



**House  
Legislative  
Analysis  
Section**

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**REGIONAL WATER AND SEWER  
AUTHORITY**

**House Bill 4206 (Substitute H-2)  
First Analysis (2-25-03)**

**Sponsor: Rep. Leon Drolet  
Committee: Government Operations**

***THE APPARENT PROBLEM:***

The Detroit Water and Sewerage Department prides itself on a long, rich history dating back to the city's attempts to ensure protection against fires, like the Great Fire of June 11, 1805, and to provide residents with a clean, reliable alternative to groundwater. Around the turn of the twentieth century three communities outside of the city limits—River Rouge, Hamtramck, and Ecorse—joined the city's water system. Since that time, many other communities have entered into contracts for wholesale water supply and sewerage service provided by the DWSD. Today the DWSD is the country's third largest water and sewer utility, providing wholesale water service to nearly one million people in the city and three million people in 126 communities throughout other parts of Wayne County and Oakland, Macomb, St. Clair, Lapeer, Genesee, Washtenaw and Monroe Counties. In addition, the DWSD provides wholesale sewerage service to two million people scattered throughout 77 neighboring communities as well as the nearly one million residents of Detroit. In a January 2003 fact sheet, the DWSD notes that suburban customers receive the same high quality drinking water and wastewater treatment provided to Detroit customers and that the department offers the fifth lowest rates for water and sewer service of the 20 most populated cities in the U.S.

Last year the *Detroit News* published a number of articles, reports and editorials alleging and documenting security lapses, lax collection policies for delinquent accounts, questionable contracting practices, bribery, and various other forms of irresponsibility and malfeasance. For instance, a September 2002 article reported that a new billing system for the system's customers was "a year behind schedule, \$2.1 million over the original price and the focus of two lawsuits claiming contract bid-rigging". According to the article, a member of Mayor Kilpatrick's transition team runs the firm who was awarded the contract for the billing system despite the firm's not knowing what kind of system it would create. Moreover, the \$11 million contract

allegedly exceeded another firm's bid by over \$2 million. Critics believe that bid-rigging and other flawed contract procedures have led to a "dramatic increase" in water and sewer rates—an increase that, they argue, disproportionately affects suburban customers, who effectively wind up subsidizing rates for Detroit residents.

In testimony before the House Local Government and Urban Policy Committee in the 2001-2002 legislative session, the Interim Deputy Director of the DWSD testified that the department "has demonstrated a willingness to listen to its customers' needs, their concerns as well as their criticisms, and to venture into creative partnering relationships with wholesale customers while exploring new areas of communication with both our retail and wholesale customers, that are based on the exchange of factual information." Not everyone agrees. For instance, in his testimony before the Local Government and Urban Policy Committee last year, the Warren City Attorney described the department as "an inefficient, bloated monopoly that has no incentive and no desire to change". Critics argue that without greater suburban oversight over the department's management decisions, the DWSD will focus on serving city residents, without paying much attention either to the majority of customers who live outside of the city or to the long-term interests of the metropolitan region. Currently the department is headed by a director, who is appointed by the mayor of Detroit, and overseen by a Board of Water Commissioners, which consists of seven mayoral appointees. Four of the board's members represent Detroit residents, and the other three commissioners represent the customers of Oakland, Macomb, and Wayne Counties. Each of the county representatives is chosen by the mayor from a group of three persons nominated by the county to serve as its representative. Legislation has been introduced to create an authority to provide additional review and oversight of the process by which DWSD contracts services out to other parties.

House Bill 4206 (2-25-03)

## ***THE CONTENT OF THE BILL:***

House Bill 4206 would create a new act to establish an authority to provide additional review and oversight of the Detroit Water and Sewerage Department's contracting process. Under the bill, a city or village that owns or operates a "water or sewer system"--i.e., a water supply facility or sewerage services facility, or both, that provides water or sewerage service to more than 20 percent of the state's population--would be required to establish an authority to provide review and oversight of the system's "contract process". (This is understood to apply only to the Detroit Water and Sewerage Department.)

Each city with a population of 750,000 or more ("qualified city") and each county with a population of 400,000 or more ("qualified county") that is served by the system would be represented on the authority. The mayor of each qualified city (the City of Detroit), with the advice and consent of the city's governing body, would appoint a city representative to the authority. The county board of commissioners of each qualified county that does not have a qualified city located within the county (Genesee, Macomb, and Oakland Counties) would appoint a county representative to the authority. For a qualified county with a qualified city within the county (i.e., Wayne County), one person who does not live or work within the qualified city would be appointed to represent the county; this appointment would be made by the majority vote of the chief elected officials of the five largest local units of government within the county.

Appointments would have to be made within 30 days after the act's effective date. Appointees (and their successors) would serve terms of four years or until a successor is appointed, whichever is later. A person could be reappointed to the authority, and an appointee could be replaced by the appointing city or county at any time. Appointees would be considered public servants under state law. They would be subject to any applicable law with respect to conflicts of interest, and the authority would have to establish policies and procedures requiring periodic disclosure by appointees of relationships that may give rise to conflicts of interest.

A majority of members of the authority would constitute a quorum for the transaction of business, and each appointee would have one vote. The authority's first meeting would have to be held not more than 45 days after the act's effective date, and after its first meeting, the authority would have to

meet at least once quarterly and at other times if necessary. The authority would elect a chairperson and other officers considered necessary. The authority would be required to adopt bylaws and rules to govern the authority's operation.

The authority would also have to establish an ethics manual governing the conduct of system business and conduct of the system's employees, and would have to establish policies no less stringent than those provided for public officers and employees by Public Act 196 of 1973. Each authority member and each employee of the system who regularly exercises significant discretion over the award and management of authority procurements would have to comply with policies governing the following:

- immediate disclosure of the existence and nature of any financial interest that would reasonably be expected to create a conflict of interest; and
- withdrawal by an authority member or employee from participation in, discussion of, or evaluation of any recommendation or decision involving procurement involving the water or sewer system that would reasonably be expected to create a conflict of interest for that member or employee.

## ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bill would have an indeterminate fiscal impact on the City of Detroit. The actual impact would depend upon the administrative costs of the authority and the scope of contract review undertaken by the authority. The bill would have no fiscal impact on state government. (2-25-03)

## ***ARGUMENTS:***

### ***For:***

Throughout 2002 the *Detroit News* published a series of articles alleging and documenting various problems with the Detroit Water and Sewer Department. For instance, in July the newspaper reported that the department's water customers collectively paid \$23 million for water that never reached their faucets because it had leaked out of aging pipes along the way. In August, the newspaper reported security lapses including all of the following: the intentional disabling of a state-of-the-art security system at drinking water reservoirs "because false alarms caused too much work"; failure

to secure manholes and hatches from potential intruders; broken motion detectors and sensors; poorly designed and maintained fences around reservoirs; and, perhaps most troubling, the failure to address many of these issues a year after they had been brought to the department's attention. On September 3, the *News* reported that the water department's customers owed nearly \$60 million in delinquent water bills. The same article described ways that delinquent customers have successfully avoided having their water turned off—e.g., bribing workers—or have illicitly turned their own water back on—e.g., buying a water valve key at the local hardware store. An article published the very next day detailed allegations of bid-rigging for a new computer billing system: a member of the mayor of Detroit's transition team was employed by the firm awarded the contract, and the firm's offer exceeded another bid by over \$2 million. While the occasional wayward department worker and free-rider might be dismissed as exceptions to the rule, improprieties in the awarding of contracts and the spectacular array of managerial lapses and shortcomings raises questions about the integrity of the system itself.

These practices (and perhaps other practices that have not yet been discovered) are likely responsible for a dramatic increase in water supply and sewer service rates for those customers who have always paid their fair share and now find themselves paying more than their fair share. Since many of these problems are most prevalent within the city of Detroit—e.g., delinquent bills—suburban customers effectively subsidize rates offered to Detroit customers. To be fair, the DWSD, headed by a new director, has taken steps to address at least some of these problems. Still, as commendable as it is to address problems after the fact, it is more important to ensure that such problems never arise in the first place. Because the DWSD provides utility services to the Detroit metropolitan area, and because the city has been a poor steward of the system (which has twice as many suburban customers for sewerage service and three times as many suburban customers for water service as there are Detroit customers), it is appropriate to establish true, effective oversight over the operations of the department, with full representation for customers who live outside of the city. The three members of the Board of Water Commissioners who represent Wayne, Oakland, and Macomb Counties are appointed by and serve at the pleasure of the mayor. Even if they are selected from a list provided by the counties themselves, commissioners can be (and have been) pressured to either yield to the majority—i.e., the city's representatives—or leave the board. This does not allow for true representation.

Instead, the authority oversight board should more adequately reflect the fact that the vast majority of water and sewerage customers live outside the city. The bill would give Genesee, Macomb, Oakland, and (non-Detroit) Wayne Counties true representation. Also, the bill would require the new board to write an ethics manual governing the conducting of system business and the conduct of employees of the system. This would help ensure that the department is run in the public's best interest, not just the best interests of those who may otherwise profit from dubious managerial decisions and other unethical or illegal practices.

#### ***Response:***

The bill proposes an authority to provide review and oversight of the DWSD's "contract process", but the term "contract process" is not defined. It appears that the term could apply to the process by which the DWSD contracts with other municipalities to provide water supply and sewerage services or the process by which the DWSD contracts with agents who perform various functions on behalf of the department, such as repairs, engineering, or it could apply to both.

#### ***Reply:***

Supporters of the bill say that it is intended to apply to contracts with suppliers or those who perform services for the system.

#### ***Against:***

Supporters of the legislation have characterized the proposed regional authority as a "Public Service Commission-like" oversight commission. (The Public Service Commission is the state agency responsible for regulating utilities and for overseeing restructuring of markets to introduce competition.) One crucial distinction between water supply and sewer service provided by the DWSD and the goods and services provided by a utility is that suburban governments have always had the choice of providing water supply and sewer service to their residents themselves. That is, the DWSD's so-called "monopoly" in any community other than Detroit is essentially the product of a decision by that community's government about the most effective way to provide its residents with water and sewer service, as embodied in a freely-negotiated contract between the DWSD and the local government. While communities are bound to the terms of the contract for the life of the contract, once the contract ends, the only "restriction" on a suburban community's decision to renew the contract is the cost of doing otherwise.

While it is reasonable for suburban customers to have access to information about how rates are calculated

and how contracts are made, DWSD officials argue that this information is available to those who want it. Suburban customers have representation on the board, and although critics of the department would like people to believe that the seven-member board's votes are highly contentious 4-3 votes, it is rare that the board acts without unanimity. DWSD officials give communities notice of planned rate increases, and are willing to meet with officials of those communities to consider adjustments to proposed rates. The department holds separate meetings with water customers and sewer customers on a quarterly basis, and makes a rate notebook available to customers who want more detail on how rates are calculated.

More importantly, critics should remember that Detroit built and owns the system. Detroit borrowed the money itself, made the investments itself, and took the risk itself. While city officials believe that suburban customers should have a voice in how the system is run, any attempt to wrest control of management decisions away from the city amount to a "quasi-taking". The mayor selects county representatives to the board from a small pool of nominees made by the county, so perhaps customers should vote for new county government officials if they feel that they are being poorly represented. Likewise, if they are convinced that their local elected officials have made poor decisions about entering into contracts with the DWSD, perhaps in the future they ought to elect officials who are committed to building a new water and sewer infrastructure for their city, village, or township.

On another note, because it has brought so much attention to the Detroit Water and Sewer Department's problems, one might expect the *Detroit News* to be the most vocal advocate of a change in management. Yet, however strongly the newspaper's editors believe the department needs to reform its ways, a September 2002 editorial characterized legislative hearings on restructuring management of the department as "a waste of time". The editorial pointed out that the DWSD is currently under a federal court order resulting from a suit brought by the Environmental Protection Agency. The order names the mayor of Detroit as the "special administrator" of the department, answerable directly to the court. Thus, even the Board of Water Commissioners and the director of the department act only in an advisory capacity, while the mayor holds the authority to make—and responsibility for—any decision that he deems necessary to protect water quality. An October 2002 *Detroit Free Press* editorial elaborates on this point, noting that "[s]tate

lawmakers can construct a regional water-sewer authority however they please, but the mayor can ignore it or pay attention to it as he pleases", or at least whenever he deems an action necessary to protect water quality. The *Free Press* editorial suggests that any attempt to impose another layer of oversight on the department would result in a lengthy battle in federal court.

### **Response:**

Detroit's claim that it owns the system is dubious, at best. Suburban customers have been paying higher water and sewerage rates because of mismanagement by city officials, then those suburban customers have essentially bought into the system. The ratepayers, including ratepayers in the city of Detroit, own the system and should, therefore, have proportional representation in any management decisions.

### **Reply:**

Critics who think that Detroit is enriching itself by charging high rates for water and sewerage service would do better to look at the markups that suburban communities charge their residents for bringing the water from the border of their communities into customers' homes.

### **POSITIONS:**

The City of Detroit opposes the bill. (2-24-03)

The Michigan Municipal League does not have an official position on the bill. (2-24-03)

The Michigan Association of Counties does not have an official position on the bill. (2-24-03)

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■ 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.