

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 3 (as enrolled)
Sponsor: Senator Shirley Johnson
Senate Committee: Natural Resources and Environmental Affairs
House Committee: Local Government and Urban Policy

PUBLIC ACT 598 of 2002

Date Completed: 4-9-03

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: Berkley, Beverly Hills, Birmingham, Clawson, Ferndale, Hazel Park, Huntington Woods, Lathrup Village, Oak Park, Pleasant Ridge, Royal Oak, and Troy. 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.

In recent years, some members of SOCCRA have experienced conflicts with the Authority and each other, resulting in litigation in some cases. For example, after SOCCRA proposed to build a nine-hole golf course atop a closed landfill site in Rochester Hills, Royal Oak sued to block the project and ask the Authority to disburse to its members the funds SOCCRA received for selling property adjacent to the proposed golf course. According to Rochester Hills, however, a 1994 consent judgment identified a nine-hole golf course as the agreed-upon method of closing the landfill. Another member, Berkley, expressed concerns about liability from lawsuits that could result from the project. Other areas of member dissatisfaction involve rates charged by SOCCRA and management of the Authority.

Although several members expressed an interest in withdrawing from SOCCRA, the governing statute provided for no mechanism

by which a member could recover the assets it had put into the Authority and withdraw from it.

CONTENT

The bill amended Public Act 179 of 1947 (which allows the incorporation of municipal authorities for the collection and/or disposal of garbage) to do the following:

- Allow a member of a "qualified authority" to withdraw from the authority if certain conditions are met.
- Require a withdrawing member to pay or guarantee its fair share of the negative equity of the authority.
- Provide that a withdrawing member remains obligated for environmental liabilities and for damages necessary to prevent the impairment of a contract.
- Require the authority to pay or guarantee to a withdrawing member its fair share of the authority's equity.
- Require the qualified authority to dissolve if certain conditions are met.
- Require the authority, if it dissolves, to settle its accounts; sell its property; establish a mechanism to handle future environmental liabilities; and distribute its remaining assets to its members.
- Require a new or extended contract or obligation to be approved by all authority members, if the contract or obligation will terminate after the termination of the authority's most recently approved contract with a member.

-- Provide that if the qualified authority is selling the real property of a member, the member has the right of first refusal.

The bill defines "qualified authority" as an authority that, as of the bill's effective date or thereafter, has at least 10 members and a population residing within its territory of 250,000 or more. "Member" means a municipality that incorporated a qualified authority or that became part of a qualified authority and has not withdrawn from it as provided in the bill.

Withdrawal

Under the bill, a member may withdraw from the qualified authority if the member's legislative body 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, unless the withdrawal would cause an impairment of contract. (The bill defines "impairment", in reference to an authority contract, as a material default in the contract that cannot be cured by the payment of money damages.) The clerk of the member must promptly file a certified copy of the resolution with the authority and the Secretary of State. The withdrawal date specified in the resolution must be 1) at least 60 days after the resolution is adopted and 2) within one year after the authority's most recently approved contract with a member, unless certified copies of the resolution are filed more than one year before the specified withdrawal date.

By the withdrawal date, the withdrawing member, at its option, must either pay to the authority the amount of the member's fair share of the negative equity of the authority, if any, determined as of the withdrawal date, or provide the authority with a bond or other independent, insured guarantee that any such amount will be paid within 30 days after the expiration date of the authority's most recently approved contract with a member. The bill specifies that this provision does not relieve the withdrawing member of any of the following:

- The member's fair share of 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 result from the authority's disposal of the withdrawn member's municipal solid waste, recyclable materials, or yard waste.

- The member's payment of any money damages, owned on account of the member's or authority's default under a contract with another person for it to collect and dispose of waste (a subcontract), 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 two or more members withdraw, they are jointly liable for damages under this provision.
- The member's fair share of any obligation to reimburse the authority after the withdrawal for liability incurred by the authority as a result of litigation or arbitration proceedings that were initiated before the withdrawal, or litigation or arbitration involving a cause of action arising before the withdrawal, if the total amount of the member's fair share of the obligation cannot be exactly determined by the date of withdrawal.

(The bill defines "member's fair share" as 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 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. "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.)

At the authority's option, by the withdrawal date, the authority must pay to the withdrawing member its fair share of the equity of the authority, determined as of the withdrawal date, or provide the member with a bond or other independent, insured guarantee that such amount will be paid within 30 days after the authority's most recently approved contract with a member expires. If the authority elects to provide a bond or other

guarantee, the withdrawn member may direct the bonding company or guarantor to pay from the bond or other guarantee any obligation or liability owed to the authority by the member, including the obligation to reimburse the authority for environmental liabilities or to pay damages resulting from a default under a contract.

(The bill defines "equity of the authority" as 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 must be reduced by any estimated liabilities that were included in determining total fund equity.)

Dissolution

Under the bill, unless it would cause an impairment of a subcontract, the qualified authority must dissolve if the legislative body of 60% of the members, weighted by the percentage of recent waste delivery, each adopts 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. The clerk of each member adopting a resolution must promptly file a certified copy of it with the authority and the Secretary of State.

Within six months after these requirements are met, the authority must establish a mechanism to manage and pay for environmental activities required under existing law and cease the activities for which it was incorporated. Within six months after ceasing these activities, the authority must settle its accounts, including all vested or accrued employee benefits, employment contracts, collective bargaining agreements, and unemployment compensation, and, subject to provisions described below, sell all of its property. The authority also must establish a mechanism for handling future environmental liabilities.

After meeting these requirements, the qualified authority must to distribute to each member that member's fair share of the authority's remaining assets. Upon distribution of its assets, the authority will be dissolved, and all liabilities of each member and former member will be terminated, except for the following:

- Any environmental liabilities attributed to the authority to the extent that they 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.
- The member's fair share of any obligation to reimburse the authority after the dissolution for liability incurred by the authority as a result of litigation or arbitration proceedings that were initiated before the dissolution, or litigation or arbitration involving a cause of action arising before the dissolution, if the total amount of the member's fair share cannot be exactly determined by the time the authority has established a mechanism to manage and pay for environmental activities required under existing law.

(The bill defines "former member" as a member that has withdrawn from the qualified authority, or a prior member of the qualified authority if it has been dissolved.)

The bill specifies that these provisions do not prevent the incorporation of a new authority by some or all of the members or former members of a dissolved authority. If the requirements for dissolution have been met, the qualified authority and a new authority may agree to the assignment of contracts from the qualified authority to the new authority.

Contract Approval

The bill provides that, after its effective date, the qualified authority may 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 with a member for the collection and/or disposal of garbage, unless the contract, obligation, bond, or note, or its extension, is approved by all members.

Sale of Property

Under the bill, within 90 days after the 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 its current market value or the

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

Articles of Incorporation

The bill provides that if a qualified authority is incorporated or amends its articles of incorporation after the bill's effective date, the authority must include in its articles of incorporation the bill's provisions for withdrawal and dissolution.

MCL 123.311

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

When SOCCRA was first established, it was based on the concept that combined buying power would yield better services and rates for waste disposal. That premise, however, apparently has not been fulfilled. Reportedly, SOCCRA's biggest expense, the hauling of municipal solid waste, was not bid out in more than 13 years, although competitive bidding could have reduced costs an estimated 10% to 20% a year. Other reports indicate that SOCCRA was charging its members approximately \$38 per ton for waste hauling by Waste Management, Inc., while another Detroit-area city paid \$22 per ton under a contract with the same company, and other cities paid as little as \$10 per ton for similar services. Members of SOCCRA also have claimed that their rates were higher than what the members could have obtained on the open market. Since SOCCRA members have not been able to take their business elsewhere, there has been no incentive for the authority to keep its rates competitive. Furthermore, since SOCCRA can balance its budget by increasing members' rates, there has been little motivation for it to avoid mismanagement.

By enabling members to withdraw from SOCCRA, the bill supplies the incentive

necessary for the authority to charge reasonable rates and improve its business practices. The bill also requires the approval of all members for SOCCRA to enter into or extend a contract or obligation that would terminate after its most recently approved contract with a member will terminate. The authority's recent history is replete with conflict and criticism. If enough of its members determine that SOCCRA no longer is serving the public good, they can take steps to dissolve the authority.

Response: Comparing SOCCRA's rates with those of other communities is somewhat misleading, because the other municipalities' rates do not take into consideration extra services, such as composting and recycling, that SOCCRA provides.

Opposing Argument

The withdrawal of one or two members and the return of their assets could lead to the destruction of SOCCRA for the remaining member municipalities. The authority provides comprehensive services that otherwise might not be available. The authority also provides long-term stability in waste collection costs and gives smaller members proportionately equal representation in decision-making matters. If SOCCRA is dissolved, each member might be forced to seek waste hauling on its own. This could result in higher, not lower, rates, especially for small municipalities that do not generate enough business to negotiate a better deal with trash haulers.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

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

Local Impact: The potential fiscal impact on local units of government is unknown. If an authority member withdraws or the authority dissolves, the bill may result in reduced expenditures in the affected local units, assuming the authority's activities are no longer needed or can be handled in a alternative manner that is more cost-effective. The bill also may result in increased local unit expenditures if the withdrawal or dissolution results in the loss of an economy of scale in operations, or causes 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 might be altered given the bill's processes for withdrawing from the authority and distributing its assets.

Fiscal Analyst: David Zin

A0102\s3ea

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.