

SENATE BILL No. 437

June 18, 2013, Introduced by Senator NOFS and referred to the Committee on Local Government and Elections.

A bill to amend 1967 (Ex Sess) PA 7, entitled "Urban cooperation act of 1967," by amending sections 5, 7, and 9 (MCL 124.505, 124.507, and 124.509), section 5 as amended by 2011 PA 263 and section 7 as amended by 2002 PA 445.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) A joint exercise of power pursuant to this act
2 shall be made by contract or contracts in the form of an interlocal
3 agreement which may provide for:

4 (a) The purpose of the interlocal agreement or the power to be
5 exercised and the method by which the purpose will be accomplished
6 or the manner in which the power will be exercised.

7 (b) The duration of the interlocal agreement and the method by

1 which it may be rescinded or terminated by any participating public
2 agency prior to the stated date of termination.

3 (c) The precise organization, composition, and nature of any
4 separate legal ~~or administrative~~ entity **EXPRESSLY** created in the
5 interlocal agreement with the powers designated to that entity.

6 (d) The manner in which the parties to the interlocal
7 agreement will provide for financial support from the treasuries
8 that may be made for the purpose set forth in the interlocal
9 agreement, payments of public funds that may be made to defray the
10 cost of such purpose, advances of public funds that may be made for
11 the purposes set forth in the interlocal agreements and repayment
12 of the public funds, and the personnel, equipment, or property of 1
13 or more of the parties to the agreement that may be used in lieu of
14 other contributions or advances.

15 (e) The manner in which funds may be paid to and disbursed by
16 any separate legal ~~or administrative~~ entity created pursuant to the
17 interlocal agreement.

18 (f) A method or formula for equitably providing for and
19 allocating revenues, including, in the case of an authorized
20 undertaking that is publicly owned at the time the interlocal
21 agreement is entered into or becomes publicly owned during the time
22 the interlocal agreement is in effect, revenues derived by or
23 payable to any participating party or any other public agency which
24 revenues directly or indirectly result from that undertaking,
25 whether the revenues are in the form of ad valorem taxes on real or
26 personal property, taxes on income, specific taxes or funds made
27 available by the state in lieu of ad valorem property taxes or

1 local income taxes, any other form of taxation, assessment, levy,
2 or impost, or any money paid under or which revert from a tax
3 increment financing plan. The interlocal agreement may also provide
4 a method or formula equitably providing for and allocating revenues
5 derived from a federal or state grant or loan, or from a gift,
6 bequest, grant, or loan from a private source. The interlocal
7 agreement may also provide for a method or formula for equitably
8 allocating and financing the capital and operating costs, including
9 payments to reserve funds authorized by law and payments of
10 principal and interest on obligations. Each method or formula shall
11 be established by the participating parties to the interlocal
12 agreement on a ratio of full valuation of real property, on the
13 basis of the amount of services rendered or to be rendered, on the
14 basis of benefits received or conferred or to be received or
15 conferred, or on any other equitable basis, including the levying
16 of taxes or assessments on the entire area serviced by the parties
17 to the interlocal agreement, subject to such limitations as may be
18 contained in the constitution and statutes of this state, to pay
19 those capital and operating costs.

20 (g) The public agency that will function as the employer of
21 personnel and staff needed for the joint exercise of power.

22 (h) The fixing and collecting of charges, rates, rents, fees,
23 loan repayments, loan interest rates, or other charges on loans,
24 where appropriate, and the making and promulgation of necessary
25 rules and regulations and their enforcement by or with the
26 assistance of the participating parties to the interlocal
27 agreement.

1 (i) The manner in which purchases shall be made and contracts
2 entered into.

3 (j) The acquisition, ownership, custody, operation,
4 maintenance, lease, or sale of real or personal property.

5 (k) The disposition, division, or distribution of any property
6 acquired through the execution of such interlocal agreement.

7 (l) The manner in which, after the completion of the purpose of
8 the interlocal agreement, any surplus money shall be returned.

9 (m) The acceptance of gifts, grants, assistance funds, or
10 bequests and the manner in which those gifts, grants, assistance
11 funds, or bequests may be used for the purpose set forth in the
12 interlocal agreement.

13 (n) The making of claims for federal or state aid payable to
14 the individual or several participants on account of the execution
15 of the interlocal agreement.

16 (o) The manner of responding for any liabilities that might be
17 incurred through performance of the interlocal agreement and
18 insuring against any such liability.

19 (p) The adjudication of disputes or disagreements, the effects
20 of failure of participating parties to pay their shares of the
21 costs and expenses, and the rights of the other participants in
22 such cases.

23 (q) The manner in which strict accountability of all funds
24 shall be provided for and the manner in which reports, including an
25 annual independent audit, of all receipts and disbursements shall
26 be prepared and presented to each participating party to the
27 interlocal agreement.

1 (r) The manner of investing surplus funds or proceeds of
2 grants, gifts, or bequests to the parties to the interlocal
3 agreement under the control of a legal ~~or administrative~~ entity
4 created under section 7.

5 (s) Any other necessary and proper matters agreed upon by the
6 participating public agencies.

7 (2) The public agencies that are parties to a contract entered
8 into pursuant to this act have the responsibility, authority, and
9 right to manage and direct on behalf of the public the functions or
10 services performed or exercised to the extent provided in the
11 contract.

12 (3) The contents or language of a contract for a joint
13 exercise of power under this act shall be a permissive subject of
14 collective bargaining between a public agency and a bargaining
15 representative of its employees. If a public agency and a
16 bargaining representative of its employees engage in collective
17 bargaining before the contract for a joint exercise of power is
18 approved and that public agency and that bargaining representative
19 reach an agreement on issues that would obligate the public agency
20 that will function as an employer in the joint exercise of power,
21 the contract for that joint exercise of power shall include those
22 obligations.

23 (4) Nothing in this act creates an employment relationship
24 between the existing employees of a public agency and the proposed
25 joint exercise of power.

26 (5) A joint exercise of power is effective through its
27 contract at least 180 days before the actual transfer of functions

1 or services. Before the effective date of the joint exercise of
2 power, the public agencies that are parties to the contract shall
3 affirm in writing to the joint exercise of power those employees
4 who will be transferred to the joint exercise of power.

5 (6) If employees who are transferred to the joint exercise of
6 power are represented by a labor organization, those employees are
7 subject to their previous terms and conditions of employment until
8 those terms and conditions of employment are modified in accordance
9 with 1947 PA 336, MCL 423.201 to 423.217, or for 6 months after the
10 transfer to the joint exercise of power, whichever is earlier.
11 Negotiations on a collective bargaining agreement with a joint
12 exercise of power shall begin no later than 180 days before the
13 date the employees transfer to the joint exercise of power.

14 (7) Subject to subsection (8), a representative of the
15 employees or group of employees in a public agency who previously
16 represented or was entitled to represent the employees or group of
17 employees in a public agency under 1947 PA 336, MCL 423.201 to
18 423.217, shall continue to represent the employees or group of
19 employees after those employees or group of employees are
20 transferred to the joint exercise of power.

21 (8) This section does not limit the rights of employees, under
22 applicable law, to assert that a bargaining representative
23 protected by subsection (7) is no longer their representative. The
24 employees of the joint exercise of power are eligible as of the day
25 the joint exercise of power becomes effective through its contract
26 to choose their representative under 1947 PA 336, MCL 423.201 to
27 423.217. This subsection does not extend the time limits as

1 provided in subsection (5).

2 (9) If multiple labor organizations assert the right to
3 represent all or part of the workforce of the joint exercise of
4 power or where a substantial portion of the transferred employees
5 were not previously represented, in the absence of a voluntary
6 mutual agreement, at the request of any party or on the initiative
7 of the Michigan employment relations commission, the Michigan
8 employment relations commission shall conduct a representation
9 election.

10 (10) In the absence of a voluntary mutual agreement, the
11 workforce of the joint exercise of power shall be merged by using a
12 single seniority list for each of the same or similar
13 classifications. The single seniority list shall be composed of all
14 employees from each public agency employed or having recall rights
15 on the date of transfer and shall be used for purposes that
16 include, but are not limited to, initial assignments, layoffs,
17 recalls, and job bidding. Disputes concerning the single seniority
18 list or use of the single seniority list shall be heard by a single
19 arbitrator appointed by the Michigan employment relations
20 commission.

21 (11) Nothing in this section requires a public agency or a
22 joint exercise of power to assume a collective bargaining agreement
23 between another public agency and its employees.

24 Sec. 7. (1) An interlocal agreement may provide for a separate
25 legal ~~or administrative~~ entity to administer or execute the
26 agreement which may be a commission, board, or council constituted
27 pursuant to the agreement. ~~The~~ **IF AN INTERLOCAL AGREEMENT DOES NOT**

1 EXPRESSLY PROVIDE FOR A SEPARATE LEGAL ENTITY, THEN A SEPARATE
 2 LEGAL ENTITY SHALL NOT BE CREATED. IF AN INTERLOCAL AGREEMENT DOES
 3 EXPRESSLY PROVIDE FOR A SEPARATE LEGAL ENTITY, THE entity shall be
 4 a public body, corporate or politic for the purposes of this act.
 5 The governing body of each public agency shall appoint a member of
 6 the commission, board, or council constituted pursuant to the
 7 agreement. That member may be removed by the appointing governing
 8 body at will. The ~~administrative or~~ **SEPARATE** legal entity shall not
 9 be operated for profit. No part of its earnings shall inure to the
 10 benefit of a person other than the public agencies that created it.
 11 Upon termination of the interlocal agreement, title to all property
 12 owned by the entity shall vest in the public agencies that
 13 incorporated it.

14 (2) A separate legal ~~or administrative~~ entity created by an
 15 interlocal agreement shall possess the common power specified in
 16 the agreement and may exercise it in the manner or according to the
 17 method provided in the agreement. The **SEPARATE LEGAL** entity may ~~be~~
 18 ~~in addition to its other powers, authorized in its own name to~~ **ALSO**
 19 make and enter into contracts; ~~to~~ employ agencies or employees; ~~to~~
 20 ~~acquire, construct, manage, maintain, or operate buildings,~~
 21 works, or improvements; ~~to~~ acquire, hold, or dispose of property;
 22 ~~to~~ incur debts, liabilities, or obligations that, except as
 23 expressly authorized by the parties, do not constitute the debts,
 24 liabilities, or obligations of any of the parties to the agreement;
 25 ~~to~~ cooperate with a public agency, an agency or instrumentality
 26 of that public agency, or another legal ~~or administrative~~ entity
 27 created by that public agency under this act; ~~to~~ make loans from

1 the proceeds of gifts, grants, assistance funds, or bequests
2 pursuant to the terms of the interlocal agreement creating the
3 entity; ~~and to~~ form other entities necessary to further the
4 purpose of the interlocal agreement. The **SEPARATE LEGAL** entity may
5 sue and be sued in its own name.

6 (3) No separate legal ~~or administrative~~ entity created by an
7 interlocal agreement shall possess the power or authority to levy
8 any type of tax within the boundaries of any governmental unit
9 participating in the interlocal agreement, or to issue any type of
10 bond in its own name, or to in any way indebted a governmental unit
11 participating in the interlocal agreement.

12 (4) A separate legal ~~or administrative~~ entity created by an
13 interlocal agreement may be authorized by the interlocal agreement
14 to borrow money and to issue bonds or notes in its name for local
15 public improvements or for economic development purposes as
16 provided in the interlocal agreement.

17 (5) The entity created by the interlocal agreement shall not
18 borrow money or issue bonds or notes for a sum that, together with
19 the total outstanding bonded indebtedness of the entity, exceeds 2
20 mills of the taxable value of the taxable property within the local
21 governmental units participating in the interlocal agreement as
22 determined under section 27a of the general property tax act, 1893
23 PA 206, MCL 211.27a.

24 (6) Bonds or notes issued under this act are a debt of the
25 entity created by the interlocal agreement and not of the
26 participating local governmental units.

27 (7) Bonds or notes issued under this act are declared to be

1 issued for an essential public and governmental purpose and,
2 together with interest on those bonds or notes and income from
3 those bonds or notes, are exempt from all taxes.

4 (8) Bonds or notes issued under this act are subject to the
5 revised municipal finance act, 2001 PA 34, MCL 141.2101 to
6 141.2821.

7 Sec. 9. (1) All of the privileges and immunities from
8 liability, and exemptions from laws, ordinances, and rules, and all
9 pensions, relief, disability, ~~workmen's~~ **WORKER'S** compensation, and
10 other benefits ~~which~~ **THAT** apply to the activity of officers,
11 agency, or employees of any public agents or employees of any
12 public agency when performing their respective functions within the
13 territorial limits for their respective agencies shall apply to the
14 same degree and extent to the performance of ~~such~~ **THOSE** functions
15 and duties of ~~such~~ **THOSE** officers, agents, or employees
16 extraterritorially under the provisions of any such interlocal
17 agreement.

18 (2) An interlocal agreement does not relieve a public agency
19 of any obligation or responsibility imposed upon it by law except
20 to the extent of actual and timely performance thereof by 1 or more
21 of the parties to the agreement or any legal ~~or administrative~~
22 entity created by the agreement in which case the performance may
23 be offered in satisfaction of the obligation or responsibility.