



Southeastern Regional Services Group

ORGANIZATIONAL STRUCTURE AND FUNCTION – condensed notes and documents

The following excerpts are taken from FY20 and FY21 SERSG Board meeting Minutes. Beginning on the 7th page are memos providing information and recommendations referenced in the meetings. This documents questions, comments and discussion about the structure of SERSG and SERSG Service Corporation. Also included are updates on the IMA Re-authorization process, the need for which was discovered through this review process. Regional Administrator Moira Rouse attended all meetings. Other attendees for each meeting are given in Footnotes.

June 3, 2020, page 2ⁱ

Moira reminded the Board she will work with KP Law over the summer to review SERSG Service Corp. ByLaws in the interest of updating them.

See MRouse memo to KP Law for **document review**

September 2, 2020, page 2ⁱⁱ

KP Law reviewed documents for SERSG and SERSG Service Corp. This was in response to the Board's request to revise the Quorum number to more appropriately serve the organization. Moira verbally presented their findings and recommendations from her own notes. David asked Moira to send the Board a summary of this information, which is provided in attached summary. The Board will review this and discuss the matter further next month when more members are present.

See KP Law memo on **Governance Options**

October 7, 2020, page 2ⁱⁱⁱ

A document summarizing of **KP Law's recommendations** was included in this month's meeting packet. The Board discussed our organizational structure and KP Law's recommendations. The group asked Moira to solicit time and cost estimates from KP Law for each of the options they suggest. She will do so and report back to the board.

Graham suggested SERSG post its By-Laws and current fiscal year Budget on the website for full disclosure. Moira said she will post the Budget, however cautioned the current documents are confusing. The consensus was to wait to post other documents until after a course of action for the organizational structure is chosen.

November 4, 2020, page 2^{iv}

The Board discussed KP Law's recommendations about **SERSG organizational structure**. Moira spoke with Atty Gregg Corbo on October 20. He estimates the cost of legal support to achieve any of the 3 proposed options will be between \$3,000-\$5,000. He explained there are conflicts among our founding documents, which he will document for the Board's reference. Moira would like to have him outline them, to assist the Board in this decision, and invite him to join our December meeting to respond to member questions.

December 2, 2020, pages 3-5^v

The current SERSG organizational structure was documented and discussed. A presentation and discussion led by **KP Law** Attorney Gregg Corbo began with a review of this document and his

recommendations (attached). Gregg joined the meeting at 10:05AM. Following the review, Gregg responded to questions:

- Gill asked whether changing from a private non-profit organization to a public entity would require any additional financial obligation. Gregg answered that a contribution to the state pension system would likely be needed. Gill said his community is not likely to support increased membership dues to accomplish such changes.
- David G. clarified that SERSG currently pays the employer portion of Social Security taxes, which would not be needed for a public employee. Expenses currently directed to social security would be redirected. (note: FY21 ER-taxes are budgeted at \$4,708) David believes that because the state pension system rewards long-tenure, such a change may not benefit Moira at all. Her response was she seeks to improve the organization for its own benefit, and not for any personal gain.
- Gregg said specific employment implications would need to be more closely explored for a clearer understanding, though it is reasonable to assume there will be an increase in the cost of employing the regional administrator as a public employee. The question he raised is whether such costs could be absorbed within the currently assessed membership fees or dues, or if it would require increasing those assessments.
- Mike Y. asked whether Health insurance would be required. Greg replied that all benefits received by public employees would need to be provided if the change used the Joint Powers Act.
- Gill said adding these expenses, known as OPEB or Other Post-Employment Benefits, creates a liability SERSG has avoided by its current structure. Such liability makes accounting more complicated, even with only one employee.
- Moira pointed out that revenue has exceeded expenses since before she was hired in 2015. The divide has grown wider as the organization expanded and dues revenue increased.
- Donnette asked: Would there be greater exposure or liability as a public entity? Would these proposed changes position SERSG to better serve its membership and/or mission in the future? And would SERSG qualify for additional services, reimbursements or benefits as a public entity (eg: grants through the CARES act)? In Gregg's opinion, greater protections would likely be afforded as a public entity than SERSG currently has. These include limits on liability, a cap on tort damages under MGL chapter 258, and immunity for discretionary function and protections of indemnification. In terms of reimbursements or grants, that would depend on the specific feature of public funding opportunities.

Gregg expressed appreciation for the questions raised and encourages continuing such consideration. He intends any changes to streamline the structure and function of the organization. If analysis of the public option created by Joint Powers Act reveals it would cost more and would not be supported with appropriation, then the legislative solution may be more appropriate. Legislation can specifically define what benefits, if any, the Regional Administrator would be entitled to, and any other employees in the future. Because the Inter-Municipal Agreement needs to be re-authorized by April 2, 2021 this is an opportune time to reassess.

The current two-entity structure depends on a majority of the now-24 member-municipalities attending meetings and actively participating in all business. Gregg imagines it may be difficult to achieve a quorum to meetings. A new single entity could be created to more efficiently manage the business. While the larger membership would continue to serve a vital role, a smaller group of representatives, who perhaps serve on a rotating basis, could manage day to day activities. Committees could be

defined to manage separate areas of business. This is particularly relevant if membership growth continues.

- Gill asked whether anything prohibits us from renewing the current structure, and whether anyone has identified Pros and Cons of the current versus a different structure. Gregg said no. Gregg confirmed the current structure could be renewed as is.
- Mike Y said the issues raised today are important and deserve further analysis and consideration. He also requested perhaps a longer-term IMA could be approved, to protect ourselves from unforeseen delays.
- David G supports SERSG to spend what it takes within reason to identify and compare/contrast the options. He believes that with only one employee, or even with 2, some requirements to provide public-employee benefits may not be triggered. These details are what require further analysis.
- Donnette asked whether an intern could be brought in to administratively support SERSG. Moira responded that administrative support certainly would be helpful, and internships cost less. But the turnover and repeated training-curve of supporting internships may not benefit her or the organization as much as a permanent assistant. The issue of administrative support with or without interns is a topic for future consideration.
- Lauren asked how quickly any changes could be made and how the April 2021 IMA expiration affects this process. Gregg has an IMA template we may be able to use and said he recommends we plan for it to take up to 6 months. However, specific timing cannot be guaranteed.

Gregg confirmed the legislative option would be slightly more complicated than the Joint Powers Act, and favors it for the greater flexibility it would provide. Regarding the larger question of organizational structure, the group consensus was to present a revised IMA for at least six months or even years. This would accommodate a longer consideration of goals and options, while maintaining organizational integrity. It was asked whether the current IMA could simply be re-used with a new date and time period; Gregg said no, it is not that straight-forward. He proposed to craft a new IIMA that could then be rolled into a potential new legislatively-created entity.

In response to the many employment-related questions posed today, Gregg asserted he is not an employment specialist. He has colleagues who are, though, and proposes to analyze the changes being considered here. He received consensus support from the Board to research employment implications of proposed change options and report back next month. Gregg recommends we undertake an IMA revision, but change the minimal

See KP Law memo on **Employee Compensation**

January 6, 2021, pages 2-3^{vi}

KP Law Attorney Gregg Corbo joined the meeting at 10:55am to answer questions about his Memorandum comparing costs of employing as a private entity versus as a public entity. Mike invited questions.

- Gill pointed out the 9% retirement plan contribution shown on Gregg's memo pertains only to annual salaries below \$30k. Above that amount, employees must contribute 9% plus 2%. Upon reaching 30 years of employment, the first amount can reduce to 6% but the additional 2% is still needed for higher salaried employees. Gregg made note of that correction.

- It was asked if SERSG became a municipality, whose retirement system would absorb the employee? Mike Y recently helped to create a regional Dispatch District and they decided to use Bristol County's retirement plan, even with a Norfolk County office.
- Gregg said if SERSG became a public Employer, the employee would be enrolled in one of the public retirement options under its own entity. There would be no significant financial difference to the employer for which available county or plan option is chosen. As stated in the memo, social security taxes would *not be paid* for a public employee.
- All of Gregg's information constitutes a legal analysis of the differences, according to their interpretation of the law. If the group moves forward with an organizational change, he advises consultation with a financial professional.
- A Special Act of the Legislature differs from the Joint Powers Act in that it would allow the status of employees to be crafted more specifically regarding compensation, benefits, and retirement. Atty Corbo explained the point of getting special legislation is to create an exception to General Laws. Because it requires approval by the legislature, the entity is protected from claims against it.
- David asked whether any Open Meeting law concerns exist when going from a private to a public entity? No, there would be no significant change to Open Meeting Law requirements if the organizational structure were changed.
- Gregg said there could be an argument that a Board of Directors gathered for the purpose of serving public business, and comprised of employees of public bodies representing the interests of those bodies, *is already subject to Open Meeting Law* requirements. If a public entity were created, it could be structured for a Large legislative body akin to City Council or Town Meeting (eg: all members) that would NOT be subject to Open Mtg Law, with a smaller group like a Management or Administrative Committee that IS subject to Open Mtg Law.
- Discussion resolved that the extension-period for a revision of the IMA should be 25 years. Gregg will provide a document to Moira for distribution to the members, and with proposed motion wording as well.
- Mallory inquired, and Gregg confirmed, that the two items of business are a) re-authorize the IMA soon, and b) at a later date, conclude how to re-structure or refine SERSG to better serve its members and mission going forward.

February 3, 2021 page 2^{vii}

The **IMA Reauthorization** process has begun and many towns have acknowledged receipt of the documents. Moira reported she will attend Stoughton's Select Board meeting virtually this evening to explain the need for this action and answer any questions.

March 3, 2021, page 3^{viii}

Moira said the status of **IMA Reauthorization** responses is very good. She is waiting and following up on 6 remaining towns. Through this IMA Re-Authorization process, it was discovered that both Brockton and Medfield are Associate SERSG Members, who receive services but do not have a vote on the SERSG Board. This status is defined in the ByLaws. When a municipality does NOT sign the IMA but DOES authorize other documents and pay dues annually, they are entitled to participate in all procurements and other services, but their presence does not count toward a quorum and they may not vote to authorize business.

Donnette explained there is a district consortium based in Brockton, for which the city previously signed an IMA. They participate in the SERSG Office Supply and Paper bids but could not justify signing another IMA to become a full member.

April 7, 2021, page 2^{ix}

Status of **IMA Reauthorization** is that only one town's response is still pending. All other needed authorizations have been received. Gill asked a specific question about Taunton's documents, which Moira will answer directly to him after this meeting.

June 9, 2021, page 2^x

Board consensus at prior meetings had been to discuss **SERSG organizational options** at a summer meeting. Upon further consideration, this topic was deferred to the September 15th meeting. This means the September meeting will extend longer than usual.

GOALS of any organizational change

- Simplify structure
- Retain shared procurement and administration resources
- Continue member networking opportunities, both Administration and DPW
- Reduce number of people required for routine business

ⁱ 6/3/20 Attendance Chair Mike Yunits, Norton; Brockton, Donnette McManus; Dighton, Mallory Aronstein; Foxborough, Katie Lang; Middleborough, Andrew Sukeforth; North Attleborough, Rajon Hudson; Raynham, Graham Waters; Sharon, Lauren Barnes; Stoughton, Fran Bruttaniti; Taunton, Gill Enos; W.Bridgewater, David Gagne

ⁱⁱ 9/2/20 Attendance Vice Chair David Gagne, W.Bridgewater; Brockton, Donnette McManus, Mike Morris; Dighton, Mallory Aronstein; Mansfield, Christina Collins; Middleborough, Andrew Sukeforth; Raynham, Graham Waters; Sharon, Lauren Barnes

ⁱⁱⁱ 10/7/20 Attendance Chair Mike Yunits, Norton; Foxborough, Katie Lang; Mansfield, Christina Collins; Middleborough, Andrew Sukeforth & Emily Surette; Raynham, Graham Waters; Sharon, Lauren Barnes; Stoughton, Fran Bruttaniti; Taunton, Gill Enos; W.Bridgewater, David Gagne

^{iv} 11/4/20 Attendance Chair Mike Yunits, Norton; Brockton, Donnette McManus; Dighton, Karin Brady; Mansfield, Christina Collins; N. Attleborough, Mikes Gallagher & Borg; Sharon, Lauren Barnes; Taunton, Gill Enos; W. Bridgewater, David Gagne;

^v 12/2/20 Attendance Chair Mike Yunits, Norton; Brockton, Donnette McManus; Dighton, Karin Brady; Foxborough, Katie Lang; Mansfield, Christina Collins; Middleborough, Emily Surette; Milton, Mike Kelly; N. Attleborough, Mikes Borg & Gallagher; Sharon, Lauren Barnes; Stoughton, Fran Bruttaniti; Taunton, Gill Enos; W. Bridgewater, David Gagne

^{vi} 1/6/21 Attendance Chair Mike Yunits, Norton; Dighton, Karin Brady; Foxborough, Katie Lang; Lakeville, Tracie Craig-McGee; Mansfield, Christina Collins; Middleborough, Emily Surette; Raynham, Graham Waters; Sharon, Lauren Barnes; Stoughton, Fran Bruttaniti; Swansea, Mallory Aronstein; Taunton, Gill Enos; W. Bridgewater, David Gagne

^{vii} 2/3/21 Attendance Vice Chair, David Gagne, W. Bridgewater; Brockton, Donnette McManus; Foxborough, Katie Lang; Lakeville, Tracie Craig-McGee; Mansfield, Christina Collins; Middleborough, Emily Surette; Raynham, Graham Waters; Sharon, Lauren Barnes; Stoughton, Fran Bruttaniti; Swansea, Mallory Aronstein

^{viii} 3/3/21 Attendance Chair, Norton, Mike Yunits; Brockton, Donnette McManus; Dighton, Karin Brady; Lakeville, Tracie Craig-McGee; Mansfield, Christina Collins; Middleborough, Emily Surette; Milton, Mike Kelly; Raynham, Graham Waters; Stoughton, Fran Bruttaniti; Swansea, Mallory Aronstein; Taunton, Gill Enos; W. Bridgewater, David Gagne

^{ix} 4/7/21 Attendance Chair, Norton, Mike Yunits; Brockton, Donnette McManus; Dighton, Mike Mullen; Foxborough, Katie Lang; Mansfield, Christina Collins; Middleborough, Emily Surette; Milton, Mike Kelly; Raynham, Graham Waters; Sharon, Lauren Barnes; Stoughton, Fran Bruttaniti; Swansea, Mallory Aronstein; Taunton, Gill Enos

^x 6/9/21 Attendance Chair, Norton, Mike Yunits; Brockton, Donnette McManus; Dighton, Mike Mullen; Hanson, Lisa Green; Lakeville, Tracie Craig-McGee; Mansfield, Christina Collins; Middleborough, Emily Surette; North Attleborough, Andrea Phillips; Sharon, Lauren Barnes; Taunton, Gill Enos; West Bridgewater, David Gagne



Southeastern Regional Services Group

SUMMARY to Board and File

from Moira Rouse

September 1, 2020

Subject: Legal firm document review of Southeastern Regional Services Group and SERSG Service Corporation

This summer I provided KP Law Attorney Gregg Corbo the SERSG incorporation documents for review and advice. This Board had requested a revision to quorum requirements in the ByLaws and I recommended revising the Inter-Municipal Agreement to update it from its original 1995 version. Gregg read the:

- SERSG INTERMUNICIPAL AGREEMENT, which has been signed by municipalities since 1995 to become members (6 pages).
- BYLAWS of the SERSG SERVICE CORP that created the organization's fiscal arm in 1997 to manage the pre-existing SERSG entity referenced in the IMA (10 pages).
- SERVICES & SUPPORT AGREEMENT, which details the relationship between SERSG and the SERSG SERVICE CORP (10 pages).
- And the 501(c)4 letter designating the organization as a non-profit entity (2 pages).

Gregg's assessment is that while these documents *adequately create and define* these two organizations, they are cumbersome and difficult to understand. I explained the organizational history that SERSG Service Corp. was formed to take fiscal responsibility for SERSG after it parted ways with Old Colony Planning Council. That helped him understand the origin dates, sequence, and some convoluted wording.

As non-governmental entities, SERSG and SERSG Service Corp fall between the cracks of familiar municipal structures. Examples of this are that as a non-municipal entity, annual MMA membership costs \$485 (current non-prof business rate) instead of being free, that OSD delayed creating our account to post bids because of their misunderstanding our organization, and that SERSG & SERSG Service Corp. pay taxes because of the particular non-profit designation given in 1997.

Atty. Corbo strongly recommends option 1 below, or can assist us with option 2, whichever the Board chooses. He suggests we:

- 1) Create a new legal entity and dissolve the old one. To accomplish this we could either: present a bill to the legislature to create a state-recognized regional entity **OR** use MGL chapter 40 section 4A½ Joint Powers Act passed in 2016 to create a new entity. Either of these options would re-define SERSG on paper, thereby simplifying future understanding and administration. Neither option would change the organization's function. If SERSG became a municipality, its members would be familiar with its legal requirements.
- 2) Revise organizational documents to remove internal inconsistencies and revise them as needed. At a minimum, this multistep process would improve SERSG on paper and simplify its documents. Member municipalities would need to approve an amended IMA. Then each member would need to approve amended By-Laws, which can include

revision to the Quorum number. Finally, changes to the Services & Support Agreement could also be needed.

Atty. Corbo has not reached a conclusive opinion as to potential tax consequences of transferring the assets of the corporation to a regional entity created by a Joint Powers Agreement or vote of the legislature. However, he said because both entities are not-for-profit, it is reasonable to assume that there may not be any adverse consequences. We can research details of whichever option the Board chooses.

TO: Moira Rouse, Regional Administrator (*By Electronic Mail Only*)

FROM: Gregg J. Corbo, Esq.

RE: Review of Governance Documents

DATE: November 30, 2020

You have requested that I review to governance documents for Southeastern Regional Services Group, and to provide an opinion and recommendation as to whether and to what extent the manner in which SERSG is legally constituted should be changed. In response to your request, I offer the following:

The Formation of SERSG

The Southeastern Regional Services Group (“SERSG”) was created on or about April 2, 1996 through an Intermunicipal Agreement (“IMA”) between Abington, Bridgewater, Brockton, Canton, East Bridgewater, Easton, Foxborough, Mansfield, Norton, Raynham, Sharon, Stoughton, Taunton and West Bridgewater. SERSG was formed to create regional solutions to common problems and the provision of certain municipal services through joint action of the member communities, acting by and through a Board of Directors. Today, SERSG serves twenty-four member communities.

Although it was intended that SERSG would act as an independent entity, the law at the time did not provide a mechanism for the creation of a separate legal entity through an IMA. To address this issue, on or about March 3, 1997, a private non-profit corporation known as SERSG Service Corp. (the “Corporation”), was formed by the founding members of SERSG. The two organizations are linked by a Service and Support Agreement, by which SERSG appointed the Corporation to serve as its day-to-day manager.

Current Governance Structure

SERSG is still governed by the terms of the 1996 IMA, which provides that it will be governed by a Board of Directors, comprised on one Director from each member community. The Board of Directors is authorized to act by a majority of those present and voting at a meeting having a quorum; a quorum is a majority of the members. This means that the current quorum requirement for the Board of Directors to transact business is thirteen. In addition to the Board of Directors, the IMA called for the appointment of a Regional Administrator. Subject to the direction and control of the Board of Directors, the Regional Administrator, who is an employee of the Corporation, is charged with managing the day-to-day affairs of SERSG.

The Corporation is governed by its corporate by-laws. Although the By-laws establish a governance structure that is similar to the one established by the IMA, it is not identical. The Bylaws establish two groups that are authorized to make decisions on behalf of the Corporation. First, it designates the position of “Member”. There is one Member for each municipality, and each member has one vote. The By-laws also have a quorum requirement of the majority of Members, however, it appears that Members may vote by proxy. The role and duties of the Members is not clearly spelled out in the Bylaws.

In addition to Members, the Corporation has a Board of Directors. According to the By-laws, the Board of Directors is charged with the Management of the Corporation. The Board of Directors of the Corporation does not have a fixed number. Rather, Directors can be appointed by the Members or the Board of Directors, and the Board shall not consist of less than three Directors. The Board of Directors is not required to have a representative from every community, its size may be changed from time-to-time, and Directors can be removed. The Board of Directors are authorized to create sub-committees and to appoint corporate officers, President, Vice-President, Treasurer, Clerk and Secretary, and to delegate all or a portion of its authority to such sub-committees and/or officers.

Based on my conversations with the Regional Administrator, it does not appear that the governance structure of the Corporation is used. Rather, the organization is primarily operated by the SERSG Board of Directors, which usually meets on a monthly basis and votes on various items, including the annual operating budget and member dues. The SERSG Board of Directors also votes to approve vendors recommended by the Regional Administrator after a procurement process. In addition to the SERSG Board of Directors, there is a smaller group known as the Administrative Committee, which meets once per year to prepare the Regional Administrator's performance evaluation and to make a salary recommendation for the following year. Finally, there is a group known as the DPW Division, which is comprised of the DPW or Highway officials from each community. The DPW Division reviews bid documents and responses and makes recommendations to the Board of Directors.

Change in Law

In 1996, when the IMA was executed, although municipalities had the authority to enter into agreements for the joint performance of their duties, they did not have the authority to create separate legal entities. At that time, the statute, G.L. c. 40A, §4A, required the approval of the City Council and the Mayor in a city and Town Meeting in a town. Although the range of services that could be performed jointly under an IMA was broad, such agreements were limited to terms of no longer than twenty-five years. The statute was amended in 2010 to remove the requirement for Town Meeting approval, so that IMAs can be approved by boards of selectmen in towns, but the twenty-five year maximum terms remained in place.

In 2016, the Legislature added a new Section 4A ½ to Chapter 40 of the General Laws, authorizing municipalities to enter into Joint Powers Agreements. Unlike a traditional IMA, a Joint Powers Agreement allows municipalities to form a legally recognized and separate entity for the exercise of any of the members' common powers or duties within a designated region. In this regard, an entity formed by a Joint Powers Agreement operates like a regional school district or a water/sewer district. Through a Joint Powers Agreement, the members can establish an entity that can make contracts, receive and expend funds, including grant funds, borrow money, hire a "business officer" and establish her duties and compensation, and sue or be sued in its own name. As the current IMA provides, the entity is governed by a Board of Directors, comprised of at least one member representing each municipality, each having one vote. A Joint Powers Agreement may be authorized, in a city, by the city council with the approval of the mayor, and, in a town, by the board of selectmen, and it does not have a maximum term.

An organization that must make all policy decisions by a majority of a twenty-four member board may be difficult to operate. If this is the case, the members may also pursue an act of the Legislature to create an entity that is managed in a manner that is more suitable to the present situation. For example, special legislation can provide that the Board of Directors serves in a legislative role, like

a city council or town meeting, for purposes of approving the budget, capital expenditures and borrowing, and that there be an executive committee, made up of a smaller, rotating group of members, that focuses on more of the day-to-day decision-making. The benefit of seeking such legislation is that it allows the members to tailor the operational aspects of the entity to suit their particular needs.

Issues and Recommendation

Although the IMA provides for automatic renewal for an indefinite period of time, in my opinion, it cannot remain in effect for a period of greater than twenty-five years unless it is re-authorized in accordance with the current version of G.L. c. 40, §4A (i.e. by the City Council, with the approval of the Mayor in cities and the Board of Selectmen in towns). Because the original IMA was executed on or about April 2, 1996, it is my opinion that the agreement must be re-authorized by April 2, 2021 to remain in effect. While the IMA will be coming up for review in each of the member communities, this may be an opportune time to examine the current governance structure to see if changes should be made.

In my opinion, a change in governance structure through a Joint Powers Agreement or act of the Legislature will benefit the members in several ways. First and foremost, either a Joint Powers Agreement or act of the Legislature can be drafted without a term of expiration. This will avoid the need for bringing the matter back to the members for re-authorization and avoid the risk that future leaders will either omit this step or that their approving authorities will vote to pursue other options.

In addition to having greater durability, an entity formed pursuant to a Joint Powers Agreement or an act of the Legislature can have a simplified governance structure. Instead of having three governance documents – the IMA, the By-laws of the Corporation and the Service and Support Agreement, there will be one governing document that sets forth all of the rights and obligations of the members and the governance procedures. As it is currently constituted, the existence of two separate entities, each with its own governing documents may result in uncertainty in the event of a dispute or exposure to liability. The creation of a single legal entity will eliminate such uncertainty and will allow the members to create a stream-lined governance structure that will allow for greater efficiencies.

Finally, a Joint Powers Agreement or an act of the Legislature will allow the members to build in legal and financial safeguards that are missing from the current structure. For example, there is no provision in the IMA which requires approval of the budget and member assessments by each member’s legislative body, or even its board of selectmen or Mayor. Likewise, there is no provision conferring the immunities and indemnification rights of public employees on the Regional Administrator. In my opinion, these are issues that should be addressed for the protection of the members and their employees.

For the foregoing reasons, it is my recommendation that the current members vote to retire the IMA and to dissolve the Corporation, and to replace them with a either a Joint Powers Agreement executed in accordance with M.G.L. c. 40, §4A ½ or an act of the Legislature.

Please do not hesitate to contact me if you have any questions in this regard.

TO: Moira Rouse, Regional Administrator (*By Electronic Mail Only*)
FROM: Gregg J. Corbo, Esq.
RE: Financial Implications in Change in Governance Structure
DATE: December 28, 2020

I am writing to follow-up on my November 23, 2020 memorandum regarding the options for simplifying the governance structure of the Southeastern Regional Services Group. Specifically, the Board of Directors has asked for an option as to whether changing the form of the SERSG from a private non-profit corporation to a public body politic will result in an increase in the costs associated with employing the Regional Administrator.

For the reasons set forth below, assuming that the Regional Administrator’s salary remains the same, it is my opinion that a change from a private entity to a public entity will not result in an increase SERSG’s costs in employing the Regional Administrator and, in fact, its costs may be lower than they are now.

As a private employer, SERSG currently makes the following contributions on behalf of the Regional Administrator:

SOC SEC EE	52,549.96	3,258.10
MED EE	52,549.96	761.97
FEDERAL WH	52,549.96	6,935.48
MASSACHUSETTS WH	52,549.96	2,527.48
MA PFL EE	52,549.96	198.64
SOC SEC ER^	52,549.96	3,258.10
MED ER^	52,549.96	761.97
FUTA ER^	7,000.00	42.00
MASSACHUSETTS SUI ER^	15,000.00	149.40
MA PFL ER^	52,549.96	0.00
MA WORKFORCE TRAINING FUND ER^	15,000.00	8.40
Totals:		13,681.67

If SERSG were to form a new entity pursuant to a Joint Powers Agreement, the Regional Administrator would be classified as a public employee, and, as such, she would need to become a member of a contributory retirement system as membership is mandatory for nearly all public employees regularly employed on a full-time basis (with the exception of elected officials, governor appointees, and certain hospital interns). The member’s contribution to the retirement system would be 9% of their regular (gross)

compensation, until 30 years of creditable service, at which point the contribution rate lowers to 6%. Therefore, based on current figures as reported to us, the initial deduction would be \$439.17/month, or \$4,729.50 for the year. This entire contribution comes from deductions from the employee's wages, and the employer is not responsible for paying any portion of it.

By membership in the contributory retirement system described above, the Regional Administrator would be excluded from social security coverage, and therefore neither the employee nor the employer would be responsible for their respective portions of the Social Security tax (6.2% of the employee's wages, paid by each the ER and the EE), thus eliminating a liability of \$3,258.10 from each of them annually. Further, by virtue of being a public employee, the Regional Administrator's wages are Exempt from the FUTA tax, according to IRS Publication 15. The employer's State tax responsibilities will not be effected by a change in status from a private to a public employer, in my opinion, and because SERSG does not currently provide health insurance benefits, it will not be required to do so if it becomes a public employer.

While public employers are not required to pay a portion of the employee's membership in the contributory retirement system, they are required to make an annual payment to the relevant system's pension fund. The amount is determined by the actuary in the state department of insurance, and constitutes the amount required in the relevant year to meet the employer's proportional share of the legal obligations of the fund. Given that SERSG group has only one employee, this amount is not likely to be significant, and may be lower than the amount currently paid in social security taxes.

Therefore, it is my opinion that SERSG's financial responsibility for the Regional Administrator's compensation will not change significantly if the entity changes to a public employer form of governance, assuming that her salary remains the same. However, it does appear that the Regional Administrator's mandatory contributions to the contributory retirement system will be greater than her social security tax liability. If you are going to consider such a change, I recommend that you have this opinion reviewed by an accountant or tax adviser (or someone with like expertise serving any constituent community).

Please do not hesitate to contact me if you have any questions in this regard.