 Local Tax Filings

- Amends G.L. c. 59, §§ 32, 52B and 60
- Lets taxpayers (or their designated representatives) get copies of filings made to assessors
- Includes abatement or exemption applications, forms of list, income and expense returns

RECENT LEGISLATION

Municipal Finance

FY2011 Supplemental Budget

Chapter 52 of the Acts of 2011
Effective 6/21/2011 [1:1]

§ 3 Expedited Emergency Borrowing

- Amends G.L. c. 44, § 8(9) to expedite short-term borrowings for emergency expenses
- Short-term means up to 2 years
- Authorized by municipal or district treasurer and chief executive officer (CEO) with approval of Director of Accounts

Chapter 52 of 2011 (continued)

- Adds G.L. c. 44, § 8(9A) to expedite emergency long term debt for capital purpose
- Capital purpose includes acquisition, construction or reconstruction of assets
- Authorized by municipal or district treasurer and CEO with approval of Municipal Finance Oversight Board (MFOB)
- Must demonstrate regular borrowing process an undue burden
- MFOB may approve debt up to the maximum term permitted by law for capital purpose

FY2012 State Budget
 Chapter 68 of the Acts of 2011
 Effective 7/1/2011 [1:3]

§§ 49-50, 57, 206 - Other Post Employment Benefit (OPEB) Liability Trust Fund

- § 57 - Amends G.L. c. 32B, § 20 local acceptance option to create special trust fund to cover future health insurance and other post employment benefits (OPEB) for retirees
- Fund not subject to claims of unit's general creditors
- Allows custodian to employ outside service to hold fund monies

Chapter 68 of 2011 (continued)

- Allows unit to designate Health Care Security Trust (HCST) as fund custodian with approval of HCST trustees and invest in state Retiree Benefits Trust Fund (state OPEB fund)
- Requires unit to report OPEB costs and liabilities to PERAC by 12/31
- Requires PERAC to review and advise unit of GASB 45 deficiencies, file report with H&S Ways & Means, A&F & HCST
- Grandfathers retirement board as custodian in units where authorized before 7/1/2011

Chapter 68 of 2011 (continued) (1:4)

§§ 73-74 Chapter 70 Deductions

- § 73 - Adds G.L. c. 71, § 91(e) – Deduction allowed if student's home district fails to pay Recovery High School
- § 74 – Adds G.L. c. 71, § 92(q & r) – Students from other districts may enroll in "Virtual" Innovation School and deduction allowed if student's home district fails to pay school

RECENT LEGISLATION

Employment Benefits

FY2012 State Budget
Chapter 68 of the Acts of 2011
Effective 7/1/2011 [1:4]

- § 131 Public Employees in Military**
- Amends local acceptance § 21 of c. 137 of Acts of 2003, amended by § 77 of c. 182 of Acts of 2008
 - Extends time for communities to pay public employees in military difference between base salary and military pay
 - Now sunsets 9/11/2014

Quinn Bill Commission
Chapter 85 of the Acts of 2011
Effective 7/28/2011 [1:22]

- Establishes 8 member commission to review municipal police career incentive program
- Report due 4/30/12

FY2012 State Budget
Chapter 68 of the Acts of 2011
Effective 7/1/2011 [1:4]

§§ 53-54 Mandatory Medicare Enrollment

- Repeals local acceptance G.L. c. 32B, § 18 and replaces local acceptance G.L. c. 32B, § 18A
- New G.L. c. 32B, § 18A requires all Medicare eligible retirees to transfer to Medicare plan offered by Extension Health Plan
- Employer must pay late enrollment penalties
- Part of Health Insurance Reform (Chapter 69)

Chapter 68 of 2011 (continued) (1:4)

§§ 55-56 Public Employee Committee (PEC)

- Amend G.L. c. 32B, § 19
- § 55 –Expedites calling of (PEC) meetings by reducing notice requirement from 30 to 7 days for initial meeting and not less than 3 days for subsequent meetings
- § 56 – Reduces PEC vote to approve health plan agreement from 70% to majority (with 10% quantum for retirees)
- Part of Health Insurance Reform (Chapter 69)

Municipal Health Insurance
Chapter 69 of the Acts of 2011
Effective 7/12/2011 [1:11]

- Emergency regulations were promulgated
- Amends municipal group health insurance law, G.L. c. 32B, §§ 2 (definitions) and 12 (joint purchase group) and adds §§ 21-29
- Primarily intended to reduce municipal health insurance costs

Chapter 69 of 2011 (continued)

- Section 1 - Adds definitions for “health care flexible spending account” (FSA), “health reimbursement arrangement” (HRA), “savings,” “subscribers”
- FSA allows employee to set aside portion of earnings to pay for qualified expenses to receive federal tax benefit
- HRA is employer-funded health benefit program that receives federal tax benefits and reimburses subscribers for qualified medical expenses

Chapter 69 of 2011 (continued)

- “Savings” under §§ 21-23 defined as difference between projected premium costs for health insurance benefits under §§ 22-23 after changes and projected costs without changes, for 12 months
- “Subscribers” defined as plan participants who previously received benefits

Chapter 69 of 2011 (continued)

- Section 3 - Adds §§ 21-29 of G.L. c. 32B
- § 21(a) allows political subdivisions to elect to change health insurance benefits under §§ 22 and 23 by local acceptance
- Acceptance by city council and manager or mayor, by selectboard in towns, RSD committee, district meeting
- Acceptance only required once, but health insurance changes must be made by stated procedures each time made

Chapter 69 of 2011 (continued)

- § 21(b) requires appropriate public authority (APA) to evaluate insurance coverage and determine savings of proposed plan design changes or transfer to Group Insurance Commission (GIC) plan over first 12 months
- Expedited notice to insurance advisory committee (IAC) of estimated savings (see regs)
- Discussion with IAC as to savings

Chapter 69 of 2011 (continued)

- Notice to collective bargaining units and retiree representative (PEC) as prescribed under G.L. c. 32B, § 19
- Notice to detail proposed changes, analysis and estimate of savings, proposal to mitigate, moderate or cap impact of changes on subscribers likely to be disproportionately affected
- § 21(c) – 30 day negotiation period
- Approval by majority vote of PEC (including 10% retiree quantum)

Chapter 69 of 2011 (continued)

- If no agreement, submitted to 3 member Municipal Health Insurance Review Panel (MHIRP) - 1 from PEC, 1 from APA and 1 from Secretary of A&F, either by agreement from 3 proposed or by Secretary designation
- 3rd member to be impartial and have experience in mediation and municipal finance or municipal health benefits
- Fee or compensation of members to be shared by PEC and APA

Chapter 69 of 2011 (continued)

- § 21(d) – MHIRP approves immediate implementation of changes if they meet requirements of §§ 22 & 23
- §§ 22 & 23 designed to effectuate cost savings with protections for subscribers
- § 21(e) – Within 10 days of receiving proposed changes, MHIRP must confirm monetary savings and appropriate protections for subscribers

Chapter 69 of 2011 (continued)

- § 21(f) – MHIRP may find proposal insufficient/consider alternative proposals from PEC
- MHIRP may require additional subscriber mitigation, not to exceed 25% of savings to subscribers
- Limited application of mitigation
- MHIRP may not impose contribution ratios
- § 21(g) MHIRP decision is binding
- § 21(h) Secretary to promulgate regs

Chapter 69 of 2011 (continued)

- § 22 allows plan changes in copays, deductibles, tiered provider network co-payments and other cost-sharing features in amounts no greater than offered by GIC in plan with largest subscriber enrollment
- APA cannot allow plan changes using reduced or selective network of providers, unless APA also offers another plan to subscribers that does not do so
- However, APA may negotiate under G.L. c. 32B, § 19 or collective bargaining agreements (CBA) for higher employee ratios

Chapter 69 of 2011 (continued)

- Decision to accept and implement § 22 not subject to G.L. c. 32B, § 19 or CBA
- APA still required to provide health insurance if it has obligation
- First implementation of plan changes under §§ 22 and 23 cannot increase percentage contribution of retirees before 7/1/14, unless previously scheduled before 7/1/2011 to do so

Chapter 69 of 2011 (continued)

- § 23 – If requirements of § 21 met, APA may provide coverage by transferring to GIC
- After 7/1/12, notice to GIC by 12/1, coverage to take effect on following 7/1
- APA required to provide information to GIC
- Plan design by GIC not subject to collective bargaining; percentage contributions are
- APA may withdraw from GIC after 3rd yr
- Health plan with claims trust fund in deficit due to failure to accrue claims made but not paid may amortize debt over 10 years

Chapter 69 of 2011 (continued)

- § 23 – GIC must offer same plans to municipal employees as state workers
- Contribution ratios are governed locally
- GIC may use cherry sheet deductions to enforce payment of premiums; if insufficient, GIC may cancel coverage
- GIC may charge up to 1% administrative fee
- §§ 24 & 25 – Allow FSA & HRA plans
- § 26 Enrollment audits required biennially

Chapter 69 of 2011 (continued)

- Section 4 – Delayed implementation of plan as to subscribers covered by CBA or 32B:19 agreement as to plan features and costs specifically included in agreement, until the initial term of agreement has ended
- Section 5 - Grandfathers special acts for Plymouth, Everett & Waltham
- Section 6 - Expedites entry into GIC by 1/1, 4/1 or 7/1/12 with 4 months notice (§ 23 after 7/1/12, notification to GIC by 12/1 for coverage to take effect the following 7/1)

RECENT CASES
Property Taxation

Florio, et. al. v. Assessors of Newbury

ATB (June 29, 2011) [2A:52]

- Plum Island homeowners claimed property values depressed by erosion and stigma
- Stigma proven as of 1/1/09 by actual erosion, necessity of remediation, and “prominent negative publicity”
- Taxpayers provided no acceptable valuation methodology to account for erosion
- Going forward, land area must be recalculated on a year to year basis

**Chelmsford Mobile Home Park Properties v.
Assessors of Chelmsford**
ATB (June 24, 2011) [2A:8]

- FY07 Assessment: \$3,873,600
- FY08-09 Assessments: > \$11,500,000
- Taxpayers claimed increase was due to assessment of manufactured homes
- Appellate Tax Board (ATB) approved assessment based on analysis of income from "site pad" rentals
- Manufactured homes treated as exempt

**Home for Aged People in Fall River v.
Assessors of Fall River**
ATB (May 4, 2011) [2A:94]

- Taxpayer operated nursing home and independent living community
- Dominant purpose analysis used to determine whether taxpayer was traditionally charitable
- ATB looked at taxpayer's overall operations and population it served and found dominant purpose was to provide housing and other services to persons who were not traditional objects of charity

**Assessors of Bridgewater v. Bridgewater
State University Foundation**
79 Mass. App. Ct. 637 (2011) [2:1]

- Charitable foundation formed for exclusive benefit of state university
- Parcels owned by foundation but occupied by University students and alumni
- ATB found foundation occupied parcels because use was consistent with its charitable purposes
- Appeals Court reversed holding charitable exemption unavailable where charity's property is occupied by governmental entity
- Supreme Judicial Court (SJC) granted further appellate review

**Boston Communications Group, Inc.
v. Assessors of Woburn**

ATB (August 15, 2011) [2A:1]

- Assessors denied abatement application but did not mail notice within 10 days
- Taxpayer had usual 3 months to appeal to ATB, plus additional 2 months given lateness of denial notice
- ATB held taxpayer's petition untimely where filed 5 months and 19 days after date abatement denied

RECENT CASES

Employment

**Boston Housing Authority v. National
Conference of Firemen & Oilers, Local 3**

458 Mass. 155 (2010) [2:4]

- Arbitrator had no authority to decide a grievance in CBA more than 3 years old
- Evergreen clause did not extend the arbitration clause of the CBA
- Evergreen clause did not extend the minimum staffing provision of the CBA

Rudy v. City of Lowell

2011 U.S. Dist. Lexis 26956 [2:85]

- Fair Labor Standards Act (FLSA) overtime calculation is on week by week basis and overpayments may only be used to offset liability if paid in same week
- Liquidated (double damages) did not apply because city acted in good faith
- City not liable for 3 years because no evidence or allegation of willfulness

Camara v. Attorney General

458 Mass. 756 (2011) [2:14]

- Employer cannot enter into agreement with an employee to voluntarily offset compensation earned using damages allegedly incurred by the employee to the employer's detriment
- Damages and responsibility for them cannot be unilaterally determined by employer

Porio v. Department of Revenue

80 Mass. App. Ct. 57 (2011) [2:58]

- 53 year old laid off DOR employee was properly terminated under civil service law as determined by commission
- Civil service decision did not preclude employee from recovering on age discrimination claim based on disparate impact of layoff decision

**School Committee of Chicopee v.
Chicopee Education Association**
80 Mass. App. Ct. 357 (2011) [2:65]

- Arbitrator applied improper standard in reinstating teacher terminated for misuse of sick day, insubordination and prior disciplinary record
- In teacher termination case, CBA standards may be superseded by G.L. c. 71, § 42 standards, which includes students best interest and need to elevate performance standards

RECENT CASES

Public Records

**Commonwealth v.
Fremont Investment & Loan**
459 Mass. 209 (2011) [2:29]

- Company sought records received in course of litigation and protected from disclosure by court order
- SJC held public records law does not require disclosure even though no express exemption

RECENT CASES
Property Interests

**North Adams Apt. LP v.
City of North Adams**
78 Mass. App. Ct. 602 (2011) [2:53]

- City took sewer system by eminent domain
- Owner's claim for damages was denied
- Owner suffered no monetary loss

Matteson v. Walsh
79 Mass. App. Ct. 402 (2011) [2:48]

- Life tenant failed to pay taxes and maintain property
- Appeals Court found those actions were detrimental to the remaindermen
- Court terminated life estate

RECENT CASES

Collections

Richardson v. Selectmen of Blackstone

27 Mass. L. Rep. 591 (2010) [2A:152]

- Town acquired parcel by eminent domain
- Co-owner sought award of damages
- Superior Court held town could offset full amount of taxes owed against co-owner's share of award

Town of Dover v. Goucher

80 Mass. App. Ct. 1103 (2011) [2:70]

- Land Court issued tax title foreclosure decree
- Buyer under purchase and sale (P & S) agreement filed petition to vacate decree
- Petition denied by Land Court recorder
- Appeals Court remanded to Land Court to determine whether buyer has standing to file petition

In Re: David R. Nichols, Debtor
2011 Bankr. Lexis 2213 [2:81]

- Claim in Bankruptcy Court by Whitman for demolition costs incurred in removing unsafe structure from debtor's property
- Town sought immediate payment of costs allowed by G.L. c. 143, § 9 as priority "administrative" expenses
- Court approved over Debtor's objection payment was not "currently due" as lien provisions contemplated collection on tax bill only after two years
- Court determined immediately "due" and lien was simply alternative collection method

RECENT CASES

Municipal Finance

Denver Street LLC v. Town of Saugus
78 Mass. App. Ct. 526 (2011) [2:35]

- Town imposed sewer inflow/infiltration (I/I) reduction "contribution" to all new sewer connection applicants
- Appeals Court ruled required I/I reduction charge is illegal tax, not permissible fee
- New users did not receive particular benefit in return for payment that was different than benefits received by existing users
- Fees charged were not reasonably calculated to only compensate town for costs of connecting new sewer users

**Leicester School Committee v.
Town of Leicester**

27 Mass. L. Rep. 467 (2010) [2A:148]

- School Committee sought to spend balance of FY2010 appropriation in June to prepay FY2011 special education (SPED) services
- SPED tuition prepayments allowed by G.L. c. 71, § 71D, but issue whether payments allowed from one fiscal year's operating budget to pay for services for next year
- Superior Court ordered town to make prepayments for FY2011 services from available balances of FY2010 school budget

**Woodward School for Girls, Inc. v. City of Quincy, as
Trustee of Adams Temple and School Fund and Charles
Francis Adams Fund**

Norfolk Probate & Family Court (February 18, 2011) [2B:1]

- Plaintiffs alleged mismanagement by municipal trustee of historical trusts funds created by President John Adams and Charles Francis Adams
- Probate Court emphasized same standards apply to municipal trustee as to other fiduciaries, i.e., to manage trust assets "so as to maximize... the income of the trust for the benefit of the income beneficiary"
- Judgment against municipal trustee based on findings that City placed its own needs above interests of the beneficiary, disregarded competent and professional investment advice and failed to maintain basic records
- On appeal

RECENT CASES

**Telecommunications and
Utility Property**

**In re New Cingular Wireless
Consolidated Valuation Appeals**

ATB Order (June 28, 2011) [2C:34]

- ATB vacated decision to dismiss § 39 appeal filed by New Cingular and various cities and towns
- Motion to convert to appeals under §§ 64 and 65 denied for jurisdictional reasons
- Appeal under § 39 allowed to proceed per *Bell Atlantic Mobile II*

**Bell Atlantic Mobile of MA Corp., LTD, dba
Verizon Wireless v. Assessors of Boston**

ATB (October 14, 2010) [2C:1]

- Provider of wireless cellular communications services not entitled to the corporate utility exemption (G.L. c. 59, § 5, Clause 16(1)(d))
- Taxable on machinery used in the conduct of the business, which includes antennae, transmitters, receivers, amplifiers, and switching equipment (G.L. c. 59, § 5, cl. 16(2))

MASSPCSCO v. Assessors of Woburn

____ Mass. App. ____ (2011) [2C:43]

- Appeals Court upheld ATB's ruling that subsidiary not entitled to corporate stock-in-trade exemption
- Parent created subsidiary solely for the purpose of avoiding personal property tax liability
- Subsidiary was not a viable business entity engaging in substantial business activities

Boston Gas Co. dba Keyspan Energy Delivery
New England v. Assessors of Boston
458 Mass. 715 (2011) [2C:15]

- SJC upheld ATB's decision to use a valuation methodology for regulated utility company property that equally weighted net book value and reproduction cost new less depreciation
- Remanded to ATB to address 3 elements of the income-capitalization methodology

Boston Gas Co. dba Keyspan Energy Delivery
New England v. Assessors of Boston
ATB (April 21, 2011) [2C:27]

- ATB reinstated decision for assessors following remand from SJC
