



PART I ADMINISTRATION OF THE GOVERNMENT
(Chapters 1 through 182)

TITLE VII CITIES, TOWNS AND DISTRICTS

CHAPTER 40 POWERS AND DUTIES OF CITIES AND TOWNS

Section 4K Public works municipal mutual aid agreement; procedure for joining agreement; advisory committee; requests to receive assistance; rights and responsibilities of requesting and sending parties

Section 4K. (a) As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

“Advisory committee”, the statewide public works municipal mutual aid advisory committee established in subsection (d).

“Agreement”, the statewide public works municipal mutual aid agreement established in subsection (b).

“Employee”, a person employed full-time or part-time by a governmental unit, a volunteer officially operating under a governmental unit, or a person contractually providing services to a governmental unit.

“Governmental unit”, a city, town, county or district, however constituted, or water or sewer commission established under the provisions of chapter 40N or any other general or special law.

“Mutual aid assistance”, cross-jurisdictional provision of services, materials or facilities from 1 party to another when existing resources are, or may be, inadequate.

“Party”, a governmental unit that has joined the agreement.

“Public works incident”, a foreseeable or unforeseeable event, emergency or natural or manmade disaster that affects or threatens to affect the public works operations of a governmental unit.

“Requesting party”, a party that requests aid or assistance from another party pursuant to the agreement.

“Sending party”, a party that renders aid or assistance to another party under the agreement.

(b) There shall be a statewide public works municipal mutual aid agreement to facilitate the provision of public works resources across jurisdictional lines in the case of a public works incident that requires mutual aid assistance from 1 or more municipalities. The mutual aid assistance to be provided under

the agreement shall include, but not be limited to, services related to public works, personnel, equipment, supplies and facilities to prepare for, prevent, mitigate, respond to and recover from public works incidents.

(c)(1) If a city or town wishes to join the agreement, the mayor in the case of a city, the city manager in the case of a Plan D or Plan E city, or the town manager, town administrator or chair of the board of selectmen upon approval by a majority vote of the board of selectmen, may act on behalf of the city or town to join the agreement by notifying the advisory committee in writing. The municipality shall be a party to the agreement 30 days after receipt by the advisory committee of the written notification.

If a city or town has joined the agreement but wishes to opt out of the agreement, the mayor in the case of a city, the city manager in the case of a Plan D or Plan E city, or the town manager, town administrator or chair of the board of selectmen upon approval by a majority vote of the board of selectmen in the case of a town, may act on behalf of the city or town to opt out of the agreement by notifying the advisory committee in writing. The removal of the municipality from the agreement shall take effect 10 days after receipt by the advisory committee of the written notification.

(2) If a governmental unit that is not a city or town wishes to join the agreement, the chief executive officer of the governmental unit may act on its behalf to join the agreement by notifying the advisory committee in writing. The governmental unit shall be a party to the agreement 30 days after receipt by the advisory committee of the written notification.

If a governmental unit that is not a city or town has joined the agreement but wishes to opt out of the agreement, the chief executive officer of the governmental unit may act on its behalf to opt out of the agreement by notifying the advisory committee in writing. The removal of the governmental unit that is not a city or town from the agreement shall take effect 10 days after receipt by the advisory committee of the written notification.

(3) If a governmental unit in a state contiguous to the commonwealth wishes to join the agreement, the governmental unit may join the agreement by notifying the advisory committee in writing. The governmental unit shall be a party to the agreement 30 days after receipt by the advisory committee of the written notification.

If a governmental unit in a state contiguous to the commonwealth has joined the agreement but wishes to opt out of the agreement, the governmental unit may opt out of the agreement by notifying the advisory committee in writing. The removal of the governmental unit from the agreement shall take effect 10 days after receipt by the advisory committee of the written notification.

(d) There shall be a statewide public works municipal mutual aid advisory committee to consist of the secretary of public safety and security or his designee, who shall serve as chair of the committee; and 1 member appointed by the secretary of public safety and security from each of the following: the

Massachusetts Highway Association; the New England Chapter of the American Public Works Association, who shall be a resident of the commonwealth; the New England Water Environment Association, who shall be a resident of the commonwealth; the Massachusetts Tree Wardens' and Foresters' Association; the Massachusetts Water Works Association; and the Massachusetts Municipal Association.

The advisory committee shall develop procedural plans, protocols and programs for intrastate and interstate cooperation to be used by public works agencies in response to a public works incident. The advisory committee shall be responsible for the administration and coordination of the statewide mutual aid agreement. The advisory committee shall develop and make available to parties forms to facilitate requests for aid, including a form to track the movement of public works equipment and personnel.

(e) Each party shall identify not more than 3 points of contact to serve as the primary liaison for all issues relating to the agreement.

(f)(1) A request by a party to receive mutual aid assistance shall be made, either orally or in writing, by the chief executive officer of the requesting party or by 1 of its designated points of contact and shall be communicated to the chief executive officer or 1 its designated points of contact from the sending party; provided, however, that if the request is communicated orally, the requesting party shall reduce the request to writing and deliver it to the sending party at the earliest possible date, but not later than 72 hours after making the oral request. (2) A requesting party may request the assistance of 1 or more parties to assist with or manage a public works incident, including recovery-related exercises, testing or training.

(2) An oral or written request for mutual aid assistance under the agreement shall include the following information:

(i) a description of the public works incident response and recovery functions for which assistance is needed;

(ii) the nature, type and amount of public works services, personnel, equipment, materials, supplies or other resources being requested;

(iii) the manner in which the resources shall be used and deployed;

(iv) a reasonable estimate of the length of time for which the resources shall be needed;

(v) the location to which the resources shall be deployed; and

(vi) the requesting party's point of contact.

(3) A party that receives a request for mutual aid assistance shall provide and make available, to the extent reasonable and practicable under the circumstances, the resources requested by the requesting party; provided, however, that a sending party may withhold requested resources to the extent necessary to provide reasonable protection and coverage for its own jurisdiction.

(g) The requesting party shall be responsible for the overall operation, assignment and deployment of resources, equipment and personnel provided by a sending party. The sending party shall retain direct supervision, command and control of personnel, equipment and resources provided by the sending party unless otherwise agreed to by the requesting party and the sending party. During the course of rendering mutual aid assistance under the agreement, the sending party shall be responsible for the operation of its equipment and for any damage thereto unless the sending party and the requesting party agree otherwise.

(h)(1) All expenses incurred by the sending party in rendering mutual aid assistance pursuant to the agreement shall be paid by the sending party; provided, however, that a requesting party and a sending party may enter into supplementary agreements for reimbursement of costs associated with providing mutual aid assistance incurred by a sending party.

(2) A sending party shall document its costs of providing mutual aid assistance under the agreement, including direct and indirect payroll and employee benefit costs, travel costs, repair costs and the costs of materials and supplies. A sending party shall also document the use of its equipment and the quantities of materials and supplies used while providing mutual aid assistance under the agreement.

(3) Except as otherwise agreed to by the parties, the requesting party shall seek reimbursement under any applicable federal and state disaster assistance programs for the costs of responding to the public works incident. The requesting party and each sending party shall receive, based on the documented costs of providing mutual aid assistance, its pro rata share of the disaster assistance reimbursement provided to the requesting party.

(4) While providing mutual aid assistance under the agreement, employees of a sending party shall: (i) be afforded the same powers, duties, rights and privileges as they are afforded in the sending party's geographical jurisdiction or location; (ii) be considered similarly licensed, certified or permitted in the requesting party's jurisdiction if the employee holds a valid license, certificate or permit issued by the employee's governmental unit; and (iii) receive the same salary, including overtime, that they would be entitled to receive if they were operating in their own governmental unit. In the absence of an agreement to the contrary, the sending party shall be responsible for all such salary expenses, including overtime.

[There is no subsection (i).]

(j)(1) While in transit to, returning from and providing mutual aid assistance under the agreement,

employees of a sending party shall have the same rights of defense, immunity and indemnification that they otherwise would have under the law if they were acting within the scope of their employment under the direction of their employer. A sending party shall provide to, and maintain for, each of its employees who provide mutual aid assistance under the agreement the same indemnification, defense, right to immunity, employee benefits, death benefits, workers' compensation or similar protection and insurance coverage that would be provided to those employees if they were performing similar services in the sending party's jurisdiction.

(2) Each party to the agreement shall waive all claims and causes of action against all other parties that may arise out of their activities while rendering or receiving mutual aid assistance under the agreement, including travel outside of its jurisdiction.

(3) Each requesting party shall defend, indemnify and hold harmless each sending party from all claims by third parties for property damage or personal injury which may arise out of the activities of the sending party or its employees, including travel, while providing mutual aid assistance under the agreement.

(4) All equipment requested and deployed pursuant to the statewide municipal mutual assistance agreement shall be insured by the sending party.

(k) This section shall not affect, supersede or invalidate any other statutory or contractual mutual aid or assistance agreements involving parties to the agreement including, but not limited to, those established pursuant to section 4A. A party may enter into supplementary mutual aid agreements with other parties or jurisdictions.