



Bulletin

2011-12B

HURRICANE DAMAGE

TO: Mayors, Selectmen, City and Town Managers, Finance Directors, Treasurers,
Accounting Officers and Assessors

FROM: Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs

DATE: August 2011

SUBJECT: Financing Emergency Expenses

As you know, Governor Patrick declared a State of Emergency on August 26, 2011 in order to prepare for and respond to Hurricane Irene. Division of Local Services staff members have already been in contact with some local officials about the options available under state municipal finance law to address emergency needs arising from the hurricane. The purpose of this *Bulletin* is to summarize those procedures.

Deficit Spending

Municipalities may deficit spend for emergency purposes. G.L. c. 44, § 31. This option provides immediate spending authority until other financing sources, such as emergency borrowing or appropriations from available funds, can be put in place to cover the spending. To use this option, a municipality must declare a local emergency to health and safety by majority vote of the selectboard, or two-thirds vote of the municipal council, as soon as practicable and request approval from the Director of Accounts to pay the liabilities the municipality incurs for emergency purposes without appropriation. The selectboard or mayor should notify the Director by letter of the declaration. Bureau of Accounts representatives will work with local officials to expedite this approval process.

Any questions about this option should be directed to the Bureau of Accounts representative for the community.

Emergency Borrowing

Short-term Emergency Borrowing (G.L. c. 44, § 8(9))

Municipalities may borrow for up to two years for emergency purposes. G.L. c. 44, § 8(9), as amended by St. 2011, c. 52, § 3. These loans may be used to pay for any emergency related expenses, including employee overtime, contractual assistance and emergency repairs.

To use this short-term emergency borrowing option, the municipality must (1) authorize the borrowing and (2) obtain the approval of the borrowing from the Director of Accounts. The borrowing may be authorized (1) in the regular manner by two-thirds vote of the municipality's legislative body, and in a city with the approval of the mayor if required by charter, or (2) under an expedited procedure by the municipality's treasurer and chief executive officer. The chief executive officer is the selectboard or mayor unless a local charter designates another officer as the chief executive. See G.L. c. 4, § 7, Fifth B.

Long-term Emergency Borrowing (G.L. c. 44, § 8(9A))

In emergency situations, municipalities may also use an expedited procedure for long-term borrowings of more than two years. G.L. c. 44, § 8(9A), as added by St. 2011, c. 52, § 3. These emergency loans, however, require approval of the MFOB and may be used only for capital purposes. Capital purposes include, but are not limited to, the acquisition, construction, reconstruction or repair of public buildings, works, improvements or assets. A long-term emergency borrowing is authorized by the municipality's treasurer and chief executive officer. The MFOB may then approve the loan for up to the maximum term permitted by law for the purpose upon a showing by the municipality that following the regular borrowing authorization procedure would be an undue burden in meeting the emergency.

Capital borrowings authorized in the regular manner by two-thirds vote of the municipality's legislative body, and in a city with the approval of the mayor if required by charter, are not emergency loans under this provision. Therefore, a borrowing authorized in the regular manner does not need MFOB approval unless otherwise required by law for that type of borrowing, for example, where the municipality wanted to issue the debt as qualified bonds under G.L. c. 44A.

Applications

Officials in municipalities that plan to use either emergency borrowing option should contact their Bureau of Accounts representative as soon as possible and compile a schedule of the expenses to be funded by the borrowing. These schedules will likely be used to obtain any possible federal or state reimbursements. Officials should attach their preliminary requests to FEMA/MEMA when requesting approval of either a short-term or long-term emergency borrowing.

Applications for approval of short-term borrowing should be made using the attached "Emergency Appropriations Borrowing Authorization Certificate" and sent to:

Gerard D. Perry, Director of Accounts
Massachusetts Department of Revenue
P.O. Box 9569
Boston, MA 02114-9569

Applications for approval of long-term capital borrowings should be sent to:

Mary Ann Growitz
Municipal Finance Oversight Board
Office of the State Auditor
1 Ashburton Place – Room 1103
Boston, MA 02108

If the municipality plans to borrow \$500,000 or more through the State House Note Program, it must also obtain the written approval of bond counsel. A municipality that does not plan to use the State House Note Program should seek the advice of its financial advisor and bond counsel. The Director and the MFOB may require any additional information needed to assist in the approval process.

Emergency Appropriations Borrowing Authorization Certificate

I. Approval of the Chief Executive

Insert if Board of Selectman

I, the Clerk of the Board of Selectmen (board) of the Town of _____ (town), Massachusetts, certify that at a meeting of the board held _____, _____, of which meeting all members of the board were duly notified and at which a quorum was present, the following vote was unanimously passed, which vote appears on the official record of the board in my custody:

Voted: that in accordance with General Laws Chapter 44, Section 8(9) there is authorized and approved the borrowing of \$_____ to pay emergency appropriations associated with the Town's response to _____, which are described in Exhibit A.

Further Voted: that each member of the Board of Selectmen, (the Town Manager/Administrator/Other Officer) the Town Clerk and the Town Treasurer are authorized to take any and all such actions, and execute and deliver such certificates, receipts or other documents as may be determined by them, or any of them, to be necessary or convenient to carry into effect the provisions of the foregoing vote.

I further certify that the above described votes were taken at a meeting open to the public, that no vote was taken by secret ballot, that a notice stating the place, date, time and agenda for the meeting (which agenda included the adoption of the above votes) was filed with the Town Clerk and a copy thereof posted in a manner conspicuously visible to the public at all hours in or on the municipal building that the office of the Town Clerk is located or, if applicable, in accordance with an alternative method of notice prescribed or approved by the Attorney General as set forth in 940 CMR 29.03(2)(b), at least 48 hours, not including Saturdays, Sundays and legal holidays, prior to the time of the meeting and remained so posted at the time of the meeting, that no deliberations or decision in connection with the subject matter of the votes were taken in executive session, all in accordance with General Laws Chapter 30A, Sections 18-25.

Clerk of the Board of Selectmen

Date: _____

Insert if Mayor/City/Town Manager/Other Chief Executive Officer

I, the duly elected/appointed (Mayor/City/Town Manager/Other Officer) of the _____ of _____ hereby authorize and approve the borrowing of \$_____ in accordance with General Laws Chapter 44, Section 8(9) to pay emergency appropriations associated with the City's/Town's response to _____, which are described in Exhibit A.

(Mayor/City/Town Manager/Other Officer)

Date: _____

II. Approval of the City/Town Treasurer

I, the duly elected/appointed Treasurer, of the _____ of _____ hereby authorize and approve the borrowing of \$_____ in accordance with General Laws Chapter 44, Section 8(9) to pay emergency appropriations associated with the City's/Town's response to _____, which are described in Exhibit A.

City/Town Treasurer

Date: _____

III. Certificate of City/Town Clerk

I, the City/Town Clerk of the _____ of _____ certify that the signatures of the (Clerk of the Board of Selectmen/Mayor/City/Town Manager/Other Officer) and the Treasurer appearing above are the genuine signatures of the persons who executed this certificate, and who held those offices when this certificate was executed.

City/Town Clerk

Date: _____

(City/Town Seal)

IV. Approval of the Director of Accounts

In accordance with General Laws Chapter 44, Section 8(9), I, the duly appointed Director of Accounts of the Division of Local Services of the Massachusetts Department of Revenue, approve \$_____ in emergency appropriations associated with the City/Town of _____ response to _____, which are described in Exhibit A.

Director of Accounts

Date: _____

Exhibit A

(Attach preliminary FEMA/MEMA request)