

COMMITTEE STATEMENT

LB 87

HEARING DATE: January 29, 1999

COMMITTEE ON: Revenue

TITLE: (Wickersham, Schimek) Authorize creation of joint public agencies under the Interlocal Cooperation Act

ROLL CALL VOTE – FINAL COMMITTEE ACTION

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results: 8/0/0/0

8	Yes	Senators Coordsen, Hartnett, Landis, C. Peterson, Raikes, Redfield, Schellpeper and Wickersham
0	No	
0	Present, not voting	
0	Absent	

PROPONENTS

REPRESENTING

Senator William R. Wickersham

Introducer

OPPONENTS

REPRESENTING

NEUTRAL

REPRESENTING

Chris Dibbern
John Musselman, Bond Counsel
Catherine Lang

NMPP Energy
NE Public Gas Agency
Property Tax Division, Dept. of Revenue

SUMMARY OF PURPOSE AND/OR CHANGES:

LB 87 is a proposal to grant a new option to entities wishing to perform a service using an interlocal agreement. The bill would allow the entities to create a new, separate, entity called a joint public agency. The joint public agency would be allowed to own property, make contracts, employ workers, have

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governmental tort immunity, and otherwise enjoy the benefits of a governmental entity. Other provisions of the bill deal with governance, taxation, modification of the contract, expanding or dissolving the entity, and powers and duties of the joint public entity.

Section 1 would amend section 13-520 to incorporate joint public agencies into the exception for interlocal agreements contained in the limitation on budgeted restricted funds.

Section 2 would amend section 13-801 to incorporate the new sections into the Interlocal Cooperation Act.

Section 3 would amend section 13-803 to add several new definitions, including "board" as the board of representatives of a joint public agency created under sections 7 to 26 of this act, or of a joint entity as currently allowed, and "governing body" to have the same meaning as in the local budget act, except that in the case of a state agency it would mean the board, commission, or Governor.

Sections 4 and 5 would amend section 13-804 essentially by dividing it into two parts. The first part would be the current provisions allowing two governmental agencies to agree to act together, including by creating a joint entity. A new subsection (6) would allow participating local governments to transfer property or employees to the joint public entity. The second part would be contained in a new section 5, which is identical to current section 13-804 (1) and allows any and all powers of any governmental entity to be exercised jointly with another, notwithstanding any provisions of a city charter. This section is to apply to both joint entities and joint public agencies.

Changes made to this section by this bill are to be construed as supplemental and not a replacement of the current Interlocal Cooperation Act.

Section 6 provides that the Legislature may amend the Interlocal Cooperation Act or any authorizing statutes and change responsibilities under interlocal agreements as a result, except that no act of the Legislature may impair any obligation of contract.

Section 7 states that a joint public agency shall have only those powers of taxation as held by one or more of the parties to the agreement and only as set out in the agreement. The agreement may authorize the joint public agency to levy a property tax if the agreement also calls for the participating public agencies to levy less by the amount to be levied by the joint public agency

Property tax authority is to be allocated to the joint public agency by the city and county as provided in section 77-3443 and the agreement may require allocation.

If one or more of the participating agencies is a city, the agreement may call for the joint public agency to levy a local option wheel, occupation or sales tax over the entire area of operation, so long as the total of all local option sales taxes do not exceed 1 1/2 percent. Before a local option sales tax is levied, the normal procedures must be followed, including a vote approved by anyone in an area outside the municipality which would be proposed to have a new sales tax. If the area to be encompassed by any local option sales tax to be levied by a joint public agency includes more than one city, each must be a part of the agreement or vote separately on the issue of increasing or diverting city sales tax for this purpose. The ballot can combine the issue of authorizing the collection of the tax by the joint public agency and the change of use of any existing local option sales tax to the joint public agency. The same procedures would apply if a county which is levying a county sales tax under Laws 1996, LB 1177.

If the agreement calls for allocating property tax authority to the joint public agency, the Property Tax Administrator is to be notified. If the agreement calls for allocating sales tax authority to the joint public agency, the Tax Commissioner is to be notified.

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Section 8 provides that any two or more public agencies may create one or more joint public agencies.

Section 9 sets out the procedure for creation. Each public agency is to pass a resolution, after sufficient public notice, determining that there is a need for a joint public agency and naming the participants. If one of the participants is a state agency, the governing board or commission issues the resolution or, if it is a code agency, the Governor is to issue a proclamation. Upon adoption of the resolution, each public agency is to appoint a representative to the board of the joint public agency. The powers of the joint public agency are to be vested in the board.

Section 10. All the participating public entities are to then file an agreement with the Secretary of State setting forth the names of the participants, a copy of the resolution passed by each member, a demonstration that each initial representative is duly appointed, proof of publication, a brief description of its activities, and the name of the joint public entity.

Section 11. The Secretary of State is to review the agreement for compliance with the act and to determine if the name is distinguishable from that of any other entity in the state. If qualified, the Secretary of State is to issue a certificate of creation and the existence of the joint public agency shall commence. Notice of creation of the joint public agency is to be published in one newspaper.

Section 12. Issuance of the certificate of creation is to be binding in any action for enforcement of any contract of the joint public agency, except as against the state. The certificate is admissible evidence and conclusive proof of its contents.

Section 13 allows other public entities to join the joint public agency by passing a resolution, applying to the joint public agency, and receiving approval by the board of the joint public agency. Added members are to be reported to the Secretary of State who is to issue an amended certificate.

Section 14 allows each representative to serve on the board for a term as set out in the agreement, not to exceed four years. A representative may be reappointed. A representative may only be removed by the public agency that appointed him or her. The term of a representative who is no longer a member of the governing board which he or she represents is terminated and is to be filled for the unexpired term. Members of the board are to receive no compensation, but shall be eligible to receive expenses including mileage.

Section 15. Each participating public agency is entitled to at least one representative. The agreement may provide that one or more participating agencies may appoint more than one representative to the board. It may also allow some representatives to cast more than one vote. Unless the agreement provides for a higher quorum, a quorum shall be a majority of the votes which can be cast. The rules of governance are to provide for the scheduling and conduct of meetings.

Section 16. The board shall appoint a chairperson and vice chairperson and may employ an executive director. It may appoint a secretary from among its members or may appoint the executive director as the secretary. The joint public agency may also employ legal counsel, agents, officers, and other such employees.

Section 17 allows the board to create an executive committee to exercise the powers of the board between meetings. Other committees may also be created with powers as delegated by the board. The board is subject to the open meetings laws.

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Section 18 allows participants to withdraw, except that withdrawal shall not affect any obligations or impair any bonds. If at least one half the participating agencies agree, the joint public agency may be dissolved, except that it cannot be dissolved without retiring or otherwise disposing of any bonds which are outstanding. The board is to provide for the disposition of assets at its discretion or as provided in the agreement for creation.

Section 19 provides that a joint public agency shall constitute a political subdivision and a body corporate and politic of this state exercising powers separate from the participating public entities.

Section 20 provides that a joint public agency may be sued under the provisions of the Tort Claims Act.

Section 21 provides general powers including the power to make contracts, make and amend rules of governance, own property, incur debts, accept contributions, collect fees and rents, and other powers necessary and convenient to carry out the act. It may exercise the powers held by any one of the participating public entities. In exercising its powers, a joint public agency shall be subject to the same restrictions as one of the participating public agencies as provided in the agreement.

Section 22. A joint public agency may indemnify and provide insurance for officers, agents and employees. The agreement may also provide that such coverage be the responsibility of the participating public entities.

Section 23 allows the agreement to command that insurance, retirement and other benefits for officers or employees of the joint public agency be included within the benefits package of one or more of the participating public entities.

Section 24. A joint public agency may file a chapter 9 bankruptcy petition for adjustment of debts.

Section 25 requires any joint public agency to file biennial reports with the Secretary of State stating the officers, the address of its principal office, the participating public entities, and the nature of its activities. Reports are due between January and April of odd-numbered years. A fee of \$20 is collected with the reports.

Section 26 provides that if all participating public entities are of the same type, the public bidding requirements for that type shall apply. If they are not all of the same type, the joint public agency is subject to the bidding requirements of the County Purchasing Act.

Section 27. All money of the joint public agency shall be paid out by check, draft or warrant signed by the chairperson and treasurer or other officer. The treasurer shall be bonded either through a treasurer's bond or a surety bond filed with the board.

Sections 28 through 41 harmonize many sections of the Interlocal Cooperation Act to insert the words "or joint public agency" together with joint entity. Also, "board" is added in various places.

Section 42 restates what is currently contained in section 13-804 (7) in a separate section. The section would state that no joint entity or joint public agency shall be considered a state agency.

Sections 43 through 53 harmonize eleven sections throughout the statutes by adding the term "joint public agency" to the term "joint entity" wherever it appears.

Section 54 declares severability, and

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Section 55 repeals the original sections.

EXPLANATION OF AMENDMENTS, IF ANY:

The Committee amendments strike the bill and insert all new sections. However, no substantive changes are made in the amendments, the purpose of the change is to merely separate into a distinct act the new powers given the joint public entity as opposed to integrating the changes into the existing Interlocal Cooperation Act. Section by section, the amendments:

Section 1 names sections 1 to 50 of the bill the Joint Public Agency Act.

Section 2 restates the purpose to promote efficiency through cooperation among governmental units.

Section 3 provides definitions: “Board” is the board of representatives of a joint public agency created under sections 7 to 26 of this act, and “governing body” is to have the same meaning as in the local budget act, except that in the case of a state agency it would mean the board, commission, or Governor, and in the case of a federal agency, the governing body or president.

Section 4 would allow two or more governmental agencies to agree to act together, including by creating a joint public entity. Requirements for the agreement are set out. Subsection (4) would allow participating local governments to transfer property or employees to the joint public entity.

Section 5, which is identical to current section 13-804 (1) allows any and all powers of any governmental entity to be exercised jointly with another, notwithstanding any provisions of a city charter.

Sections 6 through 27 are identical to sections 6 through 27 in the original copy of the bill.

Section 28 requires approval of an agreement dealing with services or facilities over which a state officer has statutory or constitutional control. (Repeats for this act the contents of 13-805.)

Section 29 authorizes the participating public agencies to appropriate money or property to the joint public agency (13-806).

Section 30 authorizes joint public agencies to issue bonds on its own behalf for specific purposes (13-808).

Section 31 provides a general grant of authority for issuing bonds (13-809).

Section 32 provides that members of the board, other political subdivisions, and the state are not liable for bonds (13-810).

Section 33 provides a procedure for issuing bonds (13-811).

Section 34. Any bonds are to be fully negotiable (13-812).

Section 35. A change in officers does not affect the validity of the bonds (13-813).

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Section 36 grants powers to the joint public agency with regard to the issuance of bonds, including covenanting to the use of property and the securing of any bonds (13-814).

Sections 37-40. Authorize (1) refunding bonds (13-815), (2) providing for exchange (13-816), (3) using the proceeds (13-817), and (4) the terms and security (13-818).

Section 41 states that bonds may be issued without the consent of any department or division of the state (13-819).

Section 42 allows publication of any proceeding in a newspaper (13-820).

Section 43 provides for a notice of intention to issue bonds (13-821).

Section 44 allows contesting the issuance of bonds within 30 days of publication. After such time, the validity cannot be challenged in any manner (13-822).

Section 45 provides that bonds issued by a joint public agency are suitable investments by the state, political subdivisions and financial institutions (13-823).

Section 46. States that the interest on bonds is exempt from taxation (13-824).

Section 47. The Joint Public Agency Act is an additional, complete method for doing the things authorized under the act (13-824).

Section 48. The state agrees to not impair any contract of any joint public agency, including bond indentures (13-825).

Section 49. A joint public agency is not a state agency, and its employees are not state employees (13-826).

Section 50. The Joint Public Agency Act shall be liberally construed to effect its purpose (13-827).

Sections 51-100 harmonize various sections in the statutes dealing with local budgets, joint public safety services, municipalities, counties, fire protection districts, joint street and road projects, corrections, workers' compensation, libraries, clean water, The Nebraska Redevelopment Act, public power, solid waste, levy and budget limits, education, emergency management, tort claims, state officers, and open meetings laws.

Section 101 provides severability.

Section 102 repeals the original sections.

Senator William R. Wickersham, Chairman
Committee on Revenue