

**Municipal Client Advisory
September 2016**

Governor Baker Signs Municipal Modernization Act

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Governor Baker recently signed House Bill 4565, “An Act modernizing municipal finance and government” (the “Act”). This Act made changes in many areas of law affecting cities and towns, including procurement, insurance, local taxation, municipal finance, and employee benefits, among others. The Act amends provisions of more than 250 different sections of the Massachusetts General Laws and represents a major overhaul of municipal-related laws in Massachusetts.

Notable Provisions

Procurement

Horizontal Construction – the Act amends procurement laws to allow cities and towns more flexibility for public works construction projects, including raising the threshold for full competitive bidding, while adding new notification requirements for projects that do not require full bidding. Public bodies can forego full competitive bidding for contracts between \$10,000 and \$50,000; however, the awarding authority must make public notification of the contract and seek written responses from at least three people. For these projects, public notification requirements include posting, at least two weeks prior to time specified for receiving responses, the contract and scope of work statement for the project on the website of the awarding authority, on the COMMBUYS system administered by the Commonwealth, in the Central Register, and in a conspicuous place in or near the primary office of the awarding authority. Contracts over \$50,000 require full competitive bidding.

Vertical Construction – The Act also changed public building construction procurement laws to parallel the new thresholds for public works construction projects, and to increase the thresholds for contracts requiring full competitive bidding from \$100,000 to \$150,000. The same public notification requirements specified above for horizontal construction projects with a value between \$10,000 and \$50,000 are compulsory for vertical construction projects of the same value range.

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Benefits

OPEB Trust Funds – Previously, only certain public bodies could establish a trust fund to address benefits they are obligated to provide to employees after retirement. The Act includes provisions permitting more governmental units, including housing authorities, redevelopment authorities, regional councils of government, regional school districts, and educational collaboratives to establish an OPEB (Other Postemployment Benefits) trust fund. The liabilities represented by post-employment benefits are a growing area of concern for many public bodies; the Act strives to make it easier for many public bodies to start tackling the issue with an OPEB trust fund.

Retiree Health Insurance Premiums – In cases where an employee worked for more than one city, town, or school district, the public body that the employee was working for at retirement could seek to recoup some of the cost of the employee's health insurance premiums from his or her previous public employers. The Act repeals this provision, which was in Section 9A ½ of Chapter 32B. This repeal is effective January 1, 2017.

Injured on Duty Fund – the Act allows municipalities to plan ahead for funds required to compensate public safety officers injured on duty by permitting public bodies to create and utilize a special injury leave indemnity fund for payment of public safety officer injury, including police and firefighters, for compensation or medical bills, rather than charging these items to current appropriations. Similar to post-employment benefits, injured in the line of duty benefits represent an area of potential unfunded liability for cities and towns, so maintaining a reserve fund to get ahead of those liabilities is advisable.

Finance

Rental Revolving Fund – the Act permits cities and towns to create a revolving fund for proceeds from rental of surplus non-school properties; previously, a revolving fund was only authorized for rental of surplus school properties.

Reserve Funds – the Act increases the amount that cities can appropriate as a reserve fund from 3% to 5% of the tax levy for the preceding fiscal year. This provision harmonizes cities' abilities to appropriate reserves with the law for towns and districts.

Stabilization Funds – the Act changes the vote needed for a municipality to appropriate into a stabilization fund, so that now only a simple majority is required to appropriate into the fund (a 2/3 vote is still required to expend money from a stabilization fund). The Act also permits

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municipalities to dedicate all or part of particular revenue streams (for example, meals tax or hotel tax) to the fund without appropriation.

Debt Authorization – the Act creates more categories of expenditures for which governmental bodies can incur debt, for example, for temporary loans related to constructing a highway; in anticipation of a grant by the federal government or the state when an advance payment is required to obtain the grant; and the ability to incur debt for more than one year to satisfy a court judgment, when approved by the municipal finance oversight board.

Emergency Spending; Court Judgments – the Act provides for automatic approval of payment for liabilities incurred as a result of a declared state of emergency, and allows payment without appropriation of final court judgments and other final judgments, for example from state agency adjudications, with municipal counsel certification.

Snow and Ice – the Act eliminates the need for prior approval for deficit spending for snow and ice removal by the board of selectmen or city council, and requires instead that the chief administrator authorize the deficit spending for this purpose.

Year End Transfers – the Act allows end of fiscal year transfers from health insurance, debt service, or other unclassified / non-departmental line items, and eliminates the prior 3% cap on the amount that may be transferred from any department.

Taxation and Assessment

Certification of Local Property Assessments – the Act changes the requirement for the Department of Revenue to certify local property evaluations from every three years to every five years. This change takes effect for the fiscal years starting on or after July 1, 2017.

Residential Tax Exemptions – for cities and towns that want to incentivize owner-occupied properties by providing a tax exemption to property owners who reside in their properties, the Act increases the amount of a local residential exemption from 20% to 35%, so that local cities and towns can increase their residential exemption up to 35% of total taxes owed without seeking a special act. This change is effective July 1, 2016.

Other Subjects

Approval of Bills and Warrants – the Act allows multi-member boards, such as boards of selectmen, to designate one of its members to review and approve bills or payment warrants,

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reporting on the action at the next meeting. This changes current law, which requires boards and committees to approve bills or payment warrants by majority vote at an open meeting.

Elections – the Act permits cities or towns to use electronic poll books in lieu of paper voting lists to check in voters at polling stations. The Secretary of State must approve the electronic poll books, and the local body must then approve of the use of the electronic poll books at least 60 days prior to the first election in which the technology will be used. The Secretary of State will be promulgating regulations about such technology.

Effective Date(s)

Except as noted for specific provisions above, many of the sections of the Act take effect on November 7, 2016, such as the changes to the procurement and stabilization laws. The effective date of other sections may vary on a case by case basis.

Further Information

This advisory, by its nature, can only touch briefly on a few key provisions in what is a 125 page bill. We are happy to answer any questions regarding changes made in specific subject areas, the effective dates of such changes, and whether the Act has made substantive changes that will affect you. Also be alert to possible guidance and interpretation from the Secretary of State, as well as any agencies involved in the various subject areas, in the future.

If you have any questions about this issue, please contact Kerry Regan Jenness or the attorney responsible for your account, or call (617) 479-5000.

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