



Bulletin

BUL-2023-8

RECENT LEGISLATION

TO: Local Officials

FROM: Kenneth Woodland, Chief, Municipal Finance Law Bureau

DATE: December 2023

SUBJECT: “AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2023 FOR SUPPLEMENTING CERTAIN EXISTING APPROPRIATIONS AND FOR CERTAIN OTHER ACTIVITIES AND PROJECTS” [Chapter 77 of the Acts of 2023](#)

To keep you informed of legislative developments, the Division of Local Services (“Division”) periodically publishes a **BULLETIN** summarizing new laws that affect municipal budgets and local tax assessment, administration and collection. Each issue usually contains a cumulative summary of session laws enacted to that time and indicates whether the Division has issued any further implementation guidelines. This edition of the **BULLETIN** instead focuses on a recent legislative change affecting municipal finance found in [Chapter 77 of the Acts of 2023](#) (“Act”), entitled AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2023 FOR SUPPLEMENTING CERTAIN EXISTING APPROPRIATIONS AND FOR CERTAIN OTHER ACTIVITIES AND PROJECTS. The Act is currently in effect.

§ 8 of the Act amends [G.L. c. 40, § 5B](#), which governs the establishment of stabilization funds and regulates their administration. As is the practice in many cities and towns, municipalities may create a general purpose stabilization fund or a special purpose stabilization fund. In practice, most general purpose stabilization funds are broadly created for any lawful purpose while a special purpose stabilization fund delineates the intent of future expenditures more distinctly. The Act changed the quantum of votes to appropriate funds from special purpose stabilization funds so that it is now a simple majority. The present two-thirds quantum of votes needed for appropriating funds from a general purpose stabilization remains the same. Likewise, a two-thirds vote is still needed to create either stabilization fund or to change its purpose.

§ 9 of the Act amends [G.L. c. 44, § 53](#), which governs municipal receipts, in the following two ways.

First, Clause 2 has been amended. Presently, a municipal or district department in charge of property that was damaged and for which the municipality or district receives insurance proceeds or restitution payments of \$150,000 or less could spend the monies, without appropriation and with the approval of the chief executive officer, to replace or repair the property. In many cases, however, that replacement or repair must be made immediately. The change now allows spending for this purpose in advance of the monies being received, for amounts \$150,000 or less. However, if the monies are not received by the close of the fiscal year after the fiscal year in which the damage occurred, the municipality must report the same in the determination of the applicable annual tax rate or otherwise make provision therefor. The amendment is patterned after the change made by the Municipal Modernization Act to [G.L. c. 44, § 53A](#), which allows spending in advance of certain grant funds.

Second, new Clauses 4 and 5 have been added. Generally, 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. This general rule of municipal finance occasionally presents communities with accounting and procedural difficulties in situations where an unexpected, conditional receipt is received. Such receipts, by law, would become part of the general fund, eventually close and become part of the next year's free cash certification. When it becomes part of free cash, the original restrictions on the funds become muddled, as under current law they must sit in an available fund that can be appropriated for any lawful purpose. Additionally, this process can take several months and many times these one-time monies are intended for immediate expenditure for their specific purpose. The new Clauses 4 and 5 create exceptions to this general rule. With the approval of the Director of Accounts, in certain circumstances, both clauses allow certain one-time monies to be reserved in a special revenue fund, thereby not closing to fund balance at the end of the fiscal year and not becoming part of the free cash certification. Clause 4 does so for monies received for one specific purpose and can be spent without further appropriation, while Clause 5 does so for monies received for multiple purposes and requires appropriation. In both scenarios, there must be an authorization from the Director of Accounts and is limited to one-time, unanticipated receipts that affect multiple communities.

To see how this change, pursuant to Clause 4, will impact opioid settlement receipts, please see [Bulletin 2023-7](#). The Bulletin further discusses Section 197 of the Act which allows a community to consolidate all monies previously received for this purpose into the special revenue fund in the ways described therein.

Next, § 10 of the Act inserts new section 53K into [G.L. c. 44](#). Municipalities often enter into host or mitigation agreements with developers or other entities, including cannabis establishments and casinos, to address the impacts of new development or location of a facility within the city or town and receive cash payments to mitigate these impacts. In addition, a developer may make a cash payment in lieu of undertaking a particular condition or obligation required by a zoning or other permitting by-law or ordinance, or a party renting municipal property may make payments in addition to the lease. Examples include a developer of a commercial property making a payment required under the town's zoning bylaw in lieu of constructing sufficient parking spaces with the monies to be used by the town for the acquisition, improvement and maintenance of municipal parking; or a cell phone company that is leasing town owned property for its equipment agreeing to give the municipality a "one-time payment" in addition to its lease. Under current municipal finance law, these mitigation payments or regulatory exactions are general fund monies that must be appropriated before they can be used for the dedicated

purposes for which they are given and received. [G.L. c. 44, § 53](#). The parties often try to characterize the monies as gifts, so as to be able to spend them without appropriation, but they are not gifts within any ordinary meaning of the term. The new § 10 addition of Section 53K allows communities to separately account for such payments in a special revenue fund and spend them for the dedicated purposes without further appropriation.

Lastly, § 205 of the Act allows a city or town to amortize over fiscal years 2025 to 2027 the amount of its fiscal year 2024 major disaster related deficit. To do so, the select board or, in a city, the council, with the mayor's approval when required by law, must adopt a deficit amortization schedule before setting the municipality's fiscal year 2025 tax rate. The amortization process will be comparable to the process that was used to amortize snow related deficits in 2015. Examples of a major disaster include flood, drought, fire, hurricane, earthquake, storm or other catastrophe, whether natural or otherwise, which poses an immediate threat to the health or safety of persons or property. To utilize this section, there must be a declaration of emergency, either locally or by the Governor, and an approval to expend for the liabilities incurred by the Director of Accounts. DLS will be providing further guidance on this process.