

HOUSE No. 1992

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act facilitating the formation of statewide mutual aid agreements for public works agencies..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 40 of the General Laws is hereby amended by inserting the
2 following new section:-

3 Chapter 40, Section 4J. The Statewide Municipal Mutual Assistance Program (a)(i) “The
4 statewide municipal mutual assistance agreement for public works” is defined as a
5 comprehensive statewide agreement entered into by participating governmental units for the
6 facilitation and provision of sharing of public works resources across jurisdictional lines in the
7 case of public works incidents that require assistance from one or more additional municipalities.

8 (ii) “Governmental unit” is defined as a city, town, county, district as defined in Section
9 1A, however constituted, water or sewer commission established under the provisions of chapter
10 40N or pursuant to a special law, fire district, or other political entity of the Commonwealth or
11 its municipalities.

12 (b) There shall be a statewide mutual assistance agreement developed for Public Works
13 activities, by the Statewide Municipal Mutual Assistance Advisory Committee, that covers

14 public works services, personnel, equipment, supplies and facilities to prepare for, prevent,
15 mitigate, respond to and recover from incidents that require assistance from additional
16 municipalities, consistent with the provisions herein. Nothing in this section shall establish or
17 apply to mutual aid agreements among local public safety agencies. All municipalities of the
18 Commonwealth shall be eligible for enrollment in the statewide municipal mutual assistance
19 agreement. In order to participate in the program, the chief executive officer of a city or town, or
20 as otherwise specified by statute or charter, must sign the mutual assistance agreement.
21 Participation shall exist for a period of ten years. Other governmental units not under the
22 direction and control of a commonwealth municipality shall be authorized to sign on to the
23 statewide mutual aid agreement on a form filed with and prescribed by the Statewide Municipal
24 Mutual Assistance Advisory Committee. In addition, governmental units from a municipality
25 directly adjacent to a commonwealth municipality, but in another state, shall be able to sign on to
26 the statewide mutual aid agreement, if duly authorized, on a form prescribed by the Statewide
27 Municipal Mutual Assistance Advisory Committee.

28 (c) There will be an annual open enrollment period for those communities who are not
29 part of the Statewide Municipal Mutual Assistance Program. The date of the open enrollment
30 period and any other requirements will be established by the Statewide Municipal Mutual
31 Assistance Advisory Committee. In addition, a community may opt out of the program at any
32 time by informing the Statewide Mutual Assistance Advisory Committee, in writing, of its intent
33 to terminate participation in the program. This request for removal from the program shall be
34 executed by the chief executive officer of a city or town, or as otherwise specified by statute or
35 charter.

36 (d) There shall be a Statewide Municipal Mutual Assistance Advisory Committee that
37 shall consist of one appointee made by the following parties: the Massachusetts Highway
38 Association, the New England Chapter of the American Public Works Association
39 (Massachusetts Representative), the New England Water Environment Association
40 (Massachusetts Representative), New England Water Works Association (Massachusetts
41 Representative), the Massachusetts Tree Wardens Association and the Massachusetts Municipal
42 Association. One appointee from the Executive Office of Public Safety and one member from
43 each of the state's Regional Planning Agencies shall serve as Ex-officio members.

44 (e) The Statewide Municipal Mutual Assistance Advisory Committee shall develop
45 procedural plans, protocols and programs for intrastate cooperation to be used by public works
46 agencies in response to an incident.

47 (f) Each participating governmental unit shall identify no less than one, but no more than
48 three points of contact within its public works agency, and shall provide for contacts consistent
49 with the governmental unit's so-called continuation of operation/continuation of governance
50 plan.

51 (g) A participating governmental unit may request the assistance of one or more
52 participating governmental units to:

53 (1) Manage public works incident response or recovery if they do not possess the ability
54 to do so effectively, independently; or

55 (2) Conduct public works incident response or recovery related exercises, testing or
56 training.

57 (h) A request for assistance to a participating governmental unit shall be made by and to:
58 the chief executive officer of a city or town, or as otherwise specified by statute or charter, or one
59 of three designated points of contact. . An oral request shall be allowable but must be followed
60 in writing no later than twenty-four hours after the oral request is made.

61 The request must include the following information:

62 (1) A description of the public works incident response and recovery functions for
63 which assistance is needed.

64 (2) The amount and type of public works services, equipment, supplies, materials,
65 personnel, and other resources requested and a point of contact at the location.

66 (3) The place and time where assistance is needed and where the point of contact will be.

67 (i) The responding governmental unit shall not be required to respond to a request and
68 may choose to do so only if responding would not jeopardize the participating municipality's
69 own reasonable protection.

70 (j) The dispatch of public works resources under the statewide mutual assistance
71 agreement shall operate under the direction of their parent agency. Tactical operational
72 control of resources shall be under the direction and control of the requesting jurisdiction. The
73 administration and coordination of the statewide mutual aid agreement shall be the responsibility
74 of the Statewide Municipal Mutual Assistance Advisory Committee.

75 (k) Reimbursement for any and all public works services performed under the statewide
76 municipal mutual assistance agreement is presumed, but may be waived in writing by a
77 participating municipality prior or subsequent to responding to an incident through a

78 supplemental agreement. This section shall not provide for reimbursement of any kind outside
79 of what is agreed to by the individual governmental units.

80 (l) Notwithstanding section 4A of chapter 40 of the general laws, the chief executive
81 officer of a city or town, or as otherwise specified by statute or charter,, is hereby authorized to
82 enter into supplemental agreements on behalf of such unit with other governmental units to
83 further define the rights and responsibilities of each party for the provision of mutual aid
84 pursuant to the statewide municipal mutual assistance agreement established herein.

85 (m) While in transit to, returning from, and during a mutual assistance response for
86 another governmental unit, a participating public works employee of a governmental unit, or
87 volunteer acting officially under the authorization of the governmental unit, that is a party to the
88 statewide municipal mutual assistance agreement shall maintain the right of indemnification
89 granted by law, or by his home governmental unit, should it exist, for all claims arising out of
90 any action within the scope of employment in accordance with the statewide municipal mutual
91 assistance agreement pursuant to this section.

92 (n) All public works employees and equipment requested and deployed pursuant to the
93 statewide municipal mutual assistance agreement shall be covered for liability, immunity,
94 employee benefits, worker's compensation and insurance, by their employer, as if they were in
95 their own jurisdiction. Participating governmental units may, by supplemental agreement with
96 one or more participating governmental units, address issues such as but not limited to pay and
97 benefits for government unit employees and volunteers, insurance, indemnification, injury
98 compensation and other operational matters related to services provided under a mutual aid
99 response.

100 (o) Barring a supplemental agreement to the contrary, public works employees shall
101 receive the same compensation as if they were operating in their own jurisdiction while
102 performing services under the statewide municipal mutual assistance agreement.

103 (p) All activities performed under the statewide municipal mutual assistance agreement
104 by governmental units are hereby declared to be governmental functions. Neither the parties,
105 nor, except in cases of willful misconduct, gross negligence, or bad faith, their personnel
106 complying with or reasonably attempting to comply with the mutual aid agreement or any
107 ordinance, rule, or regulation enacted or promulgated pursuant to the provisions of this section
108 shall not be held liable for the death of or injury to persons or for damage to property as a result
109 of any such activity.

110 (q) Public works employees of a governmental unit that is a party to the statewide
111 municipal mutual assistance agreement shall be granted recognition of their respective
112 jurisdiction, authority, licenses or permits outside their original jurisdiction while operating under
113 the statewide municipal mutual assistance agreement.

114 (r) This section shall not affect inter-local agreements established pursuant to section 4A
115 of chapter 40 of the general laws.

116 (s) The Statewide Municipal Mutual Assistance Committee shall develop and make
117 available to participating governmental units forms to facilitate requests for aid, and to facilitate
118 record keeping of movement of public works equipment and personnel.