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SFA**BILL ANALYSIS**

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Senate Bill 195 (as introduced 2-18-03)
Sponsor: Senator Laura M. Toy
Committee: Local, Urban and State Affairs

Date Completed: 2-26-03

CONTENT

The bill would create the "Regional Sewer and Water Authority Act" to require a regional system to be incorporated as a regional authority and administered, operated, and controlled for the benefit of and continued service to each voting participating municipality.

The bill provides that the city or other public corporation that originally established the regional system would retain direct control of retail water supply and retail sewerage services and facilities within that city or corporation, but would be considered a customer and user of the regional system to be provided wholesale water supply services and wholesale sewerage services on the same basis and terms as other wholesale customers and users.

The bill would do all of the following:

- Create a regional assembly and require it to determine rates for use and capital contribution for capacity to be paid by the city or public corporation that organized the regional system; review rates, charges, and procedures for water supply and sewerage services; establish or revise the rates and charges to each participating municipality or public corporation; and 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, which would control the regional water supply and sewerage systems.
- Allow the regional authority to enter

into operating agreements with the city or public corporation that originally established the regional system.

- 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.
- Allow the regional authority to issue bonds.

(The bill would define "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% of the population of this state"; i.e., the Detroit water and sewage system. "Participating municipality" would mean a city, village, township, or county that appointed a member of the proposed regional assembly, and "voting participating municipality" would mean a participating city, village, or township.)

Regional Authority

The regional authority would be a municipal corporation and a public body corporate. It would possess all powers necessary or incidental to carrying out the purposes of its incorporation. The powers granted in the proposed Act would be in addition to those granted by statute or charter.

The authority could do any 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.
- 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 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 participating municipalities' 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 regional system, in order to ensure the orderly transfer of the facilities of the regional system.

At all times, the costs of the regional system would have to be borne by all members of the system, except to the extent that costs were defrayed by grants, contributions, fees, or payments made by people who were not users of the system.

Regional Assembly

Within 90 days after the bill's effective date, the governing body of each city, village, or township that provided retail water supply or sewerage services from the regional system, would have to appoint to the regional assembly a member of the governing body or the mayor, president, or supervisor of that city, village, or township. If a municipality provided retail water supply or sewerage services from the regional system by contract with a county or a district, authority, or other public corporation established in a county, then the county board of commissioners also would have to 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.

Except for members of the first regional assembly (who would serve until the second January 1 after the bill's effective date), regional assembly members would serve for one-year terms. Members of the regional assembly would have to serve without compensation.

A member of the regional assembly appointed by a voting participating municipality would have one vote for each 45,000 mcf (thousand cubic feet) of water supply received annually from the regional assembly by that municipality, but not less than one vote on account of water supply received annually. Each member appointed by a voting participating municipality that received sewerage services from the system would have at least one vote on account of sewage treatment capacity used annually. An assembly member appointed by a county board of commissioners would not have a vote.

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 an agreement were 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 DEQ Director could petition a court to enter an order constituting an agreement or adopting articles of incorporation, as applicable.

The first meeting of the regional assembly would have to be called by the DEQ Director and held within 180 days after the bill's effective date in order to: elect a chairperson and a vice-chairperson; establish a procedure for members to agree on the beneficial rights of ownership; adopt articles of incorporation; adopt a name for the regional system and authority; and elect a regional authority board.

The bill would require the regional assembly to meet annually on the first Tuesday in March, and on additional dates to which the meeting was 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 other public corporation served by the regional system and authority, or as directed 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

Appointment. 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, elected by the regional assembly. Not more than two members of a division board could be residents of the same voting participating municipality. If a county had appointed a member to the assembly and received an average annual supply of at least 450,000 cubic feet of water from the regional system, or received sewerage services from the system, on behalf of one or more municipalities, districts, authorities, or other public corporations in the county, at least one member of the water supply division board or the sewerage division board, as applicable, would have to be a resident of the county. A member of the regional assembly could not serve on the authority board. Board members would have to be residents of the territory of the authority.

Except for members of the first division boards, who would serve one- to four-year terms, the term of a member of the regional authority board would be four years beginning July 1. A board member could be removed for cause by a majority vote of the members. Each board member would have to receive a per diem fee and mileage for not more than one meeting a day in amounts set annually by the regional assembly and paid by the regional authority.

The regional authority board would have to appoint a director of the authority and a deputy director for each division of the 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, facilities, and personnel that pertained to both divisions, including the selection and appointment of regional system personnel and the billing and collection charges for wholesale water supply or sewerage services. The water supply division board, the sewage division board, and the regional authority board could privatize, or oversee the privatization of, the functions assigned to that board.

Officers. The regional authority board would have 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 the chairpersons of the water supply division board and 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.

Written Record. The regional authority board, water supply division board, and 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 and for the auditing at least annually of the accounts of the treasurer by a qualified certified public accountant. Within 30 days after receiving the audit, the board would have to publish the balance sheet and the statement of revenue and expense in one or more newspapers whose circulation covered the territory of the authority.

Budget. By February 1 each year, the regional authority board would have to prepare a proposed budget and submit it to each member of the board and of the regional assembly. 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.

Obligations

The bill would require that the regional authority fully assume and pay each bond, note, or other evidence of indebtedness that was issued either by the city or other public corporation that organized the regional system or by a participating municipality and that was payable from the revenues of the regional system. 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 services required by the terms of the bond, note, or other evidence of indebtedness.

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 regional authority would have to 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.

The city or other public corporation that organized the regional system would have to be considered a customer and user of the

regional system to be provided wholesale water supply services and wholesale sewerage services on the same basis and terms as all other wholesale customers and users. Upon request of the city or public corporation, the regional authority would have to enter into a contract with the city or public corporation that embodied these rights. The term of the contract would be as requested by the city or public corporation but could not exceed 50 years.

Rates & Charges

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 the assembly requested a review of the rates, charges, and procedures.

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. The authority would have to apply and use rates and charges collected in the following order of priority:

- To provide for the payment of all current expenses of administration, operation, and maintenance 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 current expenses described above.
- To deposit the remaining balance at the end of each fiscal year into the debt retirement fund established by the authority board.

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 not 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 make a reasonable charge for services that it rendered in order to cover the retirement of outstanding indebtedness; costs of operation, maintenance, and replacement of its facilities; and reserves for capital improvements. Charges specified in any contract to which the regional authority was a party would be subject to increase by the authority at any time, if necessary to provide funds to meet its obligations.

Facilities; Projects

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. By resolution of the regional assembly and appropriate division board, the regional authority could acquire and construct, improve, enlarge, and extend the wholesale water supply or sewerage facilities. The resolution would have to describe the project and plans for carrying it out.

A project would have to be carried out by the regional authority if the regional assembly or regional authority board determined that the project would serve and benefit all participating municipalities. If a project would not serve and benefit all participating municipalities, it would have to be carried out by the regional authority under contract with and on behalf of the participating municipalities to be served and benefitted; or by the participating municipalities to be served and benefitted on approval of the regional authority, but without participation of the authority beyond the terms and conditions set forth in the approval resolution.

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 agreed on the apportionment of the costs or agreed to accept the authority board's determination.

Project Contract

For a project to be carried out by the regional authority, it could enter into a contract with a participating municipality 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 municipality in annual installments for not more than 40 years. The participating municipality could pledge its full faith and credit for the payment of the obligation in the manner and times specified in the contract. Each participating municipality that pledged its full faith and credit would have to include in its annual tax levy a sufficient amount to assure that the estimated collections would be sufficient to pay promptly the portion of the obligation falling due 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 a contractual obligation under these provisions, 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:

- The levy of special assessments on property benefitted by the project.
- The imposition and collection of rates or charges from users and beneficiaries of the regional system.
- From revenue derived from taxes imposed by the State.
- 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 the full faith and credit pledges of the contracting municipalities. The contract also could provide for appropriate remedies in case of default, including authorization for the county treasurer or other official charged with the disbursement of constitutional revenue sharing funds to withhold funds to make up a default or deficiency.

If a participating municipality wished to enter into a contract with the regional authority, the governing body would have to adopt a resolution and publish it in a newspaper of general circulation within the 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 signed by the lesser of 1% 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, were filed with the clerk of the municipality, the contract could not be executed unless approved by a majority vote of the registered electors of the municipality at the next primary or general election held after the petition was filed.

Bonds

To obtain funds for payments to participating municipalities under the agreement for beneficial rights of ownership, or for the acquisition, construction, improvement, enlargement, or extension of the regional system, the regional authority, after the execution of a contract with a participating municipality for a project, could issue its negotiable bonds secured by the full faith and credit pledges made by contracting participating municipalities. Except as otherwise provided in the bill, the bonds would be subject to applicable provisions of the Revised Municipal Finance Act.

The regional authority also could issue self-liquidating revenue bonds to finance acquisition, improvement, enlargement, extension, or operation of the regional system. The revenue bonds would be payable solely from the revenue of the regional authority.

Loans to the 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 authority could include the advance or loan as a part of a bond issued under the bill and could repay the participating

municipality upon the sale of the bonds.

Admission as a Participating Municipality

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, etc. 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 acceptance were recommended, the terms and conditions of admittance also would have to be recommended for acceptance or rejection. The board's 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 adopting 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.

Personnel

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 of comparable employment were not available for all employees at the time of transfer, a less senior employee who was not transferred to a comparable position would have to be placed on layoff status with the regional authority and, for three years, would have to be recalled to any position for which he or she could qualify or become qualified after a reasonable training period. The authority would have to determine the number of

positions necessary to perform any service and would not be required to create or maintain unnecessary positions. A representative of employees of a participating municipality would continue to represent the employees after they were transferred from the municipality to the regional authority.

Other Provisions

The regional assembly, the regional authority board, and the division boards would be subject to the Freedom of Information Act and the Open Meetings Act.

The maximum period of a contract authorized by the bill would be 50 years.

Legislative Analyst: George Towne

FISCAL IMPACT

The bill would have no impact on State revenues or expenditures. The bill would have an indeterminate impact on local units of government, which would vary between different local units depending upon a variety of factors.

The actual impact would depend upon the administrative and operating costs of the authority as well as the rates and charges the regional system charged its customers compared with the costs and charges from the existing providers. The degree to which contracts were reviewed by the authority and/or the degree to which the authority improved, enlarged or refinanced the system also would affect the fiscal impact upon individual local units.

This estimate is preliminary and will be revised as new information becomes available.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.