



# Bulletin

BUL-2020-08

## **An Act Relative to Municipal Governance During the COVID-19 Emergency**

TO: Local Officials  
FROM: Patricia Hunt, Chief, Bureau of Municipal Finance Law  
DATE: June 2020  
SUBJECT: Guidance on Municipal Finance Law Issues

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This Bulletin provides guidance to local officials regarding changes in municipal finance laws included in [An Act Relative to Municipal Governance During the COVID-19 Emergency, Chapter 92 of the Acts of 2020 \(the Act\)](#). Unless otherwise noted below, these changes became effective on June 5, 2020, upon Governor Baker’s signing the Act into law. Please review the Act in its entirety for other provisions related to cities and towns.

### **I. Town Meetings**

#### **A. Power of Boards of Selectmen to Reduce Town Meeting Quorum**

**Section 7** - Section 7 of the Act allows a board of selectmen or select board (both referred to herein as “board”), with the approval of the town moderator, to reduce the quorum required for any town meeting (includes both open town meetings and representative town meetings) held during the governor’s March 10, 2020 declaration of a state of emergency, to a number not less than 10 per cent of the number that would otherwise be required. There are several procedural requirements necessary to implement a quorum reduction. The board must publish<sup>1</sup> notice of its intention to consider an adjustment of town meeting quorum requirements not less than 7 days before the board’s vote. The board must also provide for adequate means of public access that will allow interested members of the public to clearly follow the deliberations of the board on making a quorum adjustment as those deliberations are occurring. And, not less than 10 days after a vote of the board to adjust the quorum requirement, the town clerk must notify the attorney general of the adjusted quorum requirement.

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<sup>1</sup> Due to the time constraints in implementing this section before fiscal year end, we do not think the legislation intended to require notice by newspaper publication. In other cases where the legislature required publication in a newspaper, it so stated. See G.L. c. 60, s. 1, definition of “publication” for purposes of chapter 60, means “printing it once in a newspaper....” G.L. c. 35, s. 28B(c) – “... notice thereof to be published in a newspaper of general circulation....” G.L. c. 200A, s. 9A(c) and (d) – “published in a newspaper of general circulation.” We suggest, at a minimum, posting notice (i) in a prominent location on the town’s website, (ii) where the town meeting warrant is usually posted, and (iii) where board of selectmen meeting notices are posted.

Towns are reminded that under [G.L. c. 41, s. 15A](#), town clerks are required to certify appropriations to the assessors and the town accountant as soon as “a vote appropriating money becomes effective.” If a town meeting (either a reduced-quorum town meeting or any town meeting) is continued to a date after June 30, appropriations approved prior to the continuance of the meeting may not be in effect if they are subject to reconsideration at the continued town meeting. Towns are urged to consult with their town clerk, local counsel and town moderator, in advance, to determine if this could be an issue for your town. Some towns have local bylaws that limit reconsideration of approved articles that could apply to allow the town clerk to certify approved appropriation votes even if the town meeting is not dissolved but continued to another date.

Towns that may not have approved budgets on June 30 are reminded to review [Bulletin 20-6](#), regarding the procedures for obtaining deficit spending authority from the director of accounts for continued operations beginning July 1, 2020 as authorized by [St. 2020, c. 53, s. 5](#).

## **B. Conducting a Representative Town Meeting through Remote Participation**

**Section 8** - This section provides a process to allow representative town meetings to be conducted remotely during the governor’s March 10, 2020 declaration of a state of emergency. This section does not apply to open town meetings. Under this section, if the moderator determines that it is not possible to safely assemble the town meeting members and interested members of the public in a common location while complying with any applicable state or local orders, directives or guidance concerning public assemblies, the moderator may request that the select board or board of selectmen of the town call for a representative town meeting to be held through remote participation. Section 8 establishes detailed approval and notification procedures as well as minimum requirements for the video or telephone conference platform and how registered voters may participate in the remote town meeting. If your town is interested in holding a representative town meeting through remote participation, we urge you to consult with your moderator and your local counsel to ensure compliance with the requirements of section 8.

**Section 17** – This section provides that if the Act does not take effect at least 15 days prior to the date of a scheduled representative town meeting, the actions of a town moderator, select board or board of selectmen and town meeting that are substantially consistent with the requirements of section 8 shall be ratified as if the Act had been in place prior thereto.

## **C. Holding a Town Meeting Outside the Geographic Location of the Town**

**Section 9** – This section allows a select board or board of selectmen (both referred to herein as “board”) with the approval of the town moderator to hold town meeting outside the geographic limits of the town if the board determines that it is not possible to adequately conduct town meeting in a location within the geographic limits of the town in a manner that ensures health and safety. This section does not apply to a meeting for the election by ballot of federal, state or other officers or the determination of other matters to be determined by ballot at an election. The board must publicly post notice of the location of town meeting to be held outside the geographic limits of the town not less than 10 days before the date of the meeting.

## II. Stabilization Funds

### A. Suspension of Dedication of Revenues to Stabilization Funds

**Section 10(a)** – Section 10(a) provides a local option for a city or town to suspend for FY2021 the dedication of revenues to one or more stabilization funds created under [G.L. c. 40, s. 5B](#). This option also applies to the dedication of revenues to a special fund pursuant to a special act. This option does not apply to revenues or receipts credited to other funds, such as departmental revolving funds under [G.L. c. 44, s. 53E ½](#), enterprise funds under [G.L. c. 44, s. 53F ½](#), cable or PEG funds under [G.L. c. 44, s. 53F ½](#) or [G.L. c. 44, s. 53F ¾](#) or any other fund created under the general laws. The option is exercised in a town with a town meeting form of government by a 2/3 vote of its select board, board of selectmen or town council and, in a city, by a 2/3 vote of its city or town council with the approval of the mayor or manager. If a city/town chooses this option, the suspension is effective for FY2021. Upon the exercise of this option, the funds which would have been so dedicated are credited to the general fund of the city or town. The option may be exercised at any time before the FY2021 tax rate is set and, once exercised, will be effective as of July 1, 2020 through June 30, 2021.

### B. Appropriation from Stabilization Funds or Special Funds Established by Special Act

**Section 10(b)** – Section 10(b) provides a local option for a city, town or district, for FY2021, to appropriate funds from any stabilization fund created under [G.L. c. 40, s. 5B](#) or a special fund established by special law for any lawful purpose notwithstanding the specified purpose of the fund. Therefore, the existing fund balance of a special purpose stabilization fund can be appropriated for expenses other than for the purposes for which the fund was originally established.

The option is exercised in a town with a town meeting form of government by a 2/3 vote of its select board, board of selectmen or town council and, in a city, by a 2/3 vote of its city or town council with the approval of the mayor or manager. This section applies only to stabilization funds created under [G.L. c. 40, s. 5B](#) and special funds created by special act. This section does not apply to other funds, such as departmental revolving funds under [G.L. c. 44, s. 53E ½](#), enterprise funds under [G.L. c. 44, s. 53F ½](#), cable or PEG funds under [G.L. c. 44, s. 53F ½](#) or [G.L. c. 44, s. 53F ¾](#) or any other fund created under the general laws. An appropriation under section 10(b) from a stabilization fund established for educational purposes also requires approval of the city's or town's school committee.

Because section 10(b) does not provide for an alternate method of appropriation for a district, districts must appropriate under this section through a 2/3 district meeting vote under [G.L. c. 40, s. 5B](#); however, the district meeting may appropriate under section 10(b) from any stabilization fund for any lawful purpose notwithstanding the specified purpose of the fund.

While section 10(b) does not establish a substantially different process for cities or districts to change the purpose of or appropriate from stabilization funds; it does so in a town. Under this section, in a town, the legislative body (town meeting) is removed from the process. As a result, we suggest, when determining whether to exercise the option under section 10(b), that a select board consider the stated intent of the Act - "to protect ... both public health and the viability of town meetings in the face of the state, national and global public health emergencies existing as a result of the COVID-19 pandemic...." As a result, this option should be used to help fund the FY2021

town budget and other necessary FY2021 expenditures and not items that the town meeting would not itself fund.

Appropriations under section 10(b) may be made during FY2020 or FY2021; however, they must be for a fiscal year 2021 expenditure.

Appropriations and alterations of the purpose of a stabilization fund may still be made by a city, town or district in the manner described in [G.L. c. 40, s. 5B](#) – by a 2/3 vote of the legislative body of the city, town or district, subject to charter. As a result, if a town meeting is held, the town meeting may, by a 2/3 vote, alter the purpose of and appropriate from stabilization funds following the procedure of [G.L. c. 40, s. 5B](#). For more information regarding Stabilization Funds, [see IGR 17-20](#).

We note that while a suspension of the dedication of revenue to a stabilization fund under section 10(a) is only for FY2021 and not permanent, an appropriation from a stabilization fund under section 10(b) results in a permanent reduction of the funds in a stabilization fund unless the legislative body later votes to appropriate funds to replenish the stabilization fund.

### **III. Extension for Mayors to Submit FY21 Annual Budget to City Council under Statutory City Budget Process of G.L. c. 44, s. 32.**

**Sections 11 and 18** – Section 11 extends the time for a mayor in a city to submit the annual budget to the city council under [G.L. c. 44, s. 32](#), if the mayor is unable to do so as a result of the outbreak of COVID-19 and the effects of the governor’s March 10, 2020 declaration of a state of emergency. Ordinarily, section 32 requires a mayor to submit an annual budget to the city council within 170 days after the annual organization of the city government in any city other than Boston. Section 11 extends the time periods for submitting the budget and for the council to act on the budget; provided that the mayor must submit the FY21 annual city budget to the city council within 30 days after the termination of the declaration of emergency or on July 31, 2020, whichever is earlier.

An overview of the statutory city budget process under [G.L. c. 44, s. 32](#) is needed to understand how to implement section 11. In summary, under section 32, once a mayor has timely submitted the annual budget to the city council, the council has 45 days to act on the mayor’s budget by approving, reducing or rejecting the amounts recommended in the mayor’s budget. If a mayor does not timely submit the annual budget to the city council, the city council, on “its own initiative,” prepares the annual budget. The council then votes on the amounts contained in its budget within 15 days, by approving, reducing or rejecting the amounts. If the city has not approved an operating budget for the fiscal year due to “circumstances beyond its control,” the mayor may submit to the city council a continuing appropriation budget on a month by month basis for a period not to exceed three months; that is, for July, for August and for September. For more information on the statutory city budget process, please see DLS’s [City Budget Process Frequently Asked Questions \(FAQs\)](#).

For example, if the mayor timely submits the budget to the council on July 31 under section 11, the city council will have 45 days after July 31 to act on the mayor’s budget by approving, reducing or rejecting the amounts recommended in the budget. If the mayor does not submit the budget to the city council on or before July 31, 2020, the city council, on “its own initiative,” prepares the annual

budget. The council then votes on the amounts contained in its budget within 15 days, by approving, reducing or rejecting the amounts. To ensure that the city will have spending authority on July 1 if the budget is not yet approved, section 11 provides that a mayor may submit a continuing appropriation budget to the city council on a monthly basis for July and for August and for September. If it is anticipated that a budget will not be approved before July 1, the mayor should submit a continuing appropriation budget to the city council for the month of July.

Section 11 is effective on May 1, 2020.

#### **IV. Local Option Approval of Payments on Contracts for Educational Services**

##### **A. Description of Local Option - Sections 12 and 13**

Sections 12 and 13 provide a local option to allow cities and towns and regional school districts to approve payment, notwithstanding that services have not been rendered, on an existing service contract for school or education-related services entered into by the school committee or a service contract renegotiated or modified by the school committee in order to maintain the availability of and access to the services secured under the underlying contract between the parties when the underlying service contract was in effect before March 10, 2020 and the service contractor was unable to perform services under the contract as a result of the disruptions caused by the outbreak of COVID-19 and the effects of the governor's March 10, 2020 declaration of a state of emergency. This option applies to education-related contracted services such as transportation, custodial, food services as well as payments to education collaboratives, non-residential vocational enrollments, and inter-district tuition agreements.

This option is available to approve payment notwithstanding the provisions of [G.L. c. 41, s. 52](#) and [56](#) that require that services under a contract must be rendered before payment may be approved.

This option applies only:

- (i) if the underlying service contract was in effect before March 10, 2020;
- (ii) if the service contractor was unable to perform services under the contract as a result of the disruptions caused by the outbreak of COVID-19 and the effects of the governor's March 10, 2020 declaration of a state of emergency;
- (iii) to payments for the period from March 10, 2020 through the remainder of the fiscal year; and
- (iv) if there are sufficient unencumbered available funds remaining for such payment in the appropriation for the purpose.

This option does not apply to tuitions and rates set by the bureau of purchased services within the operational services division pursuant to [section 22N of chapter 7 of the General Laws](#).

## **B. Exercise of Option**

This option is exercised by approval of payment on a contract subject to sections 12 and 13 as follows:

- (a) In a city, by: (i) vote of the school committee; (ii) city auditor, accountant or other officer having similar duties; and (iii) the mayor (unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.)
- (b) In a town, by: (i) vote of the school committee; (ii) town accountant or other officer having similar duties; and (iii) vote of the board of selectmen (unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter.)
- (c) For a regional school district, by: (i) vote of the regional school committee and (ii) the business manager, assistant superintendent for business or other employee with title of similar import and responsibilities as those of a town accountant.

The above committees and boards may not delegate authority to one of its members to exercise the option under sections 12 and 13 or delegate approval authority to one of its members for payments under sections 12 and 13.

## **C. Payment Requirements**

Before any payment, the service contractor must present to the above approving authorities, a sworn statement reporting grants, discounted loans or other financial support that the service contractor has received from a state, federal or local government as a result of the outbreak of COVID-19 or, if the service contractor has not received any such grants, discounted loans or other financial support, affirming that the service contractor has not received, and shall not receive thereafter, any such grants, discounted loans or other financial support. If the service contractor reports it has received grants, discounted loans or other financial support from a state, federal or local government, the payments to the service contractor made pursuant to sections 12 and 13 must not exceed the total amount to which the service contractor is eligible under the service contract less the amount the service contractor received in such grants, discounted loans or other financial support and the sworn statement shall include an attestation that the payment is not in excess of that amount.