

# SENATE BILL No. 1473

September 26, 2002, Introduced by Senators JOHNSON and SANBORN and referred to the Committee on Local, Urban and State Affairs.

A bill to provide for the creation of a regional water supply and sewerage assembly; to provide for the review of certain charges and actions proposed by certain water supply and sewerage providers; to provide for the membership of certain administrative bodies of certain water supply and sewerage providers; to provide certain employment criteria for certain employees of certain water supply and sewerage providers; to provide for the powers and duties of certain governmental officials and entities; to create the office of a regional water supply and sewerage assembly ombudsman; and to prescribe the powers and duties of the office of the ombudsman.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1       Sec. 1. This act shall be known and may be cited as the  
2 "regional water and sewerage assembly act".

1       Sec. 3. As used in this act:

2       (a) "Complainant" means an individual who files a complaint  
3 under section 23.

4       (b) "Department" means the department of environmental  
5 quality.

6       (c) "Mcf" means 1,000 cubic feet.

7       (d) "Ombudsman" means the office of the regional water  
8 supply and sewerage assembly ombudsman created under section 21.

9       (e) "Participating municipality" means a city, village,  
10 township, or county appointing a member of the regional assembly  
11 under section 5.

12       (f) "Providing city" means a city that provides wholesale  
13 water supply and sewerage services in a regional system.

14       (g) "Regional assembly" means a regional water and sewerage  
15 assembly created in section 5.

16       (h) "Regional system" means interconnected municipal water  
17 supply and sewerage services and facilities that provide whole-  
18 sale water supply service or wholesale sewerage service, or both,  
19 for more than 25% of the population of this state. A regional  
20 system may consist of a system of wholesale water supply facili-  
21 ties and services that serves 1 group of customers and users and  
22 a system of wholesale sewerage facilities and services that  
23 serves a different group of customers and users. Regional system  
24 does not include retail water supply or retail sewerage services  
25 or facilities.

1 (i) "Retail" pertains to water supply service, sewerage  
2 service, or both, provided by a county, city, village, township,  
3 district, or authority directly to residents and businesses.

4 (j) "Sewerage" means sewage collection or disposal, or  
5 both.

6 (k) "Voting participating municipality" means a participat-  
7 ing municipality that is a city, village, or township.

8 (l) "Wholesale" pertains to water supply service, sewerage  
9 service, or both, provided to a county, city, village, township,  
10 district, authority, or other public corporation that utilizes  
11 the services to in turn provide retail services.

12 Sec. 5. (1) There is created for each regional system a  
13 regional assembly.

14 (2) The director of the department, ex officio, or his or  
15 her designee shall be a member of the regional assembly, without  
16 a vote.

17 (3) Not more than 90 days after the effective date of this  
18 act, the governing body of each city, village, and township that  
19 provides retail water supply or sewerage services from the  
20 regional system, whether directly or by contract with a county or  
21 with a district authority or other public corporation established  
22 in a county, shall appoint a member of the governing body or the  
23 mayor, president, or supervisor of that city, village, or town-  
24 ship to the regional assembly and shall notify the director of  
25 the department of the name and address of the individual  
26 appointed. If a city, village, or township provides retail water  
27 supply or sewerage services from the regional system by contract

1 with a county or a district, authority, or other public  
2 corporation established in a county, not more than 90 days after  
3 the effective date of this act, the county board of commissioners  
4 of that county shall appoint a member of the county board of com-  
5 missioners or other officer in an elective county office, or a  
6 member of the governing body of the district, authority, or  
7 public corporation as a member of the regional assembly and shall  
8 notify the director of the department of the name and address of  
9 the individual appointed. A member of the first regional assem-  
10 bly appointed under this subsection shall serve for a term ending  
11 on the second January 1 following the effective date of this act  
12 or when a successor is appointed, whichever is later. If a  
13 member of the regional assembly was appointed under this subsec-  
14 tion, a successor to that member shall be appointed in the same  
15 manner as that member was appointed. A member of the regional  
16 assembly, other than the first regional assembly, appointed under  
17 this subsection shall serve for a term of 1 year, or until a suc-  
18 cessor is appointed, whichever is later.

19 (4) In addition to the circumstances set forth in section 3  
20 of 1846 RS 15, MCL 201.3, the office of a member of the regional  
21 assembly appointed under subsection (3) becomes vacant if he or  
22 she vacates the office that entitled him or her to be appointed  
23 to the regional assembly. Upon the occurrence of a vacancy, the  
24 governing body that appointed the member vacating office shall  
25 promptly appoint a successor to serve for the remainder of the  
26 term.

1       Sec. 7. (1) A majority of the members of the regional  
2 assembly constitute a quorum for the transaction of business.  
3 Five members of the regional assembly may adjourn a meeting of  
4 the regional assembly to another date or day without date.

5       (2) A member of the regional assembly appointed by a voting  
6 participating municipality shall have 1 vote for each 45,000 mcf,  
7 or major portion thereof, of sewage treatment capacity used annu-  
8 ally in the regional system and 1 vote for each 45,000 mcf, or  
9 major portion thereof, of water supply received annually from the  
10 regional system by the voting participating municipality repre-  
11 sented by the member. However, each member appointed by a voting  
12 participating municipality that receives sewerage services from  
13 the regional system shall have at least 1 vote. Each member  
14 appointed by a voting participating municipality that receives  
15 water supply from the regional system shall have not less than 1  
16 vote on account of water supply received annually. A member of  
17 the regional assembly appointed by the county board of commis-  
18 sioners shall not have a vote on the regional assembly.

19       (3) Adoption of a resolution or other action taken by the  
20 regional assembly requires a majority of the votes that members  
21 of the regional assembly are authorized to cast.

22       Sec. 9. (1) The first meeting of the regional assembly  
23 shall be held not more than 180 days after the effective date of  
24 this act. The director of the department shall call the first  
25 meeting. At the first meeting, or at any adjournments or contin-  
26 uations of the first meeting, the regional assembly shall satisfy  
27 the requirements of subsections (2) to (4).

1       (2) The regional assembly shall elect a chairperson and a  
2 vice-chairperson of the regional assembly.

3       (3) The regional assembly shall adopt articles of  
4 incorporation. The articles of incorporation shall incorporate  
5 this act and may include any other provisions consistent with  
6 this act. If the regional assembly fails to adopt and provide  
7 for publication of articles of incorporation not more than 180  
8 days after its first meeting, a member of the regional assembly  
9 or the director of the department may petition a court of compe-  
10 tent jurisdiction to enter an order adopting articles of incorpo-  
11 ration and directing the filing and publication of the articles  
12 of incorporation as provided in this act. The validity of the  
13 incorporation shall be conclusively presumed unless questioned in  
14 a court of competent jurisdiction not more than 60 days after the  
15 publication of the articles of incorporation.

16       (4) The regional assembly shall publish the articles of  
17 incorporation in 1 or more newspapers whose circulation or com-  
18 bined circulation covers the entire territory of the regional  
19 system. The regional assembly shall file a copy of the articles  
20 of incorporation with the clerk of each participating municipal-  
21 ity and with the secretary of state. The articles of incorpora-  
22 tion take effect when the requirements of this subsection are  
23 satisfied.

24       Sec. 11. After its first meeting, the regional assembly  
25 shall meet annually on the first Tuesday in March, and on such  
26 additional days and dates to which the meeting shall be  
27 adjourned, for the purposes as follows:

1 (a) To elect a chairperson and a vice-chairperson of the  
2 regional assembly for the succeeding year.

3 (b) To review rates, charges, and procedures for water  
4 supply and sewerage services on the written request of a county,  
5 city, village, township, district, authority, or other public  
6 corporation served by the regional system or as directed by a  
7 weighted majority vote of the regional assembly.

8 (c) To approve or revise the rates and charges to each  
9 county, city, village, township, district, authority, or other  
10 public corporation served by the regional system.

11 (d) To approve or revise plans and projects to extend,  
12 improve, enlarge, or refinance the facilities of the regional  
13 system.

14 (e) To approve the admission into the regional assembly of a  
15 city, village, township, county, authority, district, or other  
16 public corporation that was not a participating municipality when  
17 the regional assembly was created.

18 (f) To approve any bond issue by the providing city to  
19 finance or refinance any extension, improvement, or enlargement  
20 of the facilities of the regional system.

21 Sec. 13. In addition to the meetings required under section  
22 11, the regional assembly shall meet at such other times as a  
23 meeting is called by the chairperson of the regional assembly or  
24 by 5 of its members for purposes specified in the call of the  
25 meeting. The members of the regional assembly shall serve with-  
26 out compensation.

1       Sec. 21. The office of the regional water supply and  
2 sewerage assembly ombudsman is created within the department.  
3 The ombudsman shall be appointed by the governor and shall serve  
4 at the pleasure of the governor.

5       Sec. 23. (1) The ombudsman shall establish procedures for  
6 receiving and processing complaints from complainants, conducting  
7 investigations, holding hearings, and reporting findings result-  
8 ing from investigations.

9       (2) The ombudsman may do all of the following:

10       (a) Upon its own initiative or upon receipt of a complaint  
11 from a complainant, investigate an administrative act of a  
12 regional assembly that is alleged to be contrary to law or rule,  
13 contrary to policy of the department imposed without an adequate  
14 statement of reason, or based on irrelevant, immaterial, or erro-  
15 neous grounds.

16       (b) Decide, in its discretion, whether to investigate a  
17 complaint.

18       (c) Upon its own initiative or upon receipt of a complaint  
19 from a complainant, conduct a preliminary investigation to deter-  
20 mine whether a regional assembly may have committed an adminis-  
21 trative act that is alleged to be contrary to law, rule, or  
22 policy of the department.

23       (d) Hold informal hearings and request that individuals  
24 appear before the ombudsman and give testimony or produce docu-  
25 mentary or other evidence that the ombudsman considers relevant  
26 to a matter under investigation.



1 (e) Make recommendations to the governor and the legislature  
2 concerning the need for review, revision, or clarification of the  
3 legislation or for change in rules or policies, or both.

4 Sec. 25. (1) If the ombudsman decides to investigate a com-  
5 plaint from a complainant, the ombudsman shall notify the com-  
6 plainant, the department, and the regional assembly of the inten-  
7 tion to investigate. If the ombudsman declines to investigate a  
8 complaint or continue an investigation, the ombudsman shall  
9 notify the complainant, the department, and the regional assem-  
10 bly, in writing, of the decision and the reasons for the  
11 ombudsman's decision.

12 (2) Upon request, the ombudsman shall be given access to all  
13 information, records, and documents in the possession of the  
14 regional assembly which the ombudsman considers necessary in an  
15 investigation. The regional assembly shall assist the ombudsman  
16 in obtaining the necessary releases for documents that are spe-  
17 cifically restricted or privileged.

18 (3) The ombudsman shall treat all matters under investiga-  
19 tion, including the identities of the individuals from whom  
20 information is acquired as confidential, except to the extent  
21 that disclosure may be necessary to enable the ombudsman to per-  
22 form the duties of the office and to support any recommendations  
23 resulting from an investigation. A record of the office of the  
24 ombudsman is confidential, shall be used only for purposes set  
25 forth in this act, and is not subject to court subpoena. A  
26 record of the office of the ombudsman is exempt from disclosure

1 under the freedom of information act, 1976 PA 442, MCL 15.231 to  
2 15.246.

3       Sec. 27. (1) The ombudsman shall prepare and submit a  
4 report of the findings of an investigation and make recommenda-  
5 tions to the department or regional assembly if the ombudsman  
6 finds any of the following:

7       (a) A matter should be further considered by the department  
8 or regional assembly.

9       (b) An administrative act should be modified or canceled.

10       (c) A statute or rule should be altered.

11       (d) Reasons should be given for an administrative act.

12       (e) Other action should be taken by the department or  
13 regional assembly.

14       (2) The ombudsman shall notify the complainant of the  
15 actions taken by the ombudsman and by the department or regional  
16 assembly.

17       (3) The ombudsman shall provide the complainant with a copy  
18 of its recommendations on the complaint.

19       (4) The ombudsman shall submit to the governor and the leg-  
20 islature an annual report on the activities of the office.

21       Sec. 29. The authority granted the ombudsman is in addition  
22 to the authority granted under any other act or rule under which  
23 the remedy or right of appeal or objection is provided for a  
24 person or any procedure is provided for the inquiry into or  
25 investigation of any matter. The authority granted the ombudsman  
26 shall not be construed to limit or affect the remedy or right of

1 appeal or objection and shall not be considered part of an  
2 exclusionary process.

3       Sec. 31. (1) Subject to the limitations under this section,  
4 the providing city that originally established the regional  
5 system shall retain direct control of retail water supply and  
6 retail sewerage services and facilities within that city or other  
7 public corporation.

8       (2) Any charter provision to the contrary notwithstanding,  
9 the administrative body of the providing city's water supply and  
10 sewerage utility shall consist of 9 members, appointed by the  
11 mayor of the providing city who shall serve for a 4-year term.  
12 Four members shall be nominated by the regional assembly from the  
13 4 counties with the largest population served by the regional  
14 system, which nominees shall be appointed by the mayor.  
15 Vacancies shall be filled in the same manner as the original  
16 appointment.

17       (3) The providing city and any participating municipality  
18 shall not impose or collect a charge, rate, or fee, including a  
19 franchise fee, for wholesale water supply or sewerage services in  
20 excess of the actual cost of providing the water supply and sew-  
21 erage services.

22       Sec. 33. Rates, charges, and procedures for water supply  
23 and sewerage services from the regional system in effect and in  
24 use on the effective date of the articles of incorporation of the  
25 regional assembly shall remain in effect until the annual meeting  
26 of the regional assembly following the effective date of the

1 articles of incorporation until a review of the rates, charges,  
2 and procedures as provided in section 11.

3       Sec. 35. The regional assembly may do 1 or more of the  
4 following:

5       (a) Survey, study, and investigate water resources of the  
6 area within the territory of the regional system for the purpose  
7 of determining the feasibility and practicability of developing  
8 new sources of water supply.

9       (b) Ascertain requirements for sewerage systems and  
10 services.

11       Sec. 37. The business that the regional assembly may per-  
12 form shall be conducted at a public meeting of the regional  
13 assembly held in compliance with the open meetings act, 1976 PA  
14 267, MCL 15.261 to 15.275. A writing prepared, owned, used, in  
15 the possession of, or retained by the regional assembly in the  
16 performance of an official function is subject to the freedom of  
17 information act, 1976 PA 442, MCL 15.231 to 15.246.

18       Sec. 39. (1) The regional assembly is a municipal corpora-  
19 tion and a public body corporate with power to sue and be sued in  
20 a court of competent jurisdiction. The regional assembly pos-  
21 sesses all powers necessary or incidental to carrying out the  
22 purposes of its incorporation. The enumeration of any powers in  
23 this act shall not be construed as a limitation upon these gen-  
24 eral powers.

25       (2) The powers granted in this act are in addition to those  
26 granted by statute or charter.