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Senate Bill 3 (Substitute S-7 as reported)
Sponsor: Senator Shirley Johnson
Committee: Natural Resources and Environmental Affairs

Date Completed: 6-26-01

RATIONALE

The Southeastern Oakland County Resource Recovery Authority (SOCRRA) is a municipal corporation established in the early 1950s that provides for the collection of solid waste, yard waste, and recyclables; the disposal, processing, and/or sale of those materials; and the purchase and maintenance of the collection and disposal facilities. Currently, SOCRRA consists of 12 member municipalities including Berkley, Beverly Hills, Birmingham, Clawson, Ferndale, Hazel Park, Huntington Woods, Lathrup Village, Oak Park, Pleasant Ridge, Royal Oak, and Troy. (In 1997, Madison Heights and Royal Oak Township were expelled from SOCRRA for not signing a consent judgment in a lawsuit involving a change of waste haulers.) The Authority is governed by a 12-member board of trustees on which one member represents each of the constituent municipalities. Each member's voting power is based on the municipality's refuse tonnage delivered to SOCRRA's facilities.

One of SOCRRA's members, the City of Royal Oak, is interested in withdrawing from the authority. The city previously has objected to SOCRRA's trash disposal rates and criticized the authority board for practices such as entering into no-bid contracts. More recently, the city filed a lawsuit against the authority regarding its proposal to develop a golf course (described in **BACKGROUND**, below). Royal Oak, however, already renewed a contract with the authority until 2007, and the statute under which SOCRRA was created does not provide for a member's withdrawal.

Some people believe that if a municipal waste disposal authority is no longer effectively serving its purpose, member municipalities should be able to withdraw from the authority, as well as dissolve the authority if necessary.

CONTENT

The bill would amend Public Act 179 of 1947, the garbage disposal and dog pound authority law, to allow a member of a "qualified authority" to withdraw from the authority under certain circumstances; require a qualified authority to dissolve under certain circumstances; provide that if a qualified authority were selling the real property of a member, the member would have the right of first refusal; and limit the duration of a garbage disposal contract that a qualified authority could enter into.

(The term "member" would mean a municipality that incorporated or became part of a qualified authority under the Act and whose participation in the authority had not been terminated by an act of the Legislature. "Qualified authority" would mean an authority that had at least 10 members and a population residing within its territory of 250,000 or more.)

Withdrawal

The Act provides for the incorporation of municipal authorities for the collection and/or disposal of garbage, and for the operation of a dog pound. Under the bill, a member could withdraw from a qualified authority if both of the following requirements were met:

- The member's legislative body adopted a resolution stating that the authority was no longer effectively serving the public purposes for which it was created and declaring its decision to withdraw from the authority on a date specified in the resolution, which would have to be at least 60 days after the resolution was adopted.
- The clerk of the member promptly filed a certified copy of the resolution with the authority and the Secretary of State.

By the withdrawal date specified in the resolution, the withdrawing member would have to pay the qualified authority its fair share of the negative equity of the authority, if any. The bill specifies that this provision would not relieve the withdrawing member from any obligation to reimburse the authority after the withdrawal for any environmental liabilities subsequently incurred by the authority, to the extent that the environmental liabilities resulted directly from the authority's disposal of the withdrawn member's municipal solid waste, recyclable materials, or yard waste. In addition, the authority would have to pay the withdrawing member its fair share of the equity of the authority, by the withdrawal date.

("Environmental liabilities" would mean 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.)

Dissolution

Under the bill, a qualified authority would have to dissolve if both of the following applied:

- The legislative bodies of a majority of the members, weighted by the percentage of recent waste delivery, each adopted a resolution stating that the authority was no longer effectively serving the purposes for which it was created and directing that it be dissolved.
- The clerk of each member adopting a resolution promptly filed a certified copy of it with the authority and the Secretary of State.

Within six months after these requirements were met, the authority would have to cease the activities for which it was incorporated. Within six months after ceasing such activities, the authority would have to settle its accounts, including all vested or accrued employee benefits, employment contracts, and unemployment compensation, and, subject to provisions described below, would have to sell all of its property. Immediately after meeting these requirements, the authority would have to distribute its remaining assets to its members.

Upon distribution of its assets, the authority would be dissolved, and all liabilities of each member and former member would be terminated, except for any environmental liabilities subsequently attributed to the authority to the extent that the liabilities resulted directly from the authority's disposal of the member's municipal solid waste, recyclable materials, or yard waste. ("Former member" would mean a member that had withdrawn from a qualified authority, or a prior member of a qualified authority that had been dissolved.)

The bill specifies that these provisions would not prevent the incorporation of a new authority by some or all of the former members of a dissolved authority.

Sale of Property

Within 90 days after a qualified authority decided to sell or transfer real property located within the territory of a member or former member, the member or former member could exercise the right of first refusal to purchase the real property at a price equal to the lesser of its current market value or the highest price offered for the property in an arm's length, bona fide offer by a third party. The current market value of the real property would have to be determined by a licensed appraiser acceptable to the authority and the member. Any dispute regarding determination of current market value would have to be resolved by independent arbitration.

Other Provisions

The bill provides that if a qualified authority were incorporated or amended its articles of incorporation after the bill's effective date, the new authority would have to include the bill's withdrawal and dissolution provisions in its articles of incorporation.

The bill also provides that, after its effective date, a qualified authority could not enter into a contract for the collection or disposal of garbage with a termination date after the termination date of the authority's most recently approved contract with a member of the authority for the collection and/or disposal of garbage or for the operation of a dog pound.

BACKGROUND

According to articles in *Solid Waste Digest* (March 2001) and the *Detroit Free Press* (1-17-01), SOCRRA intended to spend \$4.9 million to build a nine-hole golf course atop a closed landfill site in Rochester Hills, pursuant to a settlement between the authority and Rochester Hills regarding odor and noise at the landfill. The City of Royal Oak filed a lawsuit in January of this year to block the project and ask that SOCRRA return to its 12 member municipalities the \$4.3 million that it received for selling 52 acres adjacent to the golf course site. Royal Oak officials allege that the project is a bad investment and is not part of the authority's purpose of building and operating solid waste systems and managing its property.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would give member municipalities true local control by allowing them to withdraw from SOCRRA or to dissolve it if the authority were not serving its purpose.

When SOCRRA was first established, it was based on the concept that the combined buying power would yield better services and rates for waste disposal. That premise, however, apparently is not being fulfilled by SOCRRA. Royal Oak officials claim that SOCRRA's biggest expense, the hauling of municipal solid waste, has not been bid out in more than 13 years. Reportedly, a competitive bid process could reduce costs an estimated 10% to 20% a year. According to an article in the *Detroit News* (1-17-00), the authority charges each member municipality approximately \$38 per ton for waste hauling by Waste Management, Inc., while other Detroit-area cities pay between \$10 and \$22 per ton for similar services. Madison Heights, which was expelled from the authority in 1997, contracts with the same waste hauling company for \$22 per ton. Royal Oak officials argue the city could save between \$300,000 and \$500,000 annually by bidding for waste hauling services independently.

Response: Comparing rates with those of other communities is not fair because their rates do not take into consideration other services, such as composting and recycling, that are provided by SOCRRA.

Opposing Argument

If member municipalities were free to break contracts and withdraw from SOCRRA, as provided in the bill, the withdrawal of one or two members and distribution of assets could lead to the destruction of the authority for the other member municipalities. The authority is a well-managed organization and provides comprehensive services that would not otherwise be available or included. The authority also provides long-term stability in waste collection costs and gives smaller cities proportionately equal representation in decision-making matters.

Opposing Argument

According to an article in the *Oakland Press* (6-14-01), in May SOCRRA drafted new bylaws that would address the issue of withdrawal. The bylaws would allow a member to withdraw from the authority or dissolve it with two-thirds approval of the community governing body and authority board, rather than by resolution, as proposed in the bill. If SOCRRA dissolved, each member would receive a proportionate amount of assets and liabilities from the authority. The bylaws would specify that neither withdrawal nor dissolution would be allowed if the action would impair authority contracts. In the spirit of local control, perhaps the proposed bylaws should be permitted to govern this matter.

Opposing Argument

Each municipality renewed its contract with SOCRRA in 1995, and it will be up to the individual member to renew the contract upon its expiration in 2007. The bill, however, would allow a member of SOCRRA to withdraw with a resolution, thereby relieving the member of legal and financial responsibilities and obligations of a binding contract that it willingly entered into and agreed to be bound by until 2007.

Response: A withdrawing member would have to pay its share of the authority's negative equity, and would not be relieved of environmental liability related to the member's waste.

Legislative Analyst: N. Nagata

FISCAL IMPACT

State Impact: The bill would have no fiscal impact on the State.

Local Impact: The potential fiscal impact on local units of government is unknown. The bill could result in reduced expenditures in those local units participating in the affected joint authorities, assuming the activities were no longer needed or could be handled in a alternative manner that would be more cost-effective. The bill also could result in increased local unit expenditures if the dissolution resulted in the loss of an economy of scale in operations, or caused one or more local units to bear a greater burden of the combined expense of operating the authority and its facilities. Both circumstances also could occur, which would increase expenditures in some local units while lowering them in others. The timing of certain revenues or expenses could be altered given the bill's processes for withdrawing from the authority and distributing the authority's assets.

The number of local units participating in such joint authorities is unknown, as is the amount currently spent maintaining such authorities. Similarly, the number of authorities that would be dissolved under the bill, or the reasons for such dissolution, is unknown.

Fiscal Analyst: D. 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.