

HOUSE No. 2005

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Facilitating the Formation of Statewide Mutual Aid Agreements for Public Work 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 Chapter 40 of the General Laws is hereby amended by inserting the following new
2 section:

3 Chapter 40, Section 4J. The Statewide Municipal Mutual Assistance Program.

4 (a)(i) “The statewide municipal mutual assistance agreement for public works” is defined
5 as a 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.

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

13 (b) There shall be a statewide mutual assistance agreement developed for Public Works
14 activities, by the Statewide Municipal Mutual Assistance Advisory Committee that covers Public
15 Works services, personnel, equipment, supplies and facilities to prepare for, prevent, mitigate,
16 respond to and recover from incidents that require assistance from additional municipalities,
17 consistent with the provisions herein. Nothing in this section shall establish or apply to mutual
18 aid agreements among local public safety agencies. All 351 municipalities of the commonwealth
19 shall be required to opt into the statewide municipal mutual assistance agreement, within one
20 year of the enactment of the legislation. The chief executive officer of a city or town, or as
21 otherwise specified by statute or charter must sign the mutual assistance agreement. If a
22 community does not execute the agreement, it is assumed that the community will not be a
23 participant. Participation shall exist for a period of ten years. Other governmental units not
24 under the direction and control of a commonwealth municipality shall be authorized to sign on to
25 the statewide mutual aid agreement on a form filed with and prescribed by the Statewide
26 Municipal Mutual Assistance Advisory Committee. In addition, governmental units from a
27 municipality directly adjacent to a commonwealth municipality, but in another state, shall be
28 able to sign on to the statewide mutual aid agreement if duly authorized on a form prescribed by
29 the Statewide Municipal Mutual Assistance Advisory Committee.

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

36 executed by the chief executive officer of a city or town, or as otherwise specified by statute or
37 charter.

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

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

48 (f) Each participating governmental unit shall identify no less than one, but no more than
49 three points of contact within its public works agency, and shall provide for contacts consistent
50 with the governmental units so-called continuation of operation/continuation of governance 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
58 to: the chief executive officer of a city or town, or as otherwise specified by statute or charter, or
59 one of three designated points of contact. An oral request shall be allowable but must be
60 followed 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 which
63 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
67 be.

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

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

76 (k) Reimbursement for any and all public works services performed under the statewide
77 municipal mutual assistance agreement is presumed, but may be waived in writing by a

78 participating municipality prior or subsequent to responding to an incident through a
79 supplemental agreement. This section shall not provide for reimbursement of any kind outside
80 of what is agreed to by the individual governmental units.

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

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

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

99 compensation and other operational matters related to services provided under a mutual aid
100 response.

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

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