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CREATE REGIONAL SEWER AND WATER AUTHORITY ACT

House Bill 5788

Sponsor: Rep. Leon Drolet

**Committee: Local Government and
Urban Policy**

Complete to 3-29-02

A SUMMARY OF HOUSE BILL 5788 AS INTRODUCED 3-12-02

The bill would create the "Regional Sewer and Water Authority Act" to require that each "regional system" be incorporated as a regional authority to be administered, operated, and controlled under the bill for the benefit of and continued service to each "voting participating municipality." "Regional system" would mean "interconnected municipal water supply and sewerage services and facilities that provide wholesale water supply service or wholesale sewerage service, or both, for more than 25% of the population of this State"—i.e., the Detroit water and sewage system, which serves most of the Detroit metropolitan area. "Participating municipality" would mean a city, village, township, or county that appointed a member of the regional assembly under the bill, and "voting participating municipality" would mean a participating city, village, or township.

The city or other public corporation that originally established a regional system (i.e., Detroit) would retain direct control of retail water supply and retail sewerage services and facilities within that city or corporation. However, it would be considered a customer and user of the regional system and would have to be provided wholesale water supply services and wholesale sewerage services on the same basis and terms as other wholesale customers and users. Upon the request of that city or other public corporation, the regional authority would have to enter into a contract with the city or other corporation that embodied the city's or other corporation's rights to be an equal customer and user. The term of the contract would have to be as requested by the city or other corporation, but could not exceed 50 years.

The bill also would do all of the following:

- create a regional assembly to determine rates for use and capital contribution for capacity to be paid by the city or public corporation organizing the regional system;
- require the regional assembly to review rates, charges, and procedures for water supply and sewage services, to establish or review the rates and charges to each participating municipality or public corporation, and to review and approve plans and projects to extend or refinance the regional system's facilities;
- create a regional water and sewer authority board consisting of a water supply division board and a sewerage division board;
- allow the regional authority to enter into operating agreements with the bodies that originally established the wholesale parts of the regional system;

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- specify that the regional assembly and authority board would have exclusive jurisdiction over all facilities and services for wholesale water supply and sewerage in the authority's territory;
- allow the regional authority to contract with participating municipalities for the acquisition, construction, improvement, or financing of water supply or sewerage facilities or services; and
- allow the regional authority to issue revenue bonds to finance the regional system.

A more detailed summary of the bill is provided below.

Regional assembly. The regional assembly would consist of a member of the governing body or the mayor, president, or supervisor of each city, village, or township that provided retail water supply or sewerage services from the regional system. If a municipality provided retail water supply or sewerage services from the regional system by contract with a county or district, authority, or other public corporation, then the county board of commissioners also would appoint a board member or other elective officer to the regional assembly. The director of the Department of Environmental Quality (DEQ), or the director's designee, would be an ex officio member of the assembly, without a vote. An appointed member of the first regional assembly would have to serve until the second January 1 after the bill's effective date or when a successor was appointed, whichever was later. An appointed member would have to serve for one year, or until a successor was appointed thereafter. If a vacancy occurred, the governing body would have to promptly appoint a successor to serve for the remainder of the term.

The regional assembly would be required to adopt articles of incorporation and establish a procedure to agree on the participating municipalities' beneficial rights of ownership in the regional system, based historically on payment of rates and charges for service and use and on capital contributions for capacity. The agreement would have to determine the rates and charges for use and capital contribution for capacity that would be paid by the city or other public corporation that originally organized the regional system. If the agreement was not reached and/or the authority's articles of incorporation were not adopted within 180 days after the assembly's first meeting, an assembly member or the director of DEQ ("director") could petition a court to enter an order constituting an agreement and/or articles of incorporation.

Meeting. The bill would require the first meeting of the regional assembly, called by the director, to be held within 180 days after the bill's effective date in order to: elect a chairperson and a vice-chairperson; establish a procedure for the beneficial rights of ownership of the participating municipalities in the regional system; adopt articles of incorporation and publish it in one or more circulating newspapers covering the authority's territory; adopt a name for the regional system and authority; and elect a regional authority board (described below).

The bill would require the regional assembly to meet annually on the first Tuesday in March and on additional dates to which the meeting would be adjourned, in order to: elect a chairperson and vice-chairperson for the succeeding year; review rates, charges, and procedures for water supply and sewerage services, if requested by a participating municipality or public corporation and directed to do so by a vote of the assembly; establish or revise the rates and

charges to each participating municipality or public corporation served by the regional system; receive, revise, and approve plans and projects to extend, improve, enlarge, or refinance the facilities of the regional system as initiated and requested by either division of the regional authority board; and elect members of the regional authority board.

Regional authority board. The 16-member regional water and sewer authority board would consist of a nine-member water supply division board and a seven-member sewerage division board. The regional assembly would elect board members; no more than two board members could be residents of the same voting participating municipality. The bill would require that at least one water supply division board member and one sewerage division board member were residents of the county if a county had appointed a member to the assembly and received an average annual supply of water from the regional system or sewerage services on behalf of one or more municipalities, districts, authorities, or other public corporations in the county.

The term of office of a member of the regional authority board would have to be four years beginning July 1. A board member could be removed for cause by a majority vote of the members. A vacancy in the office would have to be filled by the regional assembly for the remainder of the unexpired term. Each board member would have to be compensated by payment of a per diem fee and mileage for up to one meeting a day in amounts set annually by the regional assembly and paid by the regional authority. The board would have to appoint a director of the regional authority and a deputy director for each division of the regional authority board, who would have to be professionally qualified, could not be a member of the regional assembly, and would serve at the regional authority board's pleasure.

Functions. The water supply division board would have to control the regional water supply system including the operation of the water intake, treatment, and wholesale distribution and transmission facilities of the regional water supply system, and the selection and appointment of water supply system personnel. The sewerage division board would have to control the regional sewerage system including the operation of the major trunk line sewers, interceptors, treatment plant, and other similar sewerage facilities of the regional sewerage system, and the selection and appointment of sewerage system personnel. The regional authority board would have to control those activities that pertain to both the water supply division and the sewerage division, including the selection and appointment of regional system personnel and the billing and collection charges for wholesale water supply or sewerage services. However, the water supply division board, sewerage division board, and the regional authority board could privatize or oversee the privatization of any of these functions and activities. The city or other public corporation that originally established the regional system would have to retain direct control of retail water supply and retail sewerage services and facilities within that city or other public corporation.

Title. The bill specifies that title to all assets of the regional system would be vested free and clear in the regional authority upon the filing of its articles of incorporation, subject to the rights of record of third parties and the provisions of the regional assembly's agreement on beneficial rights of ownership. The regional authority could enter into operating agreements for up to five years with the city or other public corporation that originally established the wholesale

parts of the regional system, in order to ensure the orderly transfer of the facilities of the regional system.

Officers. The bill would require the regional authority board to hold its first meeting within one month after selection of its members, to elect a chairperson and two vice chairpersons from the members of the board. The vice chairpersons would have to be a member of and serving as chairperson for the water supply division board or the sewerage division board. The board also would elect a secretary and treasurer of the regional authority, who would not have to be board members and would have to be compensated as its employees. The board also would have to select and employ other officers and employees and contract for professional services it considered necessary, and fix compensation for the employees, officers, and services. The regional authority board could adopt rules of procedures and bylaws as considered advisable. In addition, the board would have to designate its principal place of business and other offices or locations it considered necessary to perform its functions and duties.

Written record. The regional authority board, water supply division board, and the sewerage division board would have to keep a written record of each of their separate sessions. The regional authority board would have to provide for a system of accounts to conform to any uniform system required by law for the auditing at least annually of the accounts of the treasurer by a qualified certified public accountant. Within 30 days after the audit was received, the regional authority board would have to publish the balance sheet and the statement of revenue and expense in one or more newspapers in circulation covering the territory of the authority.

Budget. The board also would have to prepare and submit to each member of the board and of the regional assembly, by February 1 of each year, a proposed budget. The regional authority board would have to hold a hearing on the proposed budget if, within 30 days after its distribution, a participating municipality requested a hearing. The board would have to adopt the budget by June 1 of each year, and the succeeding fiscal year would begin on July 1 and end on June 30 of each year.

Finances. The bill would require that the regional authority fully assume and pay each bond, note, or other debt payable from the regional system's revenues that was issued either by the city or other public corporation that organized the regional system or by a participating municipality. The regional authority would have to perform representations and covenants, establish and collect rates and charges, maintain accounts and reserves, operate and maintain facilities, and render required services. Each debt retirement account, fund, and reserve would have to be maintained in strict compliance with terms agreed to by the issuer and using funds.

A contract or other obligation that involved the regional system and to which a participating municipality or public corporation was a party could not be impaired, amended, revised, or terminated by the incorporation of the regional authority. The bill would require that the regional authority assume and perform each duty and obligation pertaining to the regional system of the city or other public corporation that organized the regional system. The regional authority board could agree to extend, amend, or terminate any such contract or other obligation by agreement with any other party.

Rates, charges, and procedures for water supply and sewerage services from the regional system in effect and in use on the effective date of the regional authority's articles of incorporation would have to remain in effect until the regional assembly's next annual meeting and until a review of the rates, charges, and procedures was requested by the assembly. After the regional authority's articles of incorporation took effect, the regional authority and the participating municipalities could enter into new or additional contracts for the sale and purchase of water supply and sewerage services from the regional system for a period not exceeding 50 years. Rates and charges collected would have to be applied and used in the following order of priority:

- to provide for the payment of all administration, operation, and maintenance expenses during each fiscal year;
- at the discretion of the regional authority board, or as required by financing agreements or contracts, to provide a reserve fund for replacements or major repairs and improvements not anticipated or considered to be part of the expenses described above; and
- to deposit the remaining balance at the end of each fiscal year into the debt retirement fund.

The governing body of each voting participating municipality could pay from its general fund or from revenues derived from the operation of its water supply and sewerage system that were not exclusively earmarked or pledged for other purposes, any money required to be paid for water supply or sewerage services purchased from the regional authority by the terms of a contract between the governing body and the authority. The regional authority could acquire for the regional system property, within or without the territory of the authority, by purchase, construction, lease, gift, or devise. The regional authority could hold, manage, generate income from, control, sell, exchange, or lease the property.

Exclusive control and jurisdiction. The bill specifies that, after the effective date of the regional authority's articles of incorporation, the regional assembly and regional authority board would have exclusive control of and jurisdiction over facilities and services for wholesale water supply and wholesale sewerage in the authority's territory.

Project. A project would have to be carried out by the regional authority if the regional assembly or regional authority board determined that a project would serve and benefit all participating municipalities. If the project did not serve and benefit all participating municipalities, it would have to be carried out either (1) by the regional authority under contract with the participating municipalities to be served and benefited or (2) by the participating municipalities to be served and benefited on approval of the regional authority, but without participation of the regional authority beyond the terms and conditions set forth in the approval resolution. By resolution of the regional assembly and the appropriate division of the regional authority board, the regional authority could acquire and construct, improve, enlarge, and extend the wholesale water supply or wholesale sewerage facilities. The resolution would have to describe the project and the plans for carrying it out including the details of financing and sharing of costs. Project descriptions, plans, and specifications would have to comply with applicable state and federal orders, permits, and regulations. The necessity for projects and the

apportionment of the costs among the participating municipalities would have to be decided by the regional assembly after necessary investigations and hearings, unless the members of the regional assembly agree on the apportionment of the costs.

Contract. The regional authority could enter into a contract with one or more participating municipalities for the acquisition, construction, improvement, enlargement, extension, operation, or financing of water supply or sewerage facilities or services. A contract would have to provide for the allocation and payment of the share of the total cost to be borne by the participating municipalities in annual installments for a period of up to 40 years. A contract could authorize the regional authority to issue bonds secured by the full faith and credit for the payment of the obligation in the manner and times specified in the bill. Each participating municipality would have to include a sufficient amount in its annual tax levy to assure that the estimated collections would be sufficient to promptly pay the obligation before the following tax year's collection.

If, when a participating municipality made its annual tax levy, there were other funds on hand earmarked for the payment of contractual obligations for capital projects with the authority, credit for the other funds could be taken upon the annual levy for the payment of the obligation. The participating municipality could raise these other funds by one or more of the following methods:

- the levy of special assessments on property benefited by the project;
- the imposition and collection of rates or charges from users and beneficiaries of the regional system;
- from revenue derived from the imposition of state taxes; and
- from any other source that validly could be used for the purpose of meeting the contractual obligation.

Execution of contract. A contract could authorize the regional authority to issue bonds secured by full faith and credit of the contracting participating municipalities. If a participating municipality wished to enter into a contract with the regional authority, the governing body would have to adopt a resolution in a newspaper of general circulation within the participating municipality. The contract could be executed without a vote of the electors at least 31 days after the date of publication. If within 24 days after publication, however, a petition filed with the clerk of the participating municipality were signed by the lessor of ten percent or 15,000 of the registered electors residing within the territory of the participating municipality and requesting a referendum on the execution of the contract, the contract could not be executed unless approved by a majority vote of the registered electors of the participating municipality at the next primary or general election to be held after the petition was filed. The form of the petition would have to meet the requirements of the Home Rule City Act, and the clerk of the participating municipality would have the same power to reject signatures and petitions as city clerks as specified under that act.

Bonds. To obtain funds for payments to and among participating municipalities for regional assemblies or the acquisition, construction, improvement, enlargement, or extension of the

regional system, the regional authority could issue full faith and credit negotiable bonds. The regional authority also could issue self-liquidating revenue bonds for the issuance of revenue bonds, to finance acquisition, improvement, enlargement, extension, or operation of the regional system.

Charges. The regional authority would have to make reasonable charges for services that it rendered to cover the retirement of outstanding indebtedness, costs of operation, maintenance, and replacement of its facilities, and reserves for capital improvements. The charges specified in a contract would be subject to increase by the regional authority at any time if necessary to provide funds to meet its obligations.

Personnel. The bill specifies that, if the regional authority and a participating municipality entered into a contract under Public Act 8 of the Extra Session of 1967 (which provides for intergovernmental transfers of functions and responsibilities), the contract could not transfer legislative functions. If, under such a contract, the duties of employees were transferred to the regional authority and sufficient positions were not available for all employees at the time of transfer, a less senior employee would have to be placed on layoff status and have priority to fill positions that became available, for up to three years. A representative of a participating municipality would continue to represent employees transferred from the municipality to the regional authority.

Expansion. A city, village, township, county, authority, district, or other public corporation that was not a participating municipality at the time of the regional authority's incorporation could become a participating municipality. The governing body of the city, village, township, county, authority, district, or other public corporation would have to adopt a resolution requesting admission as a participating municipality and offering to negotiate a contract for water supply or sewerage services. The resolution would have to be delivered to the regional authority board's chairperson, who would present it to the board or the appropriate division of the board for a recommendation of acceptance or rejection. If the board recommended acceptance of the resolution, the terms and conditions of admittance also would have to be recommended. The recommendation would have to be forwarded to the regional assembly for consideration at its next regular or special meeting. The assembly could approve admission by a two-thirds vote of a resolution specifying the terms and conditions of admittance. The assembly would have to file a certified copy of the adopted resolution with the clerk of the public corporation requesting admission and with the secretary of state. Within 90 days after the resolution was filed, the public corporation would have to appoint a member to the regional assembly.

Regional authority. The governing body of a participating municipality could advance or loan to the regional authority funds required for administrative expenses or for obtaining maps, plans, designs, specifications, or cost estimates of proposed improvements, additions, or extensions to the regional system. The advance or loan could be included by the authority as a part of a bond issued under the bill and repaid to the participating municipality upon the sale of the bonds. The regional authority would be a municipal corporation and could do all of the following:

- survey, study, and investigate water resources of the area within its territory for the purpose of determining the practicability and feasibility of developing new water supply sources;
- ascertain requirements for sewerage systems and services; and
- accept grants or loans from the state or federal government and execute or accept contracts, permits, documents, or agreements as required by law to secure such funds.

The regional authority would be a public body corporate with power to sue and be sued in a court of competent jurisdiction. It would possess all powers necessary or incidental to carrying out the purposes of its incorporation. The enumeration of any powers in the bill could not be construed as a limitation on such general powers. The powers granted in the proposed act would be in addition to those granted by statute or charter.

Analyst: J. Caver

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.