

Act No. 36
Public Acts of 2014
Approved by the Governor
March 20, 2014
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Senator Nofs

ENROLLED SENATE BILL No. 437

AN ACT to amend 1967 (Ex Sess) PA 7, entitled "An act to provide for interlocal public agency agreements; to provide standards for those agreements and for the filing and status of those agreements; to permit the allocation of certain taxes or money received from tax increment financing plans as revenues; to permit tax sharing; to provide for the imposition of certain surcharges; to provide for additional approval for those agreements; and to prescribe penalties and provide remedies," 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:

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

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

(b) The duration of the interlocal agreement and the method by which it may be rescinded or terminated by any participating public agency prior to the stated date of termination.

(c) The precise organization, composition, and nature of any separate legal entity expressly created in the interlocal agreement with the powers designated to that entity.

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

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

(f) A method or formula for equitably providing for and allocating revenues, including, in the case of an authorized undertaking that is publicly owned at the time the interlocal agreement is entered into or becomes publicly owned during the time the interlocal agreement is in effect, revenues derived by or payable to any participating party or any other public agency which revenues directly or indirectly result from that undertaking, whether the revenues are in the form of ad valorem taxes on real or personal property, taxes on income, specific taxes or funds made available by the state in lieu of ad valorem property taxes or local income taxes, any other form of taxation, assessment, levy, or impost, or any money paid under or which revert from a tax increment financing plan. The interlocal agreement may also provide a method or formula equitably providing for and allocating revenues derived from a federal or state grant or loan, or from a gift, bequest, grant, or loan from a private source. The interlocal agreement may also provide for a method or formula for equitably allocating and financing the capital and operating costs, including payments to reserve

funds authorized by law and payments of principal and interest on obligations. Each method or formula shall be established by the participating parties to the interlocal agreement on a ratio of full valuation of real property, on the basis of the amount of services rendered or to be rendered, on the basis of benefits received or conferred or to be received or conferred, or on any other equitable basis, including the levying of taxes or assessments on the entire area serviced by the parties to the interlocal agreement, subject to such limitations as may be contained in the constitution and statutes of this state, to pay those capital and operating costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) A joint exercise of power is effective through its contract at least 180 days before the actual transfer of functions or services. Before the effective date of the joint exercise of power, the public agencies that are parties to the contract shall affirm in writing to the joint exercise of power those employees who will be transferred to the joint exercise of power.

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

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

(8) This section does not limit the rights of employees, under applicable law, to assert that a bargaining representative protected by subsection (7) is no longer their representative. The employees of the joint exercise of power are eligible as of the day the joint exercise of power becomes effective through its contract to choose their representative under 1947 PA 336, MCL 423.201 to 423.217. This subsection does not extend the time limits as provided in subsection (5).

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

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

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

Sec. 7. (1) An interlocal agreement may provide for a separate legal entity to administer or execute the agreement which may be a commission, board, or council constituted pursuant to the agreement. If an interlocal agreement does not expressly provide for a separate legal entity, then a separate legal entity shall not be created. If an interlocal agreement does expressly provide for a separate legal entity, the entity shall be a public body, corporate or politic for the purposes of this act. The governing body of each public agency shall appoint a member of the commission, board, or council constituted pursuant to the agreement. That member may be removed by the appointing governing body at will. The separate legal entity shall not be operated for profit. No part of its earnings shall inure to the benefit of a person other than the public agencies that created it. Upon termination of the interlocal agreement, title to all property owned by the entity shall vest in the public agencies that incorporated it.

(2) A separate legal entity created by an interlocal agreement shall possess the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement. The separate legal entity may also make and enter into contracts; employ agencies or employees; acquire, construct, manage, maintain, or operate buildings, works, or improvements; acquire, hold, or dispose of property; incur debts, liabilities, or obligations that, except as expressly authorized by the parties, do not constitute the debts, liabilities, or obligations of any of the parties to the agreement; cooperate with a public agency, an agency or instrumentality of that public agency, or another legal entity created by that public agency under this act; make loans from the proceeds of gifts, grants, assistance funds, or bequests pursuant to the terms of the interlocal agreement creating the entity; and form other entities necessary to further the purpose of the interlocal agreement. The separate legal entity may sue and be sued in its own name.

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

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

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

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

(7) Bonds or notes issued under this act are declared to be issued for an essential public and governmental purpose and, together with interest on those bonds or notes and income from those bonds or notes, are exempt from all taxes.

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

Sec. 9. (1) All of the privileges and immunities from liability, and exemptions from laws, ordinances, and rules, and all pensions, relief, disability, worker's compensation, and other benefits that apply to the activity of officers, agency, or employees of any public agents or employees of any public agency when performing their respective functions within the territorial limits for their respective agencies shall apply to the same degree and extent to the performance of those functions and duties of those officers, agents, or employees extraterritorially under the provisions of any such interlocal agreement.

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

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved

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Governor