

Legal Alert

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An Overview of the Municipal Partnership Act

Another Tool in the Toolbox for Intergovernmental Cooperation

By Karrie Zeits, Attorney

In December 2011, Governor Snyder signed the Municipal Partnership Act (Act). This new Act expands the opportunities for local units of government and public agencies to cooperate in providing high quality municipal services while saving their customers money.

Due to the flexibility and expansive nature of the Act, many counties, cities, villages, townships, public agencies, and Indian tribes that exercise governmental authority over land, have high hopes for this new tool. (The Act does not apply to the state or a department, division, or agency of the state.) The Act expressly supersedes any conflicting charter or ordinance provision to the contrary and an agreement under the Act is not subject to referendum under any local charter or ordinance. In addition, the Act can be used to create a joint venture on its own or in conjunction with other acts providing for intergovernmental cooperation.

The Act includes provisions on how a joint endeavor may be formed, approved, and funded. A joint endeavor created under the Act may be between two or more local governments; or one or more local government and a public agency. A joint endeavor contract must be approved by resolution of the governing body of each participating local government to be effective.

Funding

Funding of the joint endeavor can include any, or a combination of, the following:

1. The use of tax revenues of participating entities (this can include a party's revenue already specifically dedicated to the purpose of the joint venture);
2. The levy of a tax of not more than 5 mills in the areas "served by the joint endeavor" following a resolution of the governing body of each local government participating in the joint endeavor and the approval of the voters, with the following guidelines:
 - a. Tax levy is subject to constitutional and statutory millage limits of the local unit of government.
 - b. If approved, the tax levy must be reduced annually as necessary to insure that the total millage levied by the local government(s) does not exceed the constitutional and statutory millage limits.
 - c. Only electors residing in the area to be serviced by the joint endeavor may vote on it and the millage may only be imposed on them.

- d. The levy must be proposed in an even numbered year general election.
- e. The ballot must state the manner in which the tax levy will result in any reduction of taxes levied by each local government participating in the joint endeavor.

Due to the possibility that any millage levied under the Act may be adjusted from year to year to insure that the total millage levied in a taxing jurisdiction does not exceed the constitutional and statutory limits, the contract for any joint endeavor to be funded through a millage levy should consider this possibility and contain provisions for making up any shortfall.

Contracts

The Act sets mandatory provisions that must be included in a joint endeavor contract. The provisions include:

- 1. The purpose of the joint endeavor and the method of accomplishing the purpose.
- 2. The duration of the contract and provisions for the early termination and withdrawal of a member.
- 3. The method of financing the joint endeavor and each participant's percentage of contribution.
- 4. The method of submitting a tax levy, if any, to the electors served by the joint endeavor.
- 5. If a separate authority or legal or administrative agency is created by the contract; the precise organization, composition, nature, and powers of the separate legal entity or authority, including the designation and selection of the officers of the authority or separate legal entity.

Additionally, the Act requires that any service intended to be provided by the joint endeavor be

competitively bid unless a local unit of government participating in the joint endeavor already provides the service. Particular attention should be paid to this requirement in the event that two local governments join together to provide a service not currently provided by either and if a local unit of government that does not provide the service joins together with a public agency that does provide the service. In both circumstances, due to the Act's definition of "local government" (limited to a county, city, village, or township), the Act requires that the service be competitively bid.

Traditional Intergovernmental Partnership Acts vs. Municipal Partnership Act

Historically, the three most utilized tools for intergovernmental partnerships have been the Intergovernmental Contracts between Municipal Corporations Act (MCA), Urban Cooperation Act (UCA), and the Transfer of Functions and Responsibilities Act (TFRA). Many differences exist between these Acts and the new Act. For instance, in the MCA, no authority was granted to create a separate legal entity nor are there any funding provisions except in the case of a self-insurance pool. In the UCA, there is no ability for a separate legal entity created under the act to levy a tax and the contract is subject to a referendum if it contemplates the sharing of property tax revenue. The TFRA includes a provision that requires a party to give one year notice prior to withdrawal from the contract and also has no provisions for taxing to fund the joint venture.

Labor Issues

The Municipal Partnership Act's biggest benefit may lie in its provisions regarding collective bargaining. In the past, the biggest barrier to the use of the UCA and the TFRA has been the mandatory labor costs associated with an agreement. Until recently, the UCA and TFRA¹

¹ Amendments were made to these Acts and signed into law by the Governor in December, 2011, which eliminate these requirements and replace them with a duty to bargain requirement.

required that all employees necessary for the joint endeavor be transferred along with all of the rights, benefits, and salary they were receiving. Under the Municipal Partnership Act, these requirements do not apply. Additionally, the Act makes several subjects prohibited subjects of collective bargaining. These include (1) the decision whether to enter into a joint endeavor, (2) the procedures to be used to enter into a contract under the Act, and (3) the specific parties to a joint endeavor contract. The contents of a future joint endeavor contract are a permissive subject of bargaining under the Act and any agreement reached that would bind an entity that will function as the employees' employer must be included in the joint endeavor contract. An employer must also bargain over the effects of a joint endeavor agreement on its employees to the extent that there is a duty to bargain.

Recommendations

Local governments and public agencies hoping to take advantage of the Act should carefully examine the provisions of the Act to determine whether it is the right tool for the contemplated joint endeavor. Such an examination should include whether the Act will require that competitive bids be received for the proposed service and the effect that such a requirement may have on the purpose of the agreement.

If it is the right tool, the parties should consider central issues surrounding any intergovernmental agreement, control, funding, and employment relations, in the context of the Act's provisions. The control analysis should consider whether an authority or a separate legal or administrative entity should be established. The make up of any such entity and its powers and duties should also be reviewed. Alternatively, consider whether one or more of the parties to the contract should perform all or portions of the joint endeavor.

If funding will include a millage request, then the Act's restriction as to when the matter can be

placed upon the ballot should be considered in relation to the parties' expectations about when the joint endeavor will commence and the need for any "gap" funding from the parties' own funds to meet those expectations. The amount of the millage request should also be carefully examined, looking at the current millage rate of any participating local government and any potential future increases in that rate, the service area of the joint endeavor, and the advantages and disadvantages of limiting the service area to less than the entire jurisdiction of a local government.

Also, the timing of the agreement should be considered in relation to any existing collective bargaining contracts and their date of expiration. Any collective bargaining agreement that may be impacted by the joint endeavor agreement should be examined to determine any obligations that the parties may have to bargain under the Agreement, the Act, or any applicable public employee labor statutes.

Conclusion

In conclusion, the Municipal Partnership Act provides an exciting new tool for Michigan's local governments, public agencies, and Indian Tribes to work together to provide services more economically and efficiently. Its provisions are generally more broad and expansive than the existing general tools for Intergovernmental Cooperation. However, the parties looking to enter into such an agreement should carefully examine the Act to determine whether it is an appropriate fit and, as with any intergovernmental agreement, carefully consider any issues that may arise down the road and address them up front.

Karrie is a governmental law attorney who represents municipalities, government officials, and employees. She can be reached directly at kzeits@shrr.com or 231-486-4521.

SHRR Governmental Law Attorneys



Charles F. Behler
616.458.6245
cbebler@shrr.com



Karl W. Butterer
616.458.9294
kbutterer@shrr.com



William L. Henn
616.458.5464
whenn@shrr.com



Charissa C. Huang
616.458.3443
chuang@shrr.com



Charles B. Judson
231.929.4878
cjudson@shrr.com



Todd W. Millar
231.486.4512
tmillar@shrr.com



Craig R. Noland
616.458.9466
cnoland@shrr.com



Robert W. Parker
231.486.4504
rparker@shrr.com



Michael D. Shelton
616.458.0268
mshelton@shrr.com



Robert C. Stone
616.458.3622
rstone@shrr.com



D. Adam Tountas
616.458.0437
tountas@shrr.com



Karrie A. Zeits
231.486.4521
kzeits@shrr.com