

**Division of Local Services
Department of Revenue**

**2012
“What’s New in Municipal Law”
Seminar**

RECENT LEGISLATION

Local Taxes

VALOR Act

**Veterans' Access, Livelihood, Opportunity & Resources
Chapter 108 of the Acts of 2012
Effective 5/31/2012 [1:12]**

§ 7A Veterans Exemption

- Amends G.L. c. 59, § 5, Clause 22A
- Clause 22A exempts \$750 of taxes on domiciles of veterans with specific injuries or military honors
- Continues eligibility for veterans who return to active duty

Chapter 108 of 2012 (continued)

§ 8 Surviving Spouses Exemption

- Amends G.L. c. 59, § 5, Clause 22D
- Clause 22D exempts taxes on domiciles of surviving spouses of servicemembers or guardsmen who died as proximate result of combat zone injuries or diseases
- Removes \$2500 cap in exemption after 5th year

Chapter 108 of 2012 (continued)

§ 8A Veteran Work-off Abatement

- Adds local acceptance, G.L. c. 59, § 5N
- Creates new veterans property tax work-off program akin to senior work-off program under G.L. c. 59, § 5K
- Selectboard or mayor with council approval, establishes program subject to local rules and procedures

Chapter 108 of 2012 (continued)

- Abatement of real estate taxes on domicile capped at \$1000 or 125 hours of volunteer services
- Hourly wage earned capped at state minimum wage
- Veteran considered an employee for tort claims and unemployment

Chapter 108 of 2012 (continued)

- Earnings wages for federal income taxes, but not for state income taxes or workers compensation
- Designee may work for veteran physically unable to volunteer
- IRS consultation needed about treatment of wages if designee performs work

Uniform Probate and Trust Code

Chapter 140 of the Acts of 2012
Effective 7/8/2012 [1:24]

§ 1 Long Term Lessees

- Adds G.L. c. 186, § 1A
- Restores treatment of lessees of long term leases as owners for all purposes (including owners for local taxes)
- Applies to leases with terms of 100 or more years and 50 or more years left

FY2013 State Budget

Chapter 139 of the Acts of 2012
Effective 7/1/2012 [1:15]

§ 84 Local Tax E-billing

- Adds subsection (e) to G.L. c. 60, § 3A
- Collectors may already create voluntary e-billing program for property taxes, with approval of selectboard or mayor
- E-billing of other committed taxes (excises and betterments) now also allowed by same procedure

Chapter 139 of 2012 (continued)

§ 85 Motor Vehicle Excise Bills

- Amends G.L. c. 60A, § 2
- Removes requirement to display taxpayer's driver's license number on motor vehicle excise bill

RECENT LEGISLATION

Local Finances

FY2012 Supplemental State Budget

Chapter 36 of the Acts of 2012
Effective 2/17/2012 [1:2]

§ 13 Emergency Borrowing

- Amends G.L. c. 44, § 8, Clause 9
- Clause 9 allows short-term borrowings up to 2 years for emergency expenses
- Allows up to 10 year term, as approved by Director of Accounts
- Longer term based on ability to pay debt service, likely federal and state reimbursements and other factors

Compensated Absences Special Fund

Chapter 66 of the Acts of 2012
Effective 7/3/2012 [1:11]

- Adds local acceptance G.L. c. 40, § 13D
- Acceptance by majority vote of city council, town or district meeting or regional school district (RSD) committee
- Establishes reserve fund to pay accrued liabilities for compensated absences when employee terminates

Chapter 66 of 2012 (continued)

- Reserve funded by appropriation
- RSDs may fund only in annual budget submitted to members for approval
- Funds invested according to trust fund standard (G.L. c. 44, § 54)
- Interest earned credited to fund

Chapter 66 of 2012 (continued)

- RSDs with reserves already in place may retain balances and operate fund under G.L. c. 40, § 13D
- Payments from fund made by officer designated by town or district meeting or city council vote
- Payments made by city, town or district CEO if no designation

FY2013 State Budget

Chapter 139 of the Acts of 2012
Effective 7/1/2012 [1:15]

**§§ 69-83, 155 and 218 Community
Preservation Act (CPA)(See § 218
technical amendment: c. 239, § 48 of 2012)**

- Amends G.L. c. 44B, §§ 2, 3, 5, 6, 7, 10, 12 and 16
- Expands CPA fund uses, surcharge exemptions and fund revenue sources
- Clarifies required property restrictions

Chapter 139 of 2012 (continued)

CPA Fund Uses

- Allows rehabilitation of existing recreational land not created or acquired with CPA funds
 - Reverses Supreme Judicial Court (SJC) decision in Seideman v. Newton, 452 Mass. 472 (2008)
- Prohibits use of CPA funds to acquire artificial turf for athletic fields

Chapter 139 of 2012 (continued)

- "Rehabilitation" includes "capital improvements" and for recreational land, equipment replacements
- "Capital improvement" is permanent or indefinite reconstruction or alteration that materially adds value or prolongs life of real estate

Chapter 139 of 2012 (continued)

- Prohibited regular “maintenance,” now repairs not adding value or prolonging life of real estate but keeping in fit, efficient or ready condition
- “Support” of community housing includes assistance to individuals who qualify for, or entities that own or operate, community housing

Chapter 139 of 2012 (continued)

- Recreational projects count toward annual 10% open space spending requirement
- CPA administrative and operating budgets may cover 1st year tax billing software upgrades

Chapter 139 of 2012 (continued)

CPA Surcharge Exemptions

- Adds option to exempt taxes on 1st \$100,000 assessed value of commercial and industrial properties from surcharge

Chapter 139 of 2012 (continued)

CPA Fund Revenue Sources

- May qualify for 3 rounds of state trust fund distribution by:
 - Adopting at least 1% surcharge and
 - Dedicating other revenues to CPA fund to equal 3% of real estate levy
- May reduce to minimum 1% surcharge and supplement with other revenues
- 11/15 now deadline for state distribution

Chapter 139 of 2012 (continued)

CPA Property Restrictions

- Separately recorded permanent restriction required for real property interests acquired with CPA funds
- May appropriate CPA funds to have non-profit organization hold, monitor and enforce restriction

State Finance Reform

Chapter 165 of the Acts of 2012
Effective 7/27/2012 [1:25]

§§ 116 and 136 Local Aid Payments

- Amends G.L. c. 58, § 18C
- Provides for monthly payments of some local aid instead of annually or quarterly
 - Includes Chapter 70, Unrestricted General Government Aid and State Owned land distributions
- Begins in FY2014

Economic Development

Chapter 238 of the Acts of 2012
Effective 8/7/2012 [1:26]

§ 14 Local Infrastructure Development Program (LIDP)

- Adds G.L. c. 23L
- Allows creation of development zones to construct, maintain, repair and operate public facilities and infrastructure
 - Includes water, sewer, recreation, roads, bridges, sidewalks, energy, parking, public safety and other facilities

Chapter 238 of 2012 (continued)

- Zone creation initiated by petition of property owners
- All private owners must consent
- Selectboard or council holds hearing on proposed improvement plan after at least 14 days notice to owners
- If approved, notice filed with municipal clerk, Secretary of State and Massachusetts Development Finance Agency (MDFA)

Chapter 238 of 2012 (continued)

- Improvements funded by “infrastructure” or “special” assessments established after public hearing
- Recording of plan and assessment schedule creates liens for assessments
- Assessments administered like betterments and payable in up to 25 annual installments
- Assessments may be collected in same manner as property taxes

Chapter 238 of 2012 (continued)

- MDFA may issue revenue bonds for up to 25 year term to finance construction
- Assessments may be pledged to payment of the bonds
- MDFA may issue debt secured by assessments as alternative to municipal debt for invested revenue district under District Improvement Financing (DIF)

RECENT LEGISLATION

Local Employees

Collective Bargaining Agreements

Chapter 198 of the Acts of 2011
Effective 11/22/2011 [1:1]

- Amends G.L. c. 150E, § 7
- Permits "evergreen" clauses in CBAs and continuation of contract beyond 3-year limit on term in statute
- Reverses SJC decision in Boston Housing Authority v. National Conference of Firemen and Oilers, Local 3, 458 Mass. 155 (2010)

Chapter 198 of 2011 (continued)

- Does not apply to CBA matters pending or adjudicated by court between 10/22/10 and 11/22/11
- Applies retroactively to all other CBAs that expired before act

Assistant Collectors and Treasurers

Chapter 205 of the Acts of 2011
Effective 11/29/2011 [1:2]

- Amends G.L. c. 41, §§ 39A and 39C
- Lets assistant collectors or assistant treasurers be residents of states other than Massachusetts

FY2012 Supplemental State Budget

Chapter 118 of the Acts of 2012
Effective 6/19/2012 [1:14]

§§ 9-11 Health Insurance Coverage

- Amends G.L. c. 32B, §§ 19, 21 and 23
- Requires notice to Group Insurance Commission (GIC) by:
 - December 1 to transfer subscribers by next July 1
 - July 1 to transfer subscribers by next January 1

Chapter 118 of 2012 (continued)

- Districts other than RSDs may change benefits under health insurance reform by vote of the district meeting
- Districts may now also change by vote of governing board

RECENT CASES

Property Taxes

***Verizon New England Inc.
v. Assessors of Boston, et al.***
81 Mass. App. Ct. 444 (2012) [2:118]

- Appeals Court reversed ATB ruling that landline telephone corporation's poles and wires over public ways taxable before 2009 legislation
- Held company's construction work in progress (CWIP) taxable if assets otherwise taxable
- Remanded to ATB to determine CWIP assets

***Bridgewater State University Foundation
v. Assessors of Bridgewater***
463 Mass. 154 (2012) [2:45]

- Foundation owned 3 buildings and 3 parcels
- Buildings used by university and foundation
- ATB allowed charitable exemption (G.L. c. 59, § 5, Clause 3) because properties occupied by foundation for its charitable purpose of supporting university's educational mission

***Bridgewater State University Foundation
v. Assessors of Bridgewater***
(continued)

- Appeals Court denied exemption for properties used by university
- SJC reversed Appeals Court
- Interpreted statute to avoid "absurd result" of properties used for foundation's purpose of supporting the university's educational mission being denied exemption

***Mohonk Educational & Neuropsychological
Foundation v. Assessors of Mt. Washington***
ATB (June 13, 2012) [2A:64]

- Foundation's mission to develop and apply educational and therapeutic techniques in outdoor settings for special needs children
- 174.28 acre site vacant except for dilapidated buildings
- CEO unable to identify when, how, or even if students actually used property
- ATB denied exemption because "mere ownership" insufficient for occupancy for charitable purposes

**Massachusetts Youth Soccer
Association v. Assessors of Lancaster**
ATB (May 16, 2012) [2A:51]

- Association's purpose to provide services for affiliated local soccer clubs and promote game of soccer
- Property included soccer complex and office buildings
- Association hosted tournaments and summer camps at property
- ATB held promoting soccer not educational activity and denied exemption
- Program targeted "only elite players" in a manner inconsistent with exempt status

**Roman Catholic Archbishop of Boston
v. Assessors of Scituate**
ATB (December 16, 2011) [2A:71]

- Issue of exempt status of suppressed parish church occupied by vigilers
- Church no longer used or occupied for religious purposes by owner religious organization
- Vigilers' use intended to cause owner to reopen the church as full parish
- ATB found vigilers not occupying property for owner's religious or charitable purposes
- House of worship not occupied by owner for religious purposes ineligible for exemption

**Danbee Real Estate et al.
v. Assessors of Peru**
ATB (May 7, 2012) [2A:14]

- Taxpayer appeals assessors' denial of forest land classification by assessors
- State forester certifies forest land status without appeal to ATB; application due to assessors by 10/1
- ATB held jurisdiction limited to abatement appeals of assessors' failure to tax classified forest land preferentially under G.L. c. 61
- Camp facility not entitled to G.L. c. 61B recreational land classification because:
 - Land not "natural, wild, open" and
 - Camping not available to general public

***Route 16 Land Dev. Corp.
v. Assessors of Milford***
ATB (June 13, 2012) [2A:78]

- Assessors sent commercial property owner 2 information requests under G.L. c. 59, § 38D
- Taxpayer admitted receiving 2nd request and did not contest that information was “reasonably required” by assessors
- Taxpayer testified he responded to information request—but it was never received by assessors
- ATB rejected taxpayer’s uncorroborated testimony and dismissed appeal

Kamholz v. Assessors of Newton
ATB (January 23, 2012) [2A:44]

- Conversion of property to 2 condominiums did not trigger supplemental tax (G.L. c. 59, § 2D)
- Real estate must be improved in valuation by over 50% by new construction
- ATB granted abatement because no construction on property

***Independent Concrete Pumping Corp.
v. Assessors of Wakefield***
ATB (October 20, 2011) [2A:27]

- Concrete pumper a motor vehicle for motor vehicle excise purposes
- ATB held excise value includes truck chassis and all attached pumping equipment

Armour v. Indianapolis

132 S.Ct. 2073 (2012) [2:7]

- Abutters assessed for sewer project were able to make lump sum payment or pay in installments
- City later changed assessment formula to include borrowing
- U.S. Supreme Court held forgiving future installment payments and denying refunds to those who prepaid did not violate Equal Protection Clause

Dartmouth v. Greater New Bedford Regional Vocational Technical High School

462 Mass. 219 (2012) [2:49]

- Towns challenged apportionment of costs among member communities of regional school district (RSD)
- SJC held 1993 Education Reform Act superseded prior RSD agreement
- Towns did not have standing to challenge constitutionality of Education Reform Act

Denver Street LLC v. Saugus

462 Mass. 651 (2012) [2:56]

- SJC upheld inflow and infiltration (I/I) charge imposed on developers allowed quicker access to town's sewer system
- Sewer entry charge was lawful fee and not impermissible tax
- Town's I/I charge met Emerson College v. Boston factors

Murphy v. Mass. Turnpike Authority
462 Mass. 701 (2012) [2:82]

- SJC held Turnpike Authority can divert toll revenues to pay costs for non-tolled roads, bridges and tunnels of Metropolitan Highway System
- Tolls were lawful fees under Emerson College v. Boston factors

Barr, Inc. v. Holliston
462 Mass. 112 (2012) [2:23]

- Town sought bids to construct police station
- Contract awarded to 2nd lowest bidder after town received unfavorable reviews from lowest bidder's former clients
- SJC held town in determining bidder responsibility can look outside DCAM records

Marcus v. City of Newton
462 Mass. 148 (2012) [2:73]

- SJC determines City not entitled to liability limitation of G.L. c. 21, s. 17C, the "Recreational Use Doctrine" ("RUD")
- Appellant was injured by fallen tree from neighboring property while playing softball at City park
- SJC held Appellant's payment of fee to group renting park negated City's RUD use

Bliss v. Fisher
842 F. Supp. 2d 400 (2012) [2:31]

- Civil rights and malicious prosecution case arising from unlawful use of bond funds by North Attleboro Electric Department (NAED)
- DA prosecuted NAED officials for attempted use of bond funds for purpose not authorized by town meeting (G.L. c. 44, §§ 20, 62)
- US District Court dismissed subsequent claims brought by NAED officials after not guilty findings in criminal court because DA had probable cause to bring charges

Daniel Adams v. City of Boston
461 Mass. 602 (2012) [2:1]

- SJC held City not obligated to fund state share of Quinn Bill reimbursement
- CBA did not violate language of state statute

Charles H. Turner v. City of Boston
462 Mass. 511 (2012) [2:111]

- SJC held City ordinance removing convicted City Councillor conflicted with state statutory scheme
- Sentencing, not conviction, triggers automatic removal under G.L. c. 279, § 30
- Municipalities cannot vary by ordinance

**Public Employee Retirement
Administration v. Edward Bettencourt**
81 Mass. App. Ct. 1113 (2012) [2:95]

- Appeals Court held police officer's criminal conviction resulted in pension forfeiture (G.L. c. 32, § 15(4))
- Officer convicted of unlawful use of police equipment to target fellow police officers

**Haverhill Retirement System v.
Contributory Retirement Appeal Board**
82 Mass. App. Ct. 129 (2012) [2:69]

- School employee mistakenly enrolled in City retirement system, not teacher system
- Appeals Court held City system required to transfer pension funds to teacher system
