



Informational Guideline Release

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MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND

(G.L. c. 40, § 39M)

This Informational Guideline Release (IGR) explains to local officials the procedures and requirements for establishing a special revenue fund with a dedicated surcharge on real estate taxes that may be appropriated and spent on maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets.

Topical Index Key:

Accounting Policies and Procedures
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Distribution:

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MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND

(G.L. c. 40, § 39M)

SUMMARY:

These guidelines explain the municipal finance provisions of the Municipal Water Infrastructure Investment Fund (Fund), which is found in [G.L. c. 40, § 39M](#). Under this section, a city or town may establish a special revenue fund that may be appropriated for expenditures for maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets. To establish the Fund, a community must accept [G.L. c. 40, § 39M](#). Acceptance requires majority approval of both the community's legislative body and voters at the next regular municipal or state election.

The source of revenue for the Fund is a property tax surcharge of up to three percent that will be assessed on each parcel of taxable real estate within the community. Amounts generated by the surcharge are not subject to the levy limitations of Proposition 2½.

The municipality's legislative body must appropriate all monies in the Fund before they may be spent for Fund purposes.

This statute may be accepted, and a surcharge imposed, to take effect for fiscal years beginning on or after July 1, 2015.

GUIDELINES:

I. MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND ADOPTION

A. Acceptance by Legislative Body and Electorate

Acceptance requires approval of both the legislative body of the city or town and the electorate at the next regular municipal or state election. [G.L. c. 40, § 39M\(f\)](#).

1. Legislative Body Action

A majority of the legislative body of the city or town must first approve a specific proposal to present to the voters. The legislative body of the city or town must accept G.L. c. 40, § 39M and approve the amount of the water infrastructure surcharge. The approved surcharge cannot exceed three percent. [G.L. c. 40, § 39M\(a\)](#). (See attached sample legislative body acceptance vote.)

2. Voter Action

The actions of the legislative body must be submitted to the voters for acceptance at the next regular municipal or state election.

a. Timing

After the legislative body accepts [G.L. c. 40, § 39M](#) and approves the amount of the surcharge, the acceptance question must be placed before the voters at the next regularly scheduled municipal or state election. [G.L. c. 40, § 39M\(f\)](#).

If the next regularly scheduled election is a municipal election, the legislative body must act in sufficient time to give the city or town clerk at least 35 days advance written notice of the ballot question. If the next election is a state election, the secretary of state must receive at least 60 days advance written notice of the ballot question. [G.L. c. 54, § 42C](#). The written notice must include the exact question as it will appear on the ballot and the summary as described in Section A-2-c below.

b. Question Form

The ballot question presented to the voters must read as follows:

Shall this (city or town) accept the provisions of section 39M of chapter 40 of the General Laws, a fair and concise summary of which appears below?

[G.L. c. 54, § 58A](#).

c. Question Summary

A fair and concise summary of the Municipal Water Infrastructure Investment Fund provisions that are the subject of the ballot question must appear underneath the question, including the surcharge percentage approved by the legislative body. The summary is to be prepared by the community's city solicitor or town counsel. [G.L. c. 54, § 58A](#). (See attached sample summary for acceptance.)

d. Question Approval

The question is approved and [G.L. c. 40, § 39M](#) is accepted if a majority of the voters voting on the ballot question vote "yes."

B. Effective Date

The statute takes effect, and the surcharge is first assessed, for the fiscal year that begins on the July 1 after acceptance, unless the city or town designates a later year in its acceptance. [G.L. c. 40, § 39M\(f\)](#).

For example, unless a later fiscal year is designated in the acceptance vote, the surcharge is imposed as follows:

- If the question is approved by voters at a May election, the fiscal year beginning the following July 1.
- If the question is approved by voters at a November election, the fiscal year beginning the following July 1.
- If the question is approved by voters at an election held on July 2, the fiscal year beginning the following July 1.

C. Amended Acceptance

A city or town may amend the surcharge percentage in the same manner as acceptance. Amendment requires a majority vote of the legislative body and a ballot question approved by a majority of the voters voting on it. The surcharge may not be amended more than once in any 12 month period. [G.L. c. 40 § 39M\(j\)](#).

(See attached sample legislative body vote and ballot question and summary for amendment.)

D. Revocation of Acceptance

A city or town may revoke its acceptance in the same manner as acceptance, but must wait until at least three years after acceptance. [G.L. c. 4, § 4B](#). Revocation requires a majority vote of the legislative body and a ballot question approved by a majority of the voters voting on it. [G.L. c. 40 § 39M\(j\)](#).

(See attached sample legislative body vote and ballot question and summary for revocation.)

E. Notification of Acceptance, Amendment or Revocation

The city or town clerk must notify the Municipal Databank if it accepts or revokes [G.L. c. 40 § 39M](#), or amends the surcharge. See “[Notification of Acceptance, Revocation or Amendment](#).”) The notification should be made **as soon as possible** after the votes.

II. WATER INFRASTRUCTURE SURCHARGE

In a city or town that accepts [G.L. c. 40, § 39M](#), a water infrastructure surcharge is assessed on the municipality's real estate taxes. (See Section I-B above for effective date of surcharge.) Taxes assessed on personal property, or by water, fire or other tax levying districts within the municipality, are not subject to the surcharge. Amounts generated by the surcharge are not subject to the levy limitations of Proposition 2½.

A. Surcharge Assessment and Billing

The surcharge is imposed on every type of real estate tax assessment made by the community, including all preliminary, actual, omitted, revised and supplemental assessments. The surcharge must be displayed as a separate item on the tax bills, commitments and warrants issued for those assessments. Assessors should also forward a separate notice of commitment for the surcharge to the accounting officer.

If communities are unable to modify their billing software in time to bill the surcharge on the same semiannual or quarterly schedule as their property taxes in the first year it is imposed, the surcharge commitment and billing can be deferred to later in the fiscal year as needed to make the technical changes. The failure to bill a surcharge in the usual installments due to technical reasons does not change the surcharge owed for the fiscal year. The total surcharge for the year remains the same, but may be payable in fewer installments in that year.

A stuffer should be included with the first tax bill that displays the surcharge. It should explain the purpose and calculation of the surcharge and when it will ordinarily be billed and due. It should also inform taxpayers who are exempt from the surcharge of the procedures for seeking an abatement.

B. Surcharge Amount

The surcharge is calculated by multiplying the real estate tax on the parcel by the adopted percentage. Therefore, real estate parcels that are fully exempt from property taxes for a fiscal year are not subject to any surcharge for that year.

C. Delinquent Surcharges

Surcharges not paid by the due date accrue interest at 14 percent per year computed in the same manner as overdue property taxes in the community. [G.L. c. 40, §39M\(c\)](#). Interest on overdue surcharges belongs to the Fund.

D. Partial Payments

If a taxpayer expressly directs the tax collector to apply a payment to the regular real estate tax and not the surcharge, the collector must apply the payment as directed. Otherwise, the collector may determine how to apply the payment.

E. Collection

Upon receipt of a warrant from the assessors, the tax collector must collect the surcharge in the amount and according to the computation specified in the warrant and pay over the amounts collected to the city's or town's treasurer in the same manner as regular real estate taxes. As with other local taxes committed to and collected by the tax collector, all books and accounts regarding the surcharge are subject to public disclosure. [G.L. c. 40, § 39M\(h\)](#).

Collectors may enforce collection of the surcharge with any or all of the remedies available for collection of regular real estate taxes, including a tax taking. [G.L. c. 40, § 39M\(i\)](#); [G.L. c. 60](#). The lien for the surcharge arises as of the January 1 assessment date of the fiscal year the surcharge relates to and terminates the same time as that year's real estate tax lien. Collectors should perform timely takings to ensure that both liens do not terminate. [G.L. c. 60, § 37](#); [G.L. c. 60, § 53](#).

A standard notation should be pre-printed on all municipal lien certificates that real estate taxes in the community are subject to the water infrastructure surcharge under [G.L. c. 40, § 39M](#). Collectors should list separately the amount of any outstanding surcharge on the certificate in the same manner as an outstanding district tax is shown.

F. Exemptions and Abatements

Real estate parcels that are fully exempt from property taxes are not subject to any surcharge.

A blind person, veteran, senior, surviving spouse or other individual who receives a personal exemption of taxes assessed on his or her domicile under a clause of [G.L. c. 59, § 5](#) specifically listed in the third paragraph of [G.L. c. 59, § 59](#) for any fiscal year is fully exempt from the surcharge for that year. The surcharge owed by a taxpayer who receives another exemption, or an abatement, under [G.L. c. 59](#) or any other law is reduced in proportion to the amount of the exemption or abatement. [G.L. c. 40, § 39M\(b\)](#).

A reduction in real estate tax liability under [G.L. c. 59, § 5K](#) (senior work-off abatement) and [G.L. c. 59, § 5N](#) (veteran work-off abatement), adopted by local option, is treated as an abatement for purposes of calculating the surcharge.

All committed surcharge amounts abated or exempted are charged to the water infrastructure surcharge receivable of the fiscal year. This includes reductions in committed surcharges resulting from an abatement or exemption of the real estate tax, or an abatement or exemption of the surcharge itself. The abatement or exemption certificate, as well as any abatement and exemption reports to other officers, should state separately the amount of any surcharge abatement or exemption granted.

G. Exemption Administration and Applications

1. Taxpayers Granted Personal Exemptions

Upon granting a blind person, veteran, senior, surviving spouse or other individual a personal exemption of the taxes assessed on his or her domicile under a clause of [G.L. c. 59, § 5](#) specifically listed in the third paragraph of [G.L. c. 59, § 59](#) for any fiscal year, the assessors should also exempt the taxpayer from the surcharge for that year. No further information is needed to establish eligibility for the surcharge exemption and it may be granted without requiring completion of a separate application.

2. Exemption Applications

If a taxpayer who is exempt from all or part of the surcharge in any fiscal year does not receive it, the taxpayer may apply to the assessors for the exemption. The application must be in writing on a form approved by the Commissioner of Revenue. A taxpayer may use the form approved by the Commissioner for property tax abatement applications for this purpose ([“Application for Abatement of Real/Personal Property Tax,” State Tax Form 128](#)). The application is due on or before December 15, or three months after the actual tax bill for the fiscal year is sent, whichever is later. [G.L. c. 40, § 39M\(d\)](#).

The assessors have three months to act on a taxpayer’s application for a surcharge exemption. An applicant aggrieved by the assessors’ action on the application may appeal to the state Appellate Tax Board, or the county commissioners if the applicant lives in a county where county government has not been abolished. The appeal must be filed within three months of the date the exemption was denied, or deemed denied if the assessors did not act within three months. [G.L. c. 59, §§ 64 and 65](#).

Applications for surcharge exemptions are not open to the public for inspection under the public records law. They are treated in the same manner as property tax abatement and exemption applications under [G.L. c. 59, § 60](#).

H. Refund Accounting

All refunds of surcharges are accounted for in the Fund.

I. Surcharge Deferrals

Taxpayers who are eligible to defer property taxes under [G.L. c. 59, § 5\(41A\)](#) may not defer the surcharge.

J. Surcharge on Classified Land Taxes

The surcharge assessed on classified forest land under [G.L. c. 61](#), agricultural or horticultural land under [G.L. c. 61A](#) and recreational land under [G.L. c. 61B](#) is calculated based on the real estate tax generated by the classified value of the property. The surcharge is not assessed on withdrawal, rollback or conveyance taxes imposed under G.L. c. 61, 61A or 61B.

III. MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND

A. Special Revenue Fund

The Fund is a receipts reserved for appropriation special revenue fund.

1. Receipts

The following receipts are credited to the Fund:

- a. All monies collected from the surcharge, including any interest paid on overdue surcharges.
- b. All income and interest earned on Fund monies.

[G.L. c. 40, § 39M\(e\)](#).

2. Investment

The treasurer is the custodian of the Fund. The treasurer may invest the monies of the Fund in the same manner as general funds under [G.L. c. 44, §§ 55, 55A](#) and [55B](#). [G.L. c. 40, § 39M\(e\)](#). The treasurer may pool the cash and does not have to establish a separate bank account for the Fund.

Interest earned on Fund monies belongs to the Fund.

B. Expenditures

An appropriation is required to spend any monies in the Fund. Appropriations are by majority vote of the legislative body and are limited to the actual unencumbered balance of the Fund at the time of the appropriation. Anticipated receipts cannot be appropriated.

Fund monies may be appropriated solely for maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets. This would include expenses typically incurred:

1. To maintain water, wastewater and stormwater infrastructure, such as the costs of materials, supplies and labor used to inspect, repair or otherwise keep the assets in good condition.
2. As part of water, wastewater and stormwater infrastructure projects, such as the cost of acquiring any land, easements or other property interests needed for the infrastructure, as well as any materials, supplies and labor involved in the planning, design and engineering of the project and actual construction or improvement of the assets. It also includes any debt service on debt issued to finance the projects.

Payment of bills charged to appropriations from the Fund must follow the same process used for payment of other municipal expenses. [G.L. c. 41, §§ 52 and 56](#). A payment voucher with appropriate supporting documentation is submitted to the accounting officer for placement of the bill on the treasury warrant. [G.L. c. 40, § 39M\(e\)](#).

C. Accounting

The accounting officer must establish and maintain the Fund as a separate account and record all activity in the Fund. [G.L. c. 40, § 39M\(e\)](#).

1. The assessors will issue a separate notice of commitment for the surcharge, which must be recorded in the Fund.
2. Surcharge collections and investment earnings are recorded directly into the Fund.
3. Expenditures are recorded as direct expenditures in the Fund.
4. The unspent and unencumbered balance of an appropriation for a particular infrastructure project or purpose is closed to the Fund.
5. The balance in the Fund at the end of a fiscal year carries forward to the next fiscal year.

D. Supplemental Appropriations

Appropriations may be made from other municipal funding sources, such as the tax levy, free cash or other available funds, to supplement and carry out infrastructure projects funded by the Fund. However, monies from these sources may not be appropriated directly into the Fund. Appropriations for these infrastructure projects or purposes would ordinarily be special purpose appropriations and not close out at the end of the fiscal year.

E. Surcharge Revocation

Appropriations from the Fund balance remaining after revocation of the Fund are still restricted to Fund purposes.

SAMPLES

(Samples should not be used without the advice of municipal counsel.)

**MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND
ACCEPTANCE**

Legislative Body Vote

ARTICLE/ORDER: To see if the city/town will accept [General Laws Chapter 40, Section 39M](#), which establishes a special “Municipal Water Infrastructure Investment Fund” that may be appropriated and spent for maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets, and will approve a property tax surcharge in an amount not to exceed three percent of the taxes assessed annually on real property, which will be dedicated to the fund, the surcharge to be imposed starting with taxes assessed for fiscal year _____ beginning on July 1, _____ or take any other action relative thereto.

MOTION: Moved/ordered that the city/town accept [General Laws Chapter 40, Section 39M](#), which establishes a special “Municipal Water Infrastructure Investment Fund” that may be appropriated and spent for maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets, and approve a property tax surcharge in the amount of ___ percent of the taxes assessed annually on real property to be dedicated to the fund, the surcharge to be imposed starting with taxes assessed for fiscal year _____ beginning on July 1, _____.

Ballot Question - Acceptance

Shall this (city or town) accept the provisions of section 39M of chapter 40 of the General Laws, a fair and concise summary of which appears below?

Yes _____ No _____

Summary

Section 39M of chapter 40 of the General Laws of Massachusetts establishes a special “Municipal Water Infrastructure Investment Fund” with a dedicated funding source that may be spent on maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets. (Town meeting/city/town council upon recommendation of mayor/manager) must approve all spending from the fund.

In (city/town), the funding source is a surcharge of (___)% on the annual property tax assessed on real property starting in fiscal year _____, which begins on July 1, _____. The surcharge is calculated by multiplying the real estate tax on the parcel by the adopted percentage. Real estate parcels that are fully exempt from property taxes are not subject to a surcharge. In addition, taxpayers who receive partial exemptions of the real estate taxes assessed on their domiciles, including certain seniors, veterans, blind persons and surviving spouses, are fully exempt from the surcharge. Taxpayers who receive other exemptions or abatements of their real estate taxes will receive a pro rata reduction in their surcharges.

**MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND
SURCHARGE AMENDMENT**

Legislative Body Vote

ARTICLE/ORDER: To see if the city/town will amend the amount of the surcharge imposed under [General Laws Chapter 40, Section 39M](#) from ___ percent to __ percent of the taxes assessed annually on real property, effective for fiscal year _____ beginning on July 1, _____ or take any other action relative thereto.

MOTION: Moved/ordered that the city/town amend the amount of the surcharge imposed under [General Laws Chapter 40, Section 39M](#) from ___ percent to __ percent of the taxes assessed annually on real property, effective for the fiscal year _____ beginning on July 1, _____.

Ballot Question – Surcharge Amendment

Shall this (city or town) amend its acceptance of the provisions of section 39M of chapter 40 of the General Laws, a fair and concise summary of which appears below?

Yes _____ No _____

Summary

City/town accepted section 39M of chapter 40 of the General Laws of Massachusetts and established a special “Municipal Water Infrastructure Investment Fund” with a dedicated funding source that may be spent on maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets. The funding source is a surcharge on the annual property tax assessed on real property. The surcharge accepted by the city/town is (__)%.

This amendment will (reduce/increase) the surcharge from (___)% to (___)%, starting in fiscal year _____, which begins on July 1, _____.

The surcharge will continue to be calculated in the same manner by multiplying the real estate tax on the parcel by the adopted percentage. There is also no change in surcharge exemptions. Real estate parcels that are fully exempt from property taxes are not subject to a surcharge. In addition, a taxpayer receiving an exemption of real property under a clause of G.L. c. 59, section 5, which exemption is also listed in G.L. c. 59, section 59, is fully exempt from the surcharge. A taxpayer receiving any other exemption or abatement of tax on real property receives a pro rata reduction in surcharge.

**MUNICIPAL WATER INFRASTRUCTURE INVESTMENT FUND
REVOCATION**

Legislative Body Vote

ARTICLE/ORDER: To see if the city/town will revoke its acceptance of [General Laws Chapter 40, Section 39M](#), effective for fiscal year _____ beginning on July 1, _____, or take any other action relative thereto.

MOTION: Moved/ordered that the city/town revoke its acceptance of [General Laws Chapter 40, Section 39M](#), effective for fiscal year _____ beginning on July 1, _____.

Ballot Question - Revocation

Shall this (city or town) revoke its acceptance of the provisions of section 39M of chapter 40 of the General Laws, a fair and concise summary of which appears below?

Yes _____ No _____

Summary

City/town accepted section 39M of chapter 40 of the General Laws of Massachusetts and established a special “Municipal Water Infrastructure Investment Fund” with a dedicated funding source that may be spent on maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets. The funding source is a surcharge on the annual property tax assessed on real property. The surcharge accepted by city/town is (____)%.

A revocation of acceptance will eliminate the surcharge and funding for the Municipal Water Infrastructure Investment Fund, starting in fiscal year _____, which begins on July 1, _____.

If acceptance is revoked, any monies remaining in the Municipal Water Infrastructure Investment Fund must still be appropriated and spent on maintenance, improvements and investments to municipal drinking, wastewater and stormwater infrastructure assets.