

Law: The Legal Aspects of Regionalizing Municipal Services

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As fiscal constraints on municipalities continue to tighten, there are significant incentives for cities and towns to explore ways in which municipal services can be shared or consolidated. There are various options available to municipalities to regionalize services under existing statutes, special acts, and through regional cooperation efforts, especially in the area of joint purchasing.

Regional Districts Under General Laws

There are a number of statutory schemes in the Massachusetts General Laws that permit two or more municipalities to create regional districts that provide for particular municipal services. The process for creating different types of regional districts, as well as the powers and duties of regional districts, are often similar in nature. The creation of a regional district generally entails a series of town meeting or city council votes, and, in some instances, approval at an election. While the statutory schemes differ somewhat in the autonomy of districts, in most instances the regional agreement that is negotiated can provide for a level of financial oversight and control by the member municipalities.

Regional School Districts: Perhaps the oldest form of regional district under the General Laws in Massachusetts is the regional school district. Two or more towns are authorized under Chapter 71, Sections 14 and 15, to establish a regional school system. The process begins with a town meeting vote in each town to establish a regional school district planning committee. The committee is limited to three members, appointed by the moderator. At least one member of the school committee must be appointed to the regional planning committee. The statute also authorizes town meeting to appropriate funds, not in excess of one tenth of one per cent of the assessed valuation of the town in the preceding year, in order to meet the expenses of the study committee. Once the committees are established in each town, they may join together to create a regional school district planning board.

The regional school district planning committees (or the regional school district planning board) then meet for the purpose of studying the advisability of forming a regional school district and to negotiate a proposed regional school district agreement. Regional school district agreements typically address: (1) the number, composition, method of selection, and terms of office of the members of the regional school district committee; (2) the location, type, and ownership of school buildings; (3) the method of apportionment of

operating and capital expenses, including the cost of construction of school buildings; (4) the method for providing school bus transportation; (5) the method by which new towns may be admitted to the district; (6) the process for amending the agreement; (7) details regarding the formulation and approval of the annual operating budget; and, (8) any other matter deemed advisable as long as it is consistent with applicable law.

With respect to the number, composition, and method of selection of regional school district committee members, the regional agreement must comply with the “one person one vote” requirements of the United States Constitution. If the members are to be elected by the voters, this generally means that committee members for each town must be apportioned voting power that reflects their respective town populations. This can be achieved by assigning a weighted vote to each committee member or by establishing a sufficient number of total members so that each member represents a proportionate number of voters. For example, if a town has 33 and 1/3 percent of the population of all of the towns in the district and there are three committee members from that town, the total size of the regional committee would have to be nine members. In the alternative, the agreement could assign a weighted vote to each of the three members from the town so their total voting power represented 33 and 1/3 of the weighted votes. The statute also permits a district-wide election of all of the members of the regional school committee. If the members are appointed, the requirements for a weighted vote do not apply.

Once the draft agreement is negotiated, it must be submitted to the Department of Elementary and Secondary Education for approval. Thereafter, it must be submitted to the voters in each member town for approval. In a town with an open town meeting, the proposed agreement may be approved at either the annual town meeting or a special town meeting. In a town with a representative town meeting or a town council form of government, the proposed agreement must be approved as a ballot question at an annual or special election.

Regional Refuse Disposal Districts: Two or more cities or towns may formulate a regional refuse disposal district under Chapter 40, Sections 44A through 44K. A regional refuse disposal district is a separate body (politic and corporate) formed for the purpose of providing solid waste and recycling services either through facilities owned by the district or by contracting with private vendors to provide the services. It has the authority to acquire land by eminent domain or otherwise, to incur debt for the construction of facilities, to adopt an annual operating budget, and to assess member towns for the costs of operating the facilities of the regional refuse disposal district. The district is

governed by a regional refuse disposal district committee appointed or elected in accordance with the regional agreement.

The process for formulation of such a district is similar to that of a regional school district, beginning with the appointment of a three-person unpaid committee in each town, known as a regional refuse disposal planning committee. The vote to authorize such a planning committee is by town meeting or town council in a town or by a council vote in a city. The planning committee then meets to draw up a regional agreement, which in turn must be approved in a town by a printed ballot at the next annual town meeting or by a special town meeting called for such purpose; in a city, the proposed agreement must be approved by the city council.

Regional Water and Wastewater Districts: municipalities may join together to form a regional water and sewer wastewater district commission under Chapter 40N, Section 25. The method of formulating a regional water and wastewater district commission, as well as the powers and duties of such a commission, are virtually identical to a regional refuse disposal district.

Veterans Districts: Two or more municipalities may join together to form a veterans district for the purpose of providing veterans services to members of the municipalities under Chapter 115, Section 10. The district may be created by vote of the board of selectmen in a town and by vote of the city council in a city. A veterans district may employ a director of veterans services, who is responsible for providing veteran services to all member municipalities in accordance with the powers and duties of the district as set forth in Chapter 115, Section 11. There are, however, two significant limitations contained in the statute: all member municipalities must be contiguous, and only one municipality in the district may be a city.

Joint Powers Agreement for the Management, Protection, and Enhancement of Natural Resources: Municipalities are authorized under Chapter 21A, Section 20, to enter into agreements for environmental protection purposes as approved by the secretary of Energy and the Environment. The joint powers agreement may be among municipalities, or they may be entered into with other public agencies, including Massachusetts state agencies as well as state agencies from other states. Such agreements are primarily joint cooperation agreements. They cannot supplant local authority, and they require the normal processes for the appropriation and expenditure of funds.

Regional Districts by Special Act

The statutory forms for regional districts may not be suitable in particular circumstances. In these instances, one or more municipalities can seek special legislation to create unique forms for regional districts, including for the provision of joint services that may not be covered by one of the statutory forms for regional districts. A good example of a special act district is the Dedham-Westwood Water District, created in 1886 by a special act of the Legislature. Other types of regional districts by special act include the Massachusetts Water Resources Authority, the Upper Blackstone Water Pollution Abatement District, regional planning agencies, and county councils of government. The obvious benefit of such special act districts is the ability of the incorporating municipalities to write into the special act particular provisions that are suitable for their specific needs.

Joint Purchasing and Procurements

With the advent of the Uniform Procurement Act (M.G.L. Ch. 30B), the procurement of supplies and services by municipalities has become complex and time-consuming. Moreover, it's often the case that the market share of a single municipality is not large enough to generate significant competition among vendors in a particular field. In order to increase competition and obtain more competitive bids, municipalities have been turning to joint purchasing schemes to gain better pricing for municipal services while at the same time reducing the commitment of staff resources to purchasing efforts. There are several mechanisms in the General Laws that permit joint purchasing. They include, for example, Chapter 7, Section 22A, which allows municipalities to purchase supplies and services through the state purchasing agent (state bid list), and Chapter 7, Section 22B, which permits joint purchasing efforts by two or more municipalities. In both instances, such procurements are exempt from public bidding under the Uniform Procurement Act as long as the vendor, in the case of Section 22A, has a contract with the Commonwealth, and, in the case of Section 22B, as long as the lead municipality undertaking the procurement on behalf of the other municipalities complies with the public bidding requirements of Chapter 30B.

There have been several recent examples of cities and towns using their joint purchasing authority to procure solid waste curbside collection and disposal contracts. Even though such contracts are technically exempt from public bidding under Chapter 30B, these municipalities have seen increased competitive pricing by vendors, especially where the joint purchasing captures a large population among the participating cities and towns.

It is important to note, however, that while a joint purchasing effort may conserve municipal resources and result in better pricing, each municipality is responsible for making payment to the vendor for its share of the supplies or services purchased pursuant to the joint procurement under Chapter 7, Section 22B. Due to concerns with contract compliance issues, it is highly recommended that any joint effort be restricted to the procurement process, with each municipality retaining its own contracting authority.

Intermunicipal Agreements

Intermunicipal agreements have long been a valuable tool in providing for shared facilities and services among cities and towns. While intermunicipal agreements have historically been employed to share public works infrastructure assets such as water and wastewater services, they are becoming increasingly popular as a means of sharing the services of town officials, such as dog officers, veterans' agents, and solid waste and recycling coordinators. Intermunicipal agreements have also been successfully employed to share dispatching and other public health and safety responsibilities. It's worth noting that, if an intermunicipal agreement provides that an employee of one town is to provide similar services to another town, that individual continues to be an employee of the town providing the service and not an employee of the town receiving the benefit of those services.

Intermunicipal agreements are generally governed by Chapter 40, Section 4A. A significant advantage of intermunicipal agreements is that the services or supplies procured are exempt from public bidding pursuant to Chapter 30B, Section 1(b)(3). The essential elements of an intermunicipal agreement are as follows:

1. An intermunicipal agreement may be entered into by two or more "Governmental Units," which are defined as a city, a town, a regional school district, a water or sewer district or other similar district, a regional planning commission, a regional transit authority, a water and sewer commission (established under Chapter 40N or by special law), a county, or a state agency.
2. An intermunicipal agreement can cover a wide range of services, including any services, activities or undertakings to be performed jointly or on behalf of another Governmental Unit, as long as the contracting unit is authorized by law to perform the service, activity, or undertaking.
3. An intermunicipal agreement can be for a term of up to twenty-five years, and, due to a recent amendment to Chapter 4, Section 4A, only requires the approval of the board of selectmen in a town. In cities and

towns that have a council form of government, the intermunicipal agreement must be approved by the city or town council.

4. A city or town may raise funds by any lawful means, including incurring debt, to meet its obligations under an intermunicipal agreement. This is an important provision, especially in the circumstance where a city or town is required to make a significant initial capital contribution to pay for infrastructure improvements required of the host community.

5. An intermunicipal agreement must include the maximum financial liability, if any, that is established in the authorizing vote, and it must provide for certain financial safeguards such as record keeping, financial reporting and audits.

6. Unlike typical contracts for goods and services, an intermunicipal agreement may provide that a municipality's financial obligation is not subject to annual appropriation. This is an important provision since it provides reassurance to the host community that may be required to make a significant capital contribution for new infrastructure that a guaranteed revenue stream from the other participating municipalities will be available in order to meet debt service obligations.

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