

**Key Aspects of Joint Powers Statute/Fact Sheet**  
(12/16/16)

- **Substance of Joint Powers Agreement**

The Act allows governmental units to enter into joint powers agreements. A joint powers agreement is a contract specifying the terms and conditions of the joint exercise of powers and duties. The agreement is required to specify the following terms:

- (1) the purpose and the method by which the purpose sought shall be accomplished;
- (2) the services, activities or undertakings to be jointly performed within the region;
- (3) the specific organization, composition and nature of the entity created thereby to perform the services, activities or undertakings within the region, and the specific powers and duties delegated thereto; provided, however, that such entity shall be a body politic and corporate created pursuant to subsection (d) whose funds shall be subject to an annual audit and a copy of such audit shall be provided to the member governmental units and to the division of local services in the department of revenue;
- (4) the manner of: (i) financing the joint services, activities or undertakings within the region, (ii) establishing and maintaining a budget therefore and (iii) authorizing borrowing pursuant to subsection (e), including any limitations on the purposes, terms and amounts of debt the entity may incur to perform such services, activities or undertakings;
- (5) any procedures related to the termination of the joint powers agreement, the withdrawal of any participating governmental unit and the addition of any new governmental units; and (6) its duration.

Joint Powers Statute, Subsection (c).

- **Membership**

Membership in a JPE is limited to governmental units. A governmental unit is defined as a *city, town* or a regional school district, a district defined in G.L. c. 40, §1A (e.g., fire, water, sewer, etc.), a regional planning commission, however constituted, the Hampshire council of governments, a regional transit authority under G.L. c. 161B, a water and sewer commission formed under G.L. c. 40N or by special law, *a county*, or a state agency defined in G.L. c. 6A, §1.

- **Formation**

At least two government units are needed to form a JPE. The Joint Powers Statute provides that 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 enter into a joint powers agreement with another governmental unit for the joint exercise of any of their common powers and duties within a designated region. The agreement must be authorized by the city council with the approval of the mayor, the board of selectmen, or a prudential committee, respectively, for each governmental unit.

- **Liability of Members**

There is no liability of one governmental unit for the acts or omissions of another participating governmental unit or the authority itself unless otherwise agreed to in the joint powers agreement. The Joint Powers Statute provides as follows: “[a] participating governmental unit shall not be liable for the acts or omission of another participating government unit or the region or any entity created by the joint powers agreement, unless the participating governmental unit has agreed otherwise in the joint powers agreement. Joint Powers Statute, Subsection (g).

- **Powers**

Entities that are established by a joint powers agreement are bodies politic and corporate. Subsection (d) of the Joint Powers Statute expressly confers the following powers on entities formed under the statute:

- (1) sue and be sued;
- (2) make and execute contracts and other instruments necessary for the exercise of the powers of the region;
- (3) make, amend and repeal policies and procedures relative to the operation of the region;
- (4) receive and expend funds;
- (5) apply for and receive grants from the commonwealth, the federal government and other grantors;
- (6) submit an annual report to each member governmental unit, which shall contain a detailed financial statement and a statement showing the method by which the annual charges assessed against each governmental unit were computed; and
- (7) any such other powers as are necessary to properly carry out its powers as a body politic and corporate.

In addition, a separate portion of the Joint Powers Statute provides for borrowing powers and the power to enter into contracts for purchasing of supplies and land, amongst other powers:

The board of directors may borrow money, enter into long or short-term loan agreements or mortgages and apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purposes of the entity. The borrowing, loans or mortgages shall be consistent with the joint powers agreement, standard lending practices and sections 16 to 28, inclusive, of chapter 44. The board of directors may, subject to chapter 30B, enter into contracts for the purchase of supplies, materials and services and for the purchase or lease of land, buildings and equipment, as considered necessary by the board of directors.

Joint Powers Statute, Subsection (e).

- **Management of JPE**

Management and control of the JPE is vested in a board of directors. As stated in the Joint Powers Statute “[t]he board of directors coordinates the activities of the entity and may establish any policies and procedures as necessary to do so.” Each member is entitled to representation on the board and such member is entitled to voting rights. Joint Powers Statute, Subsection (e).

- **Financial Controls**

As an independent entity that is a body politic and corporate, the JPE would need to obtain a taxpayer identification number to file taxes. The JPE, through its board of directors, is required to “establish and manage a fund to which all monies contributed by the participating governmental units, and all grants and gifts from the federal or state government or any other source shall be deposited.” Joint Powers Statute, Subsection (e).

Authorities formed under the Joint Powers Statute are subject to certain financial controls and transparency. The Joint Powers Statute contains audit, reporting and accounting requirements. More specifically, the JPE must establish and maintain and budget, and perform annual audits. The audits are to be distributed to its constituent members, and to division of local services in the DOR. Joint Powers Statute, Subsection (c). Annual reports to members are also required; the Joint Powers Statute specifies that the content of the report must include “a detailed financial statement and a statement showing the method by which the annual charges assessed against each governmental unit were computed.” Joint Powers Statute, Subsection (d).

In addition, management and disbursement of the JPE’s funds is under control of multiple parties -- the Board of Directors, its Treasurer and its business officer -- providing a system of checks and balances. The Joint Powers statute provides for appointment of a treasurer and a business officer. The treasurer can be from one of the participating governmental units, but the treasurer cannot be on the board of directors or an employee of the JPE. The board of directors must appoint a business officer (the officer may be a city auditor, town accountant or officer with similar duties from one of the participating governmental units) that will have the accounting duties pursuant to G.L. c. 41, §§52 and 56. The business officer cannot also serve as treasurer. Joint Powers Statute, Subsection (e).

- **Employees**

Under the Joint Powers Statute, joint powers entities are expressly empowered to hire their own employees. It provides “[t]he entity shall be a public employer. The board of directors may employ personnel to carry out the purposes of the joint powers agreement and establish the duties, compensation and other terms and conditions of employment of personnel.” Joint Powers Statute, Subsection (f).

## APPENDIX

### **Chapter 40, Section 4A1/2: Joint powers agreements**

Section 4A 1/2. (a) For purposes of this section, the following words shall, unless the context requires otherwise, have the following meanings:--

"Governmental unit", a city, town or a regional school district, a district as defined in section 1A, a regional planning commission, however constituted, the Hampshire council of governments, a regional transit authority established pursuant to chapter 161B, a water and sewer commission established pursuant to chapter 40N or by special law, a county, or a state agency, as defined in section 1 of chapter 6A.

"Joint powers agreement", a contract specifying the terms and conditions of the joint exercise of powers and duties entered into by participating governmental units pursuant to the laws governing any such unit and this section.

"Region", any geographically-designated area within which the powers and duties provided in a joint powers agreement shall be exercised.

(b) 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 a joint powers agreement with another governmental unit for the joint exercise of any of their common powers and duties within a designated region; provided, however, that the joint powers agreement shall not apply to veterans' services in any city or town or districts and municipal veterans' services and departments shall be subject to chapter 115. The joint powers agreement shall be authorized by the parties thereto in the following manner: 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. A decision to enter into a joint powers agreement pursuant to this section, or to join an existing region, shall not be subject to bargaining pursuant to chapter 150E.

(c) The joint powers agreement shall specify the following: (1) the purpose and the method by which the purpose sought shall be accomplished; (2) the services, activities or undertakings to be jointly performed within the region; (3) the specific organization, composition and nature of the entity created thereby to perform the services, activities or undertakings within the region, and the specific powers and duties delegated thereto; provided, however, that such entity shall be a body politic and corporate created pursuant to subsection (d) whose funds shall be subject to an annual audit and a copy of such audit shall be provided to the member governmental units and to the division of local services in the department of revenue; (4) the manner of: (i) financing the joint services, activities or undertakings within the region, (ii) establishing and maintaining a budget therefore and (iii) authorizing borrowing pursuant to subsection (e), including any limitations on the purposes, terms and amounts of debt the entity may incur to perform such services, activities or undertakings; (5) any procedures related to the termination of the joint

powers agreement, the withdrawal of any participating governmental unit and the addition of any new governmental units; and (6) its duration.

(d) An entity established by a joint powers agreement shall be a body politic and corporate with the power to: (1) sue and be sued; (2) make and execute contracts and other instruments necessary for the exercise of the powers of the region; (3) make, amend and repeal policies and procedures relative to the operation of the region; (4) receive and expend funds; (5) apply for and receive grants from the commonwealth, the federal government and other grantors; (6) submit an annual report to each member governmental unit, which shall contain a detailed financial statement and a statement showing the method by which the annual charges assessed against each governmental unit were computed; and (7) any such other powers as are necessary to properly carry out its powers as a body politic and corporate.

(e) An entity created pursuant to this section shall be governed by a board of directors comprised of at least 1 member representing each participating governmental unit. Each member of the board of directors shall be entitled to a vote. No member of the board of directors shall receive an additional salary or stipend for their service as a board member. The board of directors shall coordinate the activities of the entity and may establish any policies and procedures necessary to do so. The board of directors shall establish and manage a fund to which all monies contributed by the participating governmental units, and all grants and gifts from the federal or state government or any other source shall be deposited. The board of directors shall appoint a treasurer who may be a treasurer of 1 of the participating governmental units. No member of the board of directors or other employee of the entity shall be eligible to serve concurrently as treasurer. The treasurer, subject to the direction and approval of the board of directors, shall be authorized to receive, invest and disburse all funds of the entity without further appropriation. The treasurer shall give bond for the faithful performance of his duties in a form and amount as fixed by the board of directors. The treasurer may make appropriate investments of the funds of the entity consistent with section 55B of chapter 44.

The board shall appoint a business officer who may be a city auditor, town accountant or officer with similar duties, of 1 of the participating governmental units. The business officer shall have the duties and responsibilities of an auditor or accountant pursuant to sections 52 and 56 of chapter 41 and shall not be eligible to hold the office of treasurer.

The board of directors may borrow money, enter into long or short-term loan agreements or mortgages and apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purposes of the entity. The borrowing, loans or mortgages shall be consistent with the joint powers agreement, standard lending practices and sections 16 to 28, inclusive, of chapter 44. The board of directors may, subject to chapter 30B, enter into contracts for the purchase of supplies, materials and services and for the purchase or lease of land, buildings and equipment, as considered necessary by the board of directors.

(f) The entity shall be a public employer. The board of directors may employ personnel to carry out the purposes of the joint powers agreement and establish the duties, compensation and other terms and conditions of employment of personnel.

(g) A participating governmental unit shall not be liable for the acts or omission of another participating government unit or the region or any entity created by the joint powers agreement, unless the participating governmental unit has agreed otherwise in the joint powers agreement.

(h) A regional school district, superintendency union, educational collaborative, charter school or commonwealth virtual school may only be formed as provided in the applicable provisions of the General Laws, and no joint powers agreement made pursuant to this section may, in substance, create such a district, union, collaborative, charter school or virtual school, irrespective of how the entity created pursuant to a joint powers agreement may be characterized or named. A joint powers agreement relating to public schools may only be entered into by the school committee, or other governing board, as applicable.