

SHARED SERVICES

REGULATORY FRAMEWORK AND LEGAL ISSUES IN PENNSYLVANIA & NEW JERSEY

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Putting it in perspective....

Pennsylvania –

67
counties

56 Cities

2,509
Boroughs,
Townships,
Towns

501 School
Districts

1,663
Active
Authorities

Putting it in perspective....

New Jersey –

21
counties

52 Cities

513
Boroughs,
Townships,
Towns,
Villages

616 School
Districts

2014
Active
Authorities

Shared Services – Applicable Law

○ Pennsylvania

- > Intergovernmental Cooperation Law (Act 177 of 1996)
- > "A municipality ... may...cooperate or agree in the exercise of any function, power or responsibility with ... one or more ... municipalities...."
(53 Pa.C.S.A. §2304).

○ New Jersey

- > Uniform Shared Services and Consolidation Act (40A:65-1, *et seq*).
- > Local Unit Alignment, Reorganization & Consolidation Commission Law (C.52:27D-501, *et seq*).

Required Features of PA Act 177 Agreement

- Enacted by ordinance (can incorporate an agreement by reference in ordinance) (§2305).
- Must specify:
 - › Conditions of Agreement
 - › Duration of Agreement
 - › Purpose/objectives of Agreement (including powers/scope of authority delegated)
 - › Manner & extent of financing for Agreement
 - › Organizational structure necessary to implement agreement
 - › Manner in which property shall be acquired, licensed, disposed of
 - › Entity created must be empowered to enter contracts for insurance, employee benefits.(§2307).

Enacting Ordinance in PA Should Include:

- ◉ Title & date of agreement.
- ◉ Names of each municipality.
- ◉ A one sentence summary of the purpose of the agreement.
- ◉ Authorization of the proper official to sign the agreement.
- ◉ Statement that the agreement is attached and made a part of the ordinance.
- ◉ Ensure that everyone receives an original of the agreement.

(§2307)

Required Components - NJ

- Identify specific services to be performed.
- Specify standards for services.
- Allocate responsibility for meeting standards.
- Estimate cost of services for duration and allocate costs.
- Set duration of agreement (10 years unless otherwise stated).
- State procedure for payment.

(40A:67-7a).

NJ Procedure

◎ Resolution

- › May enter into Share Services Agreements by adopting a Resolution.
- › Clearly identify the agreement by reference.
- › Agreement does not need to be set forth in full or attached.
 - Must be open to public inspection after passage of Resolution.
- › Agreement effective upon adoption of Resolution by all parties and execution of agreements.

(40A:65-5).

Other Specifics in PA

State Approval - PA

- ◉ Submit all Act 177 agreements to Local Government Commission for review and recommendation.
- ◉ Should be in agreement as a condition precedent to effectiveness.
- ◉ State has 60 days from receipt to respond or a favorable recommendation is assumed.

(§2314)

Basic Structures for Act 177 Agreements

- ◉ Provider/Purchaser
- ◉ Joint Programs
- ◉ Council of Governments

Joint Purchasing Issues

- › Should follow Act 177
- › Lead Municipality Option
- › County Piggyback Option (Section 2309)
- › Section 2308:
 - Contracts \$10,000 and above: Competitive bidding, written contracts, two notices in paper, compliance with Steel Products Procurement Act;
 - Under \$10,000: At least 3 price quotes between \$4,000 and \$10,000.

Joint Purchasing with Private Entities (§2310)

- ◉ Permitted with private educational and non-profit human services agencies.
- ◉ Ordinance must require private entity to be bound by the terms & conditions of purchase agreements set by the governmental body.
- ◉ Private parties must pay vendors directly.
- ◉ Exempt from statutory requirement of bidding.

Joint Purchasing - Penalties

- Cannot divide transactions in order to evade competitive bidding requirements. (§2312).
- Penalty for elected officials who vote to evade (per contract) – misdemeanor of the 3rd degree. (§2313).
 - › For a misdemeanor of the third degree, a fine of not less than \$250 nor more than \$5,000, or imprisonment not exceeding 90 days, or both. (30 Pa.C.S.A. §923(a)(5)).

Provider/Purchaser Agreements

- One municipality agrees to sell a service or program to others.
- Agreed rate.
- Set period of time.
- Control is in the provider.
- Liabilities generally lie with the provider.
- Program costs/increases lie with the provider.

Joint Programs

- ◉ Shared ownership and control of a program and its assets.
- ◉ Committee of officials from each municipality responsible for oversight.
- ◉ Requires coordination.
- ◉ Sharing of risk and liability.

Council of Governments

- ◉ Special kind of Act 177 entity – both a method and a program.
- ◉ Is a general purpose entity with broad responsibilities.
- ◉ Board/Council – almost always elected officials.
- ◉ More formal.
- ◉ Usually regional in scope.

Council of Governments - Agreements

- Membership – municipalities are members, not individuals.
- Representation and Voting.
- Relationship of COG to other Act 177 Agreements – allow flexibility.
- Bylaws and Election of Officers.

Other Specifics in NJ

LUARCC Law - 2013

- Similar to the federal base realignment & closure procedure.
- Creates the Local Unit Alignment, Reorganization, and Consolidation Commission (LUARCC) in DCA (but not part of DCA).
 - > 9 voting members; generally no elected officials*
 - > No compensation
 - > Commissioner of DCA, State Treasurer & 7 public members with 5 year terms (initial terms staggered)
 - Appointed by President of Senate (1), Senate Minority Leader (1), Speaker of Assembly(1), Assembly Minority Leader(1), Governor (3).
 - Governor's appointees
 - Approved by Senate
 - Spread out geographically
 - No more than 2 of same political party

LUARCC

- ◉ Commission has Executive Director and staff.
- ◉ Duties:
 - › Study & report on structure & functions of county/municipal government
 - › Recommend legislative changes to encourage “more efficient operation of local government.”
 - › Consider “optimal service levels, ratios of employees to population served, cost structures for service delivery and other best practices.”
 - › Report findings within 2 years.

What Can the LUARCC Recommend?

- ◉ Consolidation of municipalities
- ◉ Merger of agencies into parent municipalities or county government
- ◉ Sharing of services
- ◉ Recommendations put to voters – specific wording for ballot provided in statute

Local Cooperation with LUARCC

- Required
- Also may seek assistance from Local Finance Board and Division of Local Government Services (DCA)

NJ Shared Services Agreements

- Must be filed for information purposes with the Division of Local Government, Department of Community Affairs.
- For services that are provided by personnel with a required State license or certification:
 - > Must provide a salary
 - > Must designate one municipality as the Primary Employer for purposes of tenure
 - Or municipality with largest population is by default
 - > State agency/department with oversight may promulgate applicable rules.

Public Employment Matters - NJ

- Preservation of seniority, tenure, pension rights for law enforcement (40A:65-8).
- Employment Reconciliation Plan (40A:65-11)
 - > Must set forth which jurisdiction will handle personnel.
 - > Determine which employees shall transfer to the providing municipality, be retained by the recipient unit or be terminated.
 - > Compliance with applicable collective bargaining agreements.
 - > More specific requirements in statute and Personnel Guidelines material.
 - > Public Employment Relations Commission may provide advice.

Additional Considerations - NJ

- ◉ Referendum (40A:65-7b)
 - > Municipalities may opt to submit to referendum vote.
 - > Agreement effective upon majority vote of all.
- ◉ Dispute Resolution – Binding Arbitration/Factfinding permitted. (40A:65-7c)
- ◉ Agency (40A:65-7d)
- ◉ Non-Exclusivity (40A:65-7e)
- ◉ Must follow Local Public Contracts Law if hiring private contractor. (40A:65-10)

Finance Issues -- NJ

- ◉ Payment terms must be set in agreement.
- ◉ May include installments.
- ◉ Payment Disputes
 - > Amount must be paid in full during dispute.
 - > If dispute succeeds, excess will be returned.

40A:65-7f,g.

Joint Meetings – 40A:65-14, et seq

- “[J]oint operation of any public services, public improvements, works, facilities, or other ... by contracting local units pursuant to a joint contract.”
- Must be for a period of not more than 40 years.
- Cannot operate as a public utility.
- Works as a separate entity.
- Requirements for management committee.

Joint Meetings

Power and Authority

- Can sue or be sued.
- Can acquire and hold real and personal property and can sell it at a public sale.
- Can enter into contracts.
- May perform anything necessary to operate.
- Can receive state and federal funds.
- Can acquire and use lands in any municipality under certain circumstances.
- Special provisions for sewage and solid waste facilities.

Additional NJ Issues:

- ◉ Municipal Consolidation – 40A:65-25
- ◉ SHARE Program – 40A:65-30
- ◉ Voter Participation – 40A:65-32
 - > May adopt resolution authorizing a vote to create a citizens' commission to identify and implement shared service, joint meeting or consolidation opportunities.

**CONSIDERATIONS IN
NEGOTIATING AND
DRAFTING SHARED SERVICES
AGREEMENTS**

Steps to Efficient Implementation of Shared Services Agreements

- Outline parameters of what the agreement is to do.
- Think long term.
- Assign drafting to a professional or solicitor familiar with the topic; have group review.
- Distribute copies of draft agreement/ordinance to each municipality for review and comment.
- Follow up
- Finalize before any municipality votes.

How (or if) a new municipality may join the group at a later date

- › Does this require approval of all parties or of a majority of the parties or even only of the joint board?
- › Should a joining party be required to pay original start-up costs?
 - Are these costs fixed? Do they depreciate over time?
 - Consider a “joining fee”

Dropping Out:

- How can a municipality drop out of the agreement?
- Should the agreement have a specific term?
- If a party wants to drop out, what type of notice is required?
 - > Suggest 1 year notice and exit must be at end of program's fiscal year.
- Can capital contributions be returned?
- What about a depreciation schedule?
- And how with the other parties raise the cash?

Voting and Representation

⦿ Voting rules

- › Will it be one vote per municipality?
- › Should larger municipalities be given more voting power?
- › Do votes require a 2/3 majority? A quorum?

⦿ Representation

- › Will there be a primary and an alternate representative for each municipality?

Financing

- PA Section 2307(4) requires that the ordinance/agreement specify the “manner and extent of financing the agreement.”
- Consider spelling out:
 - > Schedule for presentation, review, input and adoption of budget each fiscal year.
 - > Work with schedules used by participating municipalities.
 - > Saving surplus funds.
 - > Cash flow – schedule payments for early January; penalties for failure to pay on time.
 - > Audits – Cost of audit should be part of program budget.

Tax Laws – Beware

- Consider any long term impacts of tax levy caps or other state requirements or limitations.

Allocating Costs

- ◎ Self-Supporting Programs
 - > Examples: joint sewer and water authorities.
 - > Establish a rate structure.
 - > Have a captive market.
- ◎ Income Producing Programs
 - > User fees can produce substantial income but might not cover all costs.

Funding Choices in Allocating Costs

- ◉ Equal Shares
- ◉ Population
- ◉ Assessed Valuation
- ◉ Use
- ◉ Direct Taxes

Allocating Risk & Responsibility

- ◉ Who is responsible for what?
- ◉ Is this covered by each municipality's insurance?
- ◉ Should a rider be issued?
- ◉ Should a separate policy be purchased?

Effective Date

- ◉ When does the agreement become effective?
- ◉ When all parties approve? When a majority approve?
- ◉ Consider an end date as well.

Equipment Sharing

- ◎ Joint Ownership
 - > Location of equipment
 - > Scheduling
 - > Order of Use
 - > Operations
 - > Insurance
 - > Cost Allocation
 - > Dispute Resolution
- ◎ Rental Arrangements
 - > Require a written agreement/address liabilities
- ◎ Equipment Trading

Final Thoughts

Contact Information

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