

**HOUSE SUBSTITUTE FOR
SENATE BILL NO. 3**

(As amended December 5, 2002)

A bill to amend 1947 PA 179, entitled

"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,"

(MCL 123.301 to 123.310) by adding section 11.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 11. (1) AFTER THE EFFECTIVE DATE OF THE [2002] AMENDA-
2 TORY ACT THAT ADDED THIS SECTION, A QUALIFIED AUTHORITY SHALL NOT
3 ENTER INTO OR EXTEND ANY CONTRACT, OBLIGATION, BOND, OR NOTE THAT
4 HAS, OR AS EXTENDED WOULD HAVE, A TERMINATION DATE AFTER THE TER-
5 MINATION DATE OF THE AUTHORITY'S MOST RECENTLY APPROVED CONTRACT
6 UNDER SECTION 5(1), UNLESS THE CONTRACT, OBLIGATION, BOND, OR
7 NOTE OR EXTENSION THEREOF, IS APPROVED BY ALL MEMBERS.

8 (2) WITHIN 90 DAYS AFTER A QUALIFIED AUTHORITY DECIDES TO
9 SELL OR TRANSFER REAL PROPERTY LOCATED WITHIN THE TERRITORY OF A

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1 MEMBER OR FORMER MEMBER, THE MEMBER OR FORMER MEMBER MAY EXERCISE
2 THE RIGHT OF FIRST REFUSAL TO PURCHASE THE REAL PROPERTY AT A
3 PRICE [NOT LESS THAN THE GREATER] OF THE REAL PROPERTY'S CURRENT MARKET
4 VALUE OR THE HIGHEST PRICE OFFERED FOR THE REAL PROPERTY IN AN
5 ARM'S LENGTH, BONA FIDE OFFER BY A THIRD PARTY. THE CURRENT
6 MARKET VALUE OF SUCH REAL PROPERTY SHALL BE DETERMINED BY AN
7 APPRAISER ACCEPTABLE TO THE AUTHORITY AND THE INTERESTED MEMBER.
8 ANY DISPUTE REGARDING A DETERMINATION OF CURRENT MARKET VALUE
9 SHALL BE RESOLVED BY INDEPENDENT ARBITRATION.

10 (3) UNLESS ITS WITHDRAWAL WOULD CAUSE AN IMPAIRMENT OF [ANY
11 CONTRACT], A MEMBER MAY WITHDRAW FROM A
12 QUALIFIED AUTHORITY IF ALL OF THE FOLLOWING REQUIREMENTS ARE
13 MET:

14 (A) THE LEGISLATIVE BODY OF THE MEMBER ADOPTS A RESOLUTION
15 STATING THAT THE AUTHORITY IS NO LONGER EFFECTIVELY SERVING THE
16 [MEMBER'S NEEDS] AND DECLARING ITS DECISION
17 TO WITHDRAW FROM THE AUTHORITY ON A DATE SPECIFIED IN THE
18 RESOLUTION.

19 (B) THE WITHDRAWAL DATE SPECIFIED IN THE RESOLUTION UNDER
20 SUBDIVISION (A) IS NOT EITHER OF THE FOLLOWING:

21 (i) LESS THAN 60 DAYS AFTER THE DATE THE RESOLUTION IS
22 ADOPTED.

23 (ii) WITHIN 1 YEAR BEFORE THE TERMINATION DATE OF THE
24 AUTHORITY'S MOST RECENTLY APPROVED CONTRACT UNDER SECTION 5(1)
25 UNLESS THE FILINGS REQUIRED BY SUBDIVISION (C) ARE MADE MORE THAN
26 1 YEAR BEFORE THE SPECIFIED WITHDRAWAL DATE.

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1 (C) THE CLERK OF THE MEMBER PROMPTLY FILES A CERTIFIED COPY
2 OF THE RESOLUTION ADOPTED UNDER SUBDIVISION (A) WITH THE
3 AUTHORITY AND THE SECRETARY OF STATE.

4 (4) BY THE WITHDRAWAL DATE, THE WITHDRAWING MEMBER, AT ITS
5 OPTION, EITHER SHALL PAY TO THE AUTHORITY THE AMOUNT OF THE WITH-
6 DRAWING MEMBER'S FAIR SHARE OF THE NEGATIVE EQUITY OF THE AUTHOR-
7 ITY, IF ANY, DETERMINED AS OF THE WITHDRAWAL DATE, OR SHALL PRO-
8 VIDE THE AUTHORITY WITH A BOND OR OTHER INDEPENDENT, INSURED
9 GUARANTEE THAT ANY SUCH AMOUNT WILL BE PAID NOT LATER THAN 30
10 DAYS AFTER THE EXPIRATION DATE OF THE AUTHORITY'S MOST RECENTLY
11 APPROVED CONTRACT UNDER SECTION 5(1). THIS SUBSECTION DOES NOT
12 RELIEVE THE WITHDRAWING MEMBER FROM EITHER OF THE FOLLOWING:

13 (A) THE MEMBER'S FAIR SHARE OF ANY OBLIGATION TO REIMBURSE
14 THE AUTHORITY FOLLOWING THE MEMBER'S WITHDRAWAL FOR ANY ENVIRON-
15 MENTAL LIABILITIES SUBSEQUENTLY INCURRED BY THE AUTHORITY, TO THE
16 EXTENT THAT THE ENVIRONMENTAL LIABILITIES RESULT FROM THE

17 AUTHORITY'S DISPOSAL OF THE WITHDRAWN FORMER MEMBER'S MUNICIPAL
18 SOLID WASTE, RECYCLABLE MATERIALS, OR YARD WASTE.

19 (B) THE MEMBER'S PAYMENT OF ANY MONEY DAMAGES, OWED ON
20 ACCOUNT OF ITS OR THE AUTHORITY'S DEFAULT UNDER A CONTRACT UNDER
21 SECTION 6 IF THE DEFAULT AND DAMAGES RESULT DIRECTLY AND SOLELY
22 FROM THE MEMBER'S WITHDRAWAL AND ARE NECESSARY TO PREVENT AN
23 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.]

24 (5) AT THE OPTION OF THE AUTHORITY, BY THE WITHDRAWAL DATE,
25 THE AUTHORITY SHALL PAY TO THE WITHDRAWING MEMBER THE WITHDRAWING
26 MEMBER'S FAIR SHARE OF THE EQUITY OF THE AUTHORITY, DETERMINED AS
27 OF THE WITHDRAWAL DATE, OR SHALL PROVIDE THE WITHDRAWING MEMBER

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1 WITH A BOND OR OTHER INDEPENDENT, INSURED GUARANTEE THAT SUCH
2 AMOUNT WILL BE PAID NO LATER THAN 30 DAYS AFTER THE EXPIRATION
3 DATE OF THE AUTHORITY'S MOST RECENTLY APPROVED CONTRACT UNDER
4 SECTION 5(1). IF AN AUTHORITY ELECTS TO PROVIDE SUCH A BOND OR
5 OTHER GUARANTEE, THE WITHDRAWN FORMER MEMBER MAY DIRECT THE BOND-
6 ING COMPANY OR GUARANTOR AT ANY TIME THEREAFTER TO PAY FROM THE
7 BOND OR OTHER GUARANTEE ANY OBLIGATION OR LIABILITY OWED TO THE
8 AUTHORITY BY THE WITHDRAWN FORMER MEMBER, INCLUDING, BUT NOT
9 LIMITED TO, AN OBLIGATION DESCRIBED IN SUBSECTION (4)(A) OR (B).

10 (6) UNLESS IT WOULD CAUSE AN IMPAIRMENT OF AN AUTHORITY CON-
11 TRACT UNDER SECTION 6, A QUALIFIED AUTHORITY SHALL DISSOLVE IF
12 BOTH OF THE FOLLOWING REQUIREMENTS ARE MET:

13 (A) THE LEGISLATIVE BODIES OF A [60%] OF THE MEMBERS,
14 WEIGHTED BY THE PERCENTAGE OF RECENT WASTE DELIVERY, EACH ADOPT A
15 RESOLUTION STATING THAT THE AUTHORITY IS NO LONGER EFFECTIVELY
16 SERVING THE PUBLIC GOOD FOR WHICH IT WAS CREATED AND DIRECTING
17 THAT THE AUTHORITY BE DISSOLVED PURSUANT TO THIS SUBSECTION AND
18 SUBSECTIONS (7) TO (9).

19 (B) THE CLERK OF EACH MEMBER WHOSE LEGISLATIVE BODY ADOPTS A
20 RESOLUTION UNDER SUBDIVISION (A) PROMPTLY FILES A CERTIFIED COPY
21 OF THE RESOLUTION WITH THE AUTHORITY AND THE SECRETARY OF STATE.

22 (7) WITHIN 6 MONTHS AFTER THE REQUIREMENTS OF SUBSECTION (6)
23 ARE MET, THE QUALIFIED AUTHORITY SHALL [ESTABLISH A MECHANISM TO MANAGE
AND PAY FOR ENVIRONMENTAL ACTIVITIES REQUIRED UNDER EXISTING LAW AND]
24 CEASE THE ACTIVITIES
25 DESCRIBED IN SECTION 1 FOR WHICH IT WAS INCORPORATED. WITHIN
26 6 MONTHS AFTER CEASING [ACTIVITIES DESCRIBED IN SECTION 1], THE AUTHORITY
SHALL
27 SETTLE ITS ACCOUNTS, INCLUDING, BUT NOT LIMITED TO, ALL VESTED OR
ACCRUED EMPLOYEE BENEFITS, EMPLOYMENT CONTRACTS, COLLECTIVE

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1 BARGAINING AGREEMENTS, AND UNEMPLOYMENT COMPENSATION, AND,
2 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.]

3 (8) [] AFTER THE REQUIREMENTS OF SUBSECTION (7) ARE
4 MET, THE QUALIFIED AUTHORITY SHALL DISTRIBUTE TO EACH MEMBER THAT
5 MEMBER'S FAIR SHARE OF THE AUTHORITY'S REMAINING ASSETS.

6 (9) UPON DISTRIBUTION OF THE QUALIFIED AUTHORITY'S ASSETS
7 UNDER SUBSECTION (8), BOTH OF THE FOLLOWING APPLY:

8 (A) THE AUTHORITY IS DISSOLVED.

9 (B) ALL LIABILITIES OF EACH MEMBER AND FORMER MEMBER OF THE
10 AUTHORITY ARE TERMINATED, EXCEPT FOR [BOTH OF THE FOLLOWING:

(i)] ANY ENVIRONMENTAL LIABILI-

11 TIES [] ATTRIBUTED TO THE AUTHORITY TO THE EXTENT THAT

12 THE ENVIRONMENTAL LIABILITIES RESULT FROM THE AUTHORITY'S DIS-

13 POSAL OF THE MEMBER'S OR FORMER MEMBER'S FAIR SHARE OF MUNICIPAL
14 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.]

15 (10) SUBSECTIONS (6) TO (9) DO NOT PREVENT THE INCORPORATION
16 OF A NEW AUTHORITY BY SOME OR ALL OF THE [MEMBERS OR] FORMER MEMBERS OF AN
17 AUTHORITY [WITH RESPECT TO WHICH THE REQUIREMENTS OF SUBSECTION (6) HAVE
BEEN MET.]

18 (11) IF, AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
19 ADDED THIS SECTION, A QUALIFIED AUTHORITY IS INCORPORATED OR
20 AMENDS ITS ARTICLES OF INCORPORATION, THE QUALIFIED AUTHORITY
21 SHALL INCLUDE IN ITS ARTICLES THE PROVISIONS OF SUBSECTIONS (3)
22 TO (9).

23 (12) AS USED IN THIS ACT:

24 (A) "APPRAISER" MEANS AN INDIVIDUAL LICENSED UNDER
25 ARTICLE 26 OF THE OCCUPATIONAL CODE, 1980 PA 299, MCL 339.2601 TO
26 339.2637.

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1 (B) "AUTHORITY" MEANS AN AUTHORITY INCORPORATED UNDER THIS
2 ACT.

3 (C) "CORRECTIVE ACTION" MEANS THAT TERM AS DEFINED IN SEC-
4 TION 11502 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION
5 ACT, 1994 PA 451, MCL 324.11502.

6 (D) "ENVIRONMENTAL LIABILITIES" MEANS THE COSTS OF LANDFILL
7 CLOSURE AND POSTCLOSURE OBLIGATIONS, THE COSTS OF CORRECTIVE
8 ACTION, RESPONSE ACTIVITY COSTS, AND FINES, PENALTIES, OR DAMAGES
9 REQUIRED OR ASSESSED BY THE STATE UNDER THE NATURAL RESOURCES AND
10 ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL 324.101 TO
11 324.90106.

12 (E) "EQUITY OF THE AUTHORITY" MEANS THE TOTAL FUND EQUITY OF
13 THE AUTHORITY [EXCLUDING CONTRIBUTIONS OF CAPITAL ATTRIBUTED TO THE CLEAN
MICHIGAN INITIATIVE BOND FUND] AS SET FORTH IN [AN AUDIT CONDUCTED
14 FOR THIS PURPOSE] EXCEPT THAT LIABILITIES SHALL BE REDUCED BY
15 ANY ESTIMATED LIABILITIES THAT WERE INCLUDED IN DETERMINING TOTAL
16 FUND EQUITY.

17 (F) "FORMER MEMBER" MEANS A MEMBER THAT HAS WITHDRAWN FROM A
18 QUALIFIED AUTHORITY UNDER THIS SECTION OR A PRIOR MEMBER OF A
19 QUALIFIED AUTHORITY THAT HAS BEEN DISSOLVED UNDER THIS SECTION.

20 (G) "IMPAIRMENT", IN REFERENCE TO AN AUTHORITY CONTRACT,
21 MEANS A MATERIAL DEFAULT IN THE CONTRACT THAT CANNOT BE CURED BY
22 THE PAYMENT OF MONETARY DAMAGES.

23 (H) "MEMBER" MEANS A MUNICIPALITY THAT INCORPORATED A QUALI-
24 FIED AUTHORITY UNDER SECTION 1 OR THAT BECAME PART OF A QUALIFIED
25 AUTHORITY UNDER SECTION 7 AND THAT HAS NOT WITHDRAWN FROM THE
26 AUTHORITY UNDER THIS SECTION.

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1 (I) "MEMBER'S FAIR SHARE" MEANS THE PERCENTAGE [DETERMINED BY TAKING
2 THE TONNAGE OF MUNICIPAL SOLID WASTE, RECYCLABLE MATERIALS, AND YARD WASTE
3 CONTRIBUTED BY THE MEMBER AND DISPOSED OF BY THE AUTHORITY SINCE ITS
4 INCORPORATION AND DIVIDING THAT AMOUNT BY THE TONNAGE OF MUNICIPAL SOLID
5 WASTE, RECYCLABLE MATERIALS, AND YARD WASTE CONTRIBUTED BY ALL MEMBERS AND
6 DISPOSED OF BY THE AUTHORITY SINCE ITS INCORPORATION, AS DETERMINED, IN
THE EVENT OF A DISPUTE, BY STATUTORY AND BINDING ARBITRATION.]

7 (J) "PERCENTAGE OF RECENT WASTE DELIVERY" MEANS THE AMOUNT
8 OF MUNICIPAL SOLID WASTE, RECYCLABLE MATERIALS, AND YARD WASTE
9 GENERATED WITHIN A PARTICULAR MEMBER'S TERRITORY AND DISPOSED OF
10 BY THE AUTHORITY DURING THE LATEST FULL CALENDAR YEAR FOR WHICH
11 THE AUTHORITY DISPOSED OF SUCH MATERIALS OR WASTE GENERATED
12 WITHIN THE TERRITORY OF THAT MEMBER, DIVIDED BY THE SUM OF SUCH
13 AMOUNTS FOR ALL MEMBERS, AS DETERMINED, IN THE EVENT OF A DIS-
14 PUTE, BY INDEPENDENT ARBITRATION.

15 (K) "QUALIFIED AUTHORITY" MEANS AN AUTHORITY THAT AS OF THE
16 EFFECTIVE DATE OF THIS SECTION OR THEREAFTER IS COMPOSED OF 10 OR
17 MORE MEMBERS AND HAS A POPULATION RESIDING WITHIN ITS TERRITORY
18 OF 250,000 OR MORE.

19 (L) "RESPONSE ACTIVITY COSTS" MEANS THAT TERM AS DEFINED IN
20 SECTION 20101 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTEC-
21 TION ACT, 1994 PA 451, MCL 324.20101.