



# Bulletin

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2009-08B

## 2008 LEGISLATION

TO: Local Officials

FROM: Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs

DATE: February 2009

SUBJECT: Summary of 2008 Municipal Finance Law Changes

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To keep you informed of legislative developments during the year, the Division of Local Services publishes on a periodic basis a **BULLETIN** summarizing any new laws enacted that affect municipal budgets and local tax assessment, administration and collection. Each issue contains a cumulative summary of session laws enacted to that time and indicates whether the Division has issued or will issue any further implementation guidelines.

Attached is the **2008 edition** of the **LEGISLATIVE BULLETIN**. It includes any legislative changes affecting municipal finance found in Chapters 1 - 535 of the Acts of 2008.

Copies of these new laws can be obtained from the web site of the State Legislature: [www.mass.gov/legis](http://www.mass.gov/legis) or the State Bookstore located in Room 116 of the State House.

## **2008 LEGISLATION**

**Ch. 61**

### **PROPERTY TAX EXEMPTION FOR VETERANS ORGANIZATIONS**

**An Act Increasing the Local Property Tax Relief to Nonprofit Veterans Organizations in Certain Cities and Towns.** *Effective June 17, 2008.*

Adds a new local option clause, G.L. c. 59, § 5, Clause 5C, that if accepted, provides a property tax exemption of \$1,500,000 worth of real and personal property owned by or held in trust for veterans organizations. Unlike charitable organizations exempt under G.L. c. 59, § 5, Clause 3, veterans organizations are not fully exempt from local taxes on real and personal property owned by or held in trust for them and used for their organization's charitable purposes. The exemption is limited to a certain amount of the fair cash value of the organization's property. The basic exemption is for \$200,000 worth of property (G.L. c. 59, § 5, Clause 5). A community can give a higher exemption benefit by accepting local option Clauses 5A (\$400,000 exemption) or Clause 5B (\$700,000). The new local option Clause 5C allows communities to provide relief to organizations that are now receiving tax bills because the valuation of their property has increased beyond the exemption amount currently allowed under the other local option clauses. Acceptance requires a majority vote of the municipal legislative body, subject to local charter. G.L. c. 4, § 4.

**Ch. 80**

### **EMPLOYEE COMPENSATION**

**An Act Further Regulating Employee Compensation.** *Effective July 13, 2008.*

Amends G.L. c. 149, §§ 27-27H and §§ 150-151, which govern the prevailing wage and prompt payment of wages laws. The changes require an award of treble damages, as well as the costs of litigation and attorney fees, for prevailing employees in actions under those statutes to recover wages not properly paid. Previously, the statutes allowed the employee to seek treble damages, but only required payment of litigation costs and attorney fees when the litigant was successful in the lawsuit.

**Ch. 85**

### **ANNUAL TOWN MEETING SCHEDULE**

**An Act Allowing Town Meetings to be Held in June.** *Effective July 14, 2008.*

Amends G.L. c. 39, §§ 9 and 9A, which govern the time and place for annual town meetings and elections, to permit annual meetings to begin in June. Previously, annual meetings had to begin in February, March, April or May. Annual meetings must still conclude their business on or before June 30.

Ch. 169

**ENERGY ALTERNATIVES AND CONSERVATION**

**An Act Relative to Green Communities.** *Effective July 2, 2008.*

**§ 7 Regional Greenhouse Gas Initiative Reimbursement.** Provides a reimbursement to cities and towns where property tax revenues, including payments in lieu of property taxes, paid by electric generating plants are reduced due to the implementation of the Regional Greenhouse Gas Initiative (RGGI), which requires reductions in carbon dioxide emissions from power plants in the Northeastern states and implements a “cap and trade” regulatory system. Proceeds from an auction of the “cap and trade” emission permits will go into a trust fund and will pay for the reimbursements. **But see St. 2008, c. 312, § 4 below that limits this reimbursement to communities with coal fired generating plants.**

**§ 50 Borrowing for Energy Improvements.** Amends G.L. c. 44, § 7, Clause 3B, which authorizes cities and towns to borrow within their debt limits to make energy conservation or alternative energy improvements to municipal buildings or facilities. Under the amendment, the allowable term for energy related borrowings is increased from 10 to 20 years. In addition, cities and towns may now borrow to make the improvements to any buildings, facilities or property it owns or leases.

Ch. 173

**STATE CORPORATE TAX REFORMS**

**An Act Relative to Tax Fairness and Business Competitiveness.** *Effective July 3, 2008 unless otherwise noted.*

Makes a number of changes related to the taxation of businesses at the state level, including adoption of entity classification rules that generally conform to the federal “check-the-box” rules requiring businesses to be classified as the same type of entity for state and federal tax purposes and elimination of prior statutory distinctions between “domestic” and “foreign” corporations by designating both to be “business corporations.” **Department of Revenue (DOR) [Technical Information Release \(TIR\) 08-11](#) issued August 15, 2008.**

**§§ 2-10 and 101 Local Taxation of Business Corporations.** *Effective January 1, 2009.* Make changes to several sections of G.L. c. 59 that relate to the local taxation of corporations, including G.L. c. 59, § 5, Clause 16, in order to conform to the act’s state corporate tax reforms. With some exceptions, unincorporated entities classified as corporations for federal and state tax purposes are treated as corporations for local tax purposes. As a result, the local tax treatment of some of these entities may change depending on how they are treated for federal income tax purposes. This may impact the personal property taxable to them at the local level. **See [State Tax Form 2, Part 3](#) for a more detailed explanation of the local tax treatment of different business entities.**

**§ 97 Municipal Relief Commission.** Establishes a 14 member special commission to study additional local revenue initiatives, including a local meals tax and expanded local rooms tax, by December 15, 2008. Members include the House and Senate Chairs of the Joint Committee on Municipalities and Regional Government, House and Senate Chairs of the Joint Committee on Revenue, Chairs of the House and Senate Ways and Means Committees, House Minority Leader or his designee, three Senate members appointed by the Senate President and three House members appointed by the Speaker of the House.

Ch. 182

**FISCAL YEAR 2009 STATE BUDGET**

**An Act Making Appropriations for the Fiscal Year 2009 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements.** *Effective July 1, 2008, unless otherwise noted.*

**§ 3 Local Aid Advances.** Authorizes the State Treasurer to advance payments of fiscal year 2009 local aid distributions to a city, town, regional school district or independent agricultural and technical school that demonstrates an emergency cash shortfall, as certified by the Commissioner of Revenue and approved by the Secretary of Administration and Finance.

**§§ 13, 74 and 116 Community Preservation Recording Fee Surcharges.** *Effective Retroactive to March 5, 2003.* Section 13 amends G.L. c. 44B, § 8 to provide that certain recorded documents with references to other documents must be indexed separately and assessed a separate Community Preservation Act (CPA) recording fee surcharge. Section 74 makes the same change to G.L. c. 262, § 38 with respect to recording fees generally. The change effectively reverses a decision of the Appeals Court earlier in 2008 that such documents are single instruments and subject to the basic recording fee, a single CPA surcharge and additional amounts for extra pages and marginal references. *Patriots Resorts Corporation v. Register of Deeds for the County of Berkshire, Northern District, 71 Mass. App. Ct. 114 (2008).*

**§ 14 Senior Property Tax Deferrals.** Allows cities and towns to increase the gross receipts a senior may have to defer payment of property taxes under G.L. c. 59, § 5, Clause 41A. The limit is \$20,000 regardless of marital status, but communities may increase that limit to any amount up to \$40,000. This amendment would tie that maximum allowable increase to the income limit in the state circuit breaker tax credit for senior single filers (\$48,000 for state tax year 2007). The Commissioner of Revenue adjusts the circuit breaker income limit annually based on changes in the cost of living. [Informational Guideline Release \(IGR\) No. 08-208](#) issued August 2008.

**§ 15 Demand Fees.** Amends G.L. c. 60, § 15, which specifies the collection costs that may be added to and collected as part of an overdue tax. Under the amendment, the charge imposed when a local tax collector issues a demand may now be any amount \$30 or less. Previously, the charge was \$5. [Bulletin 2008-09B](#) issued August 2008.

**§§ 16 and 117 Motor Vehicle Excise Exemptions.** *Effective January 1, 2010.* Adds a new local acceptance paragraph to G.L. c. 60A, § 1 that if accepted, will exempt from the motor vehicle excise Massachusetts residents who are on active military duty outside the country for at least 45 days of the excise calendar year. If the service member is wounded or killed in an armed conflict, the exemption applies regardless of the number of days deployed. As with all motor vehicle excise exemptions for individuals found in G.L. c. 60A, § 1, the service member may exempt only one vehicle owned and registered for personal use. If the community accepts the exemption, then all taxpayers in the community with delinquent motor vehicle excise bills will be charged an extra \$3 when the excises are sent to a deputy collector for collection action (the current fee is \$10). This is intended to offset any reduced revenue if eligible residents are granted the exemption. The exemption takes effect on the January 1 after the calendar year the acceptance is voted. Acceptance of this paragraph requires a majority vote of the municipal legislative body, subject to local charter. G.L. c. 4, § 4.

Also adds a new paragraph to G.L. c. 60A, § 1 that will apply to all motor vehicle excise exemptions beginning with 2010 excises. Under the amendment, certain persons other than the qualifying taxpayer will have standing to apply for the exemption. Where the vehicle is jointly owned, the spouse of a taxpayer who qualifies for an exemption may apply instead. Where the qualifying taxpayer is deceased, the taxpayer's surviving spouse, executor or administrator, may apply. The purpose is to allow an excise exemption to be granted when the qualifying taxpayer is absent due to military service or other reason, or passed away before applying.

**§ 17 Motor Vehicle Excise Deferral for Deployed Guardsmen and Reservists.** Creates a new local option statute, G.L. c. 60A, § 9, that if accepted, will give Massachusetts National guardsmen and reservists deployed outside the state, or their dependents, up to 180 days after that service to pay their motor vehicle excises without interest or penalties. It is similar to the deferral of property tax payments allowed under local option statute, G.L. c. 59, § 5L, which was enacted in 2006. The property tax deferral was patterned after a provision of the federal Servicemembers Civil Relief Act under which active duty personnel (including guardsmen called to Federal service and activated reservists) may pay their federal, state or local income taxes interest and penalty free up to 180 days after termination or release from service. 50 U.S.C. App. § 570. There is no comparable federal deferral for payment of real and personal property taxes or local excises by active duty personnel, although collection activities are stayed and interest runs at 6% with no other penalties allowed. 50 U.S.C. App. § 561. Acceptance requires a majority vote of the municipal legislative body, subject to local charter. G.L. c. 4, § 4. Once accepted, the statute would apply to any outstanding motor vehicle excises of qualifying guardsmen and reservists and their dependents, regardless of when they fell due. Interest would be charged at the regular delinquency rate from the end of the 180 day period, unless the returning guardsman or reservist is still on active duty status and qualifies for the lower 6% rate under the Servicemembers Civil Relief Act.

**§§ 62-66 and 114 Regional Transit Authority (RTA) Assessments.** Under these sections, the credit RTA member communities receive in their Massachusetts Bay Transportation Authority (MBTA) assessments will now be based on the most recent audited RTA assessments available as of January 1 of each year, *e.g.*, audited FY2007 assessments will be used for FY2009 MBTA assessments. This codifies the manner in which the MBTA is currently calculating its assessments and does not impact MBTA assessments in FY2009 and beyond. Assessments for RTA member communities will now also be based on the same audited RTA assessments as used in the MBTA credit, *e.g.*, audited FY2007 assessments will appear as FY2009 Cherry Sheet estimates and will be the basis for FY2009 actual RTA assessments. Previously, budgeted prior year assessments were used for the following year's Cherry Sheet assessments. The net effect on RTA funding is that member communities of existing RTAs will not receive a 2.5% increase in their FY2009 assessments because those assessments will be based on the FY2007 audited assessments, which were used in FY2008 to determine the actual RTA assessments on members.

**§ 77 Payment of Public Employees in Military Service.** Amends a 2003 law that required counties, cities, towns and school districts that accepted it to compensate municipal employees in the Army National Guard, the Air National Guard or a reserve component of the armed forces of the United States, who were granted a military leave of absence for service after September 11, 2001 through September 11, 2005, at their base salaries minus certain military pay. St. 2003, c. 137, § 1, as amended by St. 2005, c. 77, which extended the sunset date to September 11, 2008 and made modifications to the amounts to be deducted from the compensation that had to be paid to the employees. The amendment made by this section further extends the sunset date to September 11, 2011.

**§ 100 Education Reform Waivers.** Permits cities, towns and regional school districts to apply for various adjustments in their FY2009 minimum required contributions to schools under the Education Reform Act. Municipalities may seek adjustments if (1) non-recurring revenues were used to support FY2008 operating budgets and those revenues are not available in FY2009, (2) they have extraordinary non-school related expenses in FY2009, or (3) their FY2009 municipal revenue growth factor is at least 1.5 times the statewide average and is deemed to be excessive. Regional school districts that used non-recurring revenues in FY2008 that are unavailable for FY2009 must seek waivers if a majority of the selectmen in a town, the city council in a Plan E city or the mayor in all other cities in a majority of the member municipalities requests them. If a regional school budget has already been approved by the members and a waiver is granted of any member's minimum required local contribution to the district, the use of that waiver must be approved by the selectmen, the city council in a Plan E city or the mayor in all other cities of a majority of the member municipalities. Requests for waivers must be made by October 1, 2008. [IGR 08-302 issued July 2008.](#)

**§ 112 Municipal Budget Commission.** Establishes a special 10 member commission to examine municipal budgeting and accounting practices by December 31, 2008. Members include the House and Senate Chairs of the Joint Committee on Municipalities and Regional Government, Chairs of the House and Senate Ways and Means Committees or their designees, the Speaker of the House or his designee, the Senate President or her designee, the State Auditor or his designee, the Commissioner of Revenue or her designee, a representative from the Executive Office of Administration and Finance, and a representative of the Massachusetts Municipal Association.

**Ch. 188**      **INTERMUNICIPAL AGREEMENTS**  
**An Act Relative to Intermunicipal Agreements.** *Effective July 18, 2008.*

Amends G.L. c. 40, § 4A, which authorizes agreements among governmental entities to jointly perform governmental services and functions, to allow the board of selectmen, or other chief executive officer when authorized by the board of selectmen, of a town, and the prudential committee of a district, to enter into the agreements on behalf of their entities. Previously, town or district meeting approval was required for the selectmen (or other chief executive officer) and prudential committee to enter into an agreement. It also adds state executive branch agencies as entities that may be parties to these agreements.

**Ch. 302**      **FISCAL YEAR 2008 SUPPLEMENTAL BUDGET**  
**An Act Making Appropriations for Fiscal Year 2008 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects.** *Effective August 8, 2008 unless otherwise noted.*

**§§ 13 and 68 Borrowing for School Project Feasibility Studies.** *Effective retroactive to January 1, 2008.* Adds subsection (e) to G.L. c. 70B, § 6, which relates to approval of school facility grants by the Massachusetts School Building Authority (MSBA). Under the provision, cities, towns and regional school districts may now borrow for a term of five years to conduct any feasibility study required to apply for MSBA grants. The debt is outside the debt limit and governed by G.L. c. 44. See G.L. c. 70B, § 6(d).

**Ch. 310**      **DAIRY FARM PRESERVATION**  
**An Act Relative to the Preservation of Dairy Farms.** *Effective August 14, 2008.*

**§ 2 Optional Assessment of Farm Animal Excise.** Adds a paragraph to G.L. c. 59, § 8A, which provides for the assessment of an excise on individuals engaged principally in farming or in youth agricultural programs for certain farm animals, machinery and equipment that would otherwise be subject to a personal property tax. The new provision allows a city or town to cease assessing the excise. To do so, the board of selectmen or city or town council, with the mayor's approval if required by law, must by two-thirds vote seek voter approval to not impose the excise. [Bulletin 2009-07B issued February 2009.](#)

Ch. 312

**ENVIRONMENTAL BOND BILL**

**An Act Providing for the Preservation and Improvement of Land, Parks, and Clean Energy in the Commonwealth.** *Effective August 14, 2008.*

**§ 4 RGGI Reimbursement.** Amends provision in Green Communities Act that reimburses communities with electric generating plants for any loss of property tax revenues due to the impact of the RGGI “cap and trade” regulatory provisions on plant value. **See St. 2008, c. 169, § 7 above.** Under the amendment, the reimbursement is available only to those communities with coal-fired plants. The reimbursement for each fiscal year will be based on the difference between property tax revenues in fiscal year 2008 and that year.

**§§ 6 and 7 Option to Purchase Classified Farm and Recreational Land.** Make technical corrections to G.L. c. 61A, § 14 and c. 61B, § 9, which give a municipality a first refusal option when classified farm and recreational land is sold for or converted to development. The option provisions in all classified land statutes, G.L. c. 61, 61A and 61B were revised in 2006 and the new provisions in all three chapters referred to “forest certification” and “forest use.” These sections delete “forest use” and substitute the applicable land use, *i.e.*, agricultural or horticultural use in G.L. c. 61A, § 14 and recreational use in G.L. c. 61B, § 9.

**§ 10 Sewer Assessments.** Amends G.L. c. 83, which governs sewer systems, to give cities, towns and sewer districts that develop systems to reduce or eliminate impact of nutrient enrichment on drinking water sources or surface water bodies under a comprehensive water resources management plan (CWMP) approved by the state Department of Environmental Protection (DEP) the ability to limit a property owner's right to connect to the sewer under G.L. c. 83, § 3 by adding §§ 1A-1H to G.L. c. 83. To have the new sections apply, the city, town or district must vote to adopt the new G.L. c. 83, § 1A by majority vote.

Under G.L. c. 83, §§ 1A-1H, the communities and districts may limit connections to certain properties (1) within the areas covered by the CWMP, (2) with failed septic systems that are unable to be served by a new septic system or an enhanced system under remedial use, or (3) with at least 15 units of deed restricted affordable housing. Abutters with enhanced systems may be required to connect unless the community or district has a DEP approved monitoring or inspection plan for those properties. A fee may be assessed by the board of health as part of that plan in order to fund the inspections. Once the system is operational, further connections may be allowed under certain circumstances based on capacity.

Communities and districts operating under these sections may borrow for up to 50 years for the system plant, or the plant's useful life as approved by DEP, whichever is shorter, and may issue temporary debt for up to five years. Sewer betterments may be assessed at the time of connection rather than upon construction of the system plant and property owners may pay the assessments over 50 years. A special revenue account may be established for monies collected from any property owner for the difference in cost between a conventional septic system and sewer system designed to reduce or eliminate impact of nutrient enrichment on drinking water sources or surface water bodies. The funds may only be spent to construct, maintain and operate the system. They must also be applied to the connection charges or betterment assessed on the property.

**Ch. 374**      **ENROLLMENT OF MUNICIPAL RETIREES IN MEDICARE**  
**An Act Relative to Certain Health Insurance Options for Municipal Retirees.** *Effective November 7, 2008.*

Creates a new local option, G.L. c. 32B, § 18A, that allows local governmental units to enroll retirees eligible for the federal Medicare Part B (doctors' services and outpatient care) program without penalty. Previously, if a city or town accepted G.L. c. 32B, § 18, it had to enroll all eligible retirees, including those that had already retired. By not enrolling those employees at the time they retired, however, the municipality was assessed a late premium penalty by the federal government. The new option under Section 18A allows communities to enroll only those employees who retire after the community adopts the option. Since prior retirees would not be enrolled, the municipality will not be subject to the penalty.

**Ch. 377**      **FISCAL YEAR 2009 SUPPLEMENTAL BUDGET**  
**An Act Making Appropriations for Fiscal Year 2009 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects.** *Effective November 7, 2008 unless otherwise noted.*

**§§ 2, 2A and 10 Extension of Deadline for Joining Group Insurance Commission.** Amends subsection (e) of local option G.L. c. 32B, § 19, which allows local governmental employers to obtain health insurance coverage for employees, retirees and their dependents by joining the state Group Insurance Commission (GIC). Under the amendment, employers who want GIC health benefits to take effect for any fiscal year will now have until December 1 instead of October 1 of the prior year to notify the GIC. As of January 1, 2012, the deadline will revert to October 1.

**Ch. 479      OTHER POST-EMPLOYMENT BENEFITS LIABILITY TRUST FUNDS  
An Act Providing for the Establishment of Other Post Employment  
Benefits Liability Trust Funds in Municipalities and Certain Other  
Governmental Units. *Effective January 10, 2009.***

Adds a new local option section, Section 20, to G.L. c. 32B, which governs group health insurance for active and retired employees of local governmental entities. The new option allows a city, town, district, county or municipal lighting plant to set up a special trust fund, the Other Post Employment Benefits (OPEB) Liability Trust Fund, for appropriations made to cover its unfunded actuarial liability of health care and other post-employment benefits for its retirees. Reimbursements received by the governmental entity from the federal Medicare program for covering retiree drug costs (Medicare Part D) may be credited to the fund as well. Acceptance is by vote of town meeting in a town, city council in a city having a Plan D or Plan E charter, city council with the approval of the mayor in any other city, the governing board in a district, county commissioners in a county and board for a municipal lighting plant. Previously, municipalities had to obtain special acts to create an OPEB trust fund.

The governmental entity must retain an actuary to establish a funding schedule. The schedule must be reviewed and approved by the Public Employee Retirement Administration Commission's (PERAC's) actuary. In addition, the schedule must be reviewed every three years by the chief executive officer of the entity and any update must be reviewed by PERAC's actuary as well. The governmental entity is not required to make appropriations into the fund according to the schedule, but any appropriations made are held in trust for OPEB obligations.

The governmental unit's treasurer is the custodian of the fund or in the case of a light plant, an officer designated by the board. Investment of fund monies by the custodian must be consistent with the prudent person standard set forth in G.L. c. 203C for private trust funds. Interest earned on the investment of fund monies belongs to the fund.

**An IGR will be issued on this legislation.**

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**Last Act:      Chapter 535 approved by the Governor on January 16, 2009.**