

December 29, 2016

TO: Tim Carroll
FROM: Maggie Downey
RE: Joint Powers Authority

As we discussed, you requested that I provide a brief overview of why the Cape Light Compact will be discussing the recently enacted Joint Powers Authority provision of Massachusetts General Laws. This subject will be discussed at the Compact's January 11, 2017 Board meeting, and at a proposed January meeting on the Vineyard. I have asked Compact counsel to prepare a memo for the Board on this subject. The information below is from a draft of the memo counsel is preparing.

BACKGROUND

An Act Modernizing Municipal Finance and Government was recently enacted by the Legislature as Chapter 218 of the Acts of 2016 (the "Act"). One of the provisions in the Act allows governmental units to enter into joint powers agreements. This provision is codified under G.L. c. 40, §4A ½ and was effective November 7, 2016 (the "Joint Powers Statute"). The Joint Powers Statute is appended to this memorandum as Exhibit A. Through adoption and execution of joint powers agreement, the constituent members create a separate legal entity which is a "body politic and corporate." In this memorandum, this entity will be referred to as a "JPE." Based on inquiries made to the Massachusetts Department of Revenue ("DOR"), it appears that the Joint Powers Statute was originally conceived by the Executive Office of Administration and Finance and by the DOR's Division of Local Services. The apparent focus of the Joint Powers Statute was to address the limited scope of the existing intergovernmental agreement statute, G.L. c. 40, §4A, with respect to borrowing, the ability to directly employ personnel, and to allow for the independence enjoyed by a body corporate and politic, including the power to sue and be sued.

The Cape Light Compact (the "Compact") was originally formed in October of 1997 through entry into an intergovernmental agreement ("IGA") by its constituent members. The term of the IGA (now in its sixth iteration) expires in 2022, as the statute governing intergovernmental agreements provides that the terms of such agreements cannot exceed twenty-five years. Article XIV of the IGA provides that at the conclusion of the twenty-five year term, the members shall in good faith negotiate a replacement intergovernmental agreement. Membership in the Compact is currently comprised of Dukes County, Barnstable County and the twenty-one Cape Cod and Vineyard towns.

Given the size and importance of the Compact's programs, and the need for oversight and possible approval by the Department of Public Utilities ("DPU") if there are major changes to its organizational structure, the Compact needs to start considering its long-term options. More

pressingly, the Compact's current administrative and fiscal agent, Barnstable County ("County") has notified the Compact that it no longer wishes to continue to render such services. The Compact and the County are now in the process of unwinding their relationship and negotiating a termination/transition agreement. Well before termination of the transition agreement (now proposed to be no later than June 30, 2017 with the possibility of an extension to December 31, 2017), the Compact will need to find a new fiscal agent or explore other options. A JPE could serve as the Compact's administrative agent, and eventually, long-term, serves as the operational successor to the Compact.