

# Understanding and Applying the New Inter-Municipal Agreements Law

BY LAURA SCHUMACHER

On July 18, Governor Deval Patrick signed into law Chapter 188 of the Acts of 2008, An Act Regulating Inter-Municipal Agreements. 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 inter-municipal agreements and reflects an interest on the part of the Commonwealth to encourage municipalities to work collaboratively and regionalize.

The bill amended Chapter 40, Section 4A, the law governing inter-municipal 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. The bill did not affect cities, where adoption of inter-municipal agreements still requires approval of the mayor and the city council.

## Legal Requirements

Chapter 40, Section 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.

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In addition, Chapter 40A, Section 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.” 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.

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 Inter-Municipal Agreements

There are three basic types of inter-municipal agreements: formal contracts, joint service agreements, and service exchange arrangements.

Formal contracts, the most common method of inter-governmental 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 the most common area for joint service agreements, including joint ownership of new equipment and shared solid waste disposal districts.

Under service exchange arrangements, 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.

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### Elements of Inter-Municipal Agreements

Once the decision to enter into an inter-municipal 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 inter-municipal 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 participating municipalities, 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, specifically stating who has direction and control over employees. In addition, Chapter 40, Section 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, 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. If personnel are being shared, specify what happens in instances of overtime or lack of availability due to needs of the sending municipality.

**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 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 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, liabilities 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.

**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.

**Dispute Settlement:** Specify what mechanism will be used to settle any disputes or questions that 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.

**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, identify the rights, privileges and immunities of the providing municipality's employees while 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, specify how the funds will be distributed among the parties.

### Financial Considerations

Chapter 188 of the Acts of 2008 enhances the ability of towns to use inter-municipal agreements by eliminating the requirement of town meeting approval and placing authority with the board of selectmen. It is important to note, however, that the Department of Revenue has advised municipalities that they will be bound by the financial commitments made in inter-municipal 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. ❁