

Municipal Relief Legislation Passed by State Legislature

April 3, 2020

While there certainly is no “good” time for a pandemic, the timing of the novel coronavirus, COVID-19, outbreak has presented some particularly unique challenges for towns, given such upcoming events as annual elections, town meetings, the budget setting process, and tax deadlines. On April 3, 2020, the Governor signed Chapter 53 of the Acts of 2020, entitled “An Act to Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19” (Act), which affords municipalities relief in key areas, summarized below. In the event normal governmental operations continue to be delayed through the spring, this legislation provides municipalities with some flexibility to address local concerns presented by the virus outbreak. Except as otherwise provided below, the Act is effective immediately.

Town Meeting (Sections 1-4 of the Act)

Many towns have, or are considering, postponing upcoming spring annual and special town meetings. While the existing Governor’s ban on gatherings of more than 10 people does not apply to town meetings, social and physical distancing protocols make in-person town meetings impractical, to say the least, and there is no present legal authorization allowing town meetings to be conducted by virtual or remote means.

Our prior eUpdate entitled “[Governor Baker Declares a State of Emergency in Response to Spread of Novel Coronavirus COVID-19](#),” explains the processes for postponing town meetings. Those processes vary, depending upon whether the warrant has been posted or not. If the warrant has been posted, one option for rescheduling the meeting is for the Moderator to declare a recess and continuation of town meeting, as explained in our Informational Guide, “[G.L.c.39, 10A Process for Continuing Town Meeting in the Case of Inclement Weather or Public Safety Emergency](#).”¹

The Act amends G.L. c.39, §9 to now allow for annual town meetings to be conducted past June 30th where there is an “immediate threat to the health or safety of persons or property” that prevents the completion of town meeting on or before June 30 and the Governor has declared a State of Emergency as a result of that threat. The Act also amends G.L.c.39, §10A to expressly provide that, in the event of a weather-related or public health or safety emergency, the Moderator (or if there is no Moderator, the board of selectmen/selectboard) may issue more than one Declaration of Recess and Continuance, provided that each declaration is for no longer than 30

¹ The other option is for the meeting to actually convene on the scheduled date and be continued to a later date certain.

days, and cannot continue more than 30 days after the Governor rescinds a previously-declared State of Emergency.

These provisions are retroactively effective as of **March 10, 2020**. Importantly, these statutory amendments **do not expire** once the Governor rescinds the present State of Emergency.

Fiscal Year Budget (Sections 5-8 of the Act)

General Provisions Regarding Adoption of a Budget in a State of Emergency (Section 5)

The Act amends G.L.c.44, §31, so that if a town or district is unable to approve a budget for the upcoming Fiscal Year by June 30th due to a public health or safety emergency that delays the holding of a town or district meeting, the Department of Revenue, Director of Accounts is authorized to “approve expenditures, from any appropriate fund or account, of an amount sufficient for the operations of the town or district during the month of July not less than 1/12 of the total budget approved by the town or district in the most recent fiscal year,” upon request by, and pursuant to a plan approved by, the board of selectmen, selectboard, town council, or district commissioners.

This so-called “1/12th budget” may continue for each successive month that the emergency prevents adoption of the Fiscal Year budget. The Act authorizes the Director of Accounts to issue rules or regulations in this regard.

Fiscal Year 2021 Budget (Sections 6 & 8)

With respect to Fiscal Year 2021 only, if the adoption of an annual budget in a city, town or district is delayed beyond June 30, 2020, as a result of the Governor’s March 10, 2020 declaration of a state of emergency or the COVID-19 outbreak, the Act permits the Director of Accounts to authorize a city, town or district to use “free cash” certified as of July 1, 2019, as a funding source for the city, town or district’s fiscal year 2021 expenditures, including, but not limited to, funds in an enterprise fund or special revenue account. The Act authorizes the Director of Accounts to issue rules or regulations in this regard.

Furthermore, where a Fiscal Year 2021 budget is not adopted by June 30th because of the current COVID-19 virus outbreak, a city, town or district may continue to expend monies from existing revolving funds established under G.L.c.44, §53E½ at the prior Fiscal Year 2020 levels. At the time the city, town or district adopts a Fiscal Year 2021 budget, its legislative body must also approve the Fiscal Year 21 spending limits for these revolving funds.

Amortization of Fiscal Year 2020 Budget Deficit (Section 7)

If the current COVID-19 related State of Emergency results in deficient spending in Fiscal Year 2020 (including, but not limited to, deficits in an enterprise fund or special revenue account), the Act permits a city, town or district to amortize this deficit over Fiscal Years 2021 to 2023, inclusive, either in equal installments or more rapidly.

A deficit amortization schedule must be adopted by the board of selectmen/selectboard; the city council (with the mayor's approval when required by law), town council, or district prudential committee/commission, as applicable, prior to the setting of the Fiscal Year 2021 tax rate. The Act authorizes the Commissioner of Revenue to issue guidelines or instructions in this regard.

“Chapter Lands” (Section 9 of the Act)

The so-called “chapter lands” statutes, G.L.c.61, 61A, and 61B, provide preferential property tax benefits to landowners who make a long-term commitment to dedicate their real property for qualifying forest, recreational, or farming purposes. In exchange, the municipality in which the property is located has a “right of first refusal” or option to purchase the land, in certain cases where the property owner plans a change of use.

Typically, a municipality wishing to exercise this right of first refusal must do so within statutorily-required time frames, upon being notified of the property owner’s intent to remove the property from chapter lands designation. The Act suspends these time frames for a period of 90 days after the Governor’s termination of the current State of Emergency.

State and Local Taxes (Sections 10-12 of the Act)

The “Chief Executive Officer” of a city or town², or a district, may extend tax deadlines, as follows:

1. The date real estate and personal property taxes are due from May 1 to a date not later than June 1, 2020;
2. The date real estate and personal property taxes are due, after credit is given for the preliminary tax payments previously made, for cities and towns with quarterly payments from May 1 to a date not later than June 1, 2020;
3. In the event an additional notice of preliminary tax requiring a third quarter preliminary installment payment is issued by a city or town, the due date the entire notice shall be due from May 1 to a date not later than June 1, 2020;
4. The date bills for taxes assessed for omitted property (G.L.c.59, §75) or incorrectly valued property (G.L.c.59, §76) are sent from May 1 to a date not later than June 1, 2020;
5. The date real estate and personal property taxes are due for cities and towns with semi-annual payments from April 1 to a date not later than June 1, 2020;
6. The date an application for exemption of taxes is due from April 1 to a date not later than June 1, 2020.

² Generally, the mayor in a city and the board of selectmen/selectboard in a town unless some other municipal office is designated to be the chief executive officer under the provisions of a local charter or special act.

No other due dates of any other tax payment, abatement, or exemption may be extended unless authorized by this section (Section 10) of the Act.

Similarly, the Chief Executive Officer of a city or town, or prudential committee/commission of a district, may waive the payment of interest and other penalty in the event of late payment of any excise, tax, betterment assessment or apportionment, water rate, annual sewer use, or other charge added to a tax for any payments with a due date on or after March 10, 2020. Of note, this waiver may only be given if payment is made after its due date but before June 30, 2020.

No essential services (such as water service, trash collection or electricity) may be terminated by a city or town due to a resident's failure to pay these taxes or fees, if nonpayment resulted from a "demonstrated inability to pay" due to the COVID-19 outbreak or the Governor's declaration of a State of Emergency. This "inability to pay" shall include demonstrated financial hardship of a resident, due to events such as loss of employment or serious illness or death of someone within the home (Section 11).

Finally, the Act codifies the Department of Revenue's previously-announced extension of the state tax return filing deadline for calendar year 2019, from April 15, 2020 to July 15, 2020. (Section 12).

Take-out/Delivery of Beer (Malt Beverages) and Wine (Section 13 of the Act)

The Act also authorizes any establishment licensed to sell alcoholic beverages or only wines and malt beverages on-premises, to now sell wine or beverages only for off-premises consumption, during the Governor's March 10, 2020 declared State of Emergency, subject to the following conditions:

1. No sales shall be made to anyone under the age of 21, and no delivery shall be made without verification that the person receiving the order is at least 21;
2. The wine shall be sold in its original, sealed container and the malt beverage shall be sold in a sealed container;
3. The wine or malt beverage shall be sold as part of the same transaction as the purchase of food, provided that any order that includes wine or malt beverages shall be placed no later than the hour the establishment is licensed to sell alcohol, or midnight, whichever is earlier; and
4. A customer shall be limited to 192 ounces of malt beverage and 1.5 liters of wine per transaction.

Relaxation of Statutory Limits on Post-Retirement Work (Section 14 of the Act)

Wide spread exposure to COVID-19 can have severe impacts upon municipal workforces, particularly where multiple members of the same office or department are required to self-quarantine. Retired former government employees can provide a valuable resource in filling unanticipated absences in existing workforces. However, persons retired in accordance with G.L.c.32 are limited by statute in the total number of hours they may work for

a public sector entity, and the total compensation they may receive from that public sector entity, in a single calendar year, without impacting their pensions.

To address potential shortages in municipal staffing as a result of COVID-19, the Act temporarily eliminates these hours and earnings caps,³ but only for time worked by retirees during the Governor’s declared State of Emergency. It does not appear that this legislation permits retired police and fire fighters receiving a pension who are over the age of 65 (and thus subject to a mandatory retirement age under state law) to return to work as a police officer or fire fighter, although in our opinion, such persons could work for a public sector employer in another capacity where there is no mandatory retirement age. Finally, this relaxation of post-retirement work limitations does not apply to persons receiving a disability retirement under any general or special law.

Extension of Permit Deadlines (Section 17 of the Act)

Land use and other permit granting boards and commissions have been particularly challenged by the limitations imposed in response to the COVID-19 virus outbreak. While the Governor’s March 12, 2020 [“Order Suspending Certain Provisions of the Open Meeting Law, G.L.c.30A, §20”](#) temporarily authorizes the conduct of public meetings and hearings via virtual or remote means, under certain conditions, compliance with statutory deadlines for action in the permitting context can still be difficult, impractical, and in some cases, impossible. In recognition of these specific challenges, the Act extends certain statutory deadlines for permit granting authorities to comply with their legal obligations to process and decide on permit applications. A detailed explanation of these extensions can be found [here](#).

We will continue to keep you updated on additional developments in the face of this rapidly evolving pandemic. A reminder that we have established a **Coronavirus “hotline”**, at coronavirusinfo@k-plaw.com. A dedicated team of our attorneys is available through this “hotline” e-mail address to answer the most frequently-asked legal questions arising from COVID-19. One of these designated attorneys will respond promptly to your inquiries. In some instances, you may be referred to your primary contact or other attorney with whom you work on a regular basis, and you should of course feel free to contact these attorney(s) directly with COVID-19 related questions.

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³ No more than 960 hours in a calendar year, provided that the earnings paid to the retiree, when added to their pension allowance, does not exceed the salary that is being paid for the position from which they retired plus \$15,000, except that in the first 12 months immediately following retirement, the total post-retirement earnings and pension allowance combined may not exceed the salary that is being paid for the position from which the person was retired. See G.L.c.32, §91(b).