

Drinking Water and Wastewater Infrastructure New Funding Opportunities

In some areas of Massachusetts, a majority of the existing wastewater and drinking water infrastructure was built following World War II, and it continues to age and slowly deteriorate. In other areas, cities and towns are exploring their options for installing wastewater treatment and disposal facilities for the first time. Water and wastewater infrastructure improvement and replacement projects can be expensive, yet given the potential magnitude of impacts resulting from failure of such infrastructure, proper maintenance and timely replacement is essential. Municipalities and utilities are ultimately responsible for the ongoing process of evaluation, maintenance and replacement of this infrastructure to protect water quality and public health. However, there are significant funding challenges that inhibit the ability of municipalities to fulfill this duty. In response to these funding challenges the Massachusetts legislature passed Chapter 259 of the Acts of 2014. This Memorandum highlights the relevant sections of the new legislation that create the opportunity for a significant new revenue stream for municipal funding of drinking water and wastewater infrastructure.

Massachusetts municipalities have traditionally funded drinking water and wastewater infrastructure projects with monies appropriated from their general funds or monies raised through betterment assessments. The recently enacted legislation, which has been codified at G.L. c.40, §39M, creates an alternative to these traditional funding methods that will enable municipalities to do more effective long term planning for drinking water and wastewater infrastructure projects. Similar to the Community Preservation Act of 2000, the new legislation permits municipalities that accept the law to impose a surcharge on real property at a rate up to, but not exceeding, three per cent (3%) of the real estate tax levy against real property for water infrastructure purposes. As with the CPA, revenues collected through the surcharge are not counted for the purpose of establishing the limit on the local tax levy imposed by Proposition 2½. All monies collected from the surcharge must be deposited into a special fund separate from the general fund known as the Municipal Water Infrastructure Investment Fund. Monies in the Fund may be appropriated by the local legislative body “exclusively for maintenance, improvements and investments to municipal drinking, wastewater and stormwater assets.”

In order to collect the surcharge and establish a Municipal Water Infrastructure Investment Fund, a municipality must follow the two-step process to adopt the law established by G.L. c.40, §39M(f). First, the municipality’s legislative body must vote by a majority to accept the statute and designate the surcharge percentage. Thereafter, the voters of a city or town must vote to accept the law at the next regular municipal or state election. The collection of the surcharge would begin the first fiscal year following adoption unless the municipality specifies a future fiscal year in its acceptance vote.

Any city or town that has accepted the law may later revoke its acceptance, or amend the amount of the surcharge, by following the same procedures required for initial acceptance. However, a municipality may not amend its applicable surcharge rate more than once in any 12 month period. Even if a municipality votes to revoke its acceptance of the law, any monies remaining in the fund after revocation must still be expended exclusively for maintenance, improvements and investments to municipal drinking, wastewater and stormwater assets.

If you have further questions regarding the legislation please contact Attorney John W. Giorgio at jgiorgio@k-plaw.com or 617-556-0007.

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