

# HOUSE . . . . . No. 31

Accompanying the first recommendation of the Executive Office of Public Safety and Security (House, No. 30). Municipalities and Regional Government.

## The Commonwealth of Massachusetts

In the Year Two Thousand and Nine.

### AN ACT CREATING A STATEWIDE MUTUAL AID SYSTEM..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 40 of the General Laws is hereby amended by inserting after section 4I  
2 the following new section:-

3 Section 4J. Statewide Mutual Aid Agreement

4 There is hereby created a Statewide Mutual Aid Agreement, the purpose of which is to create  
5 a framework for the provision of mutual aid assistance among the parties to the agreement in the  
6 case of any public safety incident. The assistance to be provided pursuant to the agreement shall  
7 include, but not be limited to fire service, law enforcement, emergency medical services,  
8 transportation, communications, public works, engineering, building inspection, planning and  
9 information assistance, mass care, resource support, public health, health and medical services,  
10 search and rescue, and any other resource, equipment or personnel that a party to the agreement  
11 may request or provide in anticipation of, or in response to, a public safety incident.

12 Article I. DEFINITIONS

13 Governmental unit: A city, town, county, a regional transit authority established under the  
14 provisions of chapter 161B, a water or sewer commission or district established under the  
15 provisions of chapter 40N or pursuant to a special law, a fire district, a regional health district  
16 established under the provisions of chapter 111, the Massachusetts Port Authority, a regional  
17 school district, a law enforcement council, or any other political subdivision of the  
18 Commonwealth.

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19 Employee: A person employed full time or part time by a governmental unit, any volunteer  
20 officially operating under a governmental unit, and any person contractually providing services to  
21 a governmental unit.

22 Agreement: The Statewide Mutual Aid Agreement established by this section.

23 Law Enforcement Council: A non-profit corporation organized under G. L. c. 180 whose  
24 directorate includes municipal police chiefs and whose membership includes (i) municipalities  
25 whose participation in the council has been authorized by their principal executives, and (ii) other  
26 law enforcement agencies; and whose purpose is to provide:

27 a.) mutual aid to its members pursuant to mutual aid agreements;

28 b.) mutual aid and /or requisitions for aid to non-members consistent with the provisions of  
29 G. L. c. 40, s. 8G and/or G. L. c. 41, s. 99; and,

30 c.) enhanced public safety by otherwise sharing resources and personnel.

31 Party: A governmental unit that is a party to the agreement pursuant to this section.

32 Sending party: A party that renders aid or assistance to another party pursuant to the  
33 Agreement.

34 Requesting party: A party that requests aid or assistance from another party pursuant to the  
35 Agreement.

36 Public safety incident: Any event, emergency or disaster, that threatens or causes harm to  
37 public health, safety and/or welfare and that exceeds, or reasonably may be expected to exceed,  
38 the response or recovery capabilities of any governmental unit. These events include, but are not  
39 limited to, natural and manmade disasters, technological hazards, planned events, civil unrest,  
40 health related events and emergencies, acts of terrorism, and trainings and exercises that test and  
41 simulate the ability to manage, respond to or recover from any of the forgoing events.

42 Authorized representative: In the case of a city or town, the mayor, city manager, town  
43 manager, town administrator, executive secretary, police chief or on-duty shift commander of the  
44 police department, fire chief or on-duty shift commander of the fire department, health director or  
45 chair person of the Board of Health, and the emergency management director. In the case of a  
46 governmental unit that is not a city or town, the chief executive officer or on-duty shift  
47 supervisor.

48 Emergency Management Assistance Compact (EMAC): The interstate compact that provides  
49 for mutual assistance between the Commonwealth and certain other states pursuant to Chapter  
50 339 of the Acts of 2000.

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51 International Emergency Management Assistance Compact (IEMAC): The international  
52 compact that provides for mutual aid between the Commonwealth and certain other states and  
53 provinces of Canada pursuant to Section 58 of Chapter 300 of the Acts of 2002.

54 Commonwealth: The Commonwealth of Massachusetts.

55 Incident command system (ICS): The standardized National Incident Management System  
56 (NIMS) that establishes an on-scene management system of procedures for controlling personnel,  
57 facilities, equipment and communications from different agencies to work together towards a  
58 common goal in an effective and efficient manner. ICS is the chain of leadership and command at  
59 the scene of an emergency or other event for which mutual aid assistance is provided.

60 Mutual Aid Assistance: cross-jurisdictional provision of emergency services, materials or  
61 facilities by agencies or organizations to assist each other when existing resources are or may be  
62 inadequate.

63 Article II. PARTIES TO THE AGREEMENT

64 A. Cities and Towns

65 Except as provided for herein, all cities and towns of the Commonwealth automatically shall  
66 be parties to the agreement.

67 The mayor in the case of a city, the city manager in the case of a Plan D or E city, or the town  
68 manager, town administrator, or chair of the board of selectmen upon approval by a majority vote  
69 of the board of selectmen in the case of a town, is authorized to act on behalf of the city or town  
70 to opt out of the agreement by notifying the Director of the Massachusetts Emergency  
71 Management Agency (MEMA) in writing. The removal of said municipality from the agreement  
72 shall take effect ten (10) days following receipt by MEMA of the written notification.

73 If a city or town has opted out of the agreement as provided herein but wishes to rejoin the  
74 agreement, the mayor in the case of a city, the city manager in the case of a Plan D or E city, or  
75 the town manage, town administrator, or chair of the board of selectmen upon approval by a  
76 majority vote of the board of selectmen, is authorized to act on behalf of the city or town to rejoin  
77 the agreement by notifying MEMA in writing. Said municipality shall be deemed a party to the  
78 agreement thirty days following receipt by MEMA of the written notification.

79 B. Other Governmental Units

80 Except as provided for herein, every governmental unit that is not a city or town  
81 automatically shall be deemed a party to the agreement.

82 The chief executive officer of a governmental unit that is not a city or town is authorized to  
83 act on behalf of the governmental unit to opt out of the agreement by notifying the Director of

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84 MEMA in writing. The removal of said governmental unit from the agreement shall take effect  
85 ten days following receipt by MEMA of the written notification.

86 If a governmental unit that is not a city or town has opted out of the agreement as provided  
87 herein but wishes to rejoin the agreement, the chief executive officer of said governmental unit is  
88 authorized to act on behalf of the governmental unit to rejoin the agreement by notifying the  
89 Director of MEMA in writing of its intent to rejoin the agreement. Said governmental unit shall  
90 be deemed a party to the statewide mutual aid agreement thirty days following receipt by MEMA  
91 of the written notification.

92 C. Cities and Towns in Adjoining States

93 A city or town that directly borders a city or town of the Commonwealth, but is in another  
94 state, may join the agreement as provided for herein. For such a city or town in another state to  
95 become a party to the agreement, a duly authorized officer of such a city or town shall provide  
96 written notice to the Director of MEMA of its intent to join the agreement together with a valid  
97 written certification of the lawfulness of his or her action and authority. Said city or town shall  
98 be deemed a party to the agreement ten days following receipt by MEMA of the written  
99 notification.

100 The officer or successor in office of such a city or town in another state that has joined the  
101 agreement shall be authorized to act on behalf of said city or town to remove itself as a party by  
102 notifying the Director of MEMA in writing of its intent. The removal of said city or town from  
103 the agreement shall take effect thirty days following receipt by MEMA of the written notification.

104 Article III. REQUESTS FOR MUTUAL AID ASSISTANCE

105 A request by a party to receive mutual aid assistance pursuant to the agreement must be made  
106 by an authorized representative of the requesting party and must be communicated to an  
107 authorized representative of the sending party or to MEMA. Such a request may be  
108 communicated orally or in writing. If communicated orally, the requesting party shall reduce the  
109 request to writing and deliver it to the sending party or to MEMA at the earliest possible date, but  
110 no later than seventy-two hours after making the oral request.

111 A party to the agreement may request mutual aid assistance during, in anticipation of, or as a  
112 result of a public safety incident.

113 An oral or written request for mutual aid assistance under the agreement shall include the  
114 following information: (1) a description of the public safety incident; (2) the nature, type and  
115 amount of personnel, equipment, materials, supplies or other resources being requested; (3) the  
116 manner in which said resources will be utilized and deployed; (4) a reasonable estimate of the

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117 length of time the resources will be needed; (5) the location to which the resources should be  
118 deployed; and (6) and the requesting party's point of contact.

119 A party that receives a request for mutual aid assistance shall, to the extent reasonable and  
120 practicable under the circumstances, provide and make available the resources requested by the  
121 requesting party. However, a party may withhold requested resources to the extent necessary to  
122 provide reasonable protection and coverage for its own jurisdiction.

123 Article IV. SUPERVISION; CONTROL; OPERATION OF EQUIPMENT

124 The requesting party shall be responsible for the overall operation, assignment and  
125 deployment of resources and personnel provided by a sending party consistent with the NIMS and  
126 the Incident Command System. The sending party shall retain direct supervision and command  
127 and control of personnel, equipment and resources provided by the sending party unless otherwise  
128 agreed to by the requesting party and sending party.

129 During the course of rendering mutual aid assistance under this Agreement, the sending party  
130 shall be responsible for the operation of its equipment and for any damage thereto unless the  
131 sending party and the requesting party agree otherwise.

132 Article V. COSTS AND REIMBURSEMENT

133 Except as set forth herein, all expenses incurred by the sending party in rendering mutual aid  
134 assistance pursuant to the Agreement shall be paid by the sending party. Nothing herein shall  
135 preclude a requesting party from agreeing to pay the expenses incurred by a sending party.

136 A sending party shall document its costs of providing mutual aid assistance under the  
137 Agreement, including direct and indirect payroll and employee benefit costs, travel costs, repair  
138 costs, and the costs of materials and supplies. A sending party also shall document the use of its  
139 equipment, and the quantities of materials and supplies used while providing mutual aid  
140 assistance under the agreement. A sending party shall cooperate with a requesting party in  
141 documenting costs associated with providing mutual aid assistance under the agreement and  
142 seeking reimbursement for such costs.

143 Except as set forth herein, there shall be no expectation of automatic, necessary or contractual  
144 reimbursement to a sending party for providing mutual aid assistance under the agreement.  
145 However, nothing in this section shall preclude a requesting party and a sending party from  
146 entering into agreements for reimbursement of costs associated with providing mutual aid  
147 assistance.

148 Except as otherwise agreed to by the requesting and sending parties, the requesting party shall  
149 seek reimbursement under any applicable federal and state disaster assistance programs for the  
150 costs of responding to and dealing with the public safety incident, including the mutual aid

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151 assistance costs incurred by all sending parties. The requesting party and each sending party shall  
152 receive, based on the documented costs of providing mutual aid assistance, its pro rata share of  
153 the disaster assistance compensation and reimbursement provided to the requesting party.

154 Article VI. OTHER MUTUAL AID AGREEMENTS

155 This section shall not be construed to affect, supersede or invalidate any other statutory or  
156 contractual mutual aid or assistance agreements involving parties to the agreement.

157 Nothing in this section shall preclude any party from entering into supplementary mutual aid  
158 agreements with other parties or jurisdictions.

159 In the event of a conflict between the terms of the Agreement and any lawful supplementary  
160 or preexisting statutory or contractual mutual aid assistance agreement, the terms of the  
161 supplementary or preexisting agreement shall take precedence over the Agreement.

162 Article VII. POWERS, LICENSES, PERMITS

163 While providing mutual aid assistance under the Agreement in the geographical jurisdiction  
164 or location of a requesting party, employees of a sending party shall be afforded the same powers,  
165 duties, rights and privileges as they are afforded in the sending party's geographical jurisdiction  
166 or location.

167 An employee of a sending party who holds a valid license, certificate, or other permit in their  
168 geographical jurisdiction evidencing the meeting of qualifications for professional, mechanical or  
169 other skills, shall be deemed similarly licensed, certified or permitted in the requesting party's  
170 geographical jurisdiction or location during such time as he or she is providing mutual aid  
171 assistance under the Agreement.

172 Article VIII. WAGES & COMPENSATION

173 Employees of a sending party, while providing mutual aid assistance under this Agreement,  
174 shall receive the same salary, including overtime, that they would be entitled to receive if they  
175 were operating in their own geographical jurisdiction. In the absence of an agreement to the  
176 contrary, the sending party shall be responsible for, and pay, all such salary expenses, including  
177 overtime.

178 Article IX. LIABILITY

179 In transit to, returning from, and while providing mutual aid assistance under the Agreement  
180 in the requesting party's jurisdiction or location, an employee of a sending party shall have the  
181 same rights of defense, immunity and indemnification that he otherwise would have under the  
182 law if he was acting within the scope of his employment under the direction of his employer. A  
183 sending party shall provide to, and maintain for, each of its employees who provide mutual aid  
184 assistance under the agreement the same indemnification, defense, right to immunity, employee

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185 benefits, death benefits, worker’s compensation or similar protection, and insurance coverage that  
186 would be provided to such employees if they were performing similar services in the sending  
187 party’s jurisdiction.

188 Each party to the agreement waives any and all claims and causes of action against all other  
189 parties that may arise out of their activities while rendering or receiving mutual aid assistance  
190 under this agreement, including travel outside of its jurisdiction/

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

195 Article X. EMERGENCY MANAGEMENT ASSISTANCE COMPACTS

196 The director of MEMA or his designee shall be the persons authorized under EMAC and  
197 IEMAC to (i) receive, coordinate, and answer all requests to the Commonwealth to provide  
198 mutual aid assistance to another state or country pursuant to EMAC and IEMAC, and (ii) make  
199 and coordinate all requests on behalf of the Commonwealth to another state or country to receive  
200 mutual aid assistance pursuant to EMAC and IEMAC.

201 MEMA shall be the agency of the Commonwealth authorized to dispatch resources of the  
202 Commonwealth or of a governmental unit to another state or country to provide mutual aid  
203 assistance pursuant to EMAC and IEMAC. Employees of a governmental unit who, at the  
204 request and with the approval of MEMA, render mutual aid assistance to another state or country  
205 pursuant to EMAC or IEMAC shall be deemed to be emergency forces and officers of the  
206 Commonwealth for the limited purpose of effectuating the purposes of EMAC and IEMAC.

207 Employees of the Commonwealth or a governmental unit who, at the request and with the  
208 approval of MEMA, render mutual aid assistance to another state or country pursuant to EMAC  
209 or IEMAC shall, except as otherwise provided for herein or in EMAC or IEMAC, be provided the  
210 same compensation, rights, responsibilities, benefits and protections that they would be entitled to  
211 receive if they were operating in their own geographical jurisdiction.

212 The Commonwealth shall reimburse each governmental unit for the reasonable expenses  
213 incurred in rendering mutual aid assistance under EMAC or IEMAC at the request and with the  
214 approval of MEMA, including direct and indirect payroll costs, overtime costs, travel costs, repair  
215 costs, replacement costs, costs of materials and supplies, and injury or death benefits.

216 SECTION 2. All cities and towns of the Commonwealth, and other governmental units,  
217 automatically shall become parties to the Agreement set forth in Section 1 ninety days after the

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218 effective date of this section, unless a city, town, or other governmental unit opts out of the  
219 Agreement as provided for herein.