DLS
DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

Geoffrey Snyder
Commissioner of Revenue

Sean R. Cronin
Senior Deputy Commissioner

Bulletin

BUL-2021-3

An Act Creating A Next-Generation Roadmap for Massachusetts Climate Policy

TO: Local Officials
FROM: Kenneth M. Woodland, Chief, Bureau of Municipal Finance Law
DATE: May 2021
SUBJECT: **An Act Creating A Next-Generation Roadmap for Massachusetts Climate Policy – Municipal Finance Law Issues**

This Bulletin provides initial guidance to local officials regarding changes in local property tax laws included in sections 61, 62, 63, 97 and 98 of Chapter 8 of the Acts of 2021, An Act Creating A Next-Generation Roadmap for Massachusetts Climate Policy, (the Act), signed by Governor Baker on March 26, 2021. The Act is effective on June 24, 2021, 90 days after Governor Baker signed the Act into law.

Initial general guidance is issued at this time; more detailed guidance will be forthcoming.

I. Section 114 of the Act – Effective Dates

Under section 114 of the Act, sections 61, 62, 63, 97, and 98 will take effect 90 days from the "passage of this act." As a result, these sections take effect 90 days after the Act was signed by the Governor, the same effective date as the Act itself – June 24, 2021.

However, because local property taxes are assessed as of January 1 for the following fiscal year (G.L. c. 59, §§ 11, 18), changes in property tax law will generally apply prospectively as of the next assessment date after the effective date of the amendments. For exemptions allowed under G.L. c. 59, § 5, the exemption qualifying date is generally July 1 "unless another meaning is clearly apparent from the context." Since the process for reporting taxable personal property, valuing, assessing and abating personal property all relate to the January 1 date, January 1 is also the exemption qualifying date for personal property.

Further discussion of effective dates will be included in relation to each section of the Act below.

II. Section 61 of the Act - Amendment of G.L. c. 59, § 5, cl. 45

Section 61 of the Act replaces the existing property tax exemption under clause 45 of section 5 of chapter 59 of the General Laws. The amended clause 45th exemption will become effective for property tax assessments as of the January 1, 2022 assessment date for FY 2023. A determination as to whether property qualifies for the exemption for FY 2023 will be made as of January 1, 2022.

A. In General

In general, the amended clause 45 provides a property tax exemption for three categories of solar and wind powered systems:

A solar powered system, wind powered system or a solar or wind powered system that is co-located with an energy storage system, as defined in section 1 of chapter 164, that is:

1. capable of producing not more than 125 per cent of the annual electricity needs of the real property upon which it is located; provided, however, that the real property shall include both contiguous or non-contiguous real property within the same municipality in which there is a common ownership interest;

2. a solar or wind powered system or a solar or wind powered system that is co-located with energy storage that is equal to or less than 25 kilowatts or less in capacity, provided that the capacity of the system is verified by department of energy resources incentive program documentation or electric distribution company permission to operate documentation; or

3. a solar or wind powered system or energy storage system, or a combination therein, that has entered into an agreement for payment in lieu of taxes (PILOT) associated with the system with the municipality where the system is located.

The amended clause 45 does not apply to: (i) solar powered systems developed under G.L. c. 164, § 1A or (ii) solar, wind, or energy storage systems otherwise owned by distribution or electric companies as defined under G.L. c. 164, § 1.

The exemption period is 20 years; however, the owner of the solar or wind powered system and the municipality where the system is located may agree (in writing) for the exemption to continue longer than 20 years.

As with all property tax exemptions, the burden is on the property owner seeking the exemption to demonstrate eligibility for the exemption as of the eligibility date. If the property does not qualify for the exemption, the property will be taxable unless another exemption applies.

B. PILOT Agreements under the Amended Clause 45

The amended clause 45 authorizes cities and towns to enter into a Payment in Lieu of Tax (PILOT) agreement with the owner of a solar or wind powered system or energy storage system, or a combination therein, but not including (i) solar powered systems developed under G.L. c. 164, §

1A or (ii) solar, wind, or energy storage systems otherwise owned by distribution or electric companies as defined under G.L. c. 164, § 1. A municipality is not required to enter into a PILOT agreement.

1. Property Taxes that may be subject to a Payment in Lieu of Tax (PILOT) agreement

A PILOT agreement under the amended clause 45 includes all personal property taxes regarding the system and any real property taxes attributable to the land on which the system is located provided the land and the system are in common ownership. If the land on which the system is located is not owned by the same person or entity that owns the solar or wind powered system, the taxes on the land cannot be included in the PILOT agreement. Instead, a separate assessment and tax bill regarding the real property taxes must be issued to the owner of the land.

2. "Authorized Officer"

If a PILOT agreement is desired, the municipality is required to act through "its authorized officer." An "authorized officer" is one authorized by the municipality's legislative body to negotiate and execute the PILOT. The legislative body of the host city or town may vote to authorize the chief executive board or officer (CEO) of the municipality (selectboard, mayor or manager), or some other municipal officer or officers, such as the assessors, to negotiate and execute the PILOT agreement. The authority may also be given to some combination of officers, such as the CEO and assessors, and may set parameters for any negotiated agreement.

3. Length of PILOT Agreement

A PILOT agreement may have a term for up to 20 years; however, the owner of the solar or wind powered system and the municipality may agree in writing to a PILOT agreement for a period longer than 20 years.

4. Differences Between PILOT Agreements under the Amended Clause 45 and PILOT Agreements under G.L. c. 59, § 38H(b)

Below is a summary of some of the main differences between a PILOT agreement under the amended clause 45 and a PILOT agreement under section 38H(b). Because the amended clause 45 did not include several of the requirements regarding PILOTs under section 38H(b), those requirements will not apply to PILOTs under the amended clause 45. As previously stated, additional guidance will be issued at a later time.

PILOT agreements under section 38H(b)

- Agreement required to establish values for the wind or solar system that is the subject of the agreement over the life of the agreement.
- Agreement required to be the "equivalent of the property tax obligation based on full and fair cash valuation."
- Agreement values required to be included in the "tax base for purposes of determining the levy ceiling and levy limit under section 21C …."
- Reporting - Agreement values are reported on the Form LA-4 "Assessment/Classification" report and page 1 of the tax rate recapitulation.

- New growth – When a new plant or facility that is the subject of a PILOT is constructed during the term of the PILOT, its value is included in the tax base for purposes of determining the levy ceiling and levy limit. As a result, the value is counted as "new growth" under Proposition 2-1/2. In subsequent years of the PILOT agreement, the negotiated value of any additional new personal property installed would also constitute "new growth."

PILOT agreements under the amended clause 45

- No requirement to establish values of the wind or solar system during the term of the agreement.
- No requirement that agreement be the "equivalent of the property tax obligation based on full and fair cash valuation." (However, to ensure that the municipality does not lose revenue, PILOTs should reasonably require payment of the amounts that would have been received had the property been assessed taxes.)
- Reporting – Because the values of the wind or solar system are not included in the "tax base for purposes of determining the levy ceiling and levy limit under section 21C …." PILOT agreement payments are reported on page 3 of the tax rate recapitulation as general fund estimated receipts.
- New growth - Because the values of the solar or wind facility are not included in the tax base for purposes of determining the levy ceiling and levy limit, the value of any new facilities constructed that are the subject of a PILOT agreement will not be counted as "new growth" under Proposition 2-1/2 while the PILOT agreement is in effect.

III. Sections 63 and 97 of the Act - Amendment of G.L. c. 59, § 38H(b) and Grandfathering of Existing Payment in Lieu of Tax Agreements under G.L. c. 59, § 38H(b)

Section 63 removes solar and wind power facilities and qualified fuel cell powered systems from the PILOT agreement provisions of G.L. c. 59, § 38H(b) and provides that "a facility that generates electricity through solar or wind may execute an agreement for the payment in lieu of taxes under clause Forty-fifth of said section 5."

Section 97 provides "Notwithstanding clause forty-fifth of section 5 of chapter 59 of the General Laws, the owner of a solar or wind powered system and the municipality in which the system is located shall not be required by sections 61 and 63 to amend, modify or renegotiate an existing payment in lieu of tax agreement that was entered into or executed before the effective date of this act." As a result, section 97 grandfathers section 38H(b) PILOT agreements entered into or executed before June 24, 2021.

These sections are effective June 24, 2021 pursuant to section 114 of the Act.

As a result, municipalities may continue to enter into PILOT agreements under section 38H(b) before June 24, 2021 and they will be subject to the grandfathering provisions of section 97. On or after June 24, 2021, municipalities may no longer enter into PILOT agreements for solar and wind power facilities or qualified fuel cell powered systems under section 38H(b) but may enter into PILOT agreements for solar and wind power facilities under the amended clause 45. A PILOT agreement under clause 45 would become effective on the January 1 assessment date following

the execution of the agreement for the fiscal year commencing the next following July 1. For example, if a PILOT agreement under clause 45th is executed on June 24, 2021, it will be effective (for property tax purposes) on the January 1, 2022 assessment date for FY 2023.

IV. Section 98 of the Act - Grandfathering of Exemption for Certain Solar or Wind Systems

Section 98 provides "Notwithstanding sections 61 and 63, a solar or wind system determined to be exempt under clause Forty-fifth of section 5 of chapter 59 of the General Laws prior to the effective date of this act and that has not executed a payment in lieu of taxes agreement with the municipality in which such system is located shall remain exempt; provided, however, that the system produces less than 150 per cent of the annual electricity needs of the real property on which it is located."

This section grandfathers solar or wind systems that were determined exempt under clause 45 before its amendment. However, it is limited to the remaining term of that exemption ("twenty years from the date of the installation of such system or device") and is limited to smaller facilities - systems producing "less than 150 per cent of the annual electricity needs of the real property on which it is located."

As previously stated, the exemption date for personal property taxes is January 1, the same date as property tax assessments. As a result, on January 1, 2021, solar and wind facilities were determined exempt or not exempt for FY 2022 under clause 45th before its amendment. On January 1, 2022, facilities will be determined exempt or not exempt for FY 2023 based upon eligibility under the amended clause 45th. Section 98 will grandfather in FY 2023 the smaller (less than 150 per cent of the annual electricity needs of the real property on which it is located) solar or wind systems that had been exempted under the previous clause 45th.

V. Section 62 of the Act – New Property Tax Exemption under G.L. c. 59, § 5, cl. 45B

Section 62 creates a new property tax exemption under clause 45B for a "qualified fuel cell powered system, the construction of which was commenced after January 1, 2020, that is capable of producing not more than 125 per cent of the annual energy needs of the real property upon which it is located." A qualified fuel cell powered system is defined as an "integrated system comprised of a fuel cell stack assembly and associated components that converts fuel into electricity without combustion and is being utilized as the primary or auxiliary power system for the real property upon which it is located, which shall include contiguous or non-contiguous real property owned or leased by the owner, or in which the owner otherwise holds an interest."

There is no local option acceptance required for this new exemption. It will become effective on the January 1, 2022 assessment date for FY 2023.