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REGIONAL SEWER AND WATER AUTHORITY

House Bill 4206

Sponsor: Rep. Leon Drolet

Committee: Government Operations

Complete to 2-20-03

A REVISED SUMMARY OF HOUSE BILL 4206 AS INTRODUCED 2-12-03

The bill would create a new act, the "Regional Sewer and Water Authority Act" to regionalize authority over the Detroit water and sewage system so that it is "administered, operated, and controlled for the benefit of and continued service to" each city, village, and township that provides retail water supply or sewerage services from the system. Currently, the system is run by the Detroit Water and Sewerage Department under the oversight of a seven-member Board of Water Commissioners, which includes four commissioners representing the people of Detroit and one commissioner representing the people of each of the counties served by the system--Wayne, Macomb, and Oakland Counties.

Under the bill, rates, charges, and procedures for providing water and sewerage services would be determined by a regional assembly, composed of members appointed by the governing bodies of each city, village, and township that provides retail water supply and sewerage services from the system. Among other matters, the regional assembly would be required to establish a procedure for members of the regional assembly to agree on the beneficial rights of ownership of the participating municipalities in the regional system. The bill specifies that the beneficial rights of ownership would have to be based historically upon payment of rates and charges for service and use and on capital contributions for capacity. 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. Detroit would retain direct control of retail water supply and retail sewerage services and facilities within the city but would be considered a customer and user of the regional system and would be provided wholesale water supply services and wholesale sewerage services on the same basis and terms as other wholesale customers and users. Detroit could request that the regional authority enter into a contract embodying its rights to be an equal customer and user for up to 50 years, and the authority would have to honor the request.

Members of the assembly would elect a 16-member regional water and sewer authority board, consisting of a nine-member water supply division board with control over the water supply system and a seven-member sewerage services division board with control over the regional sewerage system. Representation on the water supply division board would be guaranteed to each county that received an average annual supply of at least 450,000 cubic feet of water from the system, and representation on the sewerage supply division board would be guaranteed to each county that received sewerage services from the system. Together, the regional assembly and regional authority board would have exclusive jurisdiction over all

House Bill 4206 (2-20-03)

facilities and services for wholesale water supply and sewerage services in the territory served by the authority.

A more detailed summary of the bill is provided below.

Regional assembly. The regional assembly would consist of a member of the governing body of--or the mayor, president, or supervisor of--each city, village, or township that provides retail water supply or sewerage services from the “regional system”. (The bill defines “regional system” as “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 percent of the population of this state”. This is understood to refer to the water and sewerage system run by Detroit and serving much of the Detroit metropolitan area.) If a municipality provides 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 as a non-voting member. 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.

Terms and vacancies. An appointed member of the first regional assembly would serve until the second January 1 after the bill's effective date or until a successor is appointed, whichever is later. An appointed member of the regional assembly, other than the first regional assembly, would have to serve for one year, or until a successor is appointed. If a vacancy occurs, the governing body would have to promptly appoint a successor to serve for the remainder of the term.

Conducting assembly business. A majority of the members would constitute a quorum for the transaction of business, and five members could adjourn an assembly meeting to another day and date or without date. Each voting assembly member would have one vote for each 45,000 mcf (or major portion thereof) of sewage treatment capacity used annually in the regional system and one vote for each 45,000 mcf (or major portion thereof) of water supply received annually from the regional system by the municipality he or she represents. However, each member appointed by a municipality that receives sewerage services from the regional system would have at least one vote, as would each member appointed by a municipality that receives water supply from the system. Adoption of a resolution or other action taken by the assembly on issues that relate to both sewerage and water supply would require a majority of the votes that members are authorized to cast. If the issue pertains strictly to sewerage or to water supply and transportation, adoption of the resolution or other action would require a majority of the votes that members are authorized to cast based on sewage treatment capacity used annually or water supply received annually.

The bill would require the first meeting of the regional assembly, called by the director of DEQ, 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 (see below); adopt articles of incorporation (see below); publish the articles of incorporation 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 (see below).

After its first meeting, the bill would require the regional assembly to meet annually on the first Tuesday in March and on additional dates 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.

Establishing participating municipalities' beneficial rights of ownership. As mentioned above, the regional assembly would be required to 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. Capital contributions for capacity would have to be apportioned among participating municipalities on the basis of ownership of capacity and facilities irrespective of and whether or not the capacity or facilities are used. If necessary, the agreement would include a system of credits, charges, and payments to and among participating municipalities, by the regional system and regional authority from the proceeds of money borrowed, so that no participating municipality shall have made capital contributions for capacity, as a percentage of aggregate historical cost of the facilities of the regional system and regional authority, in an amount in excess of the percentage of beneficial rights of ownership. 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. Retail water supply systems and retail sewerage systems would continue to be owned, controlled, operated, maintained, enlarged, extended, or improved by the governmental unit that had authority to do so under law. 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.

Articles of incorporation. As mentioned above, the assembly would have to adopt articles of incorporation and a name for the regional system and regional authority. The articles of incorporation would incorporate the act and could include any other provisions consistent with the act. If the assembly fails to adopt and provide for publication of articles of incorporation not more than 180 days after its first meeting, an assembly member or the director could petition a court of competent jurisdiction to enter an order adopting articles of incorporation and directing the filing and publication of the articles of incorporation as provided in the act. The validity of the incorporation would be conclusively presumed unless questioned in a court of competent jurisdiction not more than 60 days after the publication of the articles of incorporation.

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. Assembly members would not be eligible to serve on the authority board, and members of the authority board would have to be residents of the authority's territory. The regional assembly would elect board members, and 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 be a resident of any county that had appointed a member to the assembly and either receives an average annual supply of water of not less than 450,000 cubic feet of water from the regional system, or receives sewerage services from the system.

The term of office of a member of the regional authority board would be four years beginning July 1, except for initial terms, which would be staggered. A vacancy in the office would have to be filled by the regional assembly for the remainder of the unexpired term. A board member could be removed for cause by a majority vote of the members. 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. The bill authorizes the water supply division board, sewerage division board, and the regional authority board to privatize or oversee the privatization of any of their functions and activities. The city or other public corporation that originally established the regional system--i.e., Detroit--would retain direct control of its retail water supply and retail sewerage services and facilities.

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.

Costs. The bill specifies that costs of the system would be borne by all users of the regional system, except to the extent such costs are defrayed by grants, contributions, fees, or payments made by persons who are not users of the 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. One of the vice chairpersons would have to serve as chairperson for the water supply division board, and the other vice chairperson would have to serve as chairperson for 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, contract for professional services it considers 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 considers 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 is 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 is 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 involves the regional system and to which a participating municipality or public corporation is 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.

Detroit as wholesale customer and user of regional services. The bill specifies that the city or other public corporation that organized the regional system is to be considered a customer and user of the system to be provided wholesale water supply services and wholesale sewerage services on the same basis as all other wholesale customers and users. Upon request of that city or public corporation, the regional authority would be required to enter into a contract embodying these rights for up to 50 years.

Rates, charges, and procedures. 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 remain in effect until the regional assembly's next annual meeting and, thereafter, until the assembly requests a review of the rates, charges, and procedures. After the regional authority's articles of incorporation take 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 that are derived from the operation of its water supply and sewerage system and 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. If the regional assembly or regional authority board determines that a project would serve and benefit all participating municipalities, the authority would have to carry out the project. If the project would 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.

For a project to be carried out by the regional authority, 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. The 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. The 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 makes its annual tax levy, there are 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.

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 wishes 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 is signed by the lesser of one 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 is 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 renders 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 enters 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 are transferred to the regional authority and sufficient positions are not available for all employees at the time of transfer, a less senior employee would have to be placed on layoff status and would 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 recommends 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 is 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.