

HOUSE BILL No. 4016

January 27, 2005, Introduced by Rep. Kahn and referred to the Committee on Government Operations.

A bill to provide for the approval of certain contracts and rates involving the operation of certain water and sewer systems; to require certain policies and procedures in the awarding of contracts and approving of rates; to provide for the powers and duties of certain governmental officials and entities; and to provide for remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Authority" means an authority created under this act.

3 (b) "Local unit of government" means a city, village, or
4 township. A local unit of government does not include a qualified
5 city.

6 (c) "Qualified city" means a city with a population of 750,000

1 or more that is a member of an authority created under this act.

2 (d) "Qualified county" means a county with a population of
3 400,000 or more that is a member of an authority created under this
4 act.

5 (e) "Water or sewer system" or "system" means a water supply
6 facility or sewerage services facility, or both, that provides
7 water or sewerage service to more than 20% of the population of
8 this state.

9 Sec. 2. Pursuant to section 27 of article VII of the state
10 constitution of 1963 and any other applicable law, an authority
11 created under this act is an agency and instrumentality of the
12 state that has all of the powers of a public corporation in the
13 exercising of its duties under this act.

14 Sec. 3. (1) An authority is established for each water or
15 sewer system operating in this state to provide review and
16 oversight of the contract process of and the rates charged by the
17 system.

18 (2) The members of the authority shall be all qualified
19 counties and qualified cities that are served by the water or sewer
20 system. Each member of the authority is subject to the requirements
21 of this act and the policies and procedures established by the
22 authority.

23 (3) Not more than 30 days after the effective date of this
24 act, each qualified county and qualified city that is a member of
25 an authority shall make appointments to the authority as provided
26 under this section.

27 (4) One person shall be appointed to represent each qualified

1 county that does not have a qualified city located within the
2 county. The appointment under this subsection shall be made by the
3 county board of commissioners.

4 (5) One person shall be appointed to represent each qualified
5 city. The appointment under this subsection shall be made by the
6 mayor of the city, with the advice and consent of the city's
7 governing body.

8 (6) If a qualified county has a qualified city within the
9 county, 1 person who does not live or work within the qualified
10 city shall be appointed to represent the county. The appointment
11 under this subsection shall be made by the majority vote of the
12 chief elected officials of the 5 largest local units of government
13 within the county.

14 (7) A person appointed under this section shall serve for a
15 term of 4 years, or until a successor is appointed, whichever is
16 later. A successor to a member shall be appointed in the same
17 manner and shall serve for a term of 4 years, or until a successor
18 is appointed, whichever is later. A person may be reappointed to
19 the authority. A person appointed to the authority may be replaced
20 by the appointing member at any time.

21 Sec. 4. (1) A majority of the persons appointed to the
22 authority constitute a quorum for the transaction of business.

23 (2) The person appointed to the authority shall have 1 vote.

24 (3) The first meeting of the authority shall be held not more
25 than 45 days after the effective date of this act.

26 (4) The authority shall elect a chairperson and other officers
27 as the authority considers necessary. The authority shall adopt

1 bylaws and rules to govern the operation of the authority.

2 (5) After its first meeting, the authority shall meet not less
3 than quarterly and at such other times as determined by the
4 authority.

5 Sec. 5. An authority created under this act is subject to the
6 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
7 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

8 Sec. 6. (1) Persons appointed to the authority are public
9 servants under 1968 PA 317, MCL 15.321 to 15.330, and are subject
10 to any other applicable law with respect to conflicts of interest.

11 (2) An authority shall establish policies and procedures
12 requiring periodic disclosure by persons appointed to the authority
13 of relationships which may give rise to conflicts of interest.

14 Sec. 7. (1) An authority shall establish an ethics manual
15 governing the conducting of system business and the conduct of
16 employees of the system.

17 (2) An authority shall establish policies under this section
18 that are no less stringent than those provided for public officers
19 and employees by 1973 PA 196, MCL 15.341 to 15.348. The policies
20 established under this section shall include compliance by each
21 person appointed to the authority and employees of the system who
22 regularly exercise significant discretion over the award and
23 management of authority procurements with policies governing all of
24 the following:

25 (a) Immediate disclosure of the existence and nature of any
26 financial interest that would reasonably be expected to create a
27 conflict of interest.

1 (b) Withdrawal by the person appointed to the authority or
2 employee of the system from participation in, discussion of, or
3 evaluation of any recommendation or decision involving procurement
4 involving the water or sewer system that would reasonably be
5 expected to create a conflict of interest for that person or
6 employee.

7 Sec. 8. The authority is a public body for purposes of
8 reporting violations or suspected violations of a law or regulation
9 or rule promulgated under the law of this state, a political
10 subdivision of this state, or the United States. A person reporting
11 a violation or suspected violation under this section shall have
12 all the protections provided under the whistleblowers' protection
13 act, 1980 PA 469, MCL 15.361 to 15.369.

14 Sec. 9. On or before February 1 of each year, the chief
15 financial officer for a water or sewer system shall prepare and
16 submit to each member of the system's authority a proposed budget
17 for the next succeeding fiscal year covering its anticipated
18 revenues and expenses of administration, operation, maintenance,
19 and contract procurements.

20 Sec. 10. An authority shall establish policies and procedures
21 for the contracting of services for the system. The policies and
22 procedures shall provide for all of the following:

23 (a) The authority shall have the exclusive authority to review
24 and approve all contracts and contract renewals, extensions, and
25 charge orders or appropriations in an amount greater than
26 \$50,000.00, and such contracts or appropriations are void and
27 unenforceable unless approved by the authority.

1 (b) The authority shall review and approve all contract
2 overruns from the original contract amount for contracts approved
3 under subdivision (a) and for contracts less than \$50,000.00 if the
4 overrun causes the contract amount to exceed \$50,000.00.

5 (c) Except as otherwise provided by this act, a contract shall
6 not be awarded by the system for the construction, repair,
7 remodeling, or demolition of a water or sewer facility unless the
8 contract is let pursuant to a procedure that requires competitive
9 bidding. This subdivision does not apply if the authority
10 determines that any of the following apply:

11 (i) The negotiated contract amount is less than \$50,000.00 over
12 the lifetime of the contract and any contract renewals or
13 extensions.

14 (ii) The contract is for emergency repair or construction
15 necessitated by a sudden, unforeseen occurrence or situation of a
16 serious and urgent nature and is not for convenience or expediency.
17 A contract under this subparagraph shall not be for a period
18 greater than 1 year.

19 (iii) The repair or construction is necessary to ensure safety
20 or to otherwise protect life or property. A contract under this
21 subparagraph shall not be for a period greater than 1 year.

22 (iv) That procurement by competitive bids is not practicable to
23 efficiently and effectively meet the water and sewer system needs,
24 or that another procurement method is in the public's best
25 interests.

26 (d) The policies and procedures for hiring of professional
27 service contractors.

1 Sec. 11. An authority shall establish policies and procedures
2 for the review and approval of the rates and charges imposed or
3 assessed by the water or sewer system.

4 Sec. 12. (1) A water or sewer system shall not charge a
5 customer more than that allowed under the contract to provide
6 services.

7 (2) A customer may file a complaint with the water or sewer
8 system to recover any amounts allowed under this section.

9 (3) A complaint under subsection (2) shall be filed no later
10 than 12 months from the date a payment was made as a result of a
11 violation of this section.

12 (4) If a water or sewer system is found to have charged an
13 amount in violation of this section, the system shall pay to or
14 credit the account of the customer an amount equal to 10 times the
15 overcharge or \$100.00, whichever is greater.

16 Sec. 13. If a qualified county, qualified city, or a local
17 unit of government charges its customers a rate that generates an
18 amount greater than the amount that the county, city, or local unit
19 of government is required to pay under its contract with the water
20 or sewer system, the county, city, or local unit of government
21 shall annually itemize on the customer's bill the average
22 additional charges.

23 Sec. 14. A challenge to the validity of any provision of this
24 act shall be filed with and decided by the court of appeals
25 pursuant to section 10 of article VI of the state constitution of
26 1963.