SHARED SERVICES

REGULATORY FRAMEWORK AND LEGAL ISSUES IN PENNSYLVANIA & NEW JERSEY

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Putting it in perspective....

Pennsylvania -

- 56 Cities
- 2,509 Boroughs, Townships, Towns
- 501 School Districts
- 67 counties
- 1,663 Active Authorities
New Jersey –

52 Cities

513 Boroughs, Townships, Towns, Villages

616 School Districts

21 counties

2014 Active Authorities

Putting it in perspective....
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**
**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
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.

40A:65-6
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)
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:

- 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.
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
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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