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Township Law *E-Letter*

THE NEW MUNICIPAL PARTNERSHIP ACT

New legislation affecting how townships and other public agencies consolidate services awaits the Governor's signature and will likely soon become law. This E-letter summarizes the parts of the new laws that most affect townships. One new feature is a process for two or more municipalities to enter into a "joint endeavor" for services to streamline efficiencies and cut costs. Township employees facing consolidation or transfer to a joint authority are also no longer guaranteed their seniority and benefit status, but negotiations on a new labor contract would have to begin at least 180 days before commencing a new joint service.

For many years, various municipal groups have advocated for needed changes in the current intergovernmental cooperation laws, arguing that special labor and collective bargaining protections enacted in the 1960s were acting as a disincentive to more local agreements and service sharing. A new package of bills passed by the legislature earlier this month promises to ease those obstacles considerably. Although the new laws do not eliminate protections for employees, they strike an effective compromise.

Senate Bill 8 – Joint Municipal Endeavors

Known as the Municipal Partnership Act, Enrolled Senate Bill 8 allows local governments or a local government and a public agency to contract to perform functions together that each body could perform separately if the partnership is approved by resolution of the governing board of each government or agency. The contract must clearly define and delineate the joint endeavor's responsibilities, including what functions will be jointly performed and the method by which the functions will be accomplished, duration of the contract, methods to terminate the contract, and the method of financing the joint endeavor. If two municipalities merge to provide a service that neither previously provided, then SB 8 requires a competitive-bid process for that service.

To fund the agreement, the joint endeavor may levy a property tax of not more than 5 mills within the entire area served by the joint endeavor. However, for the joint endeavor to levy the 5 mills, the contracting municipalities must decrease their existing millage so that there is no net increase in millage. The joint endeavor may levy a new property tax millage or an increase in existing millage only if a majority of the electors in each local government served by the joint endeavor vote to approve the increased tax millage.

A number of labor law amendments in SB 8 remove former barriers to intergovernmental agreements. Several issues are explicitly made *prohibited* subjects of bargaining between a municipal employer and the collective bargaining representative of its employees. The issues that are *prohibited* subjects of employee bargaining include (1) the decision whether or not local governments will enter into a joint endeavor contract, (2) the procedures used to obtain a contract, and (3) the specific parties to a joint endeavor contract. However, once the decision is made to enter into a joint endeavor contract, the contents or language of such a contract will be a *permissive* subject of collective bargaining with employees, and any agreements on issues that would obligate the joint-endeavor municipal employer reached prior to the joint endeavor contract will be included in the contract.

House Bill 4309 – Emergency Services

Keeping with the theme of governmental consolidation, Enrolled House Bill 4309 amends the Emergency Services to Municipalities Act, MCL 124.610, by *eliminating* the guarantee that an employee of a municipal emergency service who is transferred to a joint emergency service authority will be given a comparable position of employment and maintain the seniority status and all benefit rights of his or her position before the transfer. Under the new law, municipalities that are party to a joint endeavor will have the authority to manage and direct how the emergency services will be performed or exercised under the joint endeavor.

There are also changes to employee collective bargaining rights. The contents or language of the articles of incorporation of a joint emergency services authority will be a *permissive* subject of bargaining. Negotiations on a collective bargaining agreement with a joint authority must begin no later than 180 days before the date the employees transfer to the authority. If employees transferred to the authority are represented by a union, these employees will be subject to their previous terms and conditions of employment until modified under the Public Employment Relations Act or for 6 months after the transfer to the authority, whichever is earlier.

Senate Bill 493 – Subjects of Employee Collective Bargaining

Enrolled Senate Bill 493 amends the Public Employment Relations Act, MCL 423.215, regulating public employers and intergovernmental agreements, by adding subjects that are *prohibited* from employee collective bargaining and that remain at the sole discretion of the public employer. These subjects include whether to agree to consolidate or jointly perform functions or services, the procedures for obtaining such an agreement or the identity of the parties to the agreement. However the public em-

ployer still has a duty to collectively bargain with its employees about the effect a contract to consolidate will have on its employees. SB 493's language prohibiting certain subjects for collective bargaining is almost identical to that in SB 8.

House Bill 4311 – Contract Contents for Intergovernmental Transfers of Functions

Enrolled House Bill 4311 amends the Intergovernmental Transfers of Functions Act, MCL 124.534. A contract to transfer municipal functions or responsibilities no longer needs to include the manner in which affected employees of the political subdivisions to the contract are transferred or re-assigned or guarantee that the transferred employees be placed in at least the same position with respect to their benefits. Instead, the contract must simply identify the political subdivision that will act as the employer of the personnel and staff needed for transfer of functions or responsibilities. The political subdivisions that are parties to a contract will have the authority to manage and direct the functions and services performed under the contract.

The contents or language of a transfer contract would be a *permissive* subject of employee collective bargaining, and prior agreements will be included and binding on the public agency acting as the employer under the contract. If the transferred employees are represented by a union, these employees will be subject to their previous terms and conditions of employment until modified under the Public Employment Relations Act or for 6 months after the transfer to the authority, whichever is earlier. Negotiations on a collective bargaining agreement with an authority must begin no later than 180 days before the date the employees transfer to the authority.

House Bill 4312 – Amendments to the Urban Cooperation Act

With the adoption of Enrolled House Bill 4312, a contract for a joint exercise of power under the Urban Cooperation Act no longer needs to include the manner of employing, engaging, com-

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pensating, transferring, or discharging necessary personnel. The public agency that will function as the employer for the joint exercise of power must be named and that agency shall have the responsibility and the authority to manage and direct the functions and services performed in connection with the contact.

The contents or language of a contract would a permissive subject of collective bargaining and prior agreements will be included and binding on the public agency acting as the employer under the contract. Transferred employees will be subject to their previous terms and conditions of employment until modified under Public Employment Relations Act or for 6

months after the transfer to the authority, whichever is earlier. Negotiations on a collective bargaining agreement with an authority shall begin no later than 180 days before the date the employees transfer to the authority.

Conclusion

Although these new laws are sure to cause some debate between public employers and unions, as well as significant changes to collective bargaining agreements, the overall beneficial effect of these laws on pooling municipal resources and cutting costs to the public should have an immediate, positive impact on townships around the state. — *Matt Wyman*



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Matt Wyman, a Mid-Michigan native, returned from practicing law in Chicago to join our firm earlier this year. He graduated from DePaul University College of Law, where he was the president of the DePaul Chapter of the Phi Delta Phi honors fraternity and was recognized on both the law school honor roll and dean's list. Prior to joining our firm, Matt served as a prosecuting attorney for municipalities in the greater Chicago area for nearly three years. As a prosecutor, Matt gained significant trial experience that enables him to advise our clients with an eye on litigation risks and outcomes.

Fahey Schultz Burzych Rhodes PLC, Your Township Attorneys, is a Michigan law firm specializing in the representation of Michigan townships. Our lawyers have more than 130 years of combined experience in township law, and have represented more than 130 townships across the state of Michigan. This publication is intended for our clients and friends. This communication highlights specific areas of law, and is not legal advice. The reader should consult an attorney to determine how the information applies to any specific situation.



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