




Municipal Law Update

**Massachusetts Municipal Law Association
MMA Annual Meeting
January 20, 2023**

Municipal Finance

Kathleen Colleary, Esq.*

*** Opinions and legal conclusions those of presenter**



Local Taxation of Renewable Energy Facilities

Taxation of Renewable Energy Facilities

Next Generation Climate Policy Roadmap Act

Chapter 8, §§ 61-63, 97-98 and 105 of the Acts of 2021

Amends G.L. c. 59, § 5, Clause 45 and § 38H(b); adds G.L. c. 59, § 5, Clause 46

Effective June 4, 2021

- **Exempts solar and wind systems, including those co-located with energy storage systems that are**
 - **Able to produce not more than 125% of annual energy needs of real property where located or**
 - **25 kw or less in capacity as verified by Department of Energy Resources (DOER) or electric company operating documentation**
 - **Real property includes contiguous and non-contiguous land in municipality with same owner**
- **Exemption for 20 years but may be extended**

Taxation of Renewable Energy Facilities (continued)

- **Other solar and wind systems are taxable unless negotiated payment in lieu of tax (PILOT) agreement entered into with municipality**
 - **Agreement may cover personal property taxes attributable to system and real estate taxes on land if has same owner as system**
 - **Payments treated as general revenue not part of levy with levy limit growth**

Taxation of Renewable Energy Facilities (continued)

- Provides similar exemption and PILOT for fuel cell powered systems able to produce not more than 125% of annual energy needs of real property where located
- Removes solar, wind and fuel cell systems from facilities that may be subject of electric generating company PILOT
- See Department of Revenue's (DOR) Division of Local Services (DLS) [Informational Guideline Releases \(IGRs\) 2021-17](#) and [2021-24](#); [Bulletin 2021-3](#) and [Local Finance Opinion \(LFO\) 2022-1](#)



Classified Land

Dual Use Classified Farm Land

Driving Clean Energy Act

Chapter 179, §§ 42-43 of the Acts of 2022

Amends G.L. c. 61A, §§ 2A and 13

Effective August 11, 2022

- **Allows land used for farm purposes to obtain preferential tax treatment as classified land when renewable energy generating source qualifying for Department of Energy Resources (DOER) solar incentive program is simultaneously sited on land**
 - **Solar energy source cannot impede continued farm use of land**
 - **Site includes contiguous and non-contiguous land owned or leased by farm owner**
 - **Solar energy source qualifies when DOER issues final “Statement of Qualification” under [225 Code of Massachusetts Regulations \(CMR\) 20.06](#)**
- **Increases rollback penalty tax when dual use land converted or sold for residential, commercial or industrial use from 5 to 10-year recapture of tax savings**
- **Applies beginning in FY2024**

Dual Use Classified Farm Land (Continued)

- Retains existing 2016 change that makes land used for farm purposes where renewable energy generating source of certain scale and purpose is located eligible for classification as well
 - Renewal energy source defined in G.L. c. 25A, § 11F(b) includes wind as well as solar installations
 - Source cannot produce more than 125% of energy needs of farm and land on which located
 - Site includes contiguous and non-contiguous land owned or leased by farm owner
 - Rollback penalty tax when land on which source located converted or sold for residential, commercial or industrial use stays at 5-year recapture of tax savings
- See DLS [Chapterland Frequently Asked Questions \(FAQs\)](#)

Classified Land Applications

Economic Development Act

Chapter 268, § 90-100 of the Acts of 2022

**Amends G.L. c. 61, § 2; c. 61A, §§ 6, 8 and 14; c. 61B, §§ 3-6 and 9
Effective November 10, 2022**

- **Changes deadlines for taxpayers to apply to assessors for preferential taxation of forest (every 10 years), farm (annually) and recreational land (annually)**
 - **Now December 1 of year before beginning of fiscal year for which classification sought**
 - **Prior deadline was October 1**
- **Makes extended deadline for applying for farm and recreational (not forest) land classification in “revaluation year” same as abatement applications (1st actual tax payment due date)**
- **Adjusts forest land appeal timetable for December 1 deadline**
- **Approves by operation of law applications for recreational land classification not acted on by assessors within 3 months (now same as farm land applications)**
- **See DLS [Chapterland FAQs](#)**

Schools



School Procurement and Funds

School Operating Efficiency Act

Chapter 198 of the Acts of 2022

**Amends G.L. c. 30B, §§ 4-7; c. 41, § 56; c. 44, §53F½; c. 71, §§ 49A and 99
Effective November 25, 2022**

- **Changes G.L. c. 30B procurement procedures for purchases of supplies and services by municipal and regional schools**
 - **May now obtain at least 3 written quotes or use competitive bids to purchase school supplies and services estimated to cost up to \$100,000**
 - **Prior cap was \$50,000**
- **Makes exception to prohibition on prepayment for goods and services before delivery for certain school travel expenses and computer services**
- **Permits payment for allowed orders before July 1 of school materials, supplies, equipment and services chargeable to upcoming fiscal year's appropriation once budget approved to also be paid before July 1 upon delivery**

School Procurement and Funds (continued)

- **Makes school transportation service eligible for enterprise fund accounting**
 - **School committee responsible for recommending enterprise budget to executive board or officer**
- **Creates special revenue fund for school transportation purposes**
 - **Revenue source is state school transportation reimbursements**
 - **May be spent without appropriation by school committee for transportation purposes**
 - **Unspent monies carry forward for 1 fiscal year and revert to general fund thereafter**
- **See DLS [Bulletin 2022-8](#)**



Municipal Modernization

Municipal Finance Amendments

Covid Recovery Act

Chapter 102, §§ 20-29 of the Acts of 2021


Effective December 12, 2021

- **Makes mostly technical corrections to several municipal finance statutes amended by the 2016 Municipal Modernization Act (Chapter 218 of the Acts of 2016)**
 - **See DLS [City and Town \(1/20/2022\)](#) for statutes amended and explanation of amendments**
- **Revises Municipal Modernization Act changes to G.L. c. 44, § 20 giving cities, towns and districts choice to treat premiums (net of issuance costs) received on bond or notes to (1) reduce amount borrowed or (2) reserve for appropriation for capital projects**

Bond and Note Premiums

**Chapter 102, § 20 of the Acts of 2021
Amends G.L. c. 44, § 20**

- **Premium received on notes must be applied to 1st payment of interest on notes**
- **Bond premiums received on borrowing subject to Proposition 2½ debt exclusion must be used for project costs and to reduce borrowing by same amount**
 - **Debt authorizations no longer required to state bond premium to be so used and to reduce borrowing**
- **Bond premiums received on other borrowings can be (1) used for project costs and to reduce borrowing by same amount or (2) reserved for appropriation for any borrowable purpose**
- **Bonds premiums that do not exceed \$50,000 may be used, with approval of chief executive officer, to pay debt**
- **See DLS [IGR 2022-1](#) and [IGR 2022-2](#)**



Community Preservation (CPA)

Rail Trails

FY22 State Budget Act

Chapter 24, § 22 of the Acts of 2021

Amends G.L. c. 44B, § 5(b)

Effective July 1, 2021

- **Makes use of CPA funds for building rail trails over abandoned railroad tracks an allowable CPA recreational purpose**
 - **Creates exception (“notwithstanding”) to G.L. c. 44B, § 2 and § 12(a) which prohibit acquisition of real property interests less than 30 years and require permanent restriction on property interests acquired with CPA funds**
 - **Previously, reversionary interest in railroad right of way prevented acquisition and restricted recreational use**
- **See DLS [City and Town \(10/7/2021\)](#)**



Tax Titles

Tax Title Legal Expenses

Chapter 356 of the Acts of 2022

Amends G.L. c. 60, § 79

Effective April 3, 2023

- **Increases to \$500 maximum legal fee that may be added to tax title foreclosed by auction under the Land of Low Value administrative foreclosure procedure**
 - **Prior maximum was \$50**



Assessor Qualification

Assessor Qualification

Amends 830 CMR 58.3.1

Effective September 16, 2022

- **Requires assessors to qualify to assess property within 1 year of election or appointment**
 - **Qualification requires successful completion of online DLS Course 101: *Assessment Administration: Law, Procedures and Valuation***
 - **Previously had 2 years to qualify**
- **Does not apply to assessors with certain professional designations awarded by Massachusetts Association of Assessing Officers (MAAO)**



Property Tax Cases

Route 57 Solar LLC and Agawam Solar LLC v.
Assessors of Agawam

Appellate Tax Board (ATB) 2022-110 (June 3, 2022)

- **Companies challenged taxes assessed on solar facilities subject to generating company PILOT agreement with municipality under G.L. c. 59, § 38H(b) that fixed valuations and applicable tax rate for both land and facilities**
 - **Real estate taxes on land were assessed to owners who leased it to companies to site facilities**
 - **Landowners were not generating companies or parties to agreement**
 - **Personal property taxes on facilities were assessed to companies under agreement**
 - **Companies claimed total amount violated agreement**
- **ATB held it did not have jurisdiction to enforce PILOT agreements**

RCN Becocom LLC v. Commissioner of Revenue

100 Mass. App. Ct. 802 (April 1, 2022)

- Appeals Court upholds ATB decision to hear telephone company's appeal of the valuations determined by Commissioner of Revenue of its telephone property in 18 cities and towns under personal property under G.L. c. 59, § 39
- Court found ATB had jurisdiction to hear company's appeal even though initial required return of assets was incomplete
 - Finds sufficient information was later provided so that Commissioner could value property

RCN Becocom LLC v. Commissioner of Revenue **(Continued)**

- Court upheld ATB decision that taxpayer did not show valuation of property in each municipality was substantially higher than fair cash value
 - Rejected taxpayer's derivation of value from overall bulk sale of its stock transaction when company taken private
- Observed difficulty in using enterprise value to determine fair cash value of physical telephone assets in each municipality unlike Commissioner's trended reproduction cost new less depreciation methodology approved by SJC in *Matter of Valuation of MCI WorldCom Network Services, Inc.*, 454 Mass. 635 (2009)

Western Massachusetts Electric Company v. Assessors of Springfield

100 Mass. App. Ct. 1131 Rule 23 decision (April 1, 2022)

Further Appellate Review denied 489 Mass. 1109 (June 3, 2022)

- Appeals Court affirms ATB decision upholding assessors' valuation of utility personal property at more than its net book value
- ATB denied utility company's abatement claim that net book value equaled fair cash value due to absence of special circumstances that warranted higher value
- Appeals Court held special circumstances existed to justify assessing at value greater than net book value citing Supreme Judicial Court (SJC) decision in *Boston Gas Co. v. Assessors of Boston*, 458 Mass. 715 (2011)

Western Massachusetts Electric Company v. Assessors of Springfield **(continued)**

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- **SJC decision had upheld valuation using method giving equal weight to net book and reproduction cost new less depreciation (50/50 hybrid method)**
 - **Change in Department of Public Utility (DPU) carry over rate base policy in allowed rate of return to make investments in utility companies more attractive was special circumstance**
- **See DLS [LFO 2019-1](#) and [IGR 2021-17](#) regarding valuation of utility property**
 - **Net book value no longer default fair cash valuation accepted method for DOR certification**
 - **Hybrid method approved by court or another supportable method accepted for certification**

Brayton Point Energy, LLC v. Somerset

101 Mass. App. Ct. 466 (July 19, 2022)

- Appeals Court upholds ATB denial of taxpayer's claim of exemption from property taxes on certain personal property under G.L. c. 59, § 5, Clause 16(2)
 - Exemption is for business corporations subject to state corporate excise tax under G. L. c. 63, § 39
 - Property taxed as part of excise instead
- Court agrees taxpayer, a disregarded entity not separate from its owner for Federal income tax and Massachusetts corporate excise tax purposes, is not a business corporation