

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

Docket No.
2343

BILL FILING TEMPLATE

Be It Enacted, by the Senate and House of Representatives, etc., as follows:

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

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

(a)(i) "The statewide municipal mutual assistance agreement for public works" is defined as a comprehensive statewide agreement entered into by participating governmental units for the facilitation and provision of sharing of public works resources across jurisdictional lines in the case of public works incidents that require assistance from one or more additional municipalities.

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

(b) There shall be a statewide mutual assistance agreement developed for Public Works activities, by the Statewide Municipal Mutual Assistance Advisory Committee within 90 days of the enactment of this statute, that covers public works services, personnel, equipment, supplies and facilities to prepare for, prevent, mitigate, respond to and recover from incidents that require assistance from additional municipalities, consistent with the provisions herein. Nothing in this section shall establish or apply to mutual aid agreements among local public safety agencies. All 351 municipalities of the Commonwealth shall be automatically enrolled in the statewide municipal mutual assistance agreement, however, to continue participation in the program, the chief executive officer of a city or town, or as otherwise specified by statute or charter must sign the mutual assistance agreement within 180 days of the enactment of the legislation. If a community does not execute the agreement it is assumed that the community will not be a participant. Participation shall exist for a period of ten years. Other governmental units not under the direction and control of a commonwealth municipality shall be authorized to sign on to the statewide mutual aid agreement on a form filed with and prescribed by the Statewide Municipal Mutual Assistance Advisory Committee. In addition, governmental units from a municipality directly adjacent to a commonwealth municipality, but in another state, shall be able to sign on to the statewide mutual aid agreement, if duly authorized, on a form prescribed by the Statewide Municipal Mutual Assistance Advisory Committee.

(c) There will be an annual open enrollment period for those communities who are not part of the Statewide Municipal Mutual Assistance Program. The date of the open enrollment period and any other requirements will be established by the

Statewide Municipal Mutual Assistance Advisory Committee. In addition, a community may opt out of the program at any time by informing the Statewide Mutual Assistance Advisory Committee, in writing, of its intent to terminate participation in the program. This request for removal from the program shall be executed by the chief executive officer of a city or town, or as otherwise specified by statute or charter.

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

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

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

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

- (1) Manage public works incident response or recovery if they do not possess the ability to do so effectively, independently; or
- (2) Conduct public works incident response or recovery related exercises, testing or training.

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

The request must include the following information:

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

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

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

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

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

(k) Reimbursement for any and all public works services performed under the statewide municipal mutual assistance agreement is presumed, but may be waived in writing by a participating municipality prior or subsequent to responding to an incident through a supplemental agreement. This section shall not provide for reimbursement of any kind outside of what is agreed to by the individual governmental units.

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

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

(n) All public works employees and equipment requested and deployed pursuant to the statewide municipal mutual assistance agreement shall be covered for liability, immunity, employee benefits, worker's compensation and insurance, by their employer, as if they were in their own jurisdiction. Participating governmental units may, by supplemental agreement with one or more

participating governmental units, address issues such as but not limited to pay and benefits for government unit employees and volunteers, insurance, indemnification, injury compensation and other operational matters related to services provided under a mutual aid response.

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

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

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

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

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