CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

January 16, 2020

City Council President Joseph P. Lopes and
Honorable Members of the City Council
133 William Street
New Bedford, MA 02740

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

I am submitting for your approval an ORDER authorizing the appropriation of $462,000 in BAN premiums to MIS Capital Outlay.

Sincerely,

Jon Mitchell
Mayor

CITY HALL • 133 WILLIAM STREET • NEW BEDFORD, MA 02740 • TEL: (508) 979-1410 • FAX: (508) 991-6189

CITY OF NEW BEDFORD

CITY COUNCIL

January 23, 2020

AN ORDER PROVIDING FOR THE APPROPRIATION OF PREMIUM RECEIVED ON ACCOUNT OF THE SALE OF TEMPORARY NOTES, TO PAY COSTS OF PURCHASING A SERVER FOR THE MIS DEPARTMENT AND ACCELERATING THE REPLACEMENT OF PERSONAL COMPUTERS AS PART OF IMPLEMENTING OFFICE 36 CITY-WIDE.

BE IT ORDERED, BY THE CITY COUNCIL OF THE CITY OF NEW BEDFORD AS FOLLOWS:

That the City appropriates $462,000 to pay costs of purchasing a new server for the MIS Department and to pay costs of accelerating the replacement of personal computers as part of implementing Office 365 City-wide, and for the payment of all other costs incidental and related thereto; and that to meet this appropriation, $462,000 shall be transferred from amounts realized as sale premium upon the sale of temporary notes by the City from time to time, which amounts have been reserved for appropriation to pay costs of capital projects in accordance with M.G.L. c. 44, §20 as follows:

MIS CAPITAL OUTLAY...................................$462,000

OFFICE OF THE CFO

ARI J. SKY
CHIEF FINANCIAL OFFICER

CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

January 15, 2020

TO: Mayor Jonathan F. Mitchell
New Bedford City Council

FROM: Ari J. Sky

SUBJECT: Use of BAN Premiums

The City regularly issues interim debt to finance capital projects while the construction process is underway. Purchasers of municipal debt regularly issue premiums in order to enhance the marketability of the notes. Premiums are provided to the City in the form a cash payment. Prior to the passage of the Municipal Modernization Act, they were booked as General Fund revenue. However, State law now limits the use of premiums to reduce the indebtedness requirement or to appropriate toward another capital project.

The new law failed to address interim debt, which is structured on an interest-only basis and does not contain an amortization component. While there have been several attempts to correct the law since the Municipal Modernization Act's passage, the Legislature has not yet adopted a treatment for interim debt, meaning that the only permissible use would be for another capital project. The City currently has $517,440 on General Fund BAN premiums available for appropriation.

The City continues to make substantial progress in its recovery from the July cyber incident. The cyber insurance policy, which reimburses expenses up to $1 million per claim (less the $25,000 deductible), is an invaluable component of the recovery. However, the insurance policy does not cover ongoing expenses, equipment or direct personnel costs. The City Council appropriated $170,000 in September 2019 to support a number of interim measures, including a comprehensive cyber assessment which is currently underway.

To date, the City has assigned $319,871 in eligible expenses to the cyber insurance policy. This total consists of $235,791 for consultants who assisted with computer and system restoration, data entry and forensic analysis, and $84,079 for software to assist in restoration activities. A number of replacement workstations and hard drives were purchased using existing appropriations, but there continues to be a need to accelerate workstation replacement to provide all users with machines that are able to carry the enhanced security measures which have been rolled out over the past several months. In addition, there is a need to replace aging servers that were initially acquired when the City installed its Enterprise Resource Planning infrastructure in 2011. These measures, which would total $462,000, are necessary to maintain our continued progress toward ensuring that our technology infrastructure is updated and secure. I therefore respectfully request the inclusion of an appropriation in BAN premiums for these items.

Attached please find correspondence from the City Treasurer and the Director of MIS regarding this matter. Thank you for your consideration, and please do not hesitate to contact me if you have any questions or concerns.

Attachments

CITY OF NEW BEDFORD

MASSACHUSETTS

OFFICE OF THE TREASURER

Mark P. Fuller
Assistant Treasurer

Blair S. Bailey
Tax Title Attorney

R. Renee Fernandes
Treasurer – Collector

TO: Honorable Mayor Jon Mitchell

THROUGH: Ari Sky, CFO

FROM: R. Renee Fernandes, Treasurer-Collector

DATE: January 13, 2020

RE: Use of BAN Premiums

In 2016, as part of the Municipal Modernization Act, Governor Charlie Baker amended MGL Chapter 44, Section 20 providing for the use of premiums (net issuance costs). Specifically, bond/note premiums can no longer revert to the general fund and must be used to reduce indebtedness or appropriated to a project for which a loan with an equal or longer term can be incurred. Absent from the legislation was a provision for BAN (note) premiums to be used to pay the first interest payment on the associated note.

The amendment to rectify this omission has been languishing in the legislature since 2017, despite the fact that the change has the support of the Massachusetts Municipal Association and the Massachusetts Collectors and Treasurers Association. We are confident that the Legislature will act favorably on the amendment sometime in the very near future. The proposed amendment as written, however, will not address premiums currently held by municipalities.

The City of New Bedford currently has $571,440 in General Fund BAN premiums, 45,382 in Downtown Enterprise Fund BAN premiums and $7,986 in Airport Enterprise Fund BAN premiums available for appropriation. The legislation allows for appropriation of these funds to a capital project/purpose with a term of equal or greater value – in this case, a project of one-year duration or more.

As treasurer and custodian of city debt, I respectfully release these funds for appropriation. If you have any questions, please do not hesitate to contact me.

MANAGEMENT INFORMATION SYSTEMS DEPARTMENT

MARIA PINA-ROCHA
MIS DIRECTOR

CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

TO: **Ari Sky, Chief Financial Officer**

FROM: **Maria Pina-Rocha – Director of MIS**

DATE: **January 14, 2020**

SUBJECT: **End of Life – Hardware Security Assessment**

The City's datacenters located at City Hall and Police Headquarters as well as the Disaster Recovery Center located at Police Station 3 have several pieces of equipment that will be reaching their end-of-life date in calendar year 2020. Most of this equipment was acquisitioned when the City upgraded the Enterprise Resource Planning (ERP) infrastructure in 2011. The additional time allotted for extended support on these systems has also been maximized.

There are 6 server components used to save space and improve system management along with five components used for on-premise backups including data, voice and several business applications installed in 2011. The UPS system used to keep the City Hall Data Center operational during a power outage was also acquisitioned in 2011. The Voice Over Internet Protocol (VoIP) infrastructure was installed in 2014.

In addition to the aging server and backup infrastructure we are also challenged with the older computers used by the City workforce. There are 144 end user computers that do not have the capacity to handle an upgrade to Windows 2010 in combination with the new cyber security software that we acquisitioned this past year.

When equipment reaches their end-of-life date the vendor stops delivering standard support services for the product. Traditionally this includes voice and electronic technical support, hardware and software upgrades, support for new and known defects which include program temporary fixes, security fixes, service packs and updates. Running end-of-life technology puts the City's data infrastructure at considerable security risk and impacts reliability, financials and finding replacement parts. These lapses in support create significant enterprise security risks and leave a company's network infrastructure open to malicious cyber-attacks.

Below is a summarized list of the cost associated with these upgrades.

Equipment	Acquisition Year	Age	Replacement Cost
BladeUPS System	2011	9	$ 18,757.62
CityHall-Voice Servers	2014	6	
CityHall -Switches/Chasse	2011	9	$ 121,142.70
DRSite-Voice Servers/Switches	2014	6	$ 102,230.03
CityHall – Exagrid backup Storage	2011	9	$ 45,663.18
Police Headquarters - Storage Array	2010	10	$ 48,900.00
PCs - 144 - end of life ($870.00/Unit)	2014	6	$ 125,306.47
			$ 462,000.00

PREMIUM ON NOTES

PROJECT	FY17	FY18	FY19	TOTAL PREMIUM HELD PER ISSUE
CIP FY17		30,189.19	21,608.39	51,797.58
CIP FY16	55,145.00			55,145.00
SCHOOL ARP	28,528.00	11,015.99		39,543.99
TAYLOR at SEALAB	48,358.00	15,132.01	7,545.96	71,035.97
HANNIGAN CONST	130,130.00	44,048.97	11,140.59	185,319.56
PARKER SCHOOL	63,429.00	28,168.59	11,382.17	102,979.76
BROOKS FEASIBILITY		2,574.39		2,574.39
BROOKS CONSTRUCTION			12,871.52	12,871.52
ENVIRONMENTAL CLEANUP			10,507.36	10,507.36
SOUTH PUBLIC SAFETY FACILITY			10,507.36	10,507.36
CIP FY18			28,632.56	28,632.56
PARKER/TRINITY			525.37	525.37
				571,440.42
ELM ST GARAGE	31,732.00	13,650.24		**45,382.24**
TAXIWAY A		1,706.28	1,219.12	2,925.40
AIRPORT		3,188.05	1,872.49	5,060.54
				7,985.94
TOTAL PREMIUM	357,322.00	149,673.71	117,812.89	624,808.60

ACCOUNT	ACCOUNT NAME	ORG			BEG. BALANCE	DEBITS	CREDITS	NET CHANGE	END BALANCE
PER	JNL	SRC	EFF DATE	REFERENCE					
0001-00-145-000-C1230-00000-000000-C00010-490100-	TC - Premium On Notes Issuance	__01451230			0				
*11	1058	CRP	5/8/2017	C145 CASH RECEIPTS JOURNAL		0	357,322.10	-357,322.10	
*11	1615	API	5/8/2017	002461 225946 FIRST SOUTHWEST		19,840.29	0	-337,481.81	
*11	1615	API	5/8/2017	001616 225891 MOODY S INVESTC		6,000.00	0	-331,481.81	
*11	1615	API	5/8/2017	004439 225881 LOCKE LORD LLF		8,500.00	0	-322,981.81	
*11	1615	API	5/9/2017	001839 226519 STANDARD & POOF		5,000.00	0	-317,981.81	
*11	1615	API	5/15/2017	002148 227294 US BANK		300	0	-317,681.81	
*13	99	GEN	6/30/2017	aje#4 gen fund & #12 cap pro		357,322.10	0	39,640.29	
*13	101	GEN	6/30/2017	aje#5 gen fund		0	39,649.29	-9	
01451230-490100					0	396,962.39	396,971.39	-9	(9.00)
3208 Elm St Parking Garage 5M									
3208-04-192-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	32081923			0				
*13	99	GEN	6/30/2017	aje#4 gen fund & #12 cap pro		0	31,732.00	-31,732.00	
32081923-490100					0	0	31,732.00	-31,732.00	(31,732.00)
3216 CIP FY16 5.5M									
3216-01-192-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	32161923			0				
*13	99	GEN	6/30/2017	aje#4 gen fund & #12 cap pro		0	55,145.00	-55,145.00	
32161923-490100					0	0	55,145.00	-55,145.00	(55,145.00)
3222 School ARP 18.1M									
3222-03-300-000-30000-00000-000000-C00016-490100-	TC - Premium On Notes Issuance	__32223003			0				
*13	99	GEN	6/30/2017	aje#4 gen fund & #12 cap pro		0	28,528.00	-28,528.00	
32223003-490100					0	0	28,528.00	-28,528.00	(28,528.00)
3223 Taylor @ SeaLab 12.5M									
3223-03-300-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	__32233003			0				
*13	99	GEN	6/30/2017	aje#4 gen fund & #12 cap pro		0	48,358.00	-48,358.00	
32233003-490100					0	0	48,358.00	-48,358.00	(48,358.00)
3224 Hannigan Feasib/Construction									
3224-03-300-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	__32243003			0				
*13	99	GEN	6/30/2017	aje#4 gen fund & #12 cap pro		0	130,130.00	-130,130.00	
32243003-490100					0	0	130,130.00	-130,130.00	(130,130.00)
3245 Transmission Main SMSRF-MaDEP									
3245-04-450-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	32454503			0				
*13	118	GEN	6/30/2017	aje#6 capital projects		0	533,188.00	-533,188.00	
*13	119	GEN	6/30/2017	aje#7 capital projects		0	183,580.00	-716,768.00	
*13	119	GEN	6/30/2017	aje#7 capital projects		0	0.14	-716,768.14	
32454503-490100					0	0	716,768.14	-716,768.14	(716,768.14)
3253 Parker School 8.3M									
3253-03-300-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	__32533003			0				
*13	99	GEN	6/30/2017	aje#4 gen fund & #12 cap pro		0	63,429.00	-63,429.00	
32533003-490100					0	0	63,429.00	-63,429.00	(63,429.00)
									(1,074,099.14)
							MCWT		716,768.14
									(357,331.00)

ACCOUNT	ACCOUNT NAME	ORG			BEG. BALANCE	DEBITS	CREDITS	NET CHANGE	END BALANCE
PER	JNL	SRC	EFF DATE	REFERENCE					
0001-00-145-000-C1230-00000-000000-C00010-490100-	TC - Premium On Notes Issuance	__01451230			0				
*11	938	CRP	5/4/2018	C145 CASH RECEIPTS JOURNAL		0	184,723.00	-184,723.00	
*11	2082	API	5/16/2018	002148 294483 US BANK		500	0	-184,223.00	
*11	2082	API	5/16/2018	007873 294493 HILLTOP SECURIT		12,249.29	0	-171,973.71	
*11	2082	API	5/16/2018	001616 294497 MOODY S INVESTC		5,000.00	0	-166,973.71	
*11	2082	API	5/16/2018	001839 294500 STANDARD & POOF		5,000.00	0	-161,973.71	
*11	2082	API	5/16/2018	004439 294508 LOCKE LORD LLF		12,300.00	0	-149,673.71	
*11	2452	GEN	5/29/2018	Reallocate premium		149,673.71	0	0	
01451230-490100					0	184,723.00	184,723.00	0	-
3201 CIP FY17 4.1M									
3201-01-130-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	__32011303			0				
*11	2452	GEN	5/29/2018	Reallocate premium		0	30,189.19	-30,189.19	
32011303-490100					0	0	30,189.19	-30,189.19	(30,189.19)
3208 Elm St Parking Garage 5M									
3208-04-192-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	__32081923			0				
*11	2452	GEN	5/29/2018	Reallocate premium		0	13,650.24	-13,650 24	
32081923-490100					0	0	13,650.24	-13,650.24	(13,650.24)
3216 CIP FY16 5.5M									
3216-01-192-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	__32161923			0				
32161923-490100					0	0	0	0	-
3222 School ARP 18.1M									
3222-03-300-000-30000-00000-000000-C00016-490100-	TC - Premium On Notes Issuance	__32223003			0				
*11	2452	GEN	5/29/2018	Reallocate premium		0	11,015.99	-11,015.99	
32223003-490100					0	0	11,015.99	-11,015.99	(11,015.99)
3223 Taylor @ SeaLab 12.5M									
3223-03-300-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	__32233003			0				
*11	2452	GEN	5/29/2018	Reallocate premium		0	15,132.01	-15,132.01	
32233003-490100					0	0	15,132.01	-15,132.01	(15,132.01)
3224 Hannigan Feasib/Construction									
3224-03-300-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	__32243003			0				
*11	2452	GEN	5/29/2018	Reallocate premium		0	44,048.97	-44,048.97	
32243003-490100					0	0	44,048.97	-44,048.97	(44,048.97)
3245 Transmission Main SMSRF-MaDEP									
3245-04-450-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	__32454503			0				
32454503-490100					0	0	0	0	-
3253 Parker School 8.3M									
3253-03-300-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	__32533003			0				
*11	2452	GEN	5/29/2018	Reallocate premium		0	28,168.59	-28,168.59	
32533003-490100					0	0	28,168.59	-28,168.59	(28,168.59)
3258 Elizabeth Brooks Sch									
3258-03-300-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	__32583003			0				
*11	2452	GEN	5/29/2018	Reallocate premium		0	2,574.39	-2,574.39	
32583003-490100					0	0	2,574.39	-2,574.39	(2,574.39)
3286 Taxiway A 4.6M Bond									
3286-04-482-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	__32864823			0				
*11	2452	GEN	5/29/2018	Reallocate premium		0	1,706.28	-1,706.28	
32864823-490100					0	0	1,706.28	-1,706.28	(1,706.28)
3287 Airport R/W 14-32 Reconst 8.5M									
3287-04-482-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	__32874823			0				
*11	2452	GEN	5/29/2018	Reallocate premium		0	3,188.05	-3,188.05	
32874823-490100					0	0	3,188.05	-3,188.05	(3,188.05)
									(149,673.71)

ACCOUNT	ACCOUNT NAME	ORG	EFF DATE	REFERENCE	BEG. BALANCE	DEBITS	CREDITS	NET CHANGE	END BALANCE
PER	JNL	SRC	EFF DATE	REFERENCE					
0001-00-145-000-C1230-00000-000000-C00010-490100-	TC - Premium On Notes Issuance	_01451230			0				
*11	1453	CRP	5/9/2019	C145 CASH RECEIPTS JOURNAL		0	231,202.00	-231,202.00	
*11	1545	API	5/8/2019	001839 361526 STANDARD & POOF		5,000.00	0	-226,202.00	
*11	1545	API	5/8/2019	001839 361527 STANDARD & POOF		16,625.00	0	-209,577.00	
*11	1545	API	5/8/2019	001223 361529 NB ECONOMIC DEV		360	0	-209,217.00	
*11	1545	API	5/8/2019	007873 361556 HILLTOP SECURIT		13,297.41	0	-195,919.59	
*11	1545	API	5/8/2019	007873 361558 HILLTOP SECURIT		33,241.70	0	-162,677.89	
*11	1545	API	5/8/2019	004439 361559 LOCKE LORD LLF		42,490.00	0	-120,187.89	
*11	1545	API	5/9/2019	004997 361618 PAUL H MURPHY &		1,875.00	0	-118,312.89	
*11	1545	API	5/13/2019	002148 362209 US BANK		500	0	-117,812.89	
*11	1574	GEN	5/16/2019	Note Premium Allocation		117,812.89	0	0	
01451230-490100					0	231,202.00	231,202.00	0	-
3201 CIP FY17 4.1M									
3201-01-130-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	_32011303			0				
*11	1574	GEN	5/16/2019	Note Premium Allocation		0	21,608.39	-21,608.39	
32011303-490100					0	0	21,608.39	-21,608.39	(21,608.39)
3202 Parker St Waste Site/EPA 6.4M									
3202-01-130-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	_32021303			0				
*11	1574	GEN	5/16/2019	Note Premium Allocation		0	10,507.36	-10,507.36	
32021303-490100					0	0	10,507.36	-10,507.36	(10,507.36)
3208 Elm St Parking Garage 5M									
3208-04-192-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	_32081923			0				
32081923-490100					0	0	0	0	-
3209 South Public Safety Ctr 2M									
3209-04-192-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	_32091923			0				
*11	1574	GEN	5/16/2019	Note Premium Allocation		0	10,507.36	-10,507.36	
32091923-490100					0	0	10,507.36	-10,507.36	(10,507.36)
3211 CIP-FY18-5.4M									
3211-01-130-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	_32111303			0				
*11	1574	GEN	5/16/2019	Note Premium Allocation		0	28,632.56	-28,632.56	
32111303-490100					0	0	28,632.56	-28,632.56	(28,632.56)
3216 CIP FY16 5.5M									
3216-01-192-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	_32161923			0				
32161923-490100					0	0	0	0	-
3221 School ARP FY19									
3221-03-300-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	_32213003			0				
*11	1574	GEN	5/16/2019	Note Premium Allocation		0	525.37	-525.37	
32213003-490100					0	0	525.37	-525.37	(525.37)
3222 School ARP 18.1M									
3222-03-300-000-30000-00000-000000-C00016-490100-	TC - Premium On Notes Issuance	_32223003			0				
32223003-490100					0	0	0	0	-
3223 Taylor @ SeaLab 12.5M									
3223-03-300-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	_32233003			0				
*11	1574	GEN	5/16/2019	Note Premium Allocation		0	7,545.96	-7,545.96	
32233003-490100					0	0	7,545.96	-7,545.96	(7,545.96)
3224 Hannigan Feasib/Construction									
3224-03-300-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	_32243003			0				
*11	1574	GEN	5/16/2019	Note Premium Allocation		0	11,140.59	-11,140.59	
32243003-490100					0	0	11,140.59	-11,140.59	(11,140.59)
3245 Transmission Main 5MSRF-MaDEP									
3245-04-450-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	_32454503			0				
32454503-490100					0	0	0	0	-
3253 Parker School 8.3M									
3253-03-300-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance	_32533003			0				

*11		1574	GEN	5/16/2019	Note Premium Allocation		0	11,382.17	-11,382.17	
32533003-490100						0	0	11,382.17	-11,382.17	(11,382.17)
3258 Elizabeth Brooks Sch										
3258-03-300-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance		__32583003			0				
*11		1574	GEN	5/16/2019	Note Premium Allocation		0	525.37	-525.37	
*11		1574	GEN	5/16/2019	Note Premium Allocation		0	12,346.15	-12,871.52	
32583003-490100						0	0	12,871.52	-12,871.52	(12,871.52)
3286 Taxiway A 4.6M Bond										
3286-04-482-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance		__32864823			0				
*11		1574	GEN	5/16/2019	Note Premium Allocation		0	1,219.12	-1,219.12	
32864823-490100						0	0	1,219.12	-1,219.12	(1,219.12)
3287 Airport R/W 14-32 Reconst 8.5M										
3287-04-482-000-30000-00000-000000-C00031-490100-	TC - Premium On Notes Issuance		__32874823			0				
*11		1574	GEN	5/16/2019	Note Premium Allocation		0	1,872.49	-1,872.49	
32874823-490100						0	0	1,872.49	-1,872.49	(1,872.49)
										(117,812.89)

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August 8, 2017

John Clark, Treasurer/Collector
Town of Billerica
365 Boston Road
Billerica, Massachusetts 01821

Re: Suggested Amendments to Chapter 44, Section 20 of the General Laws

Dear John:

It was nice to speak with you today. As we discussed, we have been working with folks at the Division of Local Services ("DLS") as well as with some of the leading financial advisory firms in the Commonwealth, to develop suggested amendments to Chapter 44, Section 20 of the General Laws. The amendments made to this section by the Municipal Modernization Act last year represented a substantial improvement in many ways. Since the amendments were made, however, we have found that several technical improvements should be made to provide greater clarity and flexibility for municipal finance officials, their auditors and their financial advisors. These suggested changes would also assist the DLS with its oversight in this area.

What follows below is a short explanation of the changes we are suggesting, followed by suggested language for an amendment, and then, finally, a redline of how Chapter 44, Section 20 of the General Laws would appear if our suggested amendments are approved.

Explanation

Section 67 of the Municipal Modernization Act amended G.L. c. 44, § 20 to give cities, towns and districts a choice in regards to the treatment of premiums (net of issuance costs) received when issuing debt. They can now either apply the premiums to the issuance, thereby reducing the amount needed to be borrowed, or place them in a separate fund and appropriate them for a capital project.

First, communities are now also getting premiums on temporary debt such as bond anticipation notes (BANs) and there is a consensus that those premiums (net of issuance costs) should be reserved for payment of the first interest payment on the BANs. In addition, in some cases, the net premium is a small amount and it would be more efficient to be able to apply it to existing debt service, like surplus bond proceeds. Likewise, it was thought that communities should have the option of using bond premiums for project costs even where there had been a failure, often perhaps inadvertent or a matter of time, to include that requirement in the borrowing authorization. The accounting community expressed concern about having to allocate and track premiums from multi-purpose bonds when those premiums are going into the capital reserve. Those bonds generally include purposes with different borrowing terms. The amendment would remove the requirement that each premium be appropriated for a capital purpose for which the municipality could borrow for an equal or greater term than the borrowing that generated the premium and let the premiums be appropriated for any borrowable purpose. Finally, the amendment requires premiums received on a borrowing for which a Proposition 2½ debt exclusion has been approved at the time of sale to be used for project costs and reduce the borrowing. This eliminates the need for the DLS to adjust the debt exclusion to reflect the true interest costs of the borrowing, which is still required. If the premium goes to the capital reserve instead, then the municipality has no offsetting financing source for the difference between the budgeted debt service and the allowable debt exclusion. Under prior law, premiums belonged to the general fund and DLS required they be reserved and amortized over the period of the debt exclusion to cover that shortfall.

Proposed Amendment

Section 20 of chapter 44 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out the fifth sentence and inserting in place thereof the following sentences:-

Any premium received upon the sale of notes, less the cost of preparing, issuing and marketing the notes, and any accrued interest received upon the delivery of the notes, shall be applied to the first payment of interest on the note. Any premium received upon the sale of bonds, less the cost of preparing, issuing and marketing them, and any accrued interest received upon the delivery of bonds shall be: (i) in the case of bonds sold by a city or town that have been excluded under section 21C of chapter 59, or bonds sold by a regional school district for which one or more member cities or towns have so excluded their share of the bond, applied by the treasurer to pay costs of the project being financed by the bonds and to reduce the amount authorized to be borrowed for the project by like amount; or (ii) in the case of any other bonds, applied by the treasurer to pay costs of the project being financed by the bonds and to reduce the amount authorized to be borrowed for the project by like amount; or if not so applied, appropriated to pay costs of a project for which the city, town or district has authorized a borrowing, or may authorize a borrowing. Notwithstanding this section, any premium and accrued interest received on account of an issue of bonds, less the cost of preparing, issuing and marketing the bonds, not in excess of $50,000 may be applied, with the approval of the chief executive officer, for the payment of indebtedness.

Redline

Section 20. The proceeds of any sale of bonds or notes shall be used only for the purposes specified in the authorization of the loan; provided, however, that such proceeds may also be used for costs of preparing, issuing and marketing the bonds or notes, except as otherwise authorized by this section. If a balance remains after the completion of the project for which the loan was authorized, the balance may at any time be appropriated by a city, town or district for any purposes for which a loan may be incurred for an equal or longer period of time than that for which the original loan, including temporary debt, was issued. Any balance not in excess of

$50,000 may be applied, with the approval of the chief executive officer, for the payment of indebtedness. If a loan has been issued for a specified purpose but the project for which the loan was authorized has not been completed and no liability remains outstanding and unpaid on account thereof, a city, by a two-thirds vote of all of the members of the city council, or a town or district, by a two-thirds vote of the voters present and voting thereon at an annual town or district meeting, may vote to abandon or discontinue the project and the unexpended proceeds of the loan may be appropriated for any purpose for which a loan may be authorized for an equal or longer period of time than that for which the original loan, including temporary debt, was issued. Any premium received upon the sale of notes, less the cost of preparing, issuing and marketing the notes, and any accrued interest received upon the delivery of the notes, shall be applied to the first payment of interest on the note. Any premium received upon the sale of ~~the~~ bonds~~or notes~~, less the cost of preparing, issuing and marketing them, and any accrued interest received upon the delivery of ~~the~~ bonds ~~or notes~~ shall be: (i) in the case of bonds sold by a city or town that have been excluded under section 21C of chapter 59, or bonds sold by a regional school district for which one or more member cities or towns have so excluded their share of the bond, applied by the treasurer to pay costs of the project being financed by the bonds and to reduce the amount authorized to be borrowed for the project by like amount; or (ii) in the case of any other bonds, applied, by the treasurer ~~if so provided in the loan authorization,~~ to pay ~~the~~ costs of the project being financed by the bonds ~~or notes~~ and to reduce the amount authorized to be borrowed for the project by like amount; or ~~(ii)~~ if not so applied, appropriated to pay costs ~~for~~ of a project for which the city, town or district has authorized a borrowing, or may authorize a borrowing~~, for an equal or longer period of time than the original loan, including any temporary debt, was issued, thereby reducing the amount of any bonds or notes authorized to be issued for the project by like amount~~. Notwithstanding this section, any premium and accrued interest received on account of an issue of bonds, less the cost of preparing, issuing and marketing the bonds, not in excess of $50,000 may be applied, with the approval of the chief executive officer, for the payment of indebtedness. Notwithstanding this section, no appropriation from a loan or balance thereof shall be made that would increase the amount available from borrowed money for any purpose to an amount in excess of any limit imposed by general law or special act for that purpose. Additions to the levy limit for a debt exclusion are restricted to the true interest cost incurred to finance the excluded project.

Conclusion

We hope that the Massachusetts Collectors & Treasurers Association would consider endorsing the changes to Chapter 44, Section 20 of the General Laws as described above. Please let me know if you, or any of the other members of the MCTA leadership, should have any questions or comments.

Sincerely,

Rich

Richard A. Manley, Jr,

AM 66851905.1

Part I ADMINISTRATION OF THE GOVERNMENT

Title VII CITIES, TOWNS AND DISTRICTS

Chapter 44 MUNICIPAL FINANCE

Section 20 PROCEEDS FROM SALE OF BONDS; RESTRICTIONS ON USE; DISPOSITION OF PREMIUMS

[Text of section effective until November 7, 2016. For text effective November 7, 2016, see below.]

Section 20. The proceeds of any sale of bonds or notes, except premiums and accrued interest, shall be used only for the purposes specified in the authorization of the loan, and may also be used for costs of preparing, issuing and marketing such bonds or notes, except as otherwise authorized by this section. If a balance remains after the completion of the project for which the loan was authorized, such balance may at any time be appropriated by a city, town or district for any purposes for which a loan may be incurred for an equal or longer period of time than that for which the original loan, including temporary debt, was issued. Any such balance not in excess of one thousand dollars may be appropriated for the payment of the principal of such loan. If a loan has been issued for a specified purpose but the project for which the loan was authorized has not been completed and no liability remains outstanding and unpaid on account thereof, a city by a two-thirds vote of all of the members of the city council, or a town or district, by a two-thirds vote of the voters present and voting thereon at an annual town or district meeting, may vote to abandon or discontinue the project and the unexpended proceeds of the loan may thereupon be appropriated for any purpose for which a loan may be authorized for an equal or longer period of time than that for which the original loan, including temporary debt, was issued. Any premium received upon such bonds or notes, less the cost of preparing, issuing and marketing them, and any accrued interest received upon the delivery of said bonds or notes shall be paid to the city, town or district treasury. Notwithstanding the provisions of this section, no appropriation from a loan or balance thereof shall be made which would increase the amount available from borrowed money for any purpose to an amount in excess of any limit imposed by general law or special act for such purpose. Effective with the fiscal year 2005 tax rate approval process, additions to the levy limit for a debt exclusion are restricted to the true interest cost incurred to finance the excluded project. Premiums received at the time of sale shall be offset against the stated interest cost in computing the debt exclusion. The provisions of the preceding 2 sentences shall not apply to bond premiums received on or before July 31, 2003.

Chapter 44: Section 20. Proceeds from sale of bonds;

restrictions on use; disposition of premiums

[Text of section as amended by 2016, 218, Sec. 67 effective November 7, 2016. For text effective until November 7, 2016, see above.]

Section 20. The proceeds of any sale of bonds or notes shall be used only for the purposes specified in the authorization of the loan; provided, however, that such proceeds may also be used for costs of preparing, issuing and marketing the bonds or notes, except as otherwise authorized by this section. If a balance remains after the completion of the project for which the loan was authorized, the balance may at any time be appropriated by a city, town or district for any purposes for which a loan may be incurred for an equal or longer period of time than that for which the original loan, including temporary debt, was issued. Any balance not in excess of $50,000 may be applied, with the approval of the chief executive officer, for the payment of indebtedness. If a loan has been issued for a specified purpose but the project for which the loan was authorized has not been completed and no liability remains outstanding and unpaid on account thereof, a city, by a two-thirds vote of all of the members of the city council, or a town or district, by a two-thirds vote of the voters present and voting thereon at an annual town or district meeting, may vote to abandon or discontinue the project and the unexpended proceeds of the loan may be appropriated for any purpose for which a loan may be authorized for an equal or longer period of time than that for which the original loan, including temporary debt, was issued.

Any premium received upon the sale of the bonds or notes, less the cost of preparing, issuing and marketing them, and any accrued interest received upon the delivery of the bonds or notes shall be: (i) applied, if so provided in the loan authorization, to the costs of the project being financed by the bonds or notes and to reduce the amount authorized to be borrowed for the project by like amount; or (ii) appropriated for a project for which the city, town or district has authorized a borrowing, or may authorize a borrowing, for an equal or longer period of time than the original loan, including any temporary debt, was issued, thereby reducing the amount of any bonds or notes authorized to be issued for the project by like amount. Notwithstanding this section, no appropriation from a loan or balance thereof shall be made that would increase the amount available from borrowed money for any purpose to an amount in excess of any limit imposed by general law or special act for that purpose. Additions to the levy limit for a debt exclusion are restricted to the true interest cost incurred to finance the excluded project.