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Legal Issues in Providing Local Services by Means of Regionalization, Intermunicipal Agreements and Joint Ventures

Workshop C

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Legal Issues in Providing Local Services by Means of Regionalization, Intermunicipal Agreements and Joint Ventures

Case Study A

The towns of Hope, Springs and Eternal and the City of Dreams are facing difficult financial challenges in maintaining separate health, assessing, and police departments. Years of stagnant growth and increased costs for health insurance, retiree obligations and other inflationary costs associated with providing local services have reduced departmental staff in some cases to a single employee or one part-time time department head and a part-time clerical employee. Dreams has a viable civil service police department with a collective bargaining unit, but the towns do not. The towns have only one or two officers and often have to rely on the state police to provide coverage. The three towns and the city are contiguous and share similar demographic characteristics.

1. What legal options are available to the communities to provide health inspection services in cooperation with each other? [111:27A – Joint Health Committee, 111:27A,B & C – Regional Board of Health; 40:4A – Intermunicipal Agreement (Preemption?); 34B:20(e) – agreement with counsel of governments; 7:22A&B – Joint purchase of services with Private Provider; Special Act]
2. Do the communities have any option to combine their property tax assessment departments? [41:30B – joint agreement approved by legislative bodies of each city or town and approved by DOR; 40:4A agreement likely preempted; possible amendments to 41:30B to make it more user friendly in proposed Municipal Partnership II or Municipal Relief II pending bills; Special Act]
3. May the municipalities combine the several police departments into a single regional entity to more effectively and efficiently provide police services for all the municipalities? [41:99B-K – Regional Police Commission – may not be able to use because of civil service glitch in the law, no apparent restriction with respect to collective bargaining, and in this case only one union to contend with. May require bargaining over impact of decision to regionalize, Newton case. Special Act.]
4. May the towns agree with the city for the city to provide police services for the towns? If so, what mechanisms are available to do so? [40:4A – Intermunicipal Agreement (Preemption 41:99B-K?); 40:8G – Mutual Aid Agreement; Special Act]
5. What employee protections should be addressed in regionalizing or providing joint services? [Civil service rights, collective bargaining rights, transfer of bargaining unit work protection provisions, pension rights, ...]

Case Study B

The elementary and middle schools of the city of Bautit and the towns of Hooksett, Linam, and Sinka, as well as the regional BHLS high school have experienced a decline in student enrollment, an increase in special ed students, and the inability to retain superintendents and other central administrative staff due to low salary levels. The towns would like to partner with the city and the RSD to provide a central administration for all the schools. Alternatively the municipalities are considering regionalizing the elementary and middle schools.

1. What legal mechanisms are available to jointly share a school superintendent for all the schools?
[71:61-64 – School Union; 40:4A – Intermunicipal Agreement?; Special Act]
2. What legal avenues do the local educational entities have to regionalize?
[71:14-15 – Regional School District Formation; 40:4A – Intermunicipal Agreement?; Special Act]
3. Short of regionalization, are there other mechanisms for providing joint services or programs for students in the municipal schools? [40:4E – Collaboratives; 40:4A – Intermunicipal Agreements?; 34B:20 – Council of Governments? Special Acts]

Case Study C

The cities of New Purchase and Lowbid, as well as the towns of Buyrite, Cheapland and Overspend are trying to cut back on expenses for salt, sand and other materials for snow and ice treatments as well as maintenance expenses on the roads in the various municipalities generally, including materials and labor. It is important that the municipalities be able to provide the same level of protection and service, but at a lower cost. Currently the cities and towns each have supply contracts with local vendors for materials and supplies, based on best quotes, but due to the amount of volume each uses, cannot get a better deal from its traditional vendors. In addition, other vendors are not interested in supplying the smaller municipalities.

1. What options do the municipalities have to increase their buying power for the snow and ice treatment supplies they need? [7:22A&B – Joint purchase with the Commonwealth, with each other or with a COG? or RPA?; 40:4A – Intermunicipal Agreement with lead city as purchaser?]
2. May the communities jointly purchase road maintenance equipment to be shared by the purchasing municipalities and under what provision(s) of law may that be done? [84:5 – Joint Road Maintenance; 40:4A – Intermunicipal Agreement]
3. If the towns opt to jointly purchase expensive road equipment that requires the issuance of debt, must they each issue debt for their share? Using what legal authority?
4. May the communities jointly provide for maintenance or snow and ice removal of roads in their communities and under what provisions of law? [84:5 & 5A – Joint Road Maintenance & Snow & Ice Removal; 40:4A – Intermunicipal Agreement]

Case Study D

The town of Fetid has learned that its existing wastewater treatment plant no longer meets state and federal regulatory standards for sewerage treatment. It has three years to upgrade its treatment to new standards, after which it will face substantial fines for violation of the regulations. The cost of upgrading or replacing its current treatment facilities by itself would require either prohibitive increases in user charges or a large Proposition 2½ debt exclusion. Several nearby municipalities are, or will soon be, in a similar predicament.

1. What legal options does Fetid have to meet its obligations by joining with other similarly situated municipalities to upgrade an existing or construct a new sewerage treatment facility? [40N §25 - Creation of regional water & sewer commission; 44:8(15) borrowing for municipal share of capital cost of a treatment facility in a nearby community; 21:28 Regional water pollution abatement district; 40:4A Intermunicipal agreement; agreement for no more than 25 years, but new treatment plant will likely have longer useful life; can §4A agreement bind Fetid to pay share of other town's debt service without town meeting vote, since no debt will be issued by Fetid? Special legislation]
2. If special legislation is used, what key financial provisions should be included? [Borrowing authorization for useful life up to 30 years with 2/3 vote; Clear delineation of authority to spend; clear recitation of each community's financial responsibilities; Opt out provisions.]

LIST OF STATUTES PROVIDING FOR REGIONALIZATION

(This table is illustrative and should not be considered exhaustive)

TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER ISSUES
GENERAL PROVISIONS					
Intermunicipal agreements (IMAs)	40:4A	Agreement by CEOs of governmental units with approval of selectmen, mayor & council or prudential committee Contracting units include cities, towns, regional school districts, improvement districts, regional planning commissions, water & sewer commissions, counties and state agencies Approval of school committee needed if involves supplementary education centers and innovative educational programs	By agreement	By agreement	Units may jointly perform, or have one perform on behalf of others, any service, activity or undertaking any unit can perform 25 year maximum
Joint performance of services	43C:15				Consolidated municipal departments (finance, inspections, community development) may participate in IMAs
GENERAL GOVERNMENT					
Regional assessing	41:30B	Agreement approved by participating cities or towns (legislative body vote) and approved by Department of Revenue (DOR)	By agreement. Initial committee of representative assessors develops methods and procedures for sharing services of assistant assessor. Thereafter, per DOR, Board of Directors.	Fair allocation of expenses between communities per terms of approved agreement. Annual appropriation of funds.	Approval and oversight of local agreements by DOR See DOR IGR 81-402
Regional health care coverage	32B:12	Acceptance of c. 32B, by agreement of "appropriate public authorities" of 2 or more governmental units			See 32b.2(a) definition of appropriate public authority – mayor in city, selectmen in town, governing board in district, county commissioners in county (except Worcester), trustees of charter school, directors of educational collaborative
Regional retirement systems	34B:19	Statutory successor to an abolished county retirement system	Regional retirement board	Assessment by regional retirement board	Regional retirement board advisory council created.

TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER ISSUES
Regional charter commissions and councils of government	34B:20	Regional charter commission established by acceptance by legislative bodies. Commission develops proposal for structure of a regional council of government (RCG). Council charter proposal must be approved by majority of voters in a community (referendum) for it to participate.	RCG created by charter.	Annual assessment of members	
Collective purchasing	7:22B, 22A	<p>§ 22A – Statutory authority for joint purchases with Commonwealth or other municipalities through state purchasing agent. ("join together")</p> <p>§ 22B - Statutory authority for joint purchases by municipalities with one serving as lead purchasing agent. ("join together")</p>	Regulations of state purchasing agent	Each unit remains solely responsible for payments due vendor.	
Regional service centers (for development of GIS technology and data)	21A:4B	Executive Office of Energy & Environmental Affairs (EOEEA) – Office of Geographic and Environmental Information establishes regional service centers to assist governmental units in the development and use of GIS technology.	By EOEEA	State appropriation	Coordinates GIS data sharing agreements between governmental units
PUBLIC EDUCATION					
Regional school districts	71:14-16I	71:15 Acceptance by municipalities (legislative body vote) of 71:16-16I, under agreement approved by Department of Elementary & Secondary Education (DESE)	Regional School Committee (RSC), chosen in accordance with agreement	Budget adopted by RSC, approved by 2/3 of member communities in 3 or more member districts, both members in 2 member districts	
School superintendency unions	71:61-64	Agreement of school committees of towns each with <\$2.5m valuation, & aggregate # of schools between 25 and 75. DESE can form or adjust union without regard to valuation or # of schools	Joint committee of member towns' school committees fixes salary & benefits of superintendent.	Costs allocated among members in accordance with 71.65 (which has been repealed) – so presumably by agreement	Needs 2/3 vote of joint committee & DESE approval to fire superintendent. Also, DESE approval to dissolve union.
Education collaboratives	40:4E	Agreement by school committees	Board of directors, 1 appointed by each school committee	Not determined by statute	Has own treasurer; RAN borrowing; is public employer
Joint school committees	71:63	Part of superintendency union statutes – see above			
Joint directors of occupational	71:38D	District formed by vote of towns (not school committees) to employ joint director of occupational guidance & placement	Joint committee of member towns' school committees	Joint committee annually appoints director, fixes salaries & apportion costs among members.	Any member can withdraw

TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER ISSUES
PUBLIC HEALTH					
Regional health districts	111:27A-27C	Vote of municipalities (towns only, & not in Barnstable Co. under § 27A)	<p>§ 27A: Joint health committee of member towns' boards of health, or 1 or more members from each board</p> <p>§ 27B: single regional board of health, members appointed by each municipality by whatever method it chooses</p>	<p>§ 27A: joint committee develops & allocates budget, which members raise in tax levy without appropriation</p> <p>§27B: regional board adopts budget, apportioning cost among members according to choice of formulas in statute. Assessments raised in levy without appropriation</p> <p>Nothing in statute</p>	
Joint infirmaries	47:4	Nothing in statute, presumably town meeting vote	Nothing in statute	Nothing in statute	
PUBLIC LIBRARIES					
Joint public library	78:19A	Nothing in statute	Nothing in statute	Nothing in statute	§ 19A relates only to state aid reimbursement
Regional public library service	78:19C-19D	Nothing in statute; can include private as well as public libraries – see 78:19D	State Board of Library Commissioners designates administrative agency; council of members, duties prescribed by bylaws of regional system, as approved by state Board	Nothing in statute about budget; state reimbursement under 78:19C	Relates to sharing of library resource materials
PUBLIC SAFETY					
Fire districts	48:60-80 (see §§ 67 & 79)	Vote of town meeting(s) to organize the fire district and department and establish boundaries of the district by petition or residents of proposed district	Elected prudential committee as CEO & district meeting as legislative body	District property tax assessed by member town assessors, collected by town collectors and turned over to district treasurer	Not clear how districts in more than one town are formed
Regional police districts	41:99B-99K	Approval of a majority of the voters of member towns (referendum)	Regional police commission organized by member towns' boards of selectmen, each appointing 2 members of the commission	Regional police commission determines its budget and assesses member towns using statutory formula based on equalized valuation (EQV), population and miles of road of member towns	Unclear whether towns with police covered by civil service may be included
Regional EMS council (Emergency Medical Services System)	111C:4	Designated by State Department of Public Health (DPH)	10 to 35 members selected by DPH, some of which represent different aspects of EMS community	Revenue from contracts with DPH	More of an agency of the state than a separate local district

TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER ISSUES
Regional emergency communication centers and PSAPs (Public Safety Answering Points/Enhanced 911 Service)	6A:18A-18J; 166:14A	Agreement between governmental bodies in regional areas determined by the state 911 department	None specified in legislation, presumably as provided in the intergovernmental agreements	Not specified in the statutes, presumably from general fund revenues in proportion to the governmental bodies as specified in the agreements	Regional communication centers and PSAPs are part of a statewide plan for emergency dispatching services provided locally or regionally. Telecommunications companies must provide capabilities to reach the 911 centers and may charge special fees to offset their costs
Mutual police aid programs	40:8G	Agreement between communities upon acceptance of 40:8G in those communities	Governed by terms of mutual aid agreement	Financed by general municipal revenues as per mutual aid agreement	Allows for mutual aid agreements between contiguous towns in and outside MA.
PUBLIC UTILITIES					
Regional municipal water supply district	21:9A	Two or more municipalities by vote of the legislative body	Not specified in the statute, presumably by agreement	Not specified in the statute, presumably by agreement	
Drinking water protection district	40:39K	Two or more municipalities by vote of the legislative body	2 members from each member appointed by mayor or selectboard	Water rates in members include charge for water protection	
Sewer districts (re references to buy services)	83:1	Vote of sewer department in each member community, if authorized by ordinance or bylaw	Each member community's sewer department	Appropriation in accordance with contract terms	Contracts may not exceed 20 years
Regional water/sewer district commissions	40N:25	Vote of town meeting, town council or city council	Regional district commission	Regional district agreement includes financing provisions	
Regional local government unit (Water Pollution Abatement Revolving Loan Program)	29C:1	Vote of town meeting, town council or city council	Bylaw or ordinance of city or town providing service	Assessments or other charges on cities and towns receiving wastewater collection or treatment services	
Municipal light plant cooperatives	164:47C	Vote of municipal lighting plants	Board of not less than 3 directors elected by and from the members of the cooperative	In accordance with cooperative agreement	
Municipal group electric load aggregation	164:134	Majority vote of town meeting, town council or city council	In accordance with plan approved by Department of Energy Resources	Appropriation by members in accordance with service agreement	
Energy cooperatives	164:136	Vote of town meeting, town council or city council	Board of not less than 3 directors elected by and from the members of the cooperative	In accordance with agreement	
Group utility purchasing arrangements	164:137	Vote of town meeting, town council or city council	In accordance with group purchasing agreement	In accordance with agreement	
Regional refuse disposal districts	40:44A-44L	Vote of town meeting, town council or city council	Regional refuse disposal district committee	Annual assessments as determined by district committee	

TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER ISSUES
Regional recycling programs	40:8H	Vote of town meeting, town council or city council	In accordance with agreement	In accordance with agreement	
Regional water pollution abatement district	21:28-30, 32, 35-36	District proposed by Division of Water Pollution Control (DWPC) within Department of Environmental Protection, and approved by Water Resources Commission. Within 90 days if legislative bodies of municipalities do not approve, Director of DWPC may order c. 30A hearing on necessity of district. If finds needed to control water pollution, may declare district formed (mandatory district).	District commission made up of 2 members of each town appointed by selectboard Commission of mandatory district made up of 3 members appointed by Director of DWPC Commission appoints executive director	District plan for water pollution abatement facilities submitted to DWPC. Plan must include formula DWPC finds equitable for allocating operating and capital costs. May be based on 2 or more factors (population, EQV, waste volume and type, other factor DWPC considers appropriate)	Act of legislature required to dissolve district

PUBLIC WORKS

Joint road maintenance	84:5	Agreement between communities with common highways to construct, repair, maintain and improve roads and to share road machinery	Governed by terms of town meeting votes and appropriations	Funding per terms of town meeting votes and appropriations	
Joint applications for road and chemical storage assistance	16:4D	Opportunities to apply for joint project grants for 2 or more eligible towns created by rules and regulations of Commissioner of Highways (Mass Highway)	Governed by the rules and regulations of Mass Highway	Financed from grants through towns grant accounts or under rules and regulations of Mass Highway	Does not specifically authorize a joint project, per se, but merely joint grant application

RECREATION AND CULTURE

Cooperative Recreation Facilities	45:14	Vote of legislative body of 2 or more towns to authorize recreation departments to cooperate in providing recreational facilities and programs	Authorized recreation departments establish the cooperative arrangements	Expenses to maintain and support facilities and programs apportioned by recreation departments	
Regional cultural council	10:58	Any group of cities and towns may form regional council with approval of MA Cultural Council	Regional council has equal number of members appointed by mayor or selectmen. By 2/3 vote, the regional cultural council can adopt proportional representation corresponding to the populations of participating cities and towns. Council members serve for staggered 3 year terms.	Regional cultural councils disburse arts lottery funds, other "allocable" receipts including gifts and grants, and interest earned on the portion of council money which is invested. Appropriation not required (revolving fund).	

TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER ISSUES
Regional beach districts	40:12B-12G	District formed by vote of legislative bodies of 2 or more contiguous cities or towns to acquire, develop, maintain and operate beaches	Commission appointed by a "joint committee" including mayor & city council president of each city, and the chair of selectboard in each town. Joint committee also determines number and terms of office of commission members.	Not specified in statute-presumably by agreement	Treasurer of 1 of members acts as treasurer for district Director of Accounts to annually audit district accounts. Cost apportioned based on most recent EQY. State treasurer to issue warrant to assessors to raise in tax levy without appropriation and pay over.
REGULATORY FUNCTIONS					
Regional planning districts	40B:3, 11	District established by vote of legislative bodies of 2 of more cities or towns. Other cities & towns may apply for admission. Acceptance by 2/3 vote of the representatives of the member cities and towns.	District planning commission made up of 1 member from planning board of each participating community. Commission elects officers from among its members annually. 2/3 vote of district planning commission may establish an executive committee.	Annually in February, district commission prepares budget. Budget apportioned among member municipalities, subject to per capita limits adopted by 2/3 of legislative bodies of member communities. Commission certifies each city or town's share of the budget to the assessors to be raised in levy without appropriation	
Joint regulation of motorboats	90B:15	Joint action to regulate motorboats on sharing water ways or bodies in 2 or more cities and towns. Local motorboat regulations cannot conflict with 90B	Adoption of uniform regulations requires "joint action," presumably by legislative bodies, of cities and towns sharing the waters	No financial arrangements are specified – presumably each municipality covers its own enforcement costs.	
Joint air pollution control districts	111:142C	Joint request by cities and towns to state DPH to form district. DPH must approve. District similar to Metropolitan Air Pollution Control District of 111:142B	DPH may regulate "air contamination sources" and set up "air sampling stations" within the pollution control district	Participating cities and towns must reimburse Commonwealth for the cost of pollution control activities. State treasurer issues warrant to assessors in district communities to assess tax based half on assessed valuations and half on population	

TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER ISSUES
TRANSPORTATION					
Regional transit authorities	161B	<p>Authority formed by any city or town, or group of cities and towns, other than those in MBTA with bus service, by approval of selectmen in town, city manager in a Plan E city or council and mayor in other city and notice to Governor</p> <p>Any city or town, or group of cities and towns, other than those in MBTA with bus service or in authorities provided for 161B:2 & 14, may join contiguous authority by approval of selectmen in town, city manager in a Plan E city or council and mayor in other city</p> <p>City or town can withdraw upon approval of referendum placed on ballot by vote of city council, town meeting or petition of 5% of registered voters</p>	<p>Advisory board made up of city manager of each Plan D or E city, chair of selectboard of each town, or town manager or administrator (or designees). Each community has 1 vote, plus additional votes in proportion to state assessments on members. Non-voting representative from disabled commuting population appointed on rotating basis from members.</p> <p>Advisory board can establish executive committee according to by-laws</p> <p>Advisory board appoints administrator as chief executive officer</p>	<p>Annual budget prepared by administrator and approved by advisory board</p> <p>Budget not covered by operating revenues funded by cherry sheet assessments on members based in proportion to cost of service within member and state contract assistance</p>	<p>May issue debt up to 40 years; biennial audits by state auditor</p>
ECONOMIC DEVELOPMENT					
Economic development regional commission	40B:5	<p>District formed by votes of legislative bodies of cities and towns to make recommendations for physical, social, governmental or economic improvement of the district</p>	<p>District planning commission made up of 1 member of the planning board of each city and town voting to join district</p>	<p>Commission annually apportion expenses and certifies the amount to assessors of members who raise in tax levy without appropriation</p>	<p>District may issue RANs by a majority vote of commission</p>

TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER ISSUES
OTHERS					
Regional veterans' districts	115:10-15	<p>District formed by votes of legislative bodies of 2 or more adjoining towns, or 2 or more adjoining municipalities of which only 1 may be a city, to provide veterans with information about and assist them in obtaining available benefits</p>	<p>District board made up of mayor or his/her designee of each city, chair of selectboard or his/her designee of each town, and the town manager or his/her designee if town council form of government</p> <p>Board appoints director of veterans' services who performs the duties of the veteran's agent in each member city or town.</p> <p>District board also designates a treasurer of 1 of member municipalities as district treasurer.</p>	<p>District board determines district expenses and apportions them on members based on most recent EQV, most recent federal census, or by other means determined by a unanimous vote of the district board to be fair and equitable to each community. Board notifies local treasurers of apportionment. They certify amount to assessors who raise in tax levy without appropriation.</p>	<p>Director of Accounts to annually audit district accounts. Cost apportioned based on most recent EQV. State treasurer to issue warrant to assessors to raise in tax levy and pay over.</p>
Joint airport enterprise	90:51N	<p>By vote of the city council with the approval of the mayor or by vote of a town meeting, 2 or more municipalities may establish, maintain and operate airport as joint enterprise.</p> <p>Within 30 days after the votes, mayor and city council and selectmen of communities must meet to draft agreement. Agreement must be approved by the airport commission and the Director of Accounts and be agreed to by the mayor and city council of each participating city and the town meeting of each participating town.</p> <p>Agreement to establish a joint airport commission and joint airport fund and specify the proportionate interest of each participating municipality in the airport and its proportionate share of the expenses</p>	<p>The joint airport commission acts as agent of all municipalities in operating airport. Joint commission chooses the officers to maintain and operate the joint enterprise.</p>	<p>Joint airport commission determines amounts needed to run joint airport. Apportions amount needed in above amount available in joint fund to participating municipalities as per the agreement. Sends apportionment notice to mayors & selectmen.</p>	

TYPE	CITATION	CREATION	GOVERNANCE	FINANCES	OTHER ISSUES
Joint control of marine fisheries	130:56	If two or more municipalities have joint property in, or joint control over, any marine fisheries, the city council or the selectmen may exclusively exercise authority over fisheries as though such joint control or property did not exist.	Selectmen, board of alderman or city council may control, regulate or prohibit the taking of the shellfish within the city or town		Doesn't authorize joint action – rather allows exclusive control so long as residents of other communities get same rights & privileges
Joint boundary markers	42:4	Selectmen of contiguous towns required to erect permanent stone monuments at certain points of their boundary lines	Selectmen responsible for erecting boundary markers.	Expenses shared equally	42:6 provides for penalty for failure to mark
Regional housing authority	121B:3A	Operating agreement approved by municipal officers of cities and towns and Dept. of Housing and Community Development (DHCD)	Regional housing authority. Powers & obligations as set out in the operating agreement.	Appropriations by cities and towns – presumably based on operating agreement	See 121B:1 definition of municipal officers as city council with mayor's approval in city, selectmen with town manager's approval, if any, in town.

Chapter 40: Section 4A. Governmental units; joint operation of public activities; termination of agreement; "governmental unit" defined; financial safeguards

[First paragraph as amended by 2008, 188, Secs. 1 and 2 effective July 18, 2008]

The chief executive officer of a city or town, or a board, committee or officer authorized by law to execute a contract in the name of a governmental unit may, on behalf of the unit, enter into an agreement with another governmental unit to perform jointly or for that unit's services, activities or undertakings which any of the contracting units is authorized by law to perform, **if the agreement is authorized by the parties thereto, in a city by the city council with the approval of the mayor, in a town by the board of selectmen and in a district by the prudential committee;** provided, however, that **when the agreement involves the expenditure of funds for establishing supplementary education centers and innovative educational programs, the agreement and its termination shall be authorized by the school committee.** Any such agreement shall be for such **maximum term, not exceeding twenty-five years,** and shall establish such maximum financial liability of the parties, as may be specified in the authorizing votes of the parties thereto. **A governmental unit, when duly authorized to do so in accordance with the provisions of law applicable to it, may raise money by any lawful means, including the incurring of debt for purposes for which it may legally incur debt, to meet its obligations under such agreement.** Notwithstanding any provisions of law or charter to the contrary, no governmental unit shall be exempt from liability for its obligations under an agreement lawfully entered into in accordance with this section. For the purposes of this section, a **"governmental unit" shall mean a city, town or a regional school district, a district as defined in section 1A, a regional planning commission, however constituted, a regional transit authority established under chapter 161B, a water and sewer commission established under chapter 40N or by special law, a county, or a state agency as defined in section 1 of chapter 6A.**

All agreements put into effect under this section shall provide sufficient financial safeguards for all participants, including, but not limited to: accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received; the performance of regular audits of such records; and provisions for officers responsible for the agreement to give appropriate performance bonds. The agreement shall also require that periodic financial statements be issued to all participants. Nothing in this section shall prohibit any agreement entered into between governmental units from containing procedures for withdrawal of a governmental unit from said agreement.

All bills and payrolls submitted for work done under any such agreement shall be plainly marked to indicate that the work was done under authority thereof. Any reimbursement for or contribution toward the cost of such work shall be made at such intervals as the agreement provides. The amount of reimbursement received under any such agreement by any governmental unit shall be credited on its books to the account of estimated receipts, but any funds received under the provisions of section fifty-three A of chapter forty-four for contribution toward the cost of such work may be expended in accordance with the said provisions. The equipment and employees of a governmental

unit while engaged in performing any such service, activity or undertaking under such an agreement shall be deemed to be engaged in the service and employment of such unit, notwithstanding such service, activity or undertaking is being performed in or for another governmental unit or units.

Chapter 111: Section 27A. Appointment of health officer by two or more towns; duties; compensation; joint committee

[Text of section as amended by 2008, 529, Sec. 1 effective April 15, 2009.]

Section 27A. Two or more municipalities may, by vote of each, form a district for the purpose of employing therein a health officer and necessary assistants and clerks, all of whom shall be appointed and may be removed by a joint committee composed of either the boards of health of the municipalities or 1 or more representatives from the board of health of each municipality. Persons so employed shall perform such duties and receive such compensation as the joint committee shall determine and, in so far as their duties in a given municipality are concerned, shall be the employees of and responsible to the regularly constituted board of health of such municipality. The department, in consultation with the department of environmental protection, may adopt regulations to set minimum qualifications for health officer pursuant to this section. The joint committee shall annually elect a chairman and a secretary and shall determine the relative amount of service to be performed in each municipality of the district by employees of the district. The treasurer of 1 of the municipalities of the district, designated by the joint committee, or such other treasurer designated by the joint committee, shall be treasurer of the district and shall give to the district a bond with a surety company authorized to transact business in the commonwealth as surety, for the faithful performance of his duties as treasurer of the district, in such sum and upon such conditions as the joint committee may require. The joint committee, annually in the month of December, shall estimate the amount of money required to pay the costs and expenses of the district for the following year, shall fix and determine the proportion of such costs and expenses to be paid by the respective municipalities thereof during the year and shall certify the amount so determined for each such municipality to its assessors who shall include such amount in the tax levy of such year. Upon order of the board of health of each municipality, the municipal treasurer thereof shall, from time to time and subject to section 52 of chapter 41, pay to the district treasurer such sums not exceeding the amount certified by the joint committee as the municipality's share of the costs and expenses of the district. The district treasurer shall disburse the money so received, upon warrants approved by the health officer. A member municipality of a regional health district formed pursuant to this section may withdraw by majority vote of its legislative body and the vote to withdraw shall become effective on the last day of the next fiscal year. This section shall not apply in the county of Barnstable.

Nothing in this section shall be construed to prohibit a board of health that is not part of a regional health district from appointing as its health agent, a health agent employed by another municipality pursuant to section 30, and setting the salary and terms of employment thereof if such health agent has received written approval from the original

appointing authority and the health agent is either: (a) a physician, having graduated from an accredited approved school of medicine and registered, or eligible for registration, to practice medicine in the commonwealth, with 1 year of full-time graduate public health academic training or 2 years of full-time experience in public health; or (b) a lay person with professional academic training equivalent to a bachelor's degree and with 5 years of administrative experience and supervision of generalized public health programs or a registered sanitarian, certified pursuant to section 8700 of chapter 112. If a lay health officer is employed, a registered physician shall also be employed to perform such medical functions as are required.

For purposes of this section, the term "board of health" shall include any body politic or political subdivision of the commonwealth that acts as a board of health, public health commission or a health department for a municipality.

Chapter 111: Section 27B. Regional health districts; regional board of health; powers and duties; administration; organization; management; accounts; rules and regulations

[Text of section as amended by 2008, 529, Sec. 1 effective April 15, 2009.]

Section 27B. Two or more municipalities may, by vote of their respective boards of health and, in a city having a Plan E charter by the affirmative vote of a majority of all members of the city council, in other cities by vote of the city council and approval of the mayor, and by vote of a town at a regular annual town meeting, form a regional health district which shall consist of a regional board of health, a director of health and staff thereof. Towns and cities may, in a like manner, join a regional health district previously formed with the approval of the regional board of health of such district. The regional health district may have all the powers and may perform all the duties conferred upon, or exercised by, the boards of health and health departments of the constituent municipalities under any law or ordinance pertaining thereto, except in so far as the regional health district may, by majority vote, delegate certain powers and duties to the constituent municipalities. Notwithstanding the foregoing, a constituent municipality shall retain its legal authority under chapter 111 and section 6 of Article 2 of the Amendments to the Massachusetts Constitution, unless and until a municipality votes, by vote of its board of health and, in a city having a Plan E charter by the affirmative vote of a majority of all members of the city council, and in other cities by vote of the city council and approval of the mayor, and by vote of a town at a regular annual town meeting, to delegate part or all of its legal authority to the regional board of health.

The regional board of health, hereinafter referred to as the board, shall be comprised of at least 1 representative from each constituent municipality. Unless the board votes otherwise, each constituent municipality having a population greater than 10,000 shall have 1 additional representative to the board for every population unit of 10,000 or major fraction thereof beyond the first 10,000. In no instance shall there be more than 5 representatives from a single municipality on a board. Towns shall, at a town meeting, select or change the method of selecting their representative or representatives by any of

the following methods: (a) by appointment of the board of health; (b) by appointment of the selectmen; (c) by vote at the annual town meeting; or (d) by any other method decided at the annual town meeting. In cities, such representatives shall be appointed by the mayor with the approval of the city council, or in cities having Plan E charters by the city manager, unless a definite mode of appointment is otherwise provided by the city charter. Each representative shall serve for a period of 3 years, except that at its initial organization the board shall decide the term of years for the first representatives who shall be elected or appointed to the board, so that thereafter approximately one-third of the representatives will be elected or appointed each year. Such representatives shall serve without compensation, but shall receive their necessary traveling expenses from the board while in the performance of their official duties. Representatives to the board may be re-elected or reappointed for a maximum of 2 terms. The board shall meet annually and at such other times as it shall determine by its rules or when requested by the chairman of the board or the director of health.

Each board may make and adopt reasonable rules and regulations for the promotion of general health within the district not in conflict with law, ordinance, by-law or any fire, health or safety regulation. The powers of each district shall include, but not be limited to, the power to: (1) sue and be sued; (2) make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the health district; (3) make and from time to time amend and repeal rules and regulations relative to the operation of the district; (4) receive and expend funds; (5) apply for and receive grants from the commonwealth, the federal government and from other grantors, if the purpose of the grant is to improve public health; and (6) have such other powers as are necessary to properly carry out its powers as an independent entity of government.

Any constituent municipality that has been a member of the district for at least 3 years may withdraw from the district, by vote of its board of health and its respective legislative bodies passed prior to July first in any year, and the withdrawal shall be effective January first of the following year. In the event of the withdrawal of a town or city from the district, or in the event of dissolution of any district, the employees thereof, if originally employed by a municipality, shall automatically become employees in the same position they held in such municipality's board of health.

The board shall select a treasurer, who may be the treasurer of 1 of the constituent municipalities or such other treasurer as designated by the board, to act as treasurer for the district. For the faithful performance of his duties, the treasurer shall give bond, with a surety company authorized to transact business in the commonwealth, in such sums and upon such conditions as the board may require. The board shall, annually, in the month of December: (a) estimate the amount of money required to pay the cost and expense of the district for the following year; (b) fix and determine by a majority vote the proportion of such costs and expenses to be paid by the individual municipalities thereof during such year; and (c) certify the amount so determined for each municipality to the assessors thereof, who shall include such in the tax levies of each year, and each municipality shall appropriate such sum for the district. In apportioning the costs, the board, by a majority vote, may use any of the following formulae as a basis for its apportionment: (a)

valuation, according to the latest state valuation, establishing the basis of apportionment of state and county taxes; (b) population, as determined by the most recent estimate by the state secretary, exclusive of universities and federal, state and county institutions; (c) a combined formula of valuation according to the latest state valuation and population as determined by the most recent estimate by the state secretary, exclusive of universities and federal, state and county institutions; or (d) any other method decided by majority vote of the board. Upon order of the board, the treasurer of each constituent municipality thereof shall, from time to time, subject to section 52 of chapter 41, pay to the treasurer of the district the amount certified by the board as the municipality's share of the cost and expenses of the district. The treasurer of the district shall disburse the money so received upon warrant approved by the director of health and signed by the chairman or vice-chairman of the board. The accounts of each district shall be audited annually by the bureau of accounts of the department of corporations and taxation, under sections 35, 40 and 41 of chapter 44.

The board shall appoint, and may reappoint, for a term of 3 years, a director of health, hereinafter referred to as the director. The board may remove the director for cause after proper notice and a public hearing. The director shall serve as secretary of the board, but shall have no vote. He shall be the executive and administrative head of the district and, may, with the approval of the board, designate 1 or more deputies and may appoint and employ, with like approval, such assistants as may be provided for in the budget. The director shall prepare and present annually to the board a report and a budget for its approval, together with such recommendations as he deems proper. The department of public health, in consultation with the department of environmental protection shall adopt regulations to set minimum qualifications for directors of health and other employees hired pursuant to this section.

The board shall adopt reasonable rules and regulations, for which notice and public hearing shall be given in the same manner and extent as required by section 37 of chapter 30 and section 2 of chapter 30A. The board shall also: (a) take evidence in appeals; (b) consider plans and appointments required by law; (c) hold hearings; and (d) discharge such other duties required by law, but the board shall have no administrative or executive functions. The board may delegate the holding of hearings to the director or his deputies. The board may elect an executive committee consisting of its chairman, vice-chairman, secretary and such other members as its rules may determine. The executive committee shall have the authority to act for the board when the board is not in session.

All full-time and part-time incumbents of any office or position brought under the district at the time of its formation shall be transferred thereto without loss of civil service, retirement or other rights. Any transferred employee's compensation shall be fixed by the board at not less than the amount received by the employee during the fiscal year preceding the date such employee was transferred to the district. Any person hired pursuant to this section shall be hired in accordance with the merit system, personnel policies and compensation plans approved by the board. Any employee whose employment was governed by chapter 31 shall be transferred to the district with duties comparable to those previously performed by him and shall have all rights and privileges

accruing to him from his previous position. Any employee whose employment was not governed by said chapter 31 shall be transferred to the district in a comparable position. The employee shall have all rights and privileges accruing to him from his previous position. If a new position is governed by said chapter 31 such employee shall be classified in the competitive civil service without examination. All positions and offices of the district, including the director, but excluding representatives to the board, shall be subject to the provisions of chapter 32. Ninety days after the organizational meeting of the board, all district positions and offices, except the director and the representatives to the board, not subject to chapter 31 at the time of the formation of the regional board of health, shall be placed within the civil service in the manner provided by said chapter 31 and the rules and regulations promulgated thereunder, and all positions and offices subsequently established by the board shall be subject to said chapter 31 and the rules and regulations thereof, unless the board by a majority vote within 90 days after its organizational meeting votes not to extend said chapter 31 to any or all of such eligible positions and offices. At any time after such a vote to exclude, the board may, by a majority vote, bring within said chapter 31 any or all positions and offices, in the manner set forth therein, except the director and the representatives to the board, which were excluded but which are still subject to the jurisdiction of the board. The wages and salaries of all offices and positions, including those subject to chapter 31, shall be determined by the board. The department in consultation with the department of environmental protection, shall establish by regulation minimum performance standards, including standards for inspection and enforcement, for basic programs of public health administration, personal health, laboratory services, health resources and other preventive health programs not inconsistent with law, as it finds necessary or desirable for the protection of public health.

For purposes of this section, the words "board of health" shall include any body politic or political subdivision of the commonwealth that acts as a board of health, public health commission or a health department for a municipality.

Chapter 111: Section 27C. Reimbursement of regional health districts; qualification; formula for allocation of state funds for operating expenses

[Text of section as amended by 2008, 529, Sec. 1 effective April 15, 2009.]

Section 27C. (1) Each regional health district established under section 27B shall be entitled to reimbursement from the commonwealth, subject to appropriation, for expenditures incurred by it for initial capital outlays, including the acquisition, construction, improvement or renovation of any buildings or premises for the use of the district and any original furnishings and equipment therefor, but excluding the costs of supplies, salaries and other expenses for the ordinary maintenance and operation of the district. The department shall establish, by regulation, a formula for allocating state funds for initial capital outlays to each regional health district. In order to qualify for such reimbursement, a regional board of health shall, before incurring any expenses reimbursable under this section, submit to the commissioner an itemized statement of all proposed expenditures for such purposes. The commissioner shall examine such

statement and shall notify such board to what extent, in his opinion, the proposed expenditures are reasonably necessary for the purposes of the regional health district and reimbursable hereunder, and the probable amount of reimbursement therefor. Within 3 months after the date of final payment for such capital outlays the board shall submit to the commissioner a certified statement of its actual expenditures for such purposes. If satisfied that the expenditures so certified are reimbursable and not unreasonable or excessive, the commissioner shall certify to the comptroller and the treasurer shall forthwith pay to such regional health district, from any amounts appropriated therefor, the amount of such approved reimbursement.

(2) A formula shall be established, subject to appropriation, for allocating state funds for operating expenses to each regional health district. This formula shall include the requirement of municipal matching funds on a basis to be determined from the annual tax receipts of each participating city or town. Districts receiving state funds shall meet the performance standards and personnel qualifications adopted by the department of public health pursuant to section 27B. Such regional health districts may use additional funds, which they may secure from other sources. In the event that a city or town fails to appropriate its required matching funds from the annual tax receipts, such city or town shall be removed from the regional health district.

Chapter 34B: Section 20. Cities and towns; regional charter commissions; regional councils of government

Section 20. (a) A city or town within or contiguous to an abolished county or to be abolished county, which accepts the provisions of this section by vote of the city council with the approval of the chief executive officer or by vote of the town meeting or by vote of the board of selectmen may enter into agreement to join a regional charter commission. Each city or town electing to join said commission shall send a representative appointed by the chief executive officer or board of selectman, and said commission shall convene and shall develop a charter proposal recommending (1) a structure, including organization and method of selecting members for said regional council of government and (2) provision for the method of determining approval of the charter proposal in said cities and towns; provided, however, that said charter shall be adopted and binding only on those cities and towns where a majority of voters approve it by popular vote.

The charter shall also include provisions for towns to enter or leave participation in the council of governments. Said charter shall be placed before the voters in an election. The charter shall also include a method of determining approval of any increase or decrease in the county assessment authorized in this section but such method shall include approval of such increase or decrease by the member municipalities of the council of governments in a popular vote if such increase is in excess of 102.5 per cent of the previous fiscal year assessment. The charter may also include a method of determining approval of an annual budget, including fees, grants, assessments and other revenues. The charter may provide that a council of governments shall retain any powers previously conferred upon the county and its county commissioners and shall have any additional powers authorized by

this section; provided, however, that said councils shall not retain any power concerning functions transferred to the commonwealth under sections 1 or 4 of this chapter, retain power to levy a county tax, or retain powers specifically denied under this section.

(b) Notwithstanding subsection (a), the following provisions shall apply to Hampshire county. The charter proposed by the county commissioners and approved pursuant to a direct vote of the people of Hampshire county in November 1998 is hereby ratified and shall be deemed to have taken effect on January 1, 1999. The election held in Hampshire county at the biennial state election ballot in November 1998 adopting a charter is hereby ratified, validated and confirmed. All actions, proceedings, contracts, agreements, expenditures and assessments made by the Hampshire council of governments prior to July 1, 1999 are hereby ratified, validated and confirmed. The Hampshire council of governments shall retain any powers previously conferred upon Hampshire county and its county commissioners including, but not limited to, the powers and duties of county commissioners with regard to county roads; provided, however, that said council shall not retain any power concerning functions transferred to the commonwealth under sections 2 and 4, retain power to levy a county tax, or retain powers specifically denied under this section or under the charter. Notwithstanding any general or special law to the contrary, road actions taken by Hampshire council of governments after Hampshire county was abolished and before January 1, 2007 are hereby ratified, validated and confirmed. The county commission of Hampshire county shall hereafter be known as the council of governments and each municipally elected official serving on the council may serve until the end of the current term to which elected as a county commissioner or until a successor council official is elected in that municipality. The council shall organize as provided by the newly approved charter. The executive committee shall have the powers of selectmen under sections 52 and 56 of chapter 41. Notwithstanding any general or special law to the contrary, the county treasurer, appointed by the county administrator under the prior county charter, shall become known as the director of finance for the council of governments, and shall have the powers and duties of a municipal treasurer under section 35 of said chapter 41 and under sections 54, 55, and 55A of chapter 44. The director of finance shall be a member of the county retirement system advisory board with all the rights, privileges, and duties as other members of the advisory board.

(c) Upon approval of the new charter, the county commission of a county shall become known as the council of governments and each municipally elected official serving on the council may serve until the end of the current term to which elected as a county commissioner or until a successor council official is elected in that municipality. The council shall organize as provided by the newly approved charter. The executive committee shall have the powers of selectmen under section 52 and 56 of said chapter 41.

(d) The council of governments may accept or participate in any grant, donation or program available to any political subdivision of the commonwealth, and may also accept or participate in any grant, donation, or program made available to counties by any other governmental or private entity.

(e) Notwithstanding the provisions of any special or general law to the contrary, any political subdivision of the commonwealth may enter into agreement with the council of governments to perform jointly or for the other, or in cooperation with other entities, any service, activity or undertaking which the political subdivision is authorized by law to perform. For the term of the agreement and subject to the terms thereof, the council of governments shall be authorized to perform the service, activity or undertaking and may designate appropriate representatives to oversee the performance, provided that the functions and duties of the representative or representatives are set forth in the agreement.

(f) The parking provisions of chapter 90 shall apply to the parking areas subject to the control of the council of governments, and the council shall have the powers and duties of that chapter as they apply to parking.

(g) A regional council of government established pursuant to this section may administer and provide regional services to cities and towns and may delegate such authority to subregional groups of such cities and towns. Regional councils of government may enter into cooperative agreements with regional planning commissions or may merge with such commissions to provide regional services.

(h) Regional services provided to member municipalities shall be determined by each regional council of government and may include, but are not limited to, the following services: engineering, inspectional services and planning, economic development, public safety, emergency management, animal control, land use management, tourism promotion, social services, health, education, date management, regional sewerage, housing, computerized mapping, household hazardous waste collections, recycling, public facility siting, coordination of master planning, vocational training and development, solid waste disposal, fire protection, regional resource protection, regional impact studies, and transportation.

(i) For the purpose of organizing and administering in the county or a portion of the county a cooperative or regional entity to provide, purchase or otherwise make available services on a regionalized basis, the council of governments may impose a regional assessment as set forth in the charter submitted to the voters and approved by said voters pursuant to this section. The regional assessment shall be allocated among the members of the council of governments in proportion to their respective equalized valuations as reported to the general court by the commissioner of revenue in accordance with section 10C of chapter 58 unless the charter includes provisions that set the assessment based upon other factors including, but not limited to, population or base cost per municipality. The regional assessment shall be based upon the budget adopted by the council of governments, net of estimated revenues. The regional assessment shall be retained by the council of governments and shall be used for the purpose of providing regional or municipal services or programs, or planning, organizing and administering such services or programs, and maintaining abolished county or regional council of government property in connection with said services or programs, under the authority granted herein.

(j) The council of governments may increase or reduce the regional assessment on each member municipality from the base year of fiscal year 2000, subject to the limits of sections 20A and 21C of chapter 59.

(k) The council of governments may incur temporary debt in anticipation of revenue for a term not to exceed one year, with the approval of a majority of the council of governments. The temporary debt shall not exceed one-half of the amount of the council of governments assessment under subsection (h). Sections 16 to 19, inclusive, and sections 21 to 22C, inclusive, of chapter 44 shall, so far as possible, apply to debt issued under this section.

(l) The provisions of chapter 268A and 268B that are applicable to a county agency and county employees shall apply to a regional council of government and its employees.

(m) Nothing in this chapter shall authorize, require or permit any regional council of government to abrogate, in whole or in part any agreement, including any collective bargaining agreement, negotiated with any employee organization under chapter 150E or to interfere with or detract from the rights of any employee under chapter 31. Nothing in this chapter shall supplant or supersede any rights of any employee organization under any law, including, but not limited to, said chapter 150E, including any agreements negotiated under said chapter 150E, or any employee under chapter 31.

(n) a council of governments shall maintain or contract with others to maintain records relating to county roads within its jurisdiction.

Chapter 7: Section 22A. Collective purchasing by commonwealth and political subdivisions

Section 22A. Notwithstanding any contrary provision of law relating to collective purchasing, but subject, however, to all other laws regulating public purchases and competitive bidding, the commonwealth and one or more of its cities, towns, districts, counties, or authorities, or two or more cities, towns, districts, counties, or authorities, hereinafter called political subdivisions, may make purchases of materials, supplies, equipment or services through the state purchasing agent subject to such rules, regulations and procedures as may be established from time to time by said purchasing agent; provided that the political subdivision shall accept sole responsibility for any payment due the vendor for its share of such purchase.

Chapter 7: Section 22B. Collective purchasing by political subdivisions

Section 22B. Notwithstanding any contrary provision of law relating to collective purchasing, but subject, however, to all other laws regulating public purchases and competitive bidding, any two or more political subdivisions, as defined in section twenty-two A, may join together for the purpose of obtaining and accepting competitive bids on similar items of materials, supplies, equipment or services which they intend to purchase, provided that each political subdivision shall accept sole responsibility for any payment

due the vendor for its share of such purchase. No political subdivision which serves as a purchasing agent under the provisions of this section shall be liable solely by reason of its actions as such agent for any claim based upon a breach of warranty or defects in the design, manufacture or installation of the materials, supplies or equipment purchased pursuant to this section.

Chapter 41: Section 30B. Agreements for joint and cooperative assessment, classification and valuation of property

Section 30B. **Any two or more cities and towns may enter into an agreement for joint or cooperative assessing, classification and valuation of property.** Such agreement shall provide for:—

- (1) the division, merger or consolidation of administrative functions between or among the parties, or the performances thereof by one city or town on behalf of all the parties;
- (2) the financing of the joint or cooperative undertaking;
- (3) the rights and responsibilities of the parties with respect to the direction and supervision of the work to be performed and with respect to the administration of the assessing office including the receipt and disbursement of funds, the maintenance of accounts and records and the auditing of accounts;
- (4) annual reports of the assessor to the constituent parties;
- (5) the duration of the agreement and procedures for amendment or termination thereof; and
- (6) any other necessary or appropriate matter.

Unless the agreement provides for assessing by one city or town on behalf of the other cities and towns parties thereto, the agreement shall provide for the designation of an appointing authority representing all of the cities and towns in the district, which shall be responsible for the appointment of an assessor who shall serve as the assessor for each and all cities and towns in the district. Subject to the rules and regulations established by the commissioner of revenue pursuant to section one of chapter fifty-eight, the agreement shall provide for qualifications, terms and conditions of employment for the assessor and employees of his office. The agreement may provide for inclusion of the assessor and said employees in insurance, retirement programs and other benefit programs of one of the constituent parties. Any city or town party to such an agreement may include employees of an assessing district in such programs.

No agreement for joint or cooperative assessing made pursuant to this section shall take effect until it has been approved in writing by the commissioner of revenue.

[Municipal Relief Bill currently pending may make helpful changes to this statute]

Chapter 41: Section 99B. Purpose of Secs. 99B to 99K

Section 99B. The purpose of this and the nine following sections, which shall be designated and may be known as “The regional police district law”, is to permit two or more contiguous towns to establish a regional police district and organize a common police department to serve and protect the inhabitants of said towns.

Sections ninety-nine B to ninety-nine K, inclusive, shall not apply to any town in which the provisions of chapter thirty-one are in effect with respect to the members of the police force or the chief of police.

Chapter 41: Section 99C. Establishment

Section 99C. Any group of contiguous towns may, by vote of their respective registered voters, vote to establish a regional police district, the area of jurisdiction of which shall be the combined corporate limits of the member towns.

Chapter 41: Section 99D. Town elections for acceptance; ballots

Section 99D. In towns using official ballots at town elections, acceptance of the provisions of the regional police district law shall be by vote in answer to the following questions to be placed on the official ballot at an annual town election as hereinafter provided, and in towns not using official ballots at town elections such acceptance shall be by vote at an annual town meeting. Upon the filing, with the clerk of any town using official ballots at town elections, of a petition signed by the board of selectmen requesting that the question of accepting the provisions of the regional police district law be placed upon the official ballot, the clerk shall place such questions on the official ballot for the next town election occurring more than thirty days after the filing of such petition. The questions to be voted on shall be:—

A. Shall the town accept the provisions of sections ninety-nine B to ninety-nine K, inclusive, of chapter forty-one of the General Laws, providing for the establishment of a regional police district, together with the town (towns) of?

YES.	<input type="checkbox"/>
NO.	<input type="checkbox"/>

B. Shall the police department provided for in question A be under the control and supervision of the regional police district commission and otherwise be governed by section ninety-seven of chapter forty-one of the General Laws governing local police department?

YES.	<input type="checkbox"/>
NO.	<input type="checkbox"/>

C. Shall the police department provided for in question A be under the sole control and supervision of the chief of police appointed by the regional police district commission and otherwise be governed by section ninety-seven A of chapter forty-one of the General Laws governing local police departments?

YES.	
NO.	

If a majority of the voters in each town voting on question A is in the affirmative, the proposed regional police district shall be deemed to be established.

If a majority of all the votes cast in the affirmative in the towns voting on question B is greater than the majority voting in the affirmative on question C, then the police department so established will be governed by section ninety-seven of said chapter forty-one; however, if a majority of all the votes cast in the affirmative in the towns voting on question C is greater than the majority voting in the affirmative on question B, the police department so established will be governed by the provisions of section ninety-seven A of said chapter forty-one.

Chapter 41: Section 99E. Powers and duties

Section 99E. A regional police district established under section ninety-nine D shall be a body politic and corporate with all the powers and duties conferred by law upon police departments, and with the following additional powers and duties:

- (a) To adopt a name and a corporate seal, and the engraved or printed facsimile of such seal on a bond or note of the district shall have the same validity and effect as though such seal were impressed thereon.
- (b) To sue and be sued, but only to the same extent and upon the same conditions that a town may sue or be sued.
- (c) To acquire property within the towns comprising the district under the provisions of chapter seventy-nine and section fourteen of chapter forty for the purposes of the district, and to construct, reconstruct, add to, remodel, make extraordinary repairs to, equip, organize and operate a police facility or facilities for the benefit of the towns comprising the district, and to make any necessary contracts in relation thereto.
- (d) To incur debt for the purpose of acquiring land and constructing, reconstructing, adding to and equipping a police building or buildings for a term of not exceeding twenty years or for the purpose of remodeling and making extraordinary repairs to a police building or buildings for a term not exceeding ten years; and provided, further, that written notice of the amount of the debt and of the general purposes for which it was authorized shall be given to the board of selectmen in each of the towns comprising the district not later than seven days after the date on which said debt was authorized by the

district commission; and no debt may be incurred until the expiration of thirty days from the date on which said debt was so authorized; and prior to the expiration of said period any member town of the regional police district may hold a town meeting for the purpose of expressing disapproval of the amount of debt authorized by the district commission, and if at such meeting a majority of the voters present and voting thereon express disapproval of the amount authorized by the district commission, said debt shall not be incurred and the district police commission shall prepare another proposal which may be the same as any prior proposal and an authorization to incur debt therefor.

(e) To issue bonds and notes in the name and upon the full faith and credit of said district; said bonds or notes shall be signed by the chairman and treasurer of the regional police district commission, except that said chairman by a writing bearing his written signature and filed in the office of said treasurer, which writing shall be open to public inspection, may authorize said treasurer to cause to be engraved or printed on said bonds or notes a facsimile of said chairman's signature, and such facsimile signature so engraved or printed shall have the same validity and effect as said chairman's written signature, and each issue of bonds or notes shall be a separate loan.

(f) To receive and disburse funds for any district purpose.

(g) To incur temporary debt in anticipation of revenue to be received from member towns.

(h) To assess member towns for any expenses of the district.

(i) To receive any grants or gifts for the purposes of the regional district police.

(j) To engage legal counsel.

(k) To submit an annual report to each of the member towns, containing a detailed financial statement, and a statement showing the method by which the annual charges assessed against each town were computed, together with such additional information relating to the operation and maintenance of such police protection as may be deemed necessary by the district police commission or by the selectmen of any member town.

(l) To employ a chief of police who shall have all the powers and duties imposed upon chiefs of police by law.

(m) To adopt an annual operating and maintenance budget, not later than December first.

Chapter 41: Section 99F. Regional police district commission; membership; officers

Section 99F. The powers, duties and liabilities of a regional police district shall be vested in and exercised by a regional police district commission organized by the boards of selectmen of the member towns. Each said board shall appoint two members of the commission within three months of the adoption of the regional police district law, for

terms of such length and so arranged that the term of one appointee will expire each year, and their successors shall be appointed in a like manner for terms of two years. Vacancies shall be filled in a like manner for the unexpired term. All members shall serve without compensation but may be reimbursed for expenses actually incurred in the transaction of the business of the commission. The commission shall choose annually a chairman and a vice chairman by ballot from its membership. The vice chairman shall, in the absence of the chairman, exercise the powers and perform the duties of said chairman. It shall appoint a secretary and a treasurer who may be the same person, but who need not be members of said commission. The treasurer shall receive and take charge of all money belonging to the district, and shall pay any bill of the district which shall have been approved by the commission. The commission may appoint an assistant treasurer who need not be a member of the commission, and who shall, in the absence of the treasurer, perform his duties and shall have the powers and be subject to the requirements and penalties applicable to him. The treasurer and assistant treasurer may, by vote of said commission, be compensated for their services. The treasurer and assistant treasurer of said district shall be subject to the provisions of sections thirty-five, fifty-two and one hundred and nine A of chapter forty-one, to the extent applicable. If the office of secretary is vacant or if the secretary is absent or is unable to perform his duties because of disability, the commission may appoint a temporary secretary to hold such office and exercise the powers and perform the duties thereof until a secretary is duly appointed or the secretary who was disabled or absent resumes his duties.

Chapter 41: Section 99G. Budget; apportionment; appropriations

Section 99G. The regional police district commission shall annually determine the amounts necessary to be raised to maintain and operate the district police during the ensuing calendar year, and the amounts required for payment of debt and interest incurred by the district which will be due in said year, and shall apportion the amount so determined among the member towns in accordance with the provisions of section ninety-nine I. The amounts so apportioned for each town shall, prior to December thirty-first in each year, be certified by the regional police district treasurer to the treasurers of the member towns. Each town shall, at the next annual town meeting, appropriate the amounts so certified and the town treasurer shall pay the amount so appropriated to said district forthwith.

The treasurer of any member town of a regional police district with the approval of the board of selectmen may, during the interval between January first and the date when such town makes the annual appropriation of the amount apportioned to it as provided in the first paragraph, make payments to the regional police district from the treasury of such town from any funds available therein. Such payments shall not exceed in the aggregate one third of the amount so apportioned and shall be charged against such appropriation.

For the purpose of organizing a department as provided in section ninety-nine J, the treasurer of any member town of a regional police district with the approval of the board of selectmen may, during the interval between the establishment of the commission as provided in section ninety-nine F and the following December thirty-first, make

payments to the regional police district from the treasury of such town from any funds available therein. Such payments shall not exceed three thousand dollars per member town and shall be charged against the first annual appropriation.

Chapter 41: Section 99H. Annual audits

Section 99H. The director of accounts in the department of revenue shall annually cause an audit to be made of the accounts of the regional police district commission, and for this purpose he, and his duly accredited agents, shall have access to all necessary papers, books and records. Upon the completion of each audit, a report thereon shall be made to the chairman of the selectmen of each town which is a member of the district. The director shall apportion the cost among the member towns on the basis provided by section ninety-nine I, and submit the amounts of each apportionment to the state treasurer who shall issue his warrant requiring the assessors of the towns which are members of the district to assess a tax to the amount of the expense, and such amounts shall be collected and paid to the state treasurer as provided by section twenty of chapter fifty-nine.

Chapter 41: Section 99I. Costs and expenses; annual estimates; apportionment; assessment of towns

Section 99I. Said commission shall, annually not later than December first, estimate the amount of money required to pay the costs and expenses of the district for the following year and shall fix and determine the proportion of such costs and expenses to be paid by the member towns using the following formula:

Fifty per cent thereof shall be assessed upon all towns in the district in the proportion which the total equalized valuation in each said town bears to the total equalized valuation in the district. When used in this section "equalized valuation" shall mean the equalized valuation of the aggregate property in a town subject to local taxation, as most recently reported by the commissioner of revenue to the general court under the provisions of section ten C of chapter fifty-eight.

Twenty-five per cent thereof shall be assessed upon all towns in the district in the proportion which the number of inhabitants in each said town bears to the total number of inhabitants in the district. The number of inhabitants shall be determined in accordance with the last preceding federal census.

Twenty-five per cent thereof shall be assessed upon all towns in the district in the proportion which the total mileage of state highways and town ways in each said town, as most recently determined by the state department of highways, bears to the total mileage of state highways and town ways in the district.

Chapter 41: Section 99J. Regional district police department; pending prosecutions; personnel transfers.

Section 99J. Each regional police district commission shall organize a regional district police department, and such department shall begin operations and otherwise take effect on January first following acceptance of the provisions of the regional police district law. Each regional district police department so established shall succeed any existing town police departments, whether fully organized or not, within its district, and each such town police department shall cease to exist on December thirty-first following the acceptance of the provisions of the regional police district law. Any pending criminal prosecutions of the police of the member towns shall be assumed by the regional district police department, and **all town police employees who immediately prior to the effective date of the district held positions classified under chapter thirty-one or had tenure in their positions by special act shall be transferred to the service of the district police department upon the establishment of said department; every such transfer to be without impairment of civil service status, seniority, retirement and other rights of the employee, without interruption of his service within the meaning of said chapter thirty-one or special act, and without reduction in his compensation and salary grade, notwithstanding any change in his title or duties made as a result of such transfer.** Said district police department shall be considered a single town police department as that phrase is used or implied in the general laws, and all general laws applicable to town police departments shall apply to such district police departments. If a majority of towns in said district shall vote to accept the provisions of chapter thirty-one, at annual elections held therein, with respect to such district, by the method provided in section fifty-four of said chapter, the provisions of said chapter shall apply to said district. Any such district department shall be under the supervision of an officer known as the chief of police.

The chief and other police officers of all regional police districts shall have, throughout their respective districts, unless a different meaning is clearly apparent from the language or context, all the powers, duties, immunities and privileges conferred by the General Laws on chiefs and police officers of the towns.

Chapter 41: Section 99K. Revocation of acceptance of regional police district law; town elections; ballot; continuity of district

Section 99K. In towns using official ballots at town elections, revocation of the provisions of the regional police district law shall be by vote in answer to a question placed on the official ballot at an annual town election as hereinafter provided, and in towns not using official ballots at town elections such revocation shall be by vote at an annual town meeting. Upon the filing, with the clerk of any town using official ballots at town elections, of a petition signed either by the board of selectmen or by not less than five per cent of the total number of registered voters thereof, requesting that the question of revoking acceptance of the provisions of this law be placed upon the official ballot, the clerk shall place such question on the official ballot for the next town election occurring more than thirty days after the filing of such petition. The question to be voted on shall

be:—“Shall the acceptance by the town of the provisions of sections ninety-nine B to ninety-nine K, inclusive, of chapter forty-one of the General Laws which provided for the establishment of a regional police district, together with the town (towns) of , be revoked?”

If such revocation is favored by a majority of the voters voting thereon, the acceptance of this law by such town shall be revoked and this law shall become null and void in said town beginning one year after such vote; provided, however, if any such town while a member of the district voted to accept the provisions of chapter thirty-one with respect to said district, the provisions of said chapter thirty-one shall remain in effect in said town and any person transferred to said town from the district as a result of such revocation shall be transferred without impairment of civil service status, seniority, retirement and other rights, without interruption of his service within the meaning of said chapter thirty-one and without reduction in his compensation and salary grade, notwithstanding any change in his title or duties made as a result of such transfer.

Whenever a town revokes acceptance of this law and withdraws from a regional police district said town shall remain liable for its share of any obligation of the district incurred while said town was a member of said district.

Whenever a town revokes acceptance of this law and withdraws from a regional police district and thereby breaks the contiguity required by section ninety-nine C, the remaining towns shall continue to form a district notwithstanding the absence of contiguity.

Chapter 40: Section 8G. Mutual police aid programs; agreements

Section 8G. A city or town which accepts this section may enter into an agreement with another city or town, or other cities and towns including cities and towns in states contiguous to the commonwealth, to provide mutual aid programs for police departments to increase the capability of such departments to protect the lives, safety, and property of the people in the area designated in the agreement. Said agreement may include the furnishing of personal services, supplies, materials, contractual services, and equipment when the resources normally available to any municipality in the agreement are not sufficient to cope with a situation which requires police action. When providing such mutual aid, police officers shall have all the immunities and powers granted to them in the municipalities that employ them, including, but not limited to, powers of arrest.

While in transit to, returning from, and during a mutual aid response for another city or town, a participating police officer shall maintain the right of indemnification granted by law, or by his home city or town, or both, for all claims arising out of any action within the scope of his employment in accordance with a valid mutual aid agreement. A mutual aid agreement may provide for methods of activation or requesting and responding to mutual aid requests. The agreement may also address issues such as pay and benefits for officers, insurance, indemnification, injury compensation and other operational matters

related to police services provided for a mutual aid response. Nothing in this paragraph shall be construed to expand or otherwise modify existing police powers as provided by law or any existing mutual aid agreement or both.

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF LABOR RELATIONS

BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

Case No.: MUP-02-3634

Parties: - Newton Police Association and City of Newton

Board Members Participating: Marjorie F. Wittner, Chair

Elizabeth Neumeier, Board Member

Appearing: Joseph P. McConnell, Esq. - Representing the City of Newton

Mark Hickernell, Esq. – Representing the Newton Police Association

Decision Date: December 31, 2008

DECISION[1]

Statement of the Case

On December 3, 2002, the Newton Police Association (Association) filed a charge with the Labor Relations Commission (Commission) against the City of Newton (City or Newton). The charge alleges that the City had engaged in a prohibited practice within the meaning of Sections 10(a)(5) and 10(a)(1) of M.G.L. c. 150E (the Law).

Following an investigation, the Commission issued a complaint on August 21, 2003. The complaint alleges that the City had failed to bargain in good faith with the Association by unilaterally assigning bargaining unit work to non-unit personnel in violation of Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law. On September 2, 2003, the City filed an answer to the complaint.

On November 10, 2003, Hugh L. Reilly, a duly-designated Board Hearing Officer (Hearing Officer) conducted a hearing at which both parties had the opportunity to be heard, examine witnesses, and introduce evidence. By agreement, both the Association and Newton submitted proposed findings of fact and conclusions of law. The Association filed its initial brief on January 13, 2004, the City on January 12, 2004, and the Association filed a reply on January 20, 2004.

The Hearing Officer issued recommended findings on August 24, 2007. On September 27, 2007, the Association submitted challenges to the Hearing Officer's recommended findings of fact. The City did not challenge the Hearing Officer's recommended findings of fact, nor did the City respond to those challenges submitted by the Association.

Findings of Fact[2]

The City is an employer as defined in Section 1 of the Law. The Association is an employee organization as defined in Section 1 of the Law and is recognized by the City as the exclusive bargaining representative for patrol officers employed by the Newton Police Department (Department).

The Department is divided into separate bureaus: Patrol, Traffic, Community Services, "IT", Special Services, Detective, and Research. The separate bureaus employ both patrol officers and non-police (civilian) employees. Patrol officers are covered by successive collective bargaining agreements between the Association and the City. Non-police clerical employees employed by the Department are covered by collective bargaining agreement between the City and the American Federation of State, County, and Municipal Employees (AFSCME), also an employee organization under the Law. The non-police clerical employees have primary responsibility for taking information by phone, entering information in computers, answering phones, and some duties specific to the bureau to which they are assigned. Police officers also compile data, enter information in computers, and answer phones when working inside.[3]

Newton and the Association are parties to a collective bargaining agreement effective on its face from July 1, 2000 through June 30, 2003 (CBA). Under Article 34.01, the CBA remains in effect unless one party gives notice to the other 120 days prior to the expiration date of a desire to terminate or amend specific provisions of the CBA. There is no evidence that notice was given pursuant to this provision, and the CBA was in effect at all times relevant to the issues in this case.

Article XII of the CBA, "Management Rights" states:

12.01 Except where such rights, powers, and authority, are specifically relinquished, abridged, or limited by the provisions of this Contract, the CITY has and will continue to retain, whether exercised or not, all of the rights, powers, and authority heretofore had by it, and except where such rights, powers and authority are specifically relinquished, abridged or limited by the provisions of this Contract, it shall have the sole and unquestioned right, responsibility and prerogative of management of the affairs of the CITY and direction of the working forces, including but not limited to the following:

- A. To determine the care, maintenance and operation of the equipment and property used for and on behalf of the purposes of the CITY.
- B. To establish or continue policies, practices and procedures for the conduct of the CITY business and, from time to time, to change or abolish such policies, practices or procedures.

C. To discontinue processes or operations or to discontinue their performance by employees.

D. To select and to determine the number and types of employees required to perform the CITY's operations.

E. To employ, transfer, promote or demote employees, or to lay-off, terminate or otherwise relieve employees from duty for lack of work or other legitimate reasons when it shall be in the best interests of the CITY or the Department.

F. To prescribe and enforce reasonable rules and regulations for the maintenance of discipline and for the performance of work in accordance with the requirements of the CITY, provided such rules and regulations are made known in a reasonable manner to the employees affected by them.

G. To insure that related duties connected with Department operations, whether enumerated in job description[s] or not, shall be performed by employees.

H. To establish contracts or sub-contracts for municipal operations, provided that this right shall not be used for the purpose or intention of undermining the UNION or of discrimination against its members.

12.02 All work customarily performed by the employees of the bargaining unit shall be continued to be so performed unless in the sole judgment of the CITY, it can be done more economically or expeditiously otherwise.

12.03 The above rights, responsibilities and prerogatives are inherent in the Mayor and by virtue of statutory and charter provisions are not subject to review or determination in any grievance or arbitration proceeding, but the manner of exercise of such rights may be subject to the Grievance Procedure described in this contract.

Bianchi's Employment Background

Paul Bianchi (Bianchi) has been employed with the Department, approximately 23 years. He first started as a night officer. Bianchi had been working inside the Traffic Bureau for approximately 14 years when the Department made the below-described changes in 2002. Throughout his tenure, whether he was doing inside work or work on the street, Bianchi held the title of Traffic Officer, and maintained the physical ability to perform the outside duties of a Traffic Officer.[4] Regardless of whether he worked inside or outside, Bianchi also kept up with the training required of a Traffic Officer. During relevant times, he was the only Traffic Officer assigned inside the Traffic Bureau. When Traffic Officer Tony Penzo (Penzo) retired, Bianchi assumed Penzo's full-time position inside the Traffic Bureau.[5]

2002 Traffic Bureau Changes

Police Chief Jose Cordero (Cordero) was appointed in February of 2002. In the spring of that year, he began evaluating personnel, job descriptions, and assignments in all bureaus in the Department, including the Traffic Bureau. Chief Cordero in association with Superintendent

Robert McDonald (McDonald) decided that changes needed to be made in the Community Service Bureau and the Traffic Bureau. The changes resulted in the transfer of one civilian clerk, Debbie Gentile (Gentile), from the Community Services Bureau to the Traffic Bureau.[6] After the transfer, clerical work formerly done by Gentile for the Community Service Bureau was divided among the Police Officers in that Bureau. After the transfer, Gentile did clerical work in the Traffic Bureau that, in part, had been done by Bianchi. The Parking Control Officers, who had been part of the Traffic Bureau since 1999, continued to do the same work following the transfer.[7] Their paper work was handled in the Traffic Bureau both before and after the transfer. After the transfer, the Traffic Bureau did their performance evaluations.

At the time these changes were made, Bianchi was employed inside the Traffic Bureau, and not on the street. The functions performed by personnel inside the Traffic Bureau are listed[8] as:

- Enter all moving citations on sheet by each Officer.
- Assign (according to complaint streets and areas) and schedule all of the Parking Control Officers.
- Monitor the Parking Control Officers productivity.
- Do the daily attendance for the Parking Control Officers and coordinate vacation and sick time etc.
- Separate parking tickets.
- Count parking tickets and send to Data Processing.
- Type out sheets on total citations and parking tickets for Chief, Patrol Captain and Community Services.
- Enter parking tickets in computer.
- Enter Civil and Criminal moving citations in computer.
- Process Civil and Criminal citations to Registry and Court.
- Enter all moving citations (warnings) in computer.
- Run a computer check for any mistakes on all moving citations entered in computer each day.
- Enter citation books signed out by Officer in computer.
- Run a computer check in total citation field daily for bad citations entered (meaning not enough numbers or letters in field to print an audit sheet).
- Print audit sheets from computer.
- Stamp and cross-reference audit sheets with signed out books to make sure books are complete.
- Separate all moving citations.
- Order moving and parking citation books.
- Investigate all pending hit and run accident reports.
- Process all insurance requests for accident reports.
- Make copies of reports and mail to insurance companies.
- Record in book all checks received from insurance companies.

- Process all taxi applications including doing license and background checks.
- Type taxi cards and file when approved.
- Check files for expirations on all drivers.
- Investigate all complaints on taxi drivers.
- Investigate all complaints on motor vehicle operators.
- Record all checks and money on sheets for Chief's Office and City Hall.
- Inspect all [taxis, private autos and limos]. Prepare reports for the Public Safety Transportation Committee.
- Order and issue all taxi medallions.
- Order all resident and municipal parking permits.
- Process and file all parking permit applications.
- Coordinate all City ordinances with City Clerks Office pertaining to Traffic and Police Duties.
- Assist citizens at the counter and on the phone.
- Check with Chief's Office to confirm the status of the Public Safety Account before ordering parking permits, taxi medallions, mouth pieces for intoxilyzer, test cards etc.

Most of the listed activities do not require training as a patrol officer.

With respect to the above-listed functions, Bianchi generally did the clerical work concerning moving violations, taxi licensing, accident investigation, and medallions, and the civilian clerical employees did work related to parking violations. Other duties, such as assisting citizens at the counter and on the phone, were shared. Although Bianchi primarily monitored Parking Control Officers' productivity, entered civil and criminal moving citations in the computer, and typed taxi cards and filed them after approval, civilian personnel performed these duties when he was not present in the office. Bianchi and civilian personnel both processed all insurance requests for accident reports, made copies of reports and mailed them to insurance companies, recorded all checks received from insurance companies, recorded all checks and money on sheets for the Chief's Office and City Hall, and processed and filed all parking permit applications.

Traffic Officers assigned "outside" are sent to areas of Newton where there are high levels of traffic violations, accident rates, citizen complaints or other enforcement issues. In general, they are responsible for investigating motor vehicle accidents, issuing citations for ordinance violations, taxi medallions, and ordinance changes related to traffic. Their specific duties include selective enforcement of motor vehicle violations arising from citizen complaints and traffic accident analysis investigations; investigation of fatal accident, other serious motor vehicle accidents, and hit and run accidents when the alleged violator resides outside the City of Newton; photographing serious accident scenes, serious crimes and accidents involving city vehicles and incidents of injuries on city property; assisting in traffic control at special events; and generally

being alert to traffic safety condition which may endanger or inconvenience the public and report such conditions to the Traffic Bureau Commander.

About early September 2002, Captain Alexander Sbordone (Sbordone) told Bianchi that Cordero had decided that he (Bianchi) would be assigned to the street in order to have more officers there. A short time after that, John J. Babcock (Babcock), Association President, raised the transfer issue with Superintendent Robert McDonald (McDonald), and asked that it be placed on the agenda for a meeting to be held with Cordero about a number of issues the Association had with the Department.^[9]

In mid-September, 2002, Cordero, McDonald, and Babcock, with Bianchi in attendance, met to address a number of different issues. Babcock raised Bianchi's assignment to the outside at the meeting. Cordero, in response, said that the decision had already been made, and "that was it".^[10]

As a result, Bianchi's assignment to outside work for the Traffic Bureau remained in place. However, he continued to perform some functions inside the Traffic Bureau. As a Traffic Officer on the street, Bianchi had the functions listed above. In addition, he continued to perform on a daily basis the duties he had while inside: inspection of all taxis, private automobiles, and limousines; preparation of reports for the Public Safety Transportation Committee; and ordering and issuing all taxi medallions. He no longer investigates all reports of hit and run accidents. The remaining duties in the Traffic Bureau are performed by Gentle and another civilian part-time employee.

Generally, Traffic Officers work four days on, and two days off, and begin their shift at 7:30 a.m. or 3:30 p.m. While he was inside, Bianchi had worked a five days on two days off schedule and began his shift at 7:00 a.m. At the time he was assigned to outside duty, Bianchi consulted with Babcock about his work schedule. Following that conversation, Bianchi initially asked Sbordone if he could work 6:30 a.m. to 2:30 p.m. That request was denied. He then asked that he retain his inside schedule. That request was granted. As a result, his outside schedule is five days on and two days off, beginning his shift at 7:00 a.m. Some time later, starting the day shift at 7:00 a.m. and working five days on and two days off became regular for other officers in the Traffic Bureau, as well as Bianchi.

When Bianchi was inside, he had opportunities to work and receive compensation for overtime. When available, he would stay about 2 hours following the end of his shift. Bianchi "is not sure", but thinks that since his assignment to the outside he has less than half the overtime opportunities available to him while working on the inside. He no longer has overtime opportunities for "Cops and Kids", but does get "safety seat belt" overtime. He also does fill in for the Safety Officer when she is not available. Bianchi worked 139 overtime hours in calendar year 2002, and 139 hours from January through October 25, 2003.^[11]

Opinion

Unilateral Change and Calculated Displacement of Bargaining Unit Work

The issue to be decided by the Board in this case is whether the City unlawfully transferred bargaining unit work outside of the bargaining unit. The City does not dispute that it transferred certain duties performed by Bianchi inside the Traffic Bureau to non-unit personnel without bargaining with the Association but argues that the work could lawfully be transferred to non-unit personnel because: 1) the work had been previously shared between unit members and non-unit personnel; and 2) the management rights clause contained within the parties' CBA empowered the City with the exclusive authority to do so without bargaining with the Association.

A public employer violates Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it unilaterally changes an existing condition of employment or implements a new condition of employment involving a mandatory subject of bargaining without first giving its employees' exclusive collective bargaining representative notice and an opportunity to bargain to resolution or impasse. Commonwealth of Massachusetts v. Labor Relations Commission, 404 Mass. 124, 127 (1989); School Committee of Newton v. Labor Relations Commission, 388 Mass. 557, 572 (1983); Town of Andover, 28 MLC 264, 268 (2002); City of Newton, 27 MLC 74, 81 (2000). The obligation to bargain extends to working conditions established through custom and practice as well as to working conditions contained in a collective bargaining agreement. Town of Andover, 28 MLC at 268 (citing City of Gloucester, 26 MLC 128, 129 (2000)); Town of Wilmington, 9 MLC 1694, 1699 (1983). To establish a unilateral change violation, the charging party must establish the following: (1) the employer changed an existing practice or instituted a new one; (2) the change affected a mandatory subject of bargaining; and (3) the change was implemented without prior notice or an opportunity to bargain. Town of Andover, 28 MLC at 268 (citing Commonwealth of Massachusetts, 27 MLC 70, 72 (2000); City of Boston, 26 MLC 177, 181 (2000); Massachusetts Port Authority, 26 MLC 100, 101 (2000)).

Where job duties have traditionally been shared by bargaining unit members and non-unit employees, the Board has held that the work in question will not be recognized as bargaining unit work. City of Quincy/Quincy City Hospital, 15 MLC 1239 (1988). In shared-work situations, bargaining must occur where there is a "calculated displacement" of bargaining unit work, City of Boston, 10 MLC 1539, 1541 (1984), or where the employer unilaterally changed a previously existing pattern of shared work. City of Quincy, 15 MLC at 1241. The Board may also examine whether non-unit employees subsequently constitute a greater percentage of the work force performing the disputed duties than they had previously. City of New Bedford, 15 MLC 1732, 1737 (1989). In determining whether there has been a calculated displacement of unit work, the Board "considers whether unit members have traditionally performed an ascertainable percentage of the work and whether the employer has taken action that results in a significant reduction in that percentage, with a corresponding increase in the percentage of the work

performed by non-unit personnel.” Town of Bridgewater, 25 MLC 103, 104 (1998) (citing City of Somerville, 23 MLC 256, 259 (1997); City of Boston, 6 MLC 1117, 1126 (1979)).

Here, the uncontroverted evidence demonstrates that, in the spring of 2002, Chief Cordero began evaluating personnel, job descriptions, and assignments in all bureaus in the Department, including the Traffic Bureau. Thereafter, Cordero, in association with McDonald, determined that changes needed to be made in the Community Services Bureau and the Traffic Bureau. The changes resulted in the transfer of Gentile, a non-unit clerical employee, from the Community Services Bureau to the Traffic Bureau. After the transfer, Gentile performed clerical work in the Traffic Bureau that, in part, had been done by Bianchi. Then, in September 2002, Cordero decided that more Traffic Officers were needed on the street and assigned Bianchi “outside” on the street to help fulfill that need. Bianchi continued to perform some functions “inside” the Traffic Bureau, as well: inspecting all taxis, private automobiles and limousines; preparing of reports for the Public Safety Transportation Committee; and ordering and issuing all taxi medallions.

The record reflects that the City has employed non-unit civilian personnel to perform administrative duties within the Department and that unit members sometimes performed these administrative duties attendant to their police work. While “inside” the Traffic Bureau, Bianchi generally did the clerical work concerning moving violations, taxi licensing, accident investigation, and medallions, and the civilian clerical employees did work related to parking violations. Other duties, such as assisting citizens at the counter and on the phone, were shared. Although Bianchi primarily monitored Parking Control Officers’ productivity, entered civil and criminal moving citations in the computer, and typed taxi cards and filed them after approval, civilian personnel performed these duties when he was not present in the office. Bianchi and civilian personnel both processed all insurance requests for accident reports, made copies of reports and mailed them to insurance companies, recorded all checks received from insurance companies, recorded all checks and money on sheets for the Chief’s Office and City Hall, and processed and filed all parking permit applications. Following Bianchi’s reassignment to the “outside”, Bianchi no longer investigated reports of hit and run accidents, and the remaining duties inside the Traffic Bureau were performed by non-unit civilian employees.

Although some tasks were more often performed by Bianchi and some tasks were more often performed by non-unit clerical staff inside the Traffic Bureau, the clerical nature of the majority of the work Bianchi performed when he worked “inside” was shared with non-unit clerical staff. When Bianchi was transferred to the “outside,” a greater percentage of clerical duties were then performed by non-unit civilian personnel inside the Traffic Bureau. Accordingly, there was a calculated displacement of bargaining unit work to non-unit civilian personnel following Cordero’s decision to transfer Bianchi “outside.”

Opportunity To Bargain

The Association argues that the City should have provided the Association with notice and an opportunity to bargain prior to reassigning Bianchi to the “outside” and transferring certain “inside” duties to non-unit personnel. The City defends its actions by arguing that the Association had waived its right to bargain over these matters by virtue of the management rights clause of the parties’ CBA, which explicitly provides that the City has the “sole and unquestioned right to transfer work outside of the unit if “in the sole judgment of the CITY, it can be done more economically or expeditiously otherwise.” (emphasis in original). Further, the City argues that the Association failed to adequately make a demand for bargaining over the subject of Bianchi’s partial reassignment of duties. In rebuttal to the City’s argument, the Association maintains that, even if the City were not obligated to bargain over its decision to transfer bargaining unit work to non-unit personnel, the City should have bargained over the impacts of that decision.

Contrary to the City’s argument, the Hearing Officer noted in his recommended findings that he credited the testimony of Babcock over McDonald, finding that Babcock had asked for the Bianchi transfer issue to be included on the agenda for the Association’s meeting with Cordero. See n. 6 & 7, supra. The Board will not disturb a hearing officer’s credibility determination absent a clear preponderance of all relevant evidence that the determination is incorrect. City of Somerville, 23, MLC 11, 12 (1996). If the reason for the hearing officer’s determination is clearly stated and the evidence does not require a contrary finding, we will not disturb the determination. Vinal v. Contributory Retirement Appeal Board, 13 Mass. App. Ct. 85 (1982); Greater New Bedford Infant Toddler Center and District 65. United Auto Workers, 13 MLC 1620, 1622 (1987).

Here, the record reflects that the Association, through Babcock, raised the issues of Bianchi’s reassignment and transfer of duties with McDonald and requested that the parties discuss the issues at a meeting with Cordero. During the Association’s meeting with Cordero, Cordero indicated that his decision had already been made regarding Bianchi’s reassignment, and “that was it.” The Hearing Officer explained that he did not credit McDonald’s testimony because he found that Babcock’s recollections were more persuasive. There is no evidence in the record that requires a contrary finding and thus we will not disturb the Hearing Officer’s credibility determination. Based on the foregoing, we find that the Association made an adequate demand to bargain over the transfer of Bianchi’s duties, but the City refused to negotiate the issue.

Management Rights Clause

Notwithstanding the Association having demanded to bargain over the decision to transfer Bianchi’s duties, the City is correct in asserting that the management rights clause contained in the CBA gave the City the right to reassign Bianchi to the “outside” and transfer certain of his “inside” duties to non-unit personnel without first having to bargain to resolution or impasse over that decision. Where an employer raises the affirmative defense of contract waiver, it must show that the union knowingly and unmistakably waived its right. Town of Andover, 28

MLC at 270 (citing Town of Mansfield, 25 MLC 14, 15 (1998)). The employee bears the burden of proving that the contract clearly, unequivocally and specifically authorizes its actions. Town of Andover, 28 MLC at 270 (citing City of Boston v. Labor Relations Commission, 48 Mass. App. Ct. 169, 174 (1999)); see School Committee of Newton v. Labor Relations Commission, 388 Mass. 557, 569 (1983) (a waiver must be shown clearly, unmistakably, and unequivocally and cannot be found on the basis of a broad, but general, management rights clause). Where the parties' agreement is silent on an issue, it must be shown that the matter allegedly waived was fully explored and consciously yielded. Commonwealth of Massachusetts, 5 MLC 1097, 1099 (1978) (citing City of Everett, 2 MLC 1471, 1475 (1976)); Press Co., Inc., 121 NLRB 976, 42 LRRM 1493 (1958). Where contract language exists but is ambiguous, bargaining history or the manner in which the parties have implemented the disputed contract provision are helpful. Commonwealth of Massachusetts, 5 MLC 1097, 1099 (1978) (citing City of Boston, 3 MLC 1450, 1461, n.13 (1977)). However, where contract language contained in a management rights clause is not ambiguous, it is necessary only to examine the specificity of the clause and to determine whether the disputed action is within its scope. Commonwealth of Massachusetts, 5 MLC 1097, 1099 (1978); see Ador Corp., 150 NLRB 1658, 58 LRRM 1280(1965).

Here, the management rights clause in the CBA is more than a broad or general clause. The contract is not silent with respect to the City's authority to have bargaining unit work performed outside the bargaining unit.

Section 12.02 of the management rights clause clearly identifies the work subject to and within the scope of that Section as that work done by members of the bargaining unit. Section 12.02 unequivocally states that such work shall continue to be performed by the bargaining unit unless in the *sole judgment* of the City it can be done more economically or expeditiously otherwise. (Emphasis added.) Section 12.02 thus specifically permits the City to exercise its sole judgment, as Chief Cordero did in September 2002 when he determined that more Traffic officers were needed "outside" and reassigned Bianchi and some of the clerical duties he previously performed to the non-unit clerical employees.

The Association contends that the language of Section 12.02 is ambiguous and does not explicitly deal with the transfer of bargaining unit work to non-unit civilian personnel. That language, however, does explicitly permit the City to have the work done "otherwise" than by the bargaining unit.

Further, the Association contends that the City must present evidence to establish that this transfer of work actually permitted the City to conduct its affairs more economically or expeditiously. That is, in the Association's view, the City must justify its judgment. The Association has not pointed to any ambiguity in the language, explained by bargaining history, to indicate that the parties intended to apply the words "sole judgment" in that manner. To the contrary, the parties have agreed in this CBA provision that the City may exercise its "sole judgment." In sum, the management rights clause, as negotiated by the Association and the City, grants to the City the exclusive right to determine the number and types of employees required to

perform the City's operations in an economical and expeditious manner without first having to bargain to resolution or impasse. Accordingly, the City did not violate Sections 10(a)(5) or (1) of the Law when it refused to bargain over its decision to transfer Bianchi's duties to non-unit personnel.

Impact Bargaining

The Association next offers the argument that, even if the Board finds that the City was not obligated to bargain over the decision to transfer Bianchi's duties, the City was still obligated—but failed—to bargain over the impacts of that decision. We agree. Although Article 12.02 permitted the City to transfer certain duties outside of the bargaining unit without bargaining first with the Union over the decision to do so, that clause does not eliminate the City's duty to bargain the impacts of that decision, which had an adverse and calculable impact on the bargaining unit, as described above. See City of Worcester v. Labor Relations Commission, 438 Mass. 177, 185 (2002); Burlington v. Labor Relations Commission, 390 Mass.157, 164-167 (1983); School Committee of Newton v. Labor Relations Commission, 557, 564 (1983). The impacts in this case also include loss of "inside" work in the Traffic Department, possible loss of overtime opportunities and an increase in the workload of police officers in the Community Services Bureau.

Conclusion

For the reasons set forth above, we conclude that the City violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by failing to bargain over the impacts of its decision to transfer inside work in the Traffic Bureau to a civilian employee, who is not a bargaining unit member.

Remedy

The Union requests an order to restore the status quo ante, pending bargaining for the bargaining unit members affected by the City's decision to transfer inside work in the Traffic Bureau to non-bargaining unit employees. In cases where an employer's refusal to negotiate is limited to the impacts of a managerial decision, the Board traditionally orders restoration of the status quo ante applicable to the affected mandatory subjects rather than to the decision itself. Town of Plymouth, 26 MLC 220, 224 (2000) citing Commonwealth of Massachusetts, 26 MLC 118, 121-122 (2000) further citing, Town of Dennis, 12 MLC 1027, 1033 (1985). This remedy attempts to place the parties in the position they would have been in absent the employer's unlawful conduct. Town of Plymouth, 26 MLC at 224, citing City of Malden, 20 MLC 1400, 1406-1407 (1994). Accordingly, we order the City to bargain with the Association over the impacts of its decision to transfer inside work in the Traffic Bureau to non-bargaining and to make whole any bargaining member who lost wages or other benefits as a result of the transfer of bargaining unit work.

Order

WHEREFORE, based on the foregoing IT IS HEREBY ORDERED that the City of Newton shall:

- Cease and desist from:
 1.
 - a. Refusing to bargain collectively in good faith with the Association by not providing the Association with prior notice and an opportunity to bargain to resolution or impasse over the impacts of its decision to transfer bargaining unit work to non-bargaining unit employees.
 - b. In any like manner, interfering with, restraining and coercing its employees in any right guaranteed under the Law.
 2. Take the following affirmative action which will effectuate the purposes of the Law:
 - a. Upon request, bargain in good faith to resolution or impasse with the Association over the impacts of its decision to transfer inside work in the Traffic Department to non-bargaining unit employees.
 - b. Make whole any bargaining unit members who lost wages or other benefits as a result of the transfer of inside work in the Traffic Department to non-bargaining unit employees, plus interest on any sums owing at the rate specific in M.G.L. c. 231, §6I, compounded quarterly.
 - c. Post in conspicuous places where employees represented by the Association usually congregate, or where notices are usually posted, and display for a period of thirty (30) days thereafter, the attached Notice to Employees.
 - d. Notify the Division in writing within thirty (30) days of service of this Order of the steps taken to comply herewith.

SO ORDERED

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF LABOR RELATIONS

COMMONWEALTH EMPLOYMENT
RELATIONS BOARD

MARJORIE F. WITTNER, CHAIR

ELIZABETH NEUMEIER, BOARD MEMBER

APPEAL RIGHTS

Pursuant to M.G.L. c.150E, Section 11, decisions of the Commonwealth Employment Relations Board are appealable to the Appeals Court of the Commonwealth of Massachusetts. To claim

such an appeal, the appealing party must file a notice of appeal with the Commonwealth Employment Relations Board within thirty (30) days of receipt of this decision. No Notice of Appeal need be filed with the Appeals Court.

THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF LABOR RELATIONS

NOTICE TO EMPLOYEES

POSTED BY ORDER OF

THE MASSACHUSETTS DIVISION OF LABOR RELATIONS

AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

The Commonwealth Employment Relations Board has determined that the City of Newton (City) has violated Sections 10(a)(5) and, derivatively, 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by not providing the Newton Police Association (Association) with prior notice and an opportunity to bargain to resolution or impasse over the impacts of a decision to transfer bargaining unit work to non-unit employees.

WE WILL NOT transfer bargaining unit work to non-bargaining unit employees without first giving the Association prior notice and an opportunity to bargain to resolution or impasse about the impacts of that decision

WE WILL NOT refuse to bargain in good faith with the Association over the impacts of a decision to transfer bargaining unit work in the Traffic Department unit work to non-bargaining unit personnel.

WE WILL NOT, in any like manner, interfere with, restrain or coerce employees in the exercise of their rights guaranteed under the Law.

WE WILL, upon request, bargain in good faith to resolution or impasse with the Association over the impacts of a decision to transfer bargaining unit work in the Traffic Department to non-bargaining unit employees.

WE WILL make whole any employees represented by the Association for any loss of earnings suffered as of the decision to transfer bargaining unit work in the Traffic Department to non-bargaining unit employees, plus interest at the rate specified in M.G.L. c. 231, §6I, compounded quarterly.

City of Newton

¹ Pursuant to 456 CMR 13.02(1) of the former Labor Relations Commission's (Commission) regulations in effect prior to November 15, 2007, this case was designated as one in which the

Commission would issue a decision in the first instance. Pursuant to Chapter 145 of the Acts of 2007, the Division of Labor Relations (Division) "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission." The Commonwealth Employment Relations Board (Board) is the body within the Division charged with deciding adjudicatory matters. References to the Board include the Commission.

[2] The Board's jurisdiction is uncontested.

[3] The term "inside" refers to the kinds of duties performed by bureau offices; "outside" refers to the work police officers perform while "on the street".

[4] Employees covered by the City/Association CBA are "patrol officers". Patrol officers are informally referred to by the bureau to which they are assigned. For example, patrol officers assigned to the Traffic Bureau are referred to as Traffic Officers. For the sake of clarity, this decision refers to the officers by bureau assignment. This finding has been clarified at the Association's request, which was supported for the record.

[5] This finding has been modified at the Association's request, which is supported by the record evidence.

[6] This finding has been modified at the Association's request, which is supported by the record.

[7]The Board has added this finding about the date the Parking Control Officers were assigned to the Traffic Bureau for the sake of clarity.

[8] The list is an attachment to a memorandum from Captain Alexander Sbordone to Chief Jose M. Cordero, dated August 16, 2002 (Exhibit CP-1).

[9]McDonald did not recall that Babcock asked to make the transfer issue an agenda item for the meeting with Cordero. However, Babcock testified clearly and forthrightly that he had made that request. It is not disputed that Bianchi's transfer was a subject of discussion at the meeting. The Hearing Officer therefore credited Babcock's testimony.

[10]McDonald testified that the issue of Bianchi's transfer came up obliquely, when Bianchi mentioned that changes being discussed would affect him. Babcock testified that the Bianchi transfer was specifically discussed, that Cordero stated that the decision to put Bianchi on the street had been made, and "that was it". And that, when Babcock stated he would consult Association counsel and file a charge with the Commission, Cordero said, "do what you have to do." Because of Babcock's more detailed recollection of the conversation, the Hearing Officer credited his version of events at the meeting.

[11]Newton Exhibit R-1 is a computer printout showing the overtime Bianchi worked in calendar year 2002 and in January through October 23, 2003. Superintendent McDonald testified that this record was maintained in the regular course of business, and was the type of printout he would expect to see in response to an inquiry concerning Bianchi's overtime for the years in question.

After reviewing these records for the two years, Bianchi testified that the descriptions in the "Justification" column of each printout shows of the kinds of overtime he worked. He stated, however, that the line item on page 2 of the 2003 printout of 5.0 hours for "B & E Squad" is improper, as he never worked B & E Squad. Based upon this testimony, the Hearing Officer found that the overtime printouts on R-1 for 2002 and 2003 accurately report overtime that Bianchi worked for Newton, except for the B & E Squad line item.

Pacheco Bill – Privatization of State Functions.

Chapter 7: Section 52. Privatization contracts; need to regulate

Section 52. The general court hereby finds and declares that using private contractors to provide public services formerly provided by state employees does not always promote the public interest. To ensure that citizens of the commonwealth receive high quality public services at low cost, with due regard for the taxpayers of the commonwealth and the needs of public and private workers, the general court finds it necessary to regulate such privatization contracts in accordance with sections fifty-three to fifty-five, inclusive. The general court does not intend to restrict the use of community facilities to provide care for clients of state agencies, if any privatization contract relating to such facilities otherwise complies with the provisions of said sections fifty-three to fifty-five, inclusive.

Chapter 7: Section 53. Definitions

Section 53. As used in sections fifty-two to fifty-five, inclusive, the following words shall have the following meanings:—

“Agency”, an executive office, department, division, board, commission or other office or officer in the executive branch of the government of the commonwealth, the Massachusetts Bay Transportation Authority, the Massachusetts Turnpike Authority, the Massachusetts Port Authority and the Woods Hole, Martha’s Vineyard and Nantucket Steamship Authority.

“Business day”, any calendar day excluding Saturdays, Sundays, and legal holidays.

“Dependent”, the spouse and children of an employee if such persons would qualify for dependent status under the Internal Revenue Code or for whom a support order has been or could be granted under chapter two hundred and eight, two hundred and nine, or two hundred and nine C.

“Privatization contract”, an agreement or combination or series of agreements by which a non-governmental person or entity agrees with an agency to provide services, valued at \$200,000, but as of January 1 each year, the amount shall increase to reflect increases in the consumer price index calculated by the United States Bureau of Labor Statistics for all urban consumers nationally during the most recent 12 month period for which data are available or more, which are substantially similar to and in lieu of, services theretofore provided, in whole or in part, by regular employees of an agency. Any subsequent

agreement, including any agreement resulting from a rebidding of previously privatized service, or any agreement renewing or extending a privatization contract, shall not be considered a privatization contract. An agreement solely to provide legal, management consulting, planning, engineering or design services shall not be considered a privatization contract.

Chapter 7: Section 54. Statement of services; wage rates; health insurance; hiring of former agency employees; cost estimate; bids; certification to state auditor

Section 54. No agency shall make any privatization contract **and no such contract shall be valid unless** the agency, in consultation with the executive office for administration and finance, first complies with each of the following requirements:—

(1) The agency shall prepare a specific **written statement of the services proposed** to be the subject of the privatization contract, including the specific quantity and standard of quality of the subject services. The agency shall solicit competitive sealed bids for the privatization contracts based upon this statement. The day designated by the agency upon which it will accept these sealed bids shall be the same for any and all parties. This statement shall be a public record, shall be filed in the agency and in the executive office for administration and finance, and shall be transmitted to the state auditor for review pursuant to section fifty-five. The term of any privatization contract shall not exceed five years. No amendment to a privatization contract shall be valid if it has the purpose or effect of avoiding any requirement of this section.

(2) **For each position in which a bidder will employ any person pursuant to the privatization contract** and for which the duties are substantially similar to the duties performed by a regular agency employee or employees, the statement required by paragraph (1) shall include a **statement of the minimum wage rate to be paid for said position, which rate shall be the lesser of step one of the grade or classification under which the comparable regular agency employee is paid, or the average private sector wage rate for said position** as determined by the executive office for administration and finance from data collected by the division of employment and training and the division of purchased services. **Every bid for a privatization contract and every privatization contract shall include provisions specifically establishing the wage rate for each such position, which shall not be less than said minimum wage rate** as defined above. Every such bid and contract shall also include provisions for the **contractor to pay not less than a percentage, comparable to the percentage paid by the commonwealth for state employees, of the costs of health insurance plans for every employee employed for not less than twenty hours per week pursuant to such contract.** Such health insurance plans shall satisfy the requirements of the fifth paragraph of section nine of chapter one hundred and eighteen F, and shall provide coverage to the employee and the employee's spouse and dependent children. Each contractor shall submit quarterly payroll records to the agency, listing the name, address, social security number, hours worked and the hourly wage paid for each employee in the previous quarter. The attorney general may bring a civil action for equitable relief in the superior

court to enforce this paragraph or to prevent or remedy the dismissal, demotion or other action prejudicing any employee as a result of a report of a violation of this paragraph.

(3) Every privatization contract shall contain provisions requiring the contractor to offer available employee positions pursuant to the contract to qualified regular employees of the agency whose state employment is terminated because of the privatization contract and who satisfy the hiring criteria of the contractor. Every such contract shall also contain provisions requiring the contractor to comply with a policy of nondiscrimination and equal opportunity for all persons protected by chapter one hundred and fifty-one B, and to take affirmative steps to provide such equal opportunity for all such persons.

(4) The agency shall prepare a comprehensive written estimate of the costs of regular agency employees' providing the subject services in the most cost-efficient manner. The estimate shall include all direct and indirect costs of regular agency employees' providing the subject services, including but not limited to, pension, insurance and other employee benefit costs. For the purpose of this estimate, **any employee organization may, at any time before the final day for the agency to receive sealed bids pursuant to paragraph (1), propose amendments to any relevant collective bargaining agreement to which it is a party.** Any such amendments shall take effect only if necessary to reduce the cost estimate pursuant to this paragraph below the contract cost pursuant to paragraph (6). Such estimate shall remain confidential until after the final day for the agency to receive sealed bids for the privatization contract pursuant to paragraph (1), at which time the estimate shall become a public record, shall be filed in the agency and in the executive office for administration and finance, and shall be transmitted to the state auditor for review pursuant to section fifty-five.

(5) After consulting any relevant employee organization, the agency shall provide adequate resources for the purpose of encouraging and assisting present agency employees to organize and submit a bid to provide the subject services. In determining what resources are adequate for this purpose, the agency shall refer to an existing collective bargaining agreement of a similar employee organization whose members perform the subject services, if available, which agreement provides similar resources in the same or other agencies; provided, however, that if no such collective bargaining agreement exists, the agency shall refer to any existing collective bargaining agreements providing such resources, and shall provide such resources at the minimum level of assistance provided in said agreements. The agency shall consider any such employee bid on the same basis as all other bids. An employee bid may be made as a joint venture with other persons. Subclause (h) of clause Twenty-sixth of section seven of chapter four shall apply with respect to all employee bids. Sections four, five and six of chapter two hundred and sixty-eight A shall not apply to the activities of agency employees conducted pursuant to this paragraph.

(6) After soliciting and receiving bids, the agency shall publicly designate the bidder to which it proposes to award the contract. **The agency shall prepare a comprehensive written analysis of the contract cost based upon the designated bid, specifically**

including the costs of transition from public to private operation, of additional unemployment and retirement benefits, if any, and of monitoring and otherwise administering contract performance. If the designated bidder proposes to perform any or all of the contract outside the boundaries of the commonwealth, said contract cost shall be increased by the amount of income tax revenue, if any, which will be lost to the commonwealth by the corresponding elimination of agency employees, as determined by the department of revenue to the extent that it is able to do so.

(7) The head of the agency and the commissioner of administration shall each certify in writing to the state auditor, that:

(i) he has complied with all provisions of this section and of all other applicable laws;

(ii) the **quality of the services** to be provided by the designated bidder **is likely to satisfy** the quality requirements of the statement prepared pursuant to paragraph (1), and to **equal or exceed the quality of services which could be provided by regular agency employees** pursuant to paragraph (4);

(iii) **the contract cost pursuant to paragraph (6) will be less than the estimated cost** pursuant to paragraph (4), taking into account all comparable types of costs;

(iv) the designated bidder and its supervisory employees, while in the employ of said designated bidder, have no adjudicated record of substantial or repeated willful noncompliance with any relevant federal or state regulatory statute including, but not limited to, statutes concerning labor relations, occupational safety and health, nondiscrimination and affirmative action, environmental protection and conflicts of interest; and

(v) the proposed privatization contract is in the public interest, in that it meets the applicable quality and fiscal standards set forth herein.

A copy of the proposed privatization contract shall accompany the certificate transmitted to the state auditor.

No provision of this section shall apply in any circumstance to the extent that the provision is inconsistent with section thirty-nine M of chapter thirty or sections twenty-six to twenty-seven H, inclusive, or sections forty-four A to forty-four J, inclusive, of chapter one hundred and forty-nine.

Chapter 7: Section 55. Objection by state auditor; review

Section 55. (a) **An agency shall not make any privatization contract and no such contract shall be valid if, within thirty business days after receiving the certificate required by section fifty-four, the state auditor notifies the agency of his objection.** Such objection shall be in writing and shall state specifically the state auditor's finding that the agency has failed to comply with one or more requirements of said section fifty-

four, including that the state auditor finds incorrect, based on independent review of all the relevant facts, any of the findings required by paragraph (7) of said section fifty-four. The state auditor may extend the time for such objection for an additional period of 30 business days beyond the original 30 business days by written notice to the submitting agency stating the reason for such extension.

St.2000 C.390 AN ACT AUTHORIZING THE CITY OF LAWRENCE TO ENTER INTO CONTRACTS FOR THE SALE OR LEASE AND OPERATION AND MAINTENANCE, FINANCING, REPAIR AND REPLACEMENT, DESIGN AND CONSTRUCTION, AND MODIFICATIONS FOR THE WATER WORKS SYSTEM AND SEWER WORKS SYSTEM.

SECTION 1. (a) The city of Lawrence may, notwithstanding the provisions of any general or special law or regulation to the contrary, enter into a contract or contracts for the lease, operation and maintenance, repair or replacement, financing, design, construction and installation of new facilities or systems and modifications to existing facilities, necessary to ensure adequate services and to ensure the ability of the city's water works system and the sewer works system, as such terms are defined in section 10, to operate, maintain, repair and replace the water works system and sewer works system
...

SECTION 2. (a) Notwithstanding the provisions of any general or special law to the contrary, a contract or contracts entered into pursuant to section 1 may provide for a term, not exceeding 20 years, and an option for renewal or extension of operation, maintenance, repair and replacement services for one additional term not exceeding five years. Any renewal or extension shall be at the sole discretion of the city in accordance with the original contract terms and conditions or contract terms and conditions more favorable to and acceptable to the city.
...

SECTION 5. Notwithstanding any other provisions of this act, it shall be a **mandatory term of any request for proposals** issued by the city **and of any contract** entered into by the city with any party regarding the subject matter of this act that any party that has entered into a contract pursuant to said terms with the city, shall require, in order to maintain stable and productive labor relations and to avoid interruption of the operation of the water works system and sewer works system and to preserve the health, safety and environmental conditions of residents of the city of Lawrence and surrounding communities, that **any and all employees, as applicable, hereinafter referred to as system employees, working on the operation and maintenance of the water works system and sewer works system, be offered employment by any party entering into a contract with the city for the operation and maintenance of the water works system and sewer works system, and further, that any party entering into a contract shall employ all system employees employed at the water works system and sewer works system as of the date of execution of the contract and continue such employment throughout the term of the contract, unless any such employee voluntarily leaves the**

employ of the party or is terminated for just cause by the party. Furthermore, any party entering into such contract with the city shall provide a salary and benefits package to all system employees which is equivalent to the salary and benefits package provided to such employees by the city. Moreover, the party shall adopt all terms and conditions of employment provided by the last applicable collective bargaining agreement negotiated between the labor organization representing such system employees, if any, and the city shall continue to recognize such terms and conditions of employment until a collective bargaining agreement has been executed between the labor organization representing such system employees and said party. The party shall furthermore agree to meet its legal obligations, including bargaining in good faith, with regard to any labor organization representing system employees engaged in the operation and maintenance of the water works system and sewer works system. Notwithstanding any other provisions of this act, any proposal or contract submitted to the city regarding the subject matter of this act not complying with the above terms, shall be disqualified from further consideration by the city.

Chapter 71: Section 42B. Rights of school employees in regional districts

Section 42B. The provisions of this chapter relating to school personnel granted certificates in accordance with section thirty-eight G [*that is, teachers and certain administrators, not janitors, cafeteria workers etc.*] shall apply to all such school personnel employed by regional school districts. **Any such school personnel who have professional teacher status or other rights under section forty-one in a particular school district, whose positions are superseded by reasons of the establishment and operation of a regional school district, shall be employed with the same status by the regional school district.** [*No reductions in force permitted for tenured teachers as a result of regionalization ?*]

All such school personnel employed by regional school districts shall initially be placed on the salary schedule of the district so that compensation to be paid to such school personnel shall not be less than the compensation received by such school personnel while previously employed with the same status.

Such school personnel shall also be given credit by the regional school district committee for all accumulated sick leave and accumulated sabbatical leave years of service while employed with such status and for terminal compensation due such school personnel on the termination of such service.

All such personnel without such status in a city or town in the district whose positions are superseded by reason of the establishment and operation of a regional school district shall be elected to serve in such district by the regional school district committee; provided, however, that there is an available position which such person is certified to fill. All such personnel employed by regional school district committees shall initially be placed on the salary schedule of the regional school district so that the compensation paid to such school personnel shall not be less than the compensation received by such school personnel while previously employed by a

local school committee. Such school personnel shall also be given credit by the regional school district committee for all accumulated sick leave, accumulated time towards service with such status, and accumulated sabbatical leave years of service, and for terminal compensation due such school personnel on the termination of such service.

Any employee subject to the provisions of chapter thirty-one, employed by the school committee of a town, whose position is superseded by reason of the establishment and operation of a regional school district shall be employed by the regional school district without loss of any civil service or other rights previously acquired by him.

This section shall also apply to all school personnel with such status of local trustees for vocational education, and any such school personnel whose positions are superseded by reason of the establishment and operation of a regional school district shall be employed by the regional school district with the same status.

Any such school personnel, employed by a regional school district, whose position is abolished or eliminated by reason of the disestablishment and discontinuance of the regional school district or the withdrawal of a member community from such district shall be employed by one of the withdrawing city or town school committees, and if any such personnel have such status, such personnel shall be employed by such city or town, school committee with the same status. In the event that there are not sufficient teaching positions available in the withdrawing city or town school systems, such personnel shall be offered the available positions for which they are currently certified in the order of their seniority in the regional school district. All such personnel so employed by a city or town school district shall initially be placed on the salary schedule of such city or town school district so that the compensation paid to such school personnel shall not be less than the compensation received by such school personnel while previously employed by the regional school district. Such school personnel also shall be given credit by the city or town school committee for all accumulated sick time, accumulated time towards service with such status, and accumulated sabbatical leave years of service, and for terminal compensation due such school personnel on the termination of such service.

Chapter 71: Section 61. Superintendent of schools; employment by a town union

Section 61. The school committees of two or more towns, each having a valuation less than two million five hundred thousand dollars, and having an aggregate maximum of seventy-five, and an aggregate minimum of twenty-five, schools, and the committees of four or more such towns, having said maximum but irrespective of said minimum, shall form a union for employing a superintendent of schools. A town whose valuation exceeds said amount may participate in such a union but otherwise subject to this section. Such a union shall not be dissolved except by vote of the school committees representing a majority of the participating towns with the consent of the department, nor by reason of any change in valuation or the number of schools.

Chapter 71: Section 62. Readjustment of town unions

Section 62. The department may form or readjust such unions whenever it becomes necessary to include one or more towns otherwise unable to comply with the preceding section, and in so doing may disregard the minimum number of schools prescribed therein, but no such readjustment shall deprive a town of its right to aid under section sixty-five.

Chapter 71: Section 63. School committees as joint committee; representation: meetings; employment of superintendent, removal

Section 63. The school committees of such towns shall, for the purposes of the union, be a joint committee and shall be the agent of each participating town, provided that any school committee of more than three members shall be represented therein by its chairman and two of its members chosen by it. The joint committee shall annually, after completion of annual elections in all of the member towns meet at a day and place agreed upon by the chairmen of the constituent committees, and shall organize by choosing a chairman and a secretary. It shall employ for a three year term, a superintendent of schools, determine the relative amount of service to be rendered by him in each town, fix his salary, which shall not be reduced during his term, and may provide for fringe benefits, and other conditions of employment, including but not limited to, severance pay, relocation expenses, reimbursement for expenses incurred in the performance of duties or office, liability insurance, and leave for said superintendent and shall apportion the payment thereof in accordance with section sixty-five among the several towns and certify the respective shares to the several town treasurers. He may be removed, with the consent of the department, by a two thirds vote of the full membership of the joint committee.

Chapter 71: Section 64. Union superintendent; compensation

Section 64. The salary of the superintendent in such a union or in any twelve grade regional school district or the combined salary received by a person serving in a dual capacity as a superintendent in a union and a regional school district or in two or more regional school districts shall be not less than the amounts provided in the following schedule: ninety-five hundred dollars for the first year of service, ten thousand dollars for the second year, ten thousand five hundred dollars for the third year, eleven thousand dollars for the fourth year. If his salary is not in excess of eleven thousand six hundred dollars the union or any twelve grade regional school district or the union and the regional school district or two or more regional school districts, as the case may be, shall, and otherwise may, reimburse him for his actual traveling expenses incurred in the discharge of his duties, but such reimbursement may be limited to six hundred dollars a year.

Chapter 71: Section 14. Committee; creation; membership

Section 14. Any town, by vote in town meeting duly called therefor, may create a special unpaid committee to be known as a regional school district planning committee, to consist of three members, including one member of the school committee, to be appointed by the moderator; and may at the same meeting or at a subsequent meeting appropriate for the expense of said committee such sum or sums, not exceeding one tenth of one per cent of the assessed valuation of such town in the preceding year, as it may deem necessary. Regional school district planning committees from any two or more towns may join together to form a regional school district planning board or boards. Such regional school district planning board shall organize forthwith upon its formation by the election of a chairman and secretary-treasurer.

Chapter 71: Section 14A. Duties of planning board

Section 14A. It shall be the duty of the regional school district planning board to study the fiscal and educational advisability of establishing a regional school district, its organization, operation and control, and of constructing, maintaining and operating a school or schools to serve the needs of such district; to estimate the construction and operating costs thereof; to assess the educational soundness of establishing such school or schools, to investigate the methods of financing such school or schools, and any other matters pertaining to the organization and operation of a regional school district; and to submit a report of its findings and recommendations to the selectmen of the several towns.

Chapter 71: Section 14B. Regional school districts; formation; procedure

Section 14B. The said regional district planning board may recommend that there shall be established a regional school district which may include all the towns represented by its membership, or alternatively, any specified combination of such towns. If the said regional district planning board so recommends, it shall submit a proposed agreement or agreements setting forth as to each alternative recommendation, if such be made, the following:—

(a) The number, composition, method of selection, and terms of office of the members of the regional district school committee.

(b) The town or towns in which, or the general area within the regional school district where, the regional district school or schools are to be located.

(c) The type of regional district school or schools. Without limiting the generality of the foregoing, the type of regional school may, if it is so stated in the agreement, consist of a vocational school or schools offering such kinds of education as may be provided by

towns under the provisions of chapter seventy-four; and any other type of regional school may, if it is so stated in the agreement, offer said kinds of education. A town may simultaneously be a member of a vocational regional school district and any other type of regional school district provided, however, that when a vocational school district is in operation, no member town of such district, and no other type of regional school district of which such a town is a member shall, without the approval of the commissioner of education, offer the same kinds of education as offered by said vocational school district.

(d) The method of apportioning the expenses of the regional school district, and the method of apportioning the costs of school construction, including any interest and retirement of principal of any bonds or other obligations issued by the district among the several towns comprising the district, and the time and manner of payment of the shares of the several towns of any such expense.

(e) The method by which school transportation shall be provided, and if such transportation is to be furnished by the district, the manner in which the expenses shall be borne by the several towns.

(f) the terms by which any city or town may be admitted to or separated from the regional school district; provided, however, that in the case of admission such terms shall not be inconsistent with the provisions of section sixteen of chapter six hundred and forty-five of the acts of nineteen hundred and forty-eight.

(g) The method by which the agreement may be amended.

(h) The detailed procedure for the preparation and adoption of an annual budget.

(i) Any other matters, not incompatible with law, which the said board may deem advisable.

Copies of such agreement shall be submitted to the department of education, and subject to its approval, to the several towns for their acceptance.

Chapter 71: Section 14C. Lease or sale of property to regional school districts

Section 14C. The agreement made under section fourteen B, or any amendment to such an agreement, may contain provisions authorizing any member town to sell, lease or grant a license to use any school building and any land appurtenant thereto or used in connection therewith to the regional school district, and any such town may authorize such sale, lease or license accordingly, notwithstanding the provisions of section three of chapter forty or any other provisions of law to the contrary. In case of a sale, the price and time or times of payment and the method by which the towns other than the selling town shall be assessed for such payment shall be set forth in the agreement or amendment; but in no case shall payments be made which shall extend over a period in excess of twenty years. In the case of a lease or license to use, the rental or license fee and terms of payment and assessment shall be set forth in the agreement or amendment.

The lease or license to use may be for a term or period not in excess of twenty years, and may contain provisions for the extension of the lease or license to use for an additional term or period not in excess of twenty years, at the option of the regional district school committee.

Chapter 71: Section 14D. Agreement; approval of indebtedness

Section 14D. The agreement made under section fourteen B, or any amendment to such an agreement, may provide that the incurring of indebtedness by the district shall be approved by the registered voters in the member towns pursuant to the provisions of clause (n) of section sixteen. In any district for which the agreement does not so provide, the incurring of indebtedness shall be subject to disapproval by any member town pursuant to the provisions of clause (d) of said section sixteen. Notwithstanding the provisions of this section, the regional district school may, by vote of two-thirds of all its members, require that the approval of any particular authorized issue of indebtedness shall be by the registered voters of the member towns of the district pursuant to the provisions of clause (n) of section sixteen rather than pursuant to the provisions of clause (d) of said section sixteen.

Chapter 71: Section 14E. Regional school district committee membership options

Section 14E. A regional school district may, by amendment to its regional school district agreement, provide for one of the following options concerning the members of its regional district school committee: (1) electing committee members by voters in member communities with each community's representation apportioned according to population; (2) electing members in district-wide elections to be held at the biennial state elections; (3) electing members with residency requirements in district-wide elections to be held at the biennial state elections; (4) weighing the votes of committee members according to the population they represent; and (5) appointing committee members by locally elected officials such as school board members. Each regional school district shall designate an individual to serve as district clerk.

If a regional school district decides to elect members in district-wide elections to be held at the biennial state elections or if any vacancy is to be so filled, the district clerk shall notify the state secretary by April fifteenth of the year of the biennial state election of that fact and also of his name and mailing address.

Chapter 71: Section 15. Acceptance of organization provisions by electorate

Section 15. The selectmen or council of each of the several towns shall, upon receipt of the recommendation that a regional school district should be formed and of a proposed agreement therefor submitted in accordance with the provisions of sections fourteen to fourteen B, inclusive, or otherwise in the form and with the approval required by said sections, cause to be presented the question of accepting the provisions of sections sixteen to sixteen I, inclusive, and the proposed agreement or agreements. Said question shall be determined, in a town having an open town meeting, by vote with printed ballots

at an annual or special town meeting to be held in either case within thirty days after receipt of such recommendation by the selectmen and, in a town having a representative town meeting or council, at an annual or special town election to be held in either case not less than thirty-five nor more than fifty days after receipt of such recommendation. The article in the warrant for such annual or special town meeting or election and the question on the printed ballots to be used at such meeting or election shall be in substantially the following form:

Shall the town accept the provisions of sections sixteen to sixteen I, inclusive, of chapter seventy-one of the General Laws providing for the establishment of a regional school district, together with the towns of _____, and _____, etc., and for construction, maintenance and operation of a regional school by said district in accordance with the provisions of a proposed agreement filed with the selectmen?

Yes.	<input type="checkbox"/>
No.	<input type="checkbox"/>

If a majority of the voters present and voting on said question in each of the several towns shall vote in the affirmative, said sections sixteen to sixteen I, inclusive, shall become effective, and the proposed regional school district shall be deemed to be established forthwith in accordance with the terms of the agreement so adopted notwithstanding any defect or omission in the creation or organization of any regional school district planning committee or regional school district planning board.

Chapter 40: Section 4E. Education collaboratives

Section 4E. Pursuant to the provisions hereof, two or more school committees of cities, towns and regional school districts may enter into a written agreement to conduct education programs and services which shall complement and strengthen the school programs of member school committees and increase educational opportunities for children. The school committees shall collaborate to offer such programs and services, and **the association of school committees which is formed pursuant hereof to deliver such programs and services shall be known as an education collaborative.**

The education collaborative shall be managed by a board of directors which shall be comprised of one person appointed by each member school committee. Such person shall be either a school committee member or his designee or the superintendent of schools or his designee. Members of said board of directors shall be entitled to a vote according to the terms of the education collaborative agreement. The department of education shall appoint an individual to serve in an advisory capacity to the education collaborative board. Said individual shall not be entitled to vote on any matter which comes before the board of directors of the education collaborative.

The written agreement which shall form the basis of the education collaborative shall set forth the purposes of the program or service, the financial terms and conditions of membership of the education collaborative, the method of termination of the education collaborative and of the withdrawal of member school committees, the procedure for admitting new members and for amending the collaborative agreement, the powers and duties of the board of directors of the education collaborative to operate and manage the education collaborative and any other matter not incompatible with law which the member committees deem advisable. **The agreement shall be subject to the approval of the member school committees and the commissioner of education.**

Each board of directors of an education collaborative shall establish and manage a trust fund, to be known as an Education Collaborative Trust Fund, and each such fund shall be designated by an appropriate name. **All monies contributed by the member municipalities, and all grants or gifts from the federal government, state government, charitable foundations, private corporations, or any other source, shall be paid to the board of directors of the education collaborative and deposited in the aforesaid Fund.**

The board of directors of the education collaborative shall appoint a treasurer who may be a treasurer of a city, town or regional school district belonging to such collaborative. Such treasurer shall be authorized, subject to the direction of the board of directors of the education collaborative, to receive and disburse all monies of the trust fund without further appropriation. The treasurer shall give bond annually for the faithful performance of his duties as collaborative treasurer in a form approved by the department of revenue and in such sum, not less than the amount established by said department, as shall be fixed by the board of directors of the education collaborative. The board of directors of the education collaborative in its discretion may pay compensation to the treasurer for his services. No member of the board of directors of the education collaborative shall be eligible to serve as treasurer of said collaborative.

The treasurer of the education collaborative board of directors shall have the authority to make appropriate investments of the monies of the Education Collaborative Trust Fund consistent with the provisions of section fifty-four of chapter forty-four.

The board of directors of an educational collaborative shall have the authority to borrow money, enter into long-term or short-term loan agreements or mortgages and to apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purpose for which such collaborative is established; provided, that the board of directors has determined that any such borrowing, loan or mortgage is cost-effective and in the best interest of the collaborative and its member municipalities. Such borrowing, loans or mortgages shall be consistent with the written agreement and articles of incorporation, if any, of the educational collaborative and shall be consistent with standard lending practices.

The board of directors of the education collaborative shall have the authority to employ an executive officer who shall serve under the general direction of such board and who shall be responsible for the care and supervision of the education collaborative.

The board of directors of the education collaborative shall be deemed to be a public employer and have the authority to employ personnel, including teachers, to carry out the purposes and functions of the education collaborative. No person shall be eligible for employment by said board of directors as an instructor of children with severe special needs, teacher of children with special needs, teacher, guidance counselor or school psychologist unless such person has been granted a certificate by the board of education under the provisions of section thirty-eight G of chapter seventy-one or section six of chapter seventy-one A or an approval under the regulations promulgated by the board of education under chapter seventy-one B or chapter seventy-four with respect to the type of position for which he seeks employment; provided, however, that nothing herein shall be construed to prevent a board of directors of an education collaborative from prescribing additional qualifications. A board of directors of an education collaborative may, upon its request, be exempted by the board of education for any one school year from the requirements of this section to employ certified or approved personnel when compliance therewith would in the opinion of the board constitute a great hardship.

The education collaborative shall be deemed to be a public entity and shall have standing to sue and be sued to the same extent as a city, town or regional school district. An education collaborative, acting through its board of directors, may enter into contracts for the purchase of supplies, materials and services, and for the purchase or leasing of land, buildings and equipment as deemed necessary by such board of directors.

A school committee of any city, town or regional school district may authorize the prepayment of monies for any educational program or service of the education collaborative, to the treasurer of an education collaborative, and the city, town or regional school district treasurer shall be required to approve and pay such monies in accordance with the authorization of the school committee.

Chapter 84: Section 5. Appropriation for construction, repair, and maintenance of highway through two or more towns

Section 5. When a highway runs through two or more towns, they may appropriate money for the construction, repair, maintenance or improvement thereof in common, and may purchase road machinery therefor in common. Money so appropriated shall be expended by such persons and in such manner as the towns concerned shall agree upon.

Chapter 84: Section 5A. Removal of snow or ice; equipment and employees

Section 5A. The selectmen, highway surveyor, highway commissioners, or other board or officer having charge of the maintenance of highways in any town which accepts this section may enter into agreements for the removal of snow or ice from, including sanding

on, such public ways in adjoining towns as circumstances make necessary or convenient, and any town performing work in accordance with such agreement may be reimbursed for the expense thereof by the town for which such work is performed from the regular appropriation voted for highway maintenance or snow removal.

For the purposes of this section, equipment and employees of a town while engaged in the removal of snow or ice from, including sanding on, such public ways in another town in accordance with this section shall be deemed to be engaged in the service and employ of the town performing the work hereby authorized.

Chapter 40N: Section 25. Regional water and sewer district commissions; formation

Section 25. Municipalities may join together to form a regional water and sewer district commission in the following manner:

(a) Any town by vote in town meeting duly called therefore or city by a vote of the city council and approved by the mayor, except in Plan D and Plan E cities, by vote of the city council and approved by the city manager, may create a special unpaid committee to be known as the district water and sewer planning committee, to consist of three members, to be appointed by the local appointing authority; and may appropriate for the expense of said committee such sum or sums as it may deem necessary. Regional water and sewer district planning committees from any two or more cities or towns may join together to form a regional water and sewer commission district planning board or boards. Such regional water and sewer commission district planning board shall organize forthwith upon its formation by the election of a chairman and secretary-treasurer.

(b) It shall be the duty of the regional water and sewer district commission planning board to study the advisability of establishing a regional water and sewer district commission, its organization, operation and control and of constructing, maintaining and operating such water and sewer facilities to serve the needs of such district; to estimate the construction and operating costs thereof; to investigate the methods of financing such facilities, and any other matters pertaining to the organization and operation of a regional water and sewer district commission; and to submit a report of its findings and recommendations to the selectmen of the several towns.

(c) The said regional district planning board may recommend that there shall be established a regional water and sewer district commission which may include all the cities and towns represented by its membership, or alternatively, any specified combination of such cities or towns. If the said regional district planning board so recommends, it shall submit a proposed agreement or agreements setting forth as to each alternative recommendation, if such be made, the following:—

(i) The number, composition, method of selection, and terms of office of the members of the regional district commission.

(ii) The municipalities in which, or the general area within the regional water and sewer district where, the regional water and sewer district commission shall be located.

(iii) The method of apportioning the expenses of the regional water and sewer district commission, and the method of apportioning the method of construction, including any interest and retirement of principal of any bonds or other obligations issued by the district among the several municipalities comprising the district, and the time and manner of payment of the shares of the several municipalities of any such expense.

(iv) The terms by which any municipality may be admitted to or separated from the regional water and sewer district commission.

(v) The method by which the agreement may be amended.

(vi) The detailed procedure for the preparation and adoption of an annual budget.

(vii) Any other matters, not incompatible with law, which said board may deem advisable.

(d) In the case of a town, the selectmen shall, upon receipt of the recommendation that a regional water and sewer commission district shall be formed, and of a proposed agreement therefore submitted in accordance with subsections (a) to (c), inclusive, of section twenty-four, or otherwise, in the form and with the approval required by said subsections (a) to (c), cause to be presented for determination by vote, with printed ballots at any annual or special town meeting to be held in either case within thirty days after receipt of such recommendation by said selectmen, the question of accepting the provisions of said subsections (a) to (c), inclusive, and the proposed agreement or agreements. The article in the warrant for such annual or special town meeting and the question on the printed ballots to be used at such meeting shall be in substantially the following form:

Shall the town accept the provisions of said subsections (a) to (c), inclusive, of said section twenty-four of chapter forty N of the General Laws, providing for the establishment of a regional water and sewer commission district, together with the towns of ___ and ___, etc., and the construction, maintenance and operation of a water and sewer commission by the said district in accordance with the provisions of a proposed agreement filed with the selectmen?

If majority of the voters present and voting on said questions in each of the several towns shall vote in the affirmative, and a city or several cities, if any, accept in the manner prescribed below, said subsections (a) to (c), inclusive, of said section twenty-four, shall become effective, and the proposed regional water and sewer district commission shall be deemed to be established forthwith in accordance with the terms of the agreement so adopted notwithstanding any defect or omission in the creation or organization of any regional water and sewer district planning committee or regional water and sewer district commission planning board.

In the case of a city, such acceptance shall take effect on the vote of the city council and approval of the mayor, except in the case of Plan D and Plan E cities, where approval of the city council and the city manager shall be required.

A regional water and sewer district commission established under the provisions of this section shall be a body politic and corporate and political subdivision of the commonwealth with all the powers and duties conferred by law upon such water and sewer commission, as outlined in sections seven and eight.

Chapter 44: Section 8. Cities and towns; purposes for borrowing money outside debt limit

Section 8. Cities and towns may incur debt, outside the limit of indebtedness prescribed in section ten, for the following purposes and payable within the periods hereinafter specified: . . .

(15) For the construction of sewers, sewerage systems and sewage treatment and disposal facilities, or **for the lump sum payment of the cost of tie-in to such services in a contiguous city or town, for a period not exceeding 30 years**; provided, however, that either (i) the city or town has an enterprise or special revenue fund for sewer services and that the accountant or auditor or other officer having similar duties in the city or town shall have certified to the treasurer that rates and charges have been set at a sufficient level to cover the estimated operating expenses and debt service related to the fund, or (ii) the issuance of the debt is approved by a majority of the members of the municipal finance oversight board.

Chapter 21: Section 28. Water pollution abatement districts; establishment; dissolution; enlargement or consolidation

Section 28. (a) The division is hereby authorized, with the approval of the water resources commission, to propose water pollution abatement districts consisting of one or more cities or towns, or designated parts thereof, for the purposes set forth in section thirty. The district so proposed shall be deemed to be established after approval by the city or town, or designated parts thereof, proposed for inclusion in the district or upon the mandatory formation of the district in accordance with the provisions of subsection (b).

(b) Within ninety days of receipt by any city council of a proposal by the division, approved by the commission, that a water pollution abatement district which includes such city be established, said city council shall consider said proposal and indicate its approval or disapproval by voting by yeas and nays upon a question in substantially the following form:—"Shall there be established a water pollution abatement district as recommended by the division of water pollution control and approved by the water resources commission, to include the city (cities) of (herein name of city or cities so proposed for inclusion) and the town (towns) of (herein name of town or towns proposed for inclusion in part) and the construction, acquisition, extension, improvement, maintenance and operation of a system of water pollution abatement facilities by the said

district in accordance with the provisions of chapter twenty-one of the General Laws?" Within ninety days of receipt by the selectmen of any town of a proposal by the division, approved by the commission, that a water pollution abatement district which includes such town or a part of such town be established, said selectmen shall cause to be presented for determination by vote, with printed ballots at an annual town meeting or a special town meeting called for the purpose, the question of approving said proposal, which question shall be in substantially the form set forth above. If the proposed district includes a part or parts of a town, the said selectmen shall call a special meeting for the purpose of approving the proposal at which only registered voters resident in that part or parts of the town proposed to be included in the district may vote. The warrant for such meeting shall be signed by at least a majority of the selectmen of the town and be posted in not less than two public places in said part or parts of the town at least seven days before the day of the meeting and the moderator of the town shall preside at such meeting and the town clerk shall keep the records thereof. Whenever within said ninety days each city and town or part thereof proposed for inclusion in said district shall have indicated its approval of the proposed district by vote in the affirmative on said question in the manner described in this subsection, the district shall be deemed to be established.

In the event that the city or town or designated parts thereof proposed by the division for inclusion in a district fails to vote in the affirmative on said question within the ninety day period, the director shall order a hearing under the provisions of chapter thirty A. Upon completion of said hearing, the director may, upon finding that the creation of said district is necessary for the prompt and efficient abatement of water pollution, and with the approval of the water resources commission, declare the mandatory formation of the district.

(c) An established district may be dissolved only by act of the general court. The division, with the approval of the commission, may from time to time propose the enlargement of a district or the consolidation of two or more districts, subject to approval by the general court or approval in the manner provided in subsection (b).

In the event that the enlargement or consolidation involves a district formed mandatorily as provided in subsection (b), the director shall order a hearing under the provisions of chapter thirty A. Upon completion of the hearing, the director may, upon finding that the formation of said district is necessary for the prompt and efficient abatement of water pollution, and with the approval of the water resources commission, declare the enlargement or consolidation on the part of such district.

(d) If the division deems water pollution abatement necessary, but the benefits of such abatement are likely to be increased, or its costs to the commonwealth reduced by joint action with another state or states contiguous to the commonwealth, it shall report said fact to the water resources commission which shall consult with the appropriate agency of such other state or states on such matters and shall make recommendations to the general court in relation thereto.

(e) The provisions of subsections (b) and (c) of this section, of sections twenty-nine, thirty, thirty-two, thirty-five and thirty-six shall apply only to a district or district commission created pursuant to this section, and to any city, town or portion thereof which is a member of such district.

* Not intended to be comprehensive.

**TERMS AND CONDITIONS OF AN INTERMUNICIPAL AGREEMENT
BETWEEN THE TOWN OF _____ AND THE TOWN OF _____**

I. General Terms:

- A. State the names of each participating city and town
- B. Identify the effective date and term of agreement
- C. State the general purpose of the agreement
- D. State that costs will be shared
- E. State how municipalities may terminate participation (required)
- F. State how the agreement may be amended
- G. Acknowledge acceptance of liability under agreement
- H. Include a severability clause; identify applicable laws
- I. Provide addresses for official notices

II. Operations Terms and Conditions¹

- A. Describe services to be provided:
- B. Identify personnel or department to perform services
- C. Establish reporting relationship and successorship in shared department
- D. Specify where shared services, personnel or department will be located
- E. Establish lines of communication among participating municipalities

¹ Excerpts taken from "Understanding and Applying the New Inter-municipal Agreement Law," by Laura Schumacher, City & Town, Vol. 21, No. 10, December 2008.

F. Describe dispute resolution process

III. Finance Terms and Conditions

A. Identify salaries, wages and benefits to be shared

B. Identify operating expenses to be shared

C. Address sharing of capital cost incurred prior to and after agreement date

D. Describe how each participant approves the shared budget

E. Describe how shared costs will be allocated

F. Describe payment methodology

G. Specify insurance and indemnification requirements

IV. Provisions for Financial Safeguards Required by c.40, s.4A

A. The HOST town must maintain accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received;

B. The HOST town must arrange for the performance of annual audits of such records, which audits can be part of the HOST town's annual, independent audit of its financial statements.

C. The HOST town must ensure that all officers or staff responsible for carrying out the terms and conditions of this AGREEMENT shall give appropriate performance bonds.

D. The HOST town must provide the PARTIES with monthly expenditure reports and quarterly revenue reports and any other information reasonably requested by the NON-HOST town to present a complete picture of the financial condition of the shared department, function or position.

E. The PARTIES otherwise must to comply with all other provisions of M.G.L. c.40, s.4A.

V. Signatures

A. Provide lines for signature, titles and date of a city mayor and each city councilor, town board of selectmen and/or district prudential committee.

Focus

on Municipal Finance

Superintendency Unions

Christine Lynch, Department of Education

Small local school districts looking for ways to use resources more efficiently may want to explore forming a superintendency union. Despite the name, superintendency unions have nothing to do with collective bargaining and labor unions. Rather, they are cooperative arrangements between two or more school districts to share the services of a superintendent of schools and central office staff, while allowing each town to keep its own school committee and school buildings. Sharing the costs of administrative personnel among multiple school districts creates efficiencies that in turn can provide additional resources for the classroom or for other school district priorities.

Superintendency unions have been around for quite some time, having been first authorized by the Legislature in 1870. There are currently 20 superintendency unions encompassing 73 separate school districts. (See Figures 1 and 2.) The typical superintendency union consists of two to four elementary districts along with a regional school district serving the secondary grades. Districts participating in superintendency unions tend to have a small student enrollment, with the average being just over 700 students. The smallest union superintendency is comprised of three towns with a combined school population of less than 400 students; the largest is comprised of two towns with a combined student enrollment of over 5,000.

A typical example is Union #66, where Superintendent Barbara Ripa and her

staff serve the school committees of three local elementary districts (Southampton, Westhampton and Williamsburg); one regional elementary district (Chesterfield-Goshen); and one regional secondary school district (Hampshire).

Creation and operation of a superintendency union

Superintendency unions are governed by the Massachusetts General Laws, chapter 71, sections 53A and 61 through 64. The creation of a superintendency union does not require approval by either town meeting or the Department of Education. It simply requires the vote of two or more school committees. A written agreement is not legally required but is strongly recommended to clarify the staff to be covered, the apportionment of joint expenses, and the operation of the joint union school committee.

In most cases, all of the central office administrative staff is hired under the union agreement. The enabling legislation also permits the employment of "special teachers," who could be teaching specialists who provide services in several different school buildings within the union.

A superintendency union is governed by a joint union school committee, which consists of three members from each of the constituent district school committees — the chairperson of each district committee and two other members appointed by the district committee. The joint union school committee's primary responsibilities are hiring the superintendent of schools; establishing salary schedules, benefits and other conditions of employment for the shared staff; and apportioning the shared costs among the member towns.

continued on page four

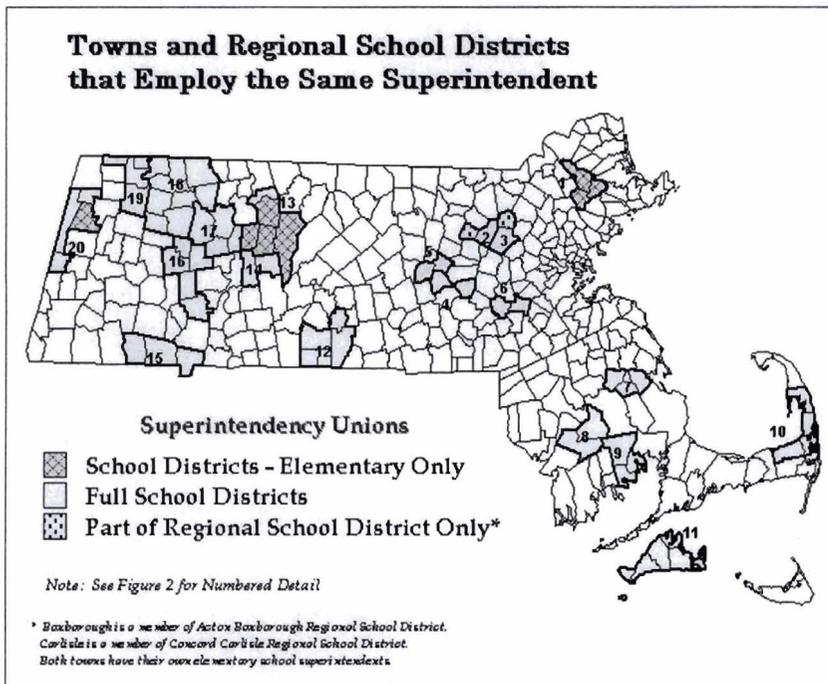


Figure 1

Superintendency Unions

continued from page three

The individual district school committees continue to have control and oversight over their respective schools, including budget, curriculum, school policies, and salaries and employment conditions for school staff.

An existing superintendency union may be dissolved by the vote of the local school committees representing a majority of the participating districts and by a two-thirds vote of the joint union school committee. The chairperson of the union school committee must then submit to the commissioner of Education a written request for approval of the proposed dissolution by the state Board

of Education. The commissioner and the Board of Education will consider the dissolution request following a review of each district's proposed educational plan. This review ensures that the proposed dissolution will not impair the educational opportunities provided by each district, and that all contractual rights and responsibilities of the school system with regard to its employees have been met.

Advantages of a superintendency union

The management of a public school district has become increasingly complex over the past two decades. The state's

1993 education reform law and the federal No Child Left Behind legislation have set lofty goals for student achievement. To reach these goals, most districts need to expand their capacity in areas such as curriculum development, teacher mentoring and training, student assessment and evaluation, and information systems. New regulatory requirements, ranging from CORI checks to pesticide management plans to disaster planning, place additional demands on superintendents and their staffs.

Many small districts find it difficult to afford adequate central office staff to handle these new demands. In many cases, one person is responsible for multiple areas, which makes it difficult to develop in-depth expertise. Small districts may also find it difficult to match the higher salary levels offered by larger districts, leading to a continual loss of skilled personnel at all levels.

By pooling the resources of two or more districts, a superintendency union can provide the critical mass to fully staff a central district office and to allow the district to offer more competitive salaries. At the same time, economies of scale can provide savings that can be used to provide additional instructional services in the classrooms.

A superintendency union does require some extra administrative work to support multiple school committees and to track and allocate costs. Superintendents and other key staff have to spend many extra nights out attending school committee meetings. But on average, districts in superintendency unions have lower administrative costs per pupil than do standalone local districts.

Comparison of superintendency unions and regional school districts

Regionalization is another organizational option that offers many of the same benefits as a superintendency union, including a critical mass and economies of scale for central office operation. In fact, K-12 regional school districts have the lowest administrative costs per pupil

Superintendency Union Members and Districts That Share the Same Superintendent					
Map no.	School district	Union no.	Map no.	School district	Union no.
1	Boxford Middleton Topsfield	58	12	Brimfield Brookfield Holland Sturbridge Wales Tantasqua Regional	61
2	Acton Acton Boxborough Regional (includes Acton and Boxborough)		13	Erving Leverett Shutesbury New Salem Wendell Regional	28
3	Concord Concord Carlisle Regional (includes Carlisle and Concord)		14	Amherst Pelham Amherst Pelham Regional	29
4	Northborough Southborough Northborough Southborough Regional	3	15	Granville Southwick Tolland Regional (includes Southwick and Tolland)	
5	Berlin Boylston Berlin Boylston Regional	60	16	Southampton Westhampton Williamsburg Chesterfield Goshen Regional (includes Chesterfield and Goshen)	66
6	Dover Sherborn Dover Sherborn Regional	50	17	Hampshire Regional Conway Deerfield Sunderland Whately Frontier Regional	38
7	Halifax Kingston Plympton Silver Lake Regional	31	18	Rowe Hawlemont Regional (includes Charlemont and Hawley) Mohawk Trail Regional (includes Ashfield, Buckland, Colrain, Heath, Plainfield and Shelburne)	
8	Freetown Lakeville Freetown Lakeville Regional	34	19	Clarksburg Florida Monroe Savoy Hancock Lanesborough New Ashford Richmond	43
9	Marion Mattapoisett Rochester Old Rochester Regional	55	20		69
10	Brewster Eastham Orleans Wellfleet Nauset Regional	54			
11	Edgartown Oak Bluffs Tisbury Marthas Vineyard Regional Upland Regional (includes Aquinnah, Chilmark and West Tisbury)	19			

Figure 2

continued on page five

Superintendency Unions

compared to all other organizational options. In a regional district, there is a single school committee, with one district budget, one curriculum and one set of policies. This, in turn, offers a greater opportunity to coordinate programs and staff to maximize resources.

Regional school districts are much more complicated to establish than superintendency unions. Approval is required from town meeting and from the Department of Education. A regional agreement must be negotiated, detailing the makeup of the regional school committee, the transfer of school buildings to the regional district, allocation of operating costs, and other issues. There is often reluctance on the part of local voters to give up direct control of their local schools.

It has not been uncommon for some towns to start with a superintendency union agreement and then later move to full regionalization.

In addition to the educational and organizational benefits, a regional district is the appropriate option if there is a need for a regional school, which is an individual school building serving two or more towns.

Who should consider a superintendency union

Compared to other states, Massachusetts' school districts tend to be very small in size. Nearly 85 percent of the operating academic school districts in the Commonwealth have enrollments of fewer than 5,000 students. Many of these are local districts that might benefit from the cooperative opportunities available in a superintendency union. Factors to be considered include the town's current fiscal capacity to meet the district's needs, and the proximity of other similar towns for which a union might be an option. Although most of the existing superintendency unions are either elementary districts only or

elementary districts combined with a regional secondary district, there is no reason why two or more small K-12 local districts could not benefit from a union agreement.

School committees interested in exploring the possibility of forming a new union need to carefully weigh the potential economic, organizational and educational impacts. Department of

Education staff are available to provide information and assistance. For more information, visit the DOE website at <http://finance1.doe.mass.edu/regional/> or contact Christine M. Lynch in DOE's school finance office, at 781-338-6520 or by e-mail at clynch@doe.mass.edu. ■

Editor's Note: This article represents the opinions and conclusions of the author and not those of the Department of Revenue.

Knowing What You Can Spend

The Importance of Multi-Year Financial Forecasting

by Christopher J. Ketchen

Every autumn, the 351 cities and towns across the Commonwealth begin their annual budget process. For most communities, the process begins with the presentation of budget projections that show a shortfall for the following year. Over the course of the budget process, local decision makers will find a way to balance next year's budget through a variety of methods depending on the community. However, very soon, the process starts all over again, and all the hard work and policy debates of the previous year will have officials back at the same place. In short: it may be a new year, but it is still the same old story and another budget in need of balance.

The Elusiveness of Structural Balance

The reason for this endless cycle is, while some communities may have balanced next year's budget, it was never *structurally* balanced for the long-term. That is, recurring government revenues are not sufficient to cover recurring expenses for programs and services.

The reasons for a lack of structural balance in municipal budgets are well defined.

1. Uncontrollable costs
2. Constraints of Proposition 2½
3. Variable state aid
4. Lack of financial planning

The first barrier to structural balance is rapid and uncontrollable cost increases. Examples from recent years include health insurance, pension obligations, special education and utilities. While such costs have routinely and significantly exceeded the rate of inflation, escalation alone does not create structural imbalance. As costs increase, structural difficulties are exacerbated by a second barrier — the revenue raising constraints of Proposition 2½.

Most communities work to build a budget within the revenue constraints established by Proposition 2½. The magnitude of this job is demonstrated by the fact that an average of 62 communities attempt at least one operating override question every year. Since the passage of Proposition 2½, there have been 4,185 operating budget override questions placed on city and town ballots in the Commonwealth. This figure does not include debt or capital exclusions. These ballot questions have a long-term success rate of 40 percent, though there is variation depending on the political or economic climate.

Many observers contend that the need for so many overrides demonstrates government's inability to live within its means. On the other side of the coin, some argue that the services provided by government are vital and the 2½ percent rule neglects consideration of infla-

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City and Town

Navjeet K. Bal, Commissioner • Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



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Chapter 188 of the Acts of 2008 — Understanding and Applying the New Intermunicipal Agreements Law

Laura Schumacher, Policy Counsel, Metropolitan Area Planning Council

As local budgets are stretched and the demand for professional, effective municipal services persists, there has been a growing trend toward regionalizing some local functions through intermunicipal agreements. The hundreds of intermunicipal agreements entered into by municipalities cover a spectrum of services from shared management of a bike trail to public purchasing cooperatives to the sharing of traffic engineers, administrative assistants and animal control officers.

Governor Deval L. Patrick signed into law Chapter 188 of the Acts of 2008, An Act Regulating Intermunicipal Agreements on July 18, 2008. Filed by Senator Pamela Resor and championed by the Massachusetts Municipal Association and the Metropolitan Area Planning Council, the new law makes it dramatically easier for municipalities to enter into intermunicipal agreements and reflects an interest on the part of the commonwealth to encourage municipalities to work collaboratively and regionalize.

The bill amended M. G.L. c. 40 § 4A, the law governing intermunicipal agreements, to shift the authority necessary to approve such agreements in municipalities with a town form of government from town meeting to the board of selectmen, while retaining all of the current requirements for financial safeguards and record keeping as outlined in M.G.L. c. 40 § 4A. The bill does not

affect cities, where adoption of intermunicipal agreements still requires approval of the mayor and city council.

Legal Requirements

Ch. 40, § 4A authorizes agreements between municipalities, "to perform ... any services, activities, or undertakings ... authorized by law." Municipalities joining in the agreement may specify the length of the agreement (up to twenty-five years), terms and conditions for addition and withdrawal of members, and the financing arrangements. In addition, Ch. 40A, § 4 includes record keeping, audit and performance bond requirements. Specifically, all agreements must, "provide sufficient financial safeguards for all participants, including, but not limited to: accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received; the performance of regular audits of such records; and provisions for officers responsible for the agreement to give appropriate performance bonds. The agreement shall also require that periodic financial statements be issued to all participants" (M.G.L. c. 40A, §4A). Finally, the agreement **must be authorized by each joining municipality**. In the case of a city, by the city council with the approval of the mayor, and in a town, by the board of selectmen.

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Please consider the environment before printing this newsletter.



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While the law is primarily directed at municipalities, it also authorizes agreements with other "governmental units," including regional planning agencies, regional transit authorities, water and sewer commissions, and state agencies.

Types of Intermunicipal Agreements

There are three basic types of intermunicipal agreements: (1) formal contracts; (2) joint service agreements, and (3) service exchange arrangements.

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Formal contracts, the most common method of intergovernmental contracting, are written contracts between two municipalities, under which one local government agrees to provide a service to another local government for an agreed upon price. An example of a formal contract is the sharing of personnel with another jurisdiction, such as an animal control officer or traffic engineer.

Joint service agreements are agreements between two or more municipalities to join forces to plan, finance and deliver a service within the boundaries of all participating jurisdictions. A joint service agreement gives local governments broad flexibility to tailor the agreement to reflect the unique needs of the service provided. Public works is currently the most common area for joint service agreements, including joint ownership of new equipment and shared solid waste disposal/refuse districts.

Finally, **service exchange arrangements** are agreements under which participating jurisdictions agree to lend services to one another, generally without any payment required. The most common example of a service exchange arrangement is mutual aid for emergency services, used by municipal police and fire departments faced with limited time and constraints on budget and staff.

Elements of Intermunicipal Agreements

Once the decision to enter into an intermunicipal agreement is made, the parties must negotiate the terms and conditions. This step is critical to ensuring a successful agreement, and municipalities should anticipate possible stumbling blocks and incorporate elements addressing such issues into their agreement accordingly. In addition to basic elements that every agreement should contain, such as the parties, the purpose, the term of the agreement, and methods for amendment and termination, the following is a summary of elements that can help ensure that intermunicipal agreements run smoothly.

Financing: If the agreement calls for the purchase of equipment or some other expenditure of funds, specify the manner of financing to be used and how a budget will be established and maintained. If the subject of the inter-local agreement will require an appropriation of funds from the municipality, such appropriation is subject to ratification by town meeting or the city council.

Oversight: Agreements should specify who will be responsible for supervising and reporting on the contract's implementation and overall performance, as well as specifically stating who has direction and control over employees. In addition, Ch. 40, § 4A includes record-keeping, audit and performance bond requirements. Agreements should specify who is responsible for fulfilling these requirements.

Availability of Service: If a service is to be provided by one municipality to another, clearly identify when the service is to be available. Specify if there are certain days or times when the equipment or personnel being shared will be available, and what happens if a scheduled service cannot be provided at the appointed time (can the receiving municipality seek the services of a third party, and who will cover any costs incurred). If personnel are being shared, specify what happens in instances of overtime or lack of availability due to needs of the sending municipality.

Public works is currently the most common area for joint service agreements, including joint ownership of new equipment and shared solid waste disposal/refuse districts.

Compensation: If payments are to be made to a municipality providing services or equipment, identify the cost of such services throughout the duration of the contract, how such costs will be allocated between/among the parties, and how and when payments will be made. Additional considerations include provisions for the periodic modification of the fee for services, the establishment of a record-keeping and reporting mechanism, and a determination of how any additional costs, such as start-up costs or capital costs, will be handled.

Indemnification: For the protection of municipalities executing the agreement, it is recommended that the liability of each party be spelled out in as much detail as possible. Specifically, consider whether there is a need for the

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recipient of the service to indemnify or hold harmless the provider of the service from any and all claims, demands, losses, damages, injuries, suits, penalties, costs, liability and expenses (including, but not limited to, reasonable investigation and legal expenses) for personal injury or property damage arising out of the provision of the service. This is particularly applicable when equipment is shared among municipalities and there is a need to cover the operation, use or stage of the equipment while in the possession of the recipient municipality.

If the subject of the inter-local agreement will require an appropriation of funds from the municipality, such appropriation is subject to ratification by town meeting or the city council.

Insurance: It is important to ensure that there is adequate insurance coverage under the agreement. Consider whether policies should name the receiving municipality as an additional insured party. If equipment is being shared, address who will assume the risk of loss, theft or damage to the equipment once the receiving municipality takes possession. In addition, address who will assume the cost of repair and/or the full replacement cost if the shared equipment is damaged, lost or destroyed while in possession of the recipient.

Dispute Settlement: In the event any disputes or questions may arise between the parties as to the interpretation of the terms of the agreement or the satisfactory performance by any of the parties of the services and other responsibilities provided for in the contract, specify what type of mechanism will be used to settle such disputes.

Personnel: If an agreement calls for the addition of personnel, consider who will hire, direct, discipline and fire staff. Consider if and how salary, benefits and other overhead costs will be distributed between municipalities. If a municipality is sharing its personnel with another municipality, what are the rights, privileges and immunities of the providing municipality's employees working in the receiving municipality's jurisdiction?

Property: If the agreement relates to the acquisition of property, real or personal, jointly among municipalities, specify the manner of acquiring, holding, and disposing of such property. If assets are disposed of, how will the funds be distributed among the parties.

Municipal Considerations

Intermunicipal agreements are becoming an increasingly popular tool to allow for the sharing of resources and increasing efficiencies between municipalities and with governmental units. Chapter 188 of the Acts of 2008 enhances the ability of towns to use intermunicipal agreements by eliminating the requirement of town meeting approval and placing authority in the board of selectmen, thereby enhancing their ability to experience the benefits of such agreements, including lowered costs to municipalities, improved serv-

ice delivery, increased efficiencies and the availability of services, equipment and personnel that the municipality otherwise could not obtain.

However, it is important to note that the Department of Revenue has advised municipalities that they will be bound by the financial commitments made in intermunicipal agreements even without town meeting approval or subsequent appropriation. Therefore, to the extent the agreement involves financial commitments, municipalities should make sure there are local processes in place to handle the financial impacts.

To assist municipalities with their regionalism initiatives, the legislature and the administration have re-established the District Local Technical Assistance (DLTA) fund and tied DLTA appropriations to regionalization so that regional planning agencies may provide their services to municipalities interested in working collaboratively and realizing the benefits of regionalizing through intermunicipal agreements.

With some foresight and planning by municipalities, intermunicipal agreements can be a useful tool in enhancing services and reducing costs, while promoting intermunicipal collaboration and regionalization.

For additional information, please contact Laura Schumacher, Policy Counsel at the Metropolitan Area Planning Council, at 617-451-2770 x2046 or lschumacher@mapc.org. ■

Editor's note: this article represents the opinions and conclusions of the author and not those of the Department of Revenue.