



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

February 7, 2019

City Council President Linda M. Morad and
Honorable Members of the City Council
133 William Street
New Bedford, MA 02740

Dear Council President Morad and Honorable Members of the City Council:

I am submitting for your approval an ORDER that, the City hereby accepts the provisions of M.G.L. c. 43, § 53F ½ establishing cable television public access as an enterprise fund effective fiscal year 2020, which begins on July 1, 2019.

The fund will be known as the "Cable Television Public Education and Government Access Enterprise Fund" and all receipts, revenues, and funds from any source derived from activities relating to this enterprise shall be deposited into said fund to support PEG access services and oversight, as well as renewals of the cable franchise agreement.

Sincerely,

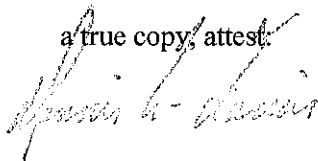

Jon Mitchell
Mayor

Referred to the Committee on Finance.

IN CITY COUNCIL, February 14, 2019

Dennis W. Farias, City Clerk

a true copy, attest:


City Clerk

CITY CLERK

2019 FEB - 7 A 8:40

CITY CLERKS OFFICE
NEW BEDFORD, MA



OFFICE OF THE CFO

ARI J. SKY
CHIEF FINANCIAL OFFICER

CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

February 4, 2019

TO: Mayor Jonathan F. Mitchell
New Bedford City Council

FROM: Ari J. Sky

SUBJECT: Cable Access Enterprise Fund

In 2014, the State Legislature adopted a measure that laid out several options for the accounting of cable television Public/Education/Government (PEG) access revenue. Included in the law is a requirement that localities begin to appropriate PEG activities, either in the General Fund or a separate enterprise fund. Prior to the adoption of this law, most localities assigned PEG revenue to a special revenue fund which does not receive a formal appropriation.

Following adoption of the law, the Department of Revenue issued an Informational Guideline Release (IGR), which required localities to transition to a dedicated fund to receive an annual budget through the appropriations process. The transition deadline was set for FY 2017. In response, a number of localities requested that the Legislature consider an amendment to allow a continuation of current practice. The Department of Revenue extended the transition date while this issue was under consideration by the Legislature.

The most recent attempt to restore current practice failed during the 2018 legislative session. As a result, the Department of Revenue has issued guidance stating that localities must take the necessary action prior to the end of FY 2019, or to begin budgeting cable access as part of the General Fund.

Attached are copies of the PEG access enterprise fund law and relevant guidance from the Department of Revenue. In order to ensure that cable access revenue is retained for its original purpose, it will be necessary to accept the statute and establish a cable access enterprise fund. A proposed appropriation for cable access activities will be included in the Mayor's budget beginning with the FY 2020 budget process.

Thank you for your consideration, and please do not hesitate to contact me if you have any questions or concerns.

Attachments

Acts (2014)

Chapter 352

AN ACT RELATIVE TO CABLE PEG ACCESS ENTERPRISE FUND

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. Section 53F¹/₂ of chapter 44 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after the word “utility”, in line 4, the following words:- , cable television public access.

SECTION 2. Said chapter 44 is hereby further amended by inserting after section 53F¹/₂ the following section:-

Section 53F³/₄. Notwithstanding section 53 or any other general or special law to the contrary, a municipality that accepts this section may establish in the treasury a separate revenue account to be known as the PEG Access and Cable Related Fund, into which may be deposited funds received in connection with a franchise agreement between a cable operator and the municipality. Monies in the fund shall only be appropriated for cable-related purposes consistent with the

franchise agreement, including, but not limited to: (i) support of public, educational or governmental access cable television services; (ii) monitor compliance of the cable operator with the franchise agreement; or (iii) prepare for renewal of the franchise license.

Approved, October 17, 2014.



DLS

DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Mark E. Nunnelly
Commissioner of Revenue

Sean R. Cronin
Senior Deputy Commissioner

Informational Guideline Release

Bureau of Accounts
Informational Guideline Release (IGR) No. 16-102
January 2016

CABLE TELEVISION PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS SPECIAL REVENUE FUNDS

(G.L. c. 44, § 53F½; G.L. c. 44, § 53F¾)

This Informational Guideline Release (IGR) explains to local officials the procedures and requirements for establishing an enterprise fund to account for monies received and spent for cable television public, educational and governmental (PEG) access facilities and operations, or alternatively, for creating a receipts reserved fund known as the PEG Access and Cable Related Fund to fund PEG access programming, as well as certain other municipal cable-related expenses.

Topical Index Key:

Accounting Policies and Procedures
Special Funds

Distribution:

Treasurers
Clerks
Accountants/Auditors
Mayors/Selectmen
Managers/Administrators/Exec. Secys.
Finance Directors
City Solicitors/Town Counsels

**CABLE TELEVISION PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS
SPECIAL REVENUE FUNDS**

(G.L. c. 44, § 53F½; G.L. c. 44, § 53F¾)

SUMMARY:

These guidelines explain two options now available to cities and towns to separately account for cable franchise fees collected from customers by cable companies and other cable-related monies negotiated in cable television agreements between the municipality and the cable television operator.

Those monies include fees collected from customers by the cable operator in connection with the franchise and in support of public, educational and government (PEG) programming. In addition to the imposition of these franchise fees, cable licensing agreements typically require that cable companies provide services, facilities and equipment for PEG channels, deliver cable television programming to municipal buildings, and maintain customer service quality. Under state law, cable operators also pay the municipality an annual license fee, which is based on the number of cable customers. All of these monies are general fund revenues, absent a special act treating them otherwise. G.L. c. 44, § 53.

Cities and towns may now designate cable PEG access operations or services as an enterprise and separately account for all franchise fees and other revenues derived from enterprise activities in the same manner as other enterprise funds. G.L. c. 44, § 53F½.

Alternatively, cities and towns may reserve the franchise fees and other cable related revenues for appropriation to support PEG access services, monitor compliance with the franchise agreement or prepare for license renewal by accepting G.L. c. 44, § 53F¾ and establishing a PEG Access and Cable Related Fund.

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

GUIDELINES:

I. TRANSITION TO SPECIAL REVENUE FUND

As part of the certification of general fund free cash, the Director of Accounts will close any reservations of cable franchise fees or other cable-related funds that appear on a city or town balance sheet on or after June 30, 2016 unless:

BUREAU OF ACCOUNTS

MARY JANE HANDY, DIRECTOR

- A. The city or town has accepted one of the special revenue funds, as explained in Sections II and III below, and
- B. The legislative body of the city or town has voted to have the accounting officer transfer any balance to the accepted fund at the beginning of the fiscal year the fund will start operation. The transfer may be voted as part of the acceptance or separately.

II. CABLE PUBLIC ACCESS ENTERPRISE FUND

Cities and towns may accept G.L. c. 44, § 53F½ and establish an enterprise fund to separately account for all revenues and expenditures in connection with operating cable PEG access service for city or town residents, whether the service is operated by a city or town department or a contractor.

For detailed guidance on adoption of an enterprise fund, setting the annual enterprise budget, accounting for enterprise activities and operation of the fund, see the Enterprise Funds Guidelines issued by the Bureau of Accounts.

III. PEG ACCESS AND CABLE RELATED FUND

A. Local Acceptance

1. Acceptance Procedure

Acceptance of G.L. c. 44, § 53F¾ for a PEG Access and Cable Related Fund (Fund), is by majority vote of the municipality's legislative body, subject to charter. G.L. c. 4, § 4. (See attached sample acceptance vote.)

2. Revocation of Acceptance

Acceptance may be revoked, but the city or town must wait until at least three years after acceptance. Revocation is also by majority vote of the municipality's legislative body, subject to charter. G.L. c. 4, § 4B.

3. Notification of Acceptance or Revocation

The city or town clerk must notify the Municipal Databank if it accepts or revokes G.L. c. 44, § 53F¾. (See "Notification of Acceptance or Revocation.") The notification should be made **as soon as possible** after the vote.

4. **Effective Date**

The Fund will begin operation for the fiscal year that begins the next July 1, unless a later fiscal year is designated in the acceptance. Revocation of the statute terminates the Fund at the end of the fiscal year in which the revocation is voted.

B. **Special Revenue Fund**

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

1. **Receipts**

The following revenues received in connection with the municipality's franchise agreements may be credited to the Fund:

- a. Cable franchise fees collected by the cable operator for PEG access and received by the city or town.
- b. Annual license fees paid by the cable operator. G.L. c. 166A, § 9.
- c. Other revenues received in connection with the franchise agreement.

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. 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 general fund.

C. **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.

Monies from the Fund may be appropriated consistent with the cable franchise agreement to:

1. Support cable PEG access service or programming for city or town residents, whether operated by a city or town department or a contractor.
2. Monitor the cable operator's compliance with the franchise agreement.
3. Prepare for renewal of the cable franchise license, including any associated expert and legal services.

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.

D. Accounting

The accounting officer must establish and maintain the Fund as a separate account and record all activity in the Fund.

1. Receipts 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 cable-related 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.

E. 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 cable-related purposes funded by the Fund. However, monies from these sources may not be appropriated directly into the Fund. Depending on the purpose, appropriations from the Fund could be operating or special purpose appropriations and the accounting officer would close them out in the same manner as other such appropriations.

F. Fund Revocation

If the city or town revokes its acceptance of G.L. c. 44, § 53F¾, the accounting officer is to close the fund balance to the general fund at the end of the fiscal year.

SAMPLE

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

PEG ACCESS AND CABLE RELATED FUND ACCEPTANCE

Legislative Body Vote

ARTICLE/ORDER. To see if the city/town will accept General Laws Chapter 44, Section 53F³/₄, which establishes a special revenue fund known as the PEG Access and Cable Related Fund, to reserve cable franchise fees and other cable-related revenues for appropriation to support PEG access services and oversight and renewal of the cable franchise agreement, the fund to begin operation for fiscal year _____, which begins on July 1, _____ or take any other action relative thereto.

MOTION. Moved/ordered that the city/town accept General Laws Chapter 44, Section 53F³/₄, which establishes a special revenue fund known as the PEG Access and Cable Related Fund, to reserve cable franchise fees and other cable-related revenues for appropriation to support PEG access services and oversight and renewal of the cable franchise agreement, the fund to begin operation for fiscal year _____, which begins on July 1, _____.



PEG Access information on Page 2.

DLS

DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Christopher C. Harding
Commissioner of Revenue

Sean R. Cronin
Senior Deputy Commissioner

To: City Auditors, Town and Special Purpose District Accountants
From: Mary Jane Handy, Director of Accounts
Date: June, 2018

This letter sets forth the requirements for certification of General Fund free cash, certification of enterprise fund retained earnings, submission of required Division of Local Services (DLS) reports, and certain other related matters.

For jurisdictions required to submit audited financial statements prior to free cash certification, if the independent auditor's opinion is adverse or disclaimed, the certification of free cash is at the discretion of the Director of the Bureau of Accounts (BOA).

Transportation Network Companies (TNC) Per-Ride Assessment

Chapter 187 of the Acts of 2016 established a Commonwealth Transportation Infrastructure Fund. As required, each TNC submits to the Department of Public Utilities the number of rides from the previous calendar year that originated within each city or town and a per-ride assessment of \$0.20, which has been credited to the Fund. One-half (½) of the amount received from the Fund is distributed proportionately to each city and town based on the number of rides that originated in that city or town.

Since these funds must be used "to address the impact of transportation network services on municipal roads, bridges and other transportation infrastructure or any other public purpose substantially related to the operation of transportation network services in the city or town including, but not limited to, the complete streets program established in [G.L. c. 90I, § 1] and other programs that support alternative modes of transportation.", they are classified as special revenue funds. An appropriation by the legislative body of the city or town is required to use these funds for the specific statutory purposes.

Grant Reimbursements

Expenditures made in anticipation of State grant reimbursements that were subsequently reduced or eliminated in FY2018 and resulted in a deficit in the grant account at June 30, 2018, and for which reimbursement is no longer anticipated, must be raised in the FY2019 tax rate ("Other Amount to be Raised" on page 2 of the Tax Rate Recap), unless otherwise funded before then.

(See Balance Sheet presentation below for additional information on the effect of grant deficits on free cash.)

Supporting a Commonwealth of Communities

mass.gov/DLS
P.O. Box 9569 Boston, MA 02114-9569
(617) 626-2300

PEG access

After the passage of Chapter 352 of the Acts of 2014 regarding options for accounting for Cable Television PEG Access revenues and the issuance of Informational Guideline Release (IGR) No. 16-102 explaining them, the Bureau received numerous calls and e-mails from communities as to their current accounting treatment of these funds. In response, the Bureau extended the date announced in IGR 16-102 twice in order to facilitate local decisions about the most appropriate accounting treatment for these revenues to provide for completion of any transition from a community's current accounting treatment to the new treatment.

The Bureau will give communities until the close of fiscal year 2019 (June 30, 2019) to consider the available accounting options and take all necessary actions to implement it. However, no further extension will be authorized. All accounts treated otherwise at the end of fiscal year 2019 will be closed to the General Fund as part of the June 30, 2019 free cash certification. Any inconsistent statements in Section I of IGR 16-101 or other prior written publications or statements are superseded.

Snow and Ice

Chapter 10, § 58 of the Acts of 2015 authorized cities and towns by local decision to amortize their FY2015 snow and ice removal account deficit over three fiscal years. We have been notified by Massachusetts Emergency Management Agency (MEMA) that Federal Emergency Management Agency (FEMA) reimbursements to all communities for January 2015 snowstorms has been completed. Any community with a deficit in this account must provide for that deficit in the FY2019 tax rate.

Balance Sheet - Form Submission Requirements

In an effort to streamline and simplify our processes, as well as to develop consistency in the submissions, we have developed a standardized balance sheet template for submission by cities, towns, and districts. This new template is an excel workbook that includes tabs for a combined balance sheet, fund balance detail for other funds including special revenue funds, capital project funds, trust and agency funds, as well as combining balance sheets for enterprise funds and internal service funds. It also includes a template for the submission of the undesignated fund balance roll-forward. This workbook can be found on two new modules added to Gateway to accommodate online reporting: "Balance Sheet" and "District Balance Sheet." These modules appear as tabs across the top, similar to the "Tax Rate" and "Schedule A" tabs and contain all of the forms necessary for submission with the balance sheet. Other forms included in the new modules are: balance sheet checklist, cash reconciliation report, outstanding receivables report, snow and ice data sheet, statement of indebtedness, and the treasurer's year-end report. These forms were previously found in Gateway under the "Miscellaneous Forms" tab. Districts are not required to complete the snow and ice data sheet.

We have also added a new Gateway form – the Balance Sheet Submission form. Cities, towns, and districts are now required to complete and upload the Excel standardized balance sheet template to this form. The module will reflect the status of all of the other required forms previously mentioned. All of these required forms must be in "form submit" status before the user will be allowed to submit the balance sheet template.

All procedures necessary to properly close accounting records should be completed. Pre-closing trial balances will not be accepted. Only balance sheets that have been closed as of June 30, 2018 will be accepted for certification of free cash.

UMAS accounting does not require that local governmental entities convert their chart of accounts to conform to GASB 54 definitions. BOA will continue to allow fund balance definitions to appear as in the past.

With the FY 2018 balance sheet submission, cities, towns, and districts submitting Free Cash certification must submit in Gateway the Excel standardized balance sheet template. This change does not apply to cities and towns using the STAT accounting method.

Cities, towns, and districts that submit their balance sheet for free cash are required to submit the following:

- The Excel standardized balance sheet template that contains the following worksheets
 - i. Combined balance sheet for all funds and account groups
 - ii. Detailed fund balances for all funds
 - iii. Detail for Account groups
 - iv. Combining statements
 - v. Detailed analysis of undesignated fund balance/surplus revenue
- Balance Sheet Checklist
- Cash Reconciliation Report
- Outstanding Receivables Report
- Snow and Ice Data Sheet
- Statement of Indebtedness
- Treasurer's year-end report
- System generated trial balance printout for the general fund
- Detail transaction report of the undesignated fund balance account

Balance Sheet Presentation

- For balance sheet purposes at June 30, 2018, debt proceeds reserved in the Enterprise Fund must be transferred to a Capital Projects Fund.
- For each separate enterprise fund, the transfer of Enterprise Fund receipts to the General Fund for indirect costs cannot exceed the amount reported on Schedule A-2 Enterprise Funds, part IIB Total costs appropriated in general fund.
- If committed before July 1, the FY2019 property tax commitment is not recorded until July 1. Cash received before July 1 toward that commitment is recorded as FY2019 deferred revenue.
- Invested funds must be reported at fair value as of June 30.
- Incurred But Not Reported (IBNR) claims of a self-insured health care trust fund must be accrued and reported on the balance sheet. A June 30, 2018 deficit in this fund is a reduction to free cash and must be raised in the FY2019 tax rate, unless otherwise funded before then.

- Any balance as of June 30 in the State Special Education Reimbursement Fund (Circuit Breaker) can be no greater than DESE's FY2018 reimbursement, not including extraordinary assistance or funds obligated by the school committee for FY2019 purposes. Any fund balance in excess of the allowable balance must close to the General Fund on June 30.
- Massachusetts School Building Authority (MSBA) lump-sum payments may require reservation and amortization. Please see IGR No. 08-102, Guidelines for the Application of School Building Assistance Grants.
- Treasurers may use inter-fund borrowing before issuance of authorized debt to pay expenses for the projects or purposes for which the debt will be issued. G.L. c. 44, § 20A. Interfund advances must be repaid during the same fiscal year and there are some borrowing restrictions. See IGR No. 17-21, Borrowing for an explanation of interfund borrowing procedures and restrictions.

Debt authorized for jurisdictions required by special acts to obtain approval from the Commissioner of Revenue must first receive local approval and then the Commissioner's approval before interfund borrowing and expenditure of funds can occur.

- Community Preservation Fund balances reported on the June 30 balance sheet must match balances reported on the Community Preservation Fund Report CP-2 that is due on October 31.
- Appropriations from Community Preservation Fund (CPF) FY2019 estimated revenues prior to July 1 are neither recorded nor expendable until July 1.
- Any Enterprise Fund related capital project deficit recorded in the Capital Projects Fund may reduce free cash or retained earnings depending upon the fund intended to finance the capital project.
- BOA has noted that a number of balance sheet reports reflect deficits in certain grants. While BOA may reduce free cash for any grants that have been reported in deficit on the balance sheet, any deficits will not have to be raised in the FY2019 tax rate. However, accounting officials should analyze the deficit funds and plan to provide for the deficit in the near future.
- BOA has advised local accounting officials that reservation of funds within an Enterprise Fund apart from retained earnings may only occur consistent with the provisions of the Enterprise Fund Manual, IGR 08-101, Enterprise Funds. We also recommend courses of action for continued reservation of such funds. The Bureau may in the June 30, 2018 retained earnings certification close to retained earnings improper reservations. Additionally, capital projects should not be reported in the Enterprise Fund, but reported in the Capital Projects Fund.

Potential Increases to Free Cash

The following amounts may be requested by the jurisdiction's accounting official to be included in the certification:

- FY2018 state aid payments received by September 30;
- Federal/state reimbursements received by September 30 for FY2018 expenditures that resulted in a deficit fund balance as of June 30 may be applied to offset the deficit; and
- Expected reimbursement from MassDOT relating to Chapter 90 apportionment reimbursements for FY2018 expenditures that resulted in a deficit fund balance as of June 30 may be applied to offset the deficit provided a documented reimbursement request was filed with the appropriate authority by September 30 and BOA must be satisfied that payment will be made.

Potential Decreases to Free Cash

The following reasons will contribute to a free cash reduction by the Director unless otherwise noted.

- The calculated amount cannot be substantiated by supporting documentation;
- A variance between the balance sheet and cash and/or outstanding receivables detail;
- Illegal deficits or any legal deficit not raised in the FY18 tax rate, or otherwise funded before the rate is set (if tax rate certification preceded free cash certification);
- A fund balance deficit in an individual Capital Projects Fund where funds were not borrowed by June 30;
- A deficit fund balance in the self-insurance health claims trust (Note: the deficit must be raised in the FY19 tax rate, unless otherwise funded before then);
- A grant deficit as of June 30 for which funds were not borrowed by June 30 or reimbursement was not received by September 30.
- A Chapter 90 fund balance deficit where funds were not borrowed by June 30; reimbursement was not received by September 30; or reimbursement was not filed with MassDOT by September 30 and BOA is not satisfied that payment will be made.

Certification Notice

Certification letters, free cash calculations, and enterprise fund retained earning calculations will be emailed to the mayor/manager, board of selectmen, finance director, accounting officer and treasurer immediately upon approval, to the email address in the Local Officials Directory (LOD) located in Gateway. Officials are advised to periodically check the LOD for accuracy of their email addresses and notify their City/Town Clerk of any changes.

Free Cash Certification Update

Once in any fiscal year, the free cash certification may be updated. Certification may be updated by receipts attributable principally to prior fiscal year property taxes, net of refunds, received from July 1 through March 31. At a minimum, a listing of taxes collected by fiscal year must be provided to the Bureau for update purposes. This free cash certification update provides additional appropriation authority.

The Director will not update certified free cash where, in the Director's opinion, appropriation of the funds could result in a negative free cash as of the following June 30. No similar update may be requested for the following fiscal year if an update is certified and a negative free cash results.

BOA will continue to allow non-recurrent distributions received in the current fiscal year to be included in a free cash certification update subject to the conditions noted above.

Treasurer's Year End Cash Report

The Treasurer's Year-End Cash Report as of June 30, 2018 must be completed and uploaded in the Gateway system by September 30, 2018 or upon submission of a balance sheet for FY2018 free cash certification, whichever is earlier.

The Accountant completes Part II or if there is a variance completes Part III of the Report. Do not check-off in Part I on behalf of the Treasurer. If you have any problems with Report submission, please contact your BOA field representative.

We recommend that the records of the Treasurer and Accountant be reconciled monthly during the year to facilitate the completion of this report.

Schedule A Form and Notice

The FY2018 Schedule A is due November 30, 2018. Cities and towns that do not submit the Schedule A timely may have all future local aid payments (regardless of fiscal year) withheld until the Schedule A is submitted and accepted. G.L. c. 58, § 18F. The FY2018 Schedule A and the Excel version of Schedule A is currently available in Gateway.

Schedule A approval letters will be emailed to the budgeting, accountant/auditor, comptroller and finance director immediately upon approval, to the email address in the Local Officials Directory (LOD) located in Gateway. Officials are advised to periodically check the LOD for accuracy of their email address and notify their City/Town Clerk of any changes.

DLS Website and Gateway

All Informational Guideline Releases (IGRs), Bulletins, Local Finance Opinions (LFOs) and other publications issued by DLS can only be found on our website at www.mass.gov/dls. You may now search for current IGRs, Bulletins and LFOs in the DLSLAW Library.

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