

# Intergovernmental Cooperation

## Generally

**Introduction.** Today, many municipalities utilize mechanisms made available in state law to jointly cooperate to achieve similar goals or implement specific projects; but prior to 1968, provisions of the Pennsylvania Constitution<sup>1</sup> were interpreted as greatly limiting the potential for cooperation among local governments. In 1968, however, a new constitution was adopted for Pennsylvania, including a new Article IX that, among other things, added three sections related to intergovernmental cooperation,<sup>2</sup> area government and areawide powers. In 1972, the General Assembly adopted enabling legislation pursuant to the constitutional authorization for intergovernmental cooperation.

**Intergovernmental Cooperation.** The law authorizing intergovernmental cooperation, now codified in Title 53 of the Pennsylvania Consolidated Statutes, Sections 2301-2315, was originally adopted as Act 180 of 1972. Title 53 authorizes two or more “local governments” to “jointly cooperate in the exercise or in the performance of their respective governmental functions, powers or responsibilities.”<sup>3</sup> Such cooperation is to be authorized by ordinance or resolution, which must specify the conditions, duration, purpose, manner and extent of any financing, organizational structure, manner in which property will be acquired, managed and disposed of, and that the entity created will be empowered to enter into certain employee-related contracts. An ordinance must be adopted if the authorizing statute for the intergovernmental cooperation agreement requires it, or a council or consortium of governments is created. An intergovernmental cooperation agreement entered into with an authority may only be executed if the designated responsibility is consistent with statute or the authority’s articles of incorporation. Also, intergovernmental cooperation may be mandated by voters by initiative and referendum.<sup>4</sup>

**Councils of Governments.** In addition to the many single purpose entities created through intergovernmental cooperation, councils of governments (COGs) represent a type of intergovernmental cooperation that is more general or multipurpose in nature. COGs need not be created for

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<sup>1</sup> These are the provisions now set forth in Article III, Section 31, of the Pennsylvania Constitution prohibiting the General Assembly from delegating the power to perform municipal functions to any special commission, private corporation or association.

<sup>2</sup> Article IX, Section 5, of the Pennsylvania Constitution provides:

A municipality by act of its governing body may, or upon being required by initiative and referendum in the area affected shall, cooperate or agree in the exercise of any function, power or responsibility with, or delegate or transfer any function, power or responsibility to, one or more other governmental units including other municipalities or districts, the Federal government, any other state or its governmental units, or any newly created governmental unit.

<sup>3</sup> 53 Pa.C.S. § 2303(a).

<sup>4</sup> See *supra* note 2. See also, Act 80 of 2019.

a specific purpose and are typically established as a coordinating organization. “They are established to enable a group of municipalities to work together on whatever programs are in their mutual interest.”<sup>5</sup>

## Other Forms of Municipal Cooperation

**Joint Authorities.** The Municipality Authorities Act<sup>6</sup> authorizes the creation of municipal authorities by two or more local governments.<sup>7</sup> These entities are typically created when large capital expenditures are required for projects such as sewage treatment, water supply, airports and bus transit systems.<sup>8</sup>

**Planning and Zoning.** Articles VIII-A and XI of the Pennsylvania Municipalities Planning Code<sup>9</sup> contain provisions for joint planning and zoning. A joint planning commission may be created without implementing joint zoning. Joint zoning, however, cannot be implemented without a joint comprehensive plan.

**Tax Collection.** Act 32 of 2008 extensively amended The Local Tax Enabling Act<sup>10</sup> by, among other things, creating 69 countywide tax collection districts for the purpose of consolidating the collection of earned income and net profits taxes levied by municipalities and school districts. A county tax collection district exists in each county, except in Philadelphia and Allegheny Counties. The geographic boundaries of a tax collection district are coterminous with the county in which it is created, with some exceptions.<sup>11</sup> Allegheny County is divided into four tax collection districts, as specified.<sup>12</sup>

**Transportation Development Districts.** The Transportation Partnership Act<sup>13</sup> allows municipalities to cooperate with one or more local governments or municipal authorities to establish transportation development districts for the purpose of planning, acquiring, developing, constructing and operating transportation facilities or services in the district. A municipal authority may not join unless it first obtains the approval, by way of ordinance, of the municipalities organizing the authority. Projects undertaken may be either facility projects, i.e., construction or acquisition of

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<sup>5</sup> *Intergovernmental Cooperation Handbook*, 7<sup>th</sup> ed., Governor’s Center for Local Government Services, Pennsylvania Department of Community and Economic Development, Harrisburg, Pa., 2018, p. 12. <http://dced.pa.gov/download/Intergovernmental%20Cooperation%20Handbook/?wpdmdl=56790> (accessed August 17, 2020).

<sup>6</sup> 53 Pa.C.S. § 5601 et seq.

<sup>7</sup> Although municipal authorities are not considered “local governments” for purposes of the law relating to intergovernmental cooperation, as a practical matter, municipal authorities do have broad authority to contract with municipalities, even those that are not members of the authority.

<sup>8</sup> See *Deskbook* article entitled “Municipal Authorities.”

<sup>9</sup> Act 247 of 1968 (53 P.S. §§ 10801-A-10821-A, 11101-11107); 53 Pa.C.S. Ch. 23 subch. C (Regional Planning).

<sup>10</sup> Act 511 of 1965 (53 P.S. § 6901 et seq.).

<sup>11</sup> *Id.* Ch. 5.

<sup>12</sup> *Id.* § 504.

<sup>13</sup> Act 47 of 1985 (53 P.S. § 1621 et seq.).

roads, streets, buses, stations, airports and parking areas, or service projects, i.e., systems of public transportation by any mode and the salaries and costs associated therewith.

**Environmental Improvement Compacts.** The Environmental Improvement Compact Act<sup>14</sup> authorizes municipalities, through initiative and referendum, to agree on the structure of government and powers concerning one or more municipal functions. Also authorized is a board “for the purpose of acquiring, holding, constructing, improving, maintaining and operating, owning or leasing, either in the capacity of lessor or lessee, for any government function of two or more municipalities.”<sup>15</sup> The board of an environmental improvement compact is elected by the voters, has the power to levy taxes up to two mills, and has corporate powers similar to a municipality, including the power of eminent domain.

**Other Laws.** Various specialized intergovernmental cooperation laws exist in municipal codes and elsewhere in state law beyond the predominant forms listed above. For example, joint municipal cooperation for purposes of acquiring recreational land is authorized in several codes.<sup>16</sup> Municipalities may create environmental advisory councils.<sup>17</sup> Cities and counties may cooperate for the building, acquisition and maintenance of auditoriums, libraries, memorial buildings, municipal buildings and monuments.<sup>18</sup>

### Local Government Commission Review

The Intergovernmental Cooperation Law requires the Local Government Commission to review certain cooperative agreements. Specifically, certain agreements between a local government and the Federal Government, the Commonwealth, any other state or government of another state must be submitted to the Local Government Commission for review and recommendation prior to and as a condition precedent to enactment of an ordinance or resolution.<sup>19</sup> An agreement exclusively between a local government and an authority as defined in section 53 Pa.C.S. § 5602 (relating to definitions) is not be subject to review by the Local Government Commission. The law delineates exceptions to this requirement.<sup>20</sup>

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<sup>14</sup> 53 Pa.C.S. § 2501 et seq.

<sup>15</sup> 53 Pa.C.S. § 2555.

<sup>16</sup> See, e.g., The Borough Code, 8 Pa.C.S. § 2701(c); The Second Class Township Code, § 2205 (53 P.S. § 67205); The County Code, 16 Pa.C.S. §16501.

<sup>17</sup> See 53 Pa.C.S. § 2321-2329 (relating to Environmental Advisory Councils).

<sup>18</sup> See Joint Building for City and County Municipal Buildings, Act 69 of 1913 (53 P.S. §§ 1331-1335).

<sup>19</sup> 53 Pa.C.S. § 2314.

<sup>20</sup> *Id.*