

JOINT GARBAGE AND RUBBISH DISPOSAL Act 179 of 1947

AN ACT to provide for the incorporation of certain municipal authorities for the collection or disposal, or both, of garbage or rubbish, or both, and for the operation of a dog pound; and to prescribe the powers, rights and duties thereof.

History: 1947, Act 179, Eff. Oct. 11, 1947;—Am. 1955, Act 92, Imd. Eff. June 2, 1955.

The People of the State of Michigan enact:

123.301 Garbage and rubbish disposal and dog pound authority; incorporation by municipality.

Sec. 1. Any 2 or more cities, villages or townships, hereinafter referred to as “municipalities”, or any combination thereof, may incorporate an authority for the purpose of the collection or disposal, or both, of garbage or rubbish, or both, and for the establishment and operation of a dog pound, by the adoption of articles of incorporation, by the legislative body of each such municipality. The fact of such adoption shall be endorsed on such articles of incorporation by the mayor and clerk of the city, the president and clerk of the village, or the supervisor and clerk of the township, as the case may be, in form substantially as follows:

“The foregoing articles of incorporation were adopted by the of the of county, Michigan, at a meeting duly held on the day of 19.... of said Clerk of said”

The authority shall be comprised of the territory within such incorporating municipalities. The articles of incorporation shall be published at least once in a newspaper designated in said articles and circulating within the authority. One printed copy of such articles of incorporation certified as a true copy by the person or persons designated therefor, with the date and place of such publication, shall be filed with each the secretary of state and the clerk of the county within which such authority or the major portion thereof is located. Such authority shall become effective at the time provided in said articles of incorporation. The validity of such incorporation shall be conclusively presumed unless questioned in a court of competent jurisdiction within 60 days after the filing of such certified copies with the secretary of state and the county clerk.

History: 1947, Act 179, Eff. Oct. 11, 1947;—CL 1948, 123.301;—Am. 1955, Act 92, Imd. Eff. June 2, 1955.

123.302 Authority; articles of incorporation, contents.

Sec. 2. Said articles of incorporation shall state the name of such authority, the names of the various municipalities creating the same, the purpose or purposes for which it is created, the powers, duties and limitations of the authority and its officers, the method of selecting its governing body, officers and employees, the person or persons who are charged with the responsibility of causing the articles of incorporation to be published and printed copies to be certified and filed as above provided or who are charged with any other responsibility in connection with the incorporation of said authority, all of which shall be subject to the provisions of the constitution and statutes of the state of Michigan and particularly of this act.

History: 1947, Act 179, Eff. Oct. 11, 1947;—CL 1948, 123.302.

123.303 Authority; corporate powers; construction of act.

Sec. 3. Such authority shall be a body corporate with power to sue or be sued in any court of this state. It shall possess all the powers necessary to carry out the purposes of its incorporation, and those incident thereto. The enumeration of any powers in this act shall not be construed as a limitation upon such general powers.

History: 1947, Act 179, Eff. Oct. 11, 1947;—CL 1948, 123.303.

123.304 Authority; acquisition, management, sale or lease of land; condemnation.

Sec. 4. For the purposes of its incorporation, the authority may acquire private property by purchase, lease, gift, devise or condemnation, either within or without its corporate limits, and may hold, manage, control, sell, exchange or lease such property. For the purpose of condemnation, it may proceed under the provisions of Act No. 149 of the Public Acts of 1911 as now or hereafter amended, or any other appropriate statute.

History: 1947, Act 179, Eff. Oct. 11, 1947;—CL 1948, 123.304.

123.305 Authority; contracts; time limitations; charges.

Sec. 5. (1) The authority may contract with any municipality that is a part of the authority for the collection

or disposal, or both, by the authority of garbage or rubbish, or both, originating in the municipality, or for the establishment and operation of a dog pound for the municipality, for a period not exceeding 40 years. The charges specified in the contract shall be subject to increase by the authority, if necessary, in order to provide funds to meet its obligations.

(2) For the purposes provided in subsection (1), the authority may also contract with a city, village, or township that is not a part of the authority. The contract may provide for charges greater than those to the municipalities that are a part of the authority. The contract shall be for a period not exceeding 40 years. The charges under the contract shall be subject to change from time to time.

History: 1947, Act 179, Eff. Oct. 11, 1947;—CL 1948, 123.305;—Am. 1955, Act 92, Imd. Eff. June 2, 1955;—Am. 1962, Act 16, Imd. Eff. Mar. 26, 1962;—Am. 1992, Act 106, Imd. Eff. June 25, 1992.

123.306 Authority; right to make subcontracts.

Sec. 6. The authority shall have the power to contract with any person, firm or corporation for the performance by the latter of any part of the work of collecting or disposing, or both, of garbage or rubbish, or both.

History: 1947, Act 179, Eff. Oct. 11, 1947;—CL 1948, 123.306.

123.307 Authority; articles of incorporation, amendment.

Sec. 7. Any city, village or township may become a part of such authority by amendment to the articles of incorporation, adopted by the legislative body of such city, village or township and by the legislative body of each city, village or township of which such authority is composed. Other amendments may be made to such articles of incorporation if adopted by the legislative body of each city, village or township of which the authority is composed. Any such amendment shall be endorsed, published and certified printed copies filed in the same manner as the original articles of incorporation, except that the filed printed copies shall be certified by the recording officer of the authority.

History: 1947, Act 179, Eff. Oct. 11, 1947;—CL 1948, 123.307.

123.308 Power to raise and expend moneys; payment of contracts; taxing power denied authority.

Sec. 8. The legislative body of each city, village or township which is a part of such authority is authorized to raise by tax or pay from its general funds, any moneys required to be paid by the articles of incorporation or by the terms of any contract between it and the authority, unless some other method is provided therefor in such articles of incorporation or contract. The authority shall have no direct taxing power.

History: 1947, Act 179, Eff. Oct. 11, 1947;—CL 1948, 123.308.

123.309 Self-liquidating revenue bonds; issuance.

Sec. 9. For the purpose of acquiring, constructing, improving, enlarging or extending facilities for the collection or disposal, or both, of garbage or rubbish, or both, or for the purpose of refunding bonds previously issued, the authority may issue self-liquidating revenue bonds in accordance with the provisions of Act No. 94 of the Public Acts of 1933, as amended, being sections 141.101 to 141.139 of the Compiled Laws of 1948. No such bonds shall be a general obligation of the authority but shall be payable from revenues only.

History: 1947, Act 179, Eff. Oct. 11, 1947;—CL 1948, 123.309;—Am. 1959, Act 205, Imd. Eff. July 23, 1959.

123.310 Powers additional.

Sec. 10. The powers herein granted shall be in addition to those granted by any statute or charter.

History: 1947, Act 179, Eff. Oct. 11, 1947;—CL 1948, 123.310.

123.311 Entering or extending contract, obligation, bond, or note; sale or transfer of property; determination of current market value; withdrawal of member from qualified authority; payment; dissolution of authority; payment of environmental activities; distribution of assets; articles of incorporation; definitions.

Sec. 11. (1) After the effective date of the 2002 amendatory act that added this section, a qualified authority shall not enter into or extend any contract, obligation, bond, or note that has, or as extended would have, a termination date after the termination date of the authority's most recently approved contract under section 5(1), unless the contract, obligation, bond, or note or extension thereof, is approved by all members.

(2) Within 90 days after a qualified authority decides to sell or transfer real property located within the territory of a member or former member, the member or former member may exercise the right of first refusal to purchase the real property at a price not less than the greater of the real property's current market value or

the highest price offered for the real property in an arm's length, bona fide offer by a third party. The current market value of such real property shall be determined by an appraiser acceptable to the authority and the interested member. Any dispute regarding a determination of current market value shall be resolved by independent arbitration.

(3) Unless its withdrawal would cause an impairment of any contract, a member may withdraw from a qualified authority if all of the following requirements are met:

(a) The legislative body of the member adopts a resolution stating that the authority is no longer effectively serving the member's needs and declaring its decision to withdraw from the authority on a date specified in the resolution.

(b) The withdrawal date specified in the resolution under subdivision (a) is not either of the following:

(i) Less than 60 days after the date the resolution is adopted.

(ii) Within 1 year before the termination date of the authority's most recently approved contract under section 5(1) unless the filings required by subdivision (c) are made more than 1 year before the specified withdrawal date.

(c) The clerk of the member promptly files a certified copy of the resolution adopted under subdivision (a) with the authority and the secretary of state.

(4) By the withdrawal date, the withdrawing member, at its option, either shall pay to the authority the amount of the withdrawing member's fair share of the negative equity of the authority, if any, determined as of the withdrawal date, or shall provide the authority with a bond or other independent, insured guarantee that any such amount will be paid not later than 30 days after the expiration date of the authority's most recently approved contract under section 5(1). This subsection does not relieve the withdrawing member from either of the following:

(a) The member's fair share of any obligation to reimburse the authority following the member's withdrawal for any environmental liabilities subsequently incurred by the authority, to the extent that the environmental liabilities result from the authority's disposal of the withdrawn former member's municipal solid waste, recyclable materials, or yard waste.

(b) The member's payment of any money damages, owed on account of its or the authority's default under a contract under section 6 if the default and damages result directly and solely from the member's withdrawal and are necessary to prevent an impairment of the contract. If 2 or more members withdraw, they are jointly liable for damages under this subdivision.

(c) The member's fair share of any obligation to reimburse the authority following the member's withdrawal for liability incurred by the authority as a result of litigation or arbitration proceedings that were initiated before the date of withdrawal, or litigation or arbitration involving a cause of action arising before the date of withdrawal, if the total amount of the member's fair share of the obligation cannot be exactly determined by the date of withdrawal.

(5) At the option of the authority, by the withdrawal date, the authority shall pay to the withdrawing member the withdrawing member's fair share of the equity of the authority, determined as of the withdrawal date, or shall provide the withdrawing member with a bond or other independent, insured guarantee that such amount will be paid no later than 30 days after the expiration date of the authority's most recently approved contract under section 5(1). If an authority elects to provide such a bond or other guarantee, the withdrawn former member may direct the bonding company or guarantor at any time thereafter to pay from the bond or other guarantee any obligation or liability owed to the authority by the withdrawn former member, including, but not limited to, an obligation described in subsection (4)(a) or (b).

(6) Unless it would cause an impairment of an authority contract under section 6, a qualified authority shall dissolve if both of the following requirements are met:

(a) The legislative bodies of 60% of the members, weighted by the percentage of recent waste delivery, each adopt a resolution stating that the authority is no longer effectively serving the public good for which it was created and directing that the authority be dissolved pursuant to this subsection and subsections (7) to (9).

(b) The clerk of each member whose legislative body adopts a resolution under subdivision (a) promptly files a certified copy of the resolution with the authority and the secretary of state.

(7) Within 6 months after the requirements of subsection (6) are met, the qualified authority shall establish a mechanism to manage and pay for environmental activities required under existing law and cease the activities described in section 1 for which it was incorporated. Within 6 months after ceasing activities described in section 1, the authority shall settle its accounts, including, but not limited to, all vested or accrued employee benefits, employment contracts, collective bargaining agreements, and unemployment compensation, and, subject to subsection (2), shall sell all of its property. In addition, the authority shall establish a mechanism for handling future environmental liabilities. A qualified authority with respect to which the requirements of subsection (6) have been met and a new authority incorporated under subsection

(10) may agree to the assignment of contracts from the qualified authority to the new authority.

(8) After the requirements of subsection (7) are met, the qualified authority shall distribute to each member that member's fair share of the authority's remaining assets.

(9) Upon distribution of the qualified authority's assets under subsection (8), both of the following apply:

(a) The authority is dissolved.

(b) All liabilities of each member and former member of the authority are terminated, except for both of the following:

(i) Any environmental liabilities attributed to the authority to the extent that the environmental liabilities result from the authority's disposal of the member's or former member's fair share of municipal solid waste, recyclable materials, or yard waste.

(ii) The member's fair share of any obligation to reimburse the authority following the dissolution for liability incurred by the authority as a result of litigation or arbitration proceedings that were initiated before the date of dissolution, or litigation or arbitration involving a cause of action arising before the date of dissolution, if the total amount of the member's fair share of the obligation cannot be exactly determined by the time the requirements of subsection (7) are met.

(10) Subsections (6) to (9) do not prevent the incorporation of a new authority by some or all of the members or former members of an authority with respect to which the requirements of subsection (6) have been met.

(11) If, after the effective date of the amendatory act that added this section, a qualified authority is incorporated or amends its articles of incorporation, the qualified authority shall include in its articles the provisions of subsections (3) to (9).

(12) As used in this act:

(a) "Appraiser" means an individual licensed under article 26 of the occupational code, 1980 PA 299, MCL 339.2601 to 339.2637.

(b) "Authority" means an authority incorporated under this act.

(c) "Corrective action" means that term as defined in section 11502 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11502.

(d) "Environmental liabilities" means the costs of landfill closure and postclosure obligations, the costs of corrective action, response activity costs, and fines, penalties, or damages required or assessed by the state under the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.

(e) "Equity of the authority" means the total fund equity of the authority excluding contributions of capital attributed to the clean Michigan initiative bond fund as set forth in an audit conducted for this purpose except that liabilities shall be reduced by any estimated liabilities that were included in determining total fund equity.

(f) "Former member" means a member that has withdrawn from a qualified authority under this section or a prior member of a qualified authority that has been dissolved under this section.

(g) "Impairment", in reference to an authority contract, means a material default in the contract that cannot be cured by the payment of monetary damages.

(h) "Member" means a municipality that incorporated a qualified authority under section 1 or that became part of a qualified authority under section 7 and that has not withdrawn from the authority under this section.

(i) "Member's fair share" means the percentage determined by taking the tonnage of municipal solid waste, recyclable materials, and yard waste contributed by the member and disposed of by the authority since its incorporation and dividing that amount by the tonnage of municipal solid waste, recyclable materials, and yard waste contributed by all members and disposed of by the authority since its incorporation, as determined, in the event of a dispute, by statutory and binding arbitration.

(j) "Percentage of recent waste delivery" means the amount of municipal solid waste, recyclable materials, and yard waste generated within a particular member's territory and disposed of by the authority during the latest full calendar year for which the authority disposed of such materials or waste generated within the territory of that member, divided by the sum of such amounts for all members, as determined, in the event of a dispute, by independent arbitration.

(k) "Qualified authority" means an authority that as of the effective date of this section or thereafter is composed of 10 or more members and has a population residing within its territory of 250,000 or more.

(l) "Response activity costs" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

History: Add. 2002, Act 598, Imd. Eff. Dec. 16, 2002.

Compiler's note: Former MCL 123.311 to 123.319, deriving from Act 345 of 1978, were repealed by Act 60 of 1995, Imd. Eff. May 24, 1995.