

HOUSE BILL No. 5098

June 16, 2009, Introduced by Reps. McMillin and Lund and referred to the Committee on Health Policy.

A bill to allow for the review, oversight, and providing of recommendations regarding the operation of certain water and sewer systems within this state; to create the water accountability advisory board; and to provide for the powers and duties of certain governmental officials and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Board" means the water accountability advisory board
3 created under this act.

4 (b) "City" means a city chartered under the home rule city
5 act, 1909 PA 279, MCL 117.1 to 117.38.

6 (c) "Local unit of government" means a city, village, or
7 township.

8 (d) "Qualified city" means a city that owns or operates a

1 water or sewer system.

2 (e) "Qualified county" means a county with a population of
3 400,000 or more that is served by the water or sewer system.

4 (f) "Township" means a township chartered under the charter
5 township act, 1947 PA 359, MCL 42.1 to 42.34.

6 (g) "Village" means a village incorporated under the home rule
7 village act, 1909 PA 278, MCL 78.1 to 78.28.

8 (h) "Water or sewer system" or "system" means a water supply
9 facility or sewerage services facility, or both, that provides
10 water or sewerage service to more than 20% of the population of
11 this state.

12 Sec. 2. (1) A city that owns or operates a water or sewer
13 system shall establish a water accountability advisory board to
14 provide review and oversight of the system and to make
15 recommendations to the system as provided under this act. The
16 board's review and oversight shall involve the system's contract
17 process and administration, rates and rate setting processes,
18 budget, finance, and operations.

19 (2) Not more than 30 days after the effective date of this act
20 or not more than 30 days after the date a county or city becomes a
21 qualified county or qualified city, whichever is later, each
22 qualified county and qualified city shall make appointments to the
23 board as provided under this section.

24 (3) One person shall be appointed to represent each qualified
25 county that does not have the qualified city located within the
26 county. The appointment under this subsection shall be made by the
27 county board of commissioners. For the initial appointments to the

1 board, if there is more than 1 qualified county, the county with
2 the largest population will appoint a person to a 1-year term, the
3 next largest county in population to a 2-year term, and all other
4 counties to a 4-year term.

5 (4) Three persons shall be appointed to represent the
6 qualified city. The appointment under this subsection shall be made
7 by the mayor of the city, with the advice and consent of the city's
8 governing body. For the initial appointments to the board, 1 person
9 shall be appointed to a 1-year term, 1 to a 2-year term, and 1 to a
10 3-year term.

11 (5) If a qualified county has the qualified city within the
12 county, 1 person who does not live or work within the qualified
13 city shall be appointed to represent the county. The appointment
14 under this subsection shall be made by the majority vote of the
15 chief elected officials of the 5 largest local units of government,
16 excluding the qualified city, within the county. For the initial
17 appointment to the board, the person shall be appointed to a 4-year
18 term.

19 (6) After the initial appointments to the board, a person
20 appointed under this section shall serve for a term of 4 years. A
21 successor to a member shall be appointed in the same manner and
22 shall serve for a term of 4 years. A person may be reappointed to
23 the board. If a vacancy occurs before the end of a term, the person
24 appointed to fill the vacancy shall be appointed in the same manner
25 for the balance of the term. A person appointed to the board may be
26 replaced by the appointing entity at any time.

27 Sec. 3. (1) A majority of the persons appointed to the board

1 constitute a quorum for the transaction of business.

2 (2) Each person appointed to the board shall have 1 vote.

3 (3) The first meeting of the board shall be held not more than
4 45 days after the effective date of this act, or not more than 45
5 days after the date a city becomes a qualified city, whichever is
6 later.

7 (4) The board shall elect a chairperson and other officers as
8 the board considers necessary. The board shall adopt bylaws and
9 rules to govern the operation of the board.

10 (5) After its first meeting, the board shall meet not less
11 than quarterly and at such other times as determined by the board.

12 (6) The board shall establish and maintain a website to
13 provide to the general public the information required under this
14 act.

15 (7) Each member of the board shall receive a per diem, at the
16 same rate established by the qualified city for its employees, for
17 each meeting the member attends and shall be reimbursed for all
18 reasonable and necessary expenses incurred in performing the
19 member's duties required under this act.

20 (8) The board shall appoint an executive director and such
21 other staff as the board considers necessary to carry out its
22 responsibilities under this act. The reasonable and necessary
23 expenses of the board shall be paid by the system. The state shall
24 reimburse the system through the appropriations process for any
25 reasonable and necessary expenses of the board paid under this act.

26 Sec. 4. (1) Persons appointed to the board, or the executive
27 director and any staff of the board, are subject to the same

1 requirement as provided under section 2 of 1968 PA 317, MCL 15.322,
2 and are subject to any other applicable law with respect to
3 conflicts of interest.

4 (2) The board shall establish policies and procedures
5 requiring periodic disclosure by persons appointed to the board, or
6 the executive director and any staff of the board, of relationships
7 which may give rise to conflicts of interest.

8 Sec. 5. (1) The board shall make recommendations regarding the
9 establishment of an ethics manual governing the conducting of
10 system business and the conduct of employees of the system.

11 (2) The board shall make recommendations regarding the
12 establishment of policies under this section that are no less
13 stringent than those provided for public officers and employees by
14 1973 PA 196, MCL 15.341 to 15.348.

15 (3) The board shall review whether the system adopted the
16 recommendations made under this section and post its
17 recommendations and findings on the board's website.

18 Sec. 6. (1) The board shall review the system's rates and rate
19 making process and make recommendations to the system regarding the
20 setting of rates.

21 (2) As part of the board's review and oversight under this
22 section, the board shall issue an annual report which shall include
23 all of the following assessments:

24 (a) Whether the rates for water and sewer service were just
25 and reasonable.

26 (b) Whether customers were notified of a rate alteration
27 before the effective date of the rate alteration.

1 (c) Whether any notices regarding rate alterations contained
2 any of the following information:

3 (i) A statement that the customer's rate may change.

4 (ii) An estimate of the amount of the annual change for the
5 typical customer that would result by the rate change.

6 (iii) A statement that a customer may comment on or receive
7 complete details of the rate alteration by calling or writing the
8 system.

9 (d) Whether the system provided at no cost to the customer
10 complete details of the rate alteration.

11 (e) Whether the system had more than 1 rate increase during
12 any 12-month period.

13 (3) The board shall make recommendations to assist the system
14 in providing services to its customers.

15 (4) The annual report and recommendations required under this
16 section shall be posted on the board's website.

17 Sec. 7. (1) The board shall make recommendations regarding
18 policies and procedures for the contracting by the system.

19 (2) The board's recommendations shall include that a contract
20 shall not be awarded by the system unless the contract is issued
21 pursuant to a procedure that requires competitive bidding. The
22 recommendations shall provide that an exemption from competitive
23 bidding may be allowed for any of the following:

24 (a) A negotiated contract if the amount is less than
25 \$50,000.00 over the lifetime of the contract, including any
26 contract renewals or extensions.

27 (b) A contract that is for emergency repair or construction

1 necessitated by a sudden, unforeseen occurrence or situation of a
2 serious and urgent nature and is not for convenience or expediency.
3 A contract under this subdivision shall not be for a period greater
4 than 1 year.

5 (c) A repair or construction contract that is necessary to
6 ensure the safety of or otherwise protect life or property. A
7 contract under this subdivision shall not be for a period greater
8 than 1 year.

9 (d) A contract where procurement by competitive bids is not
10 practicable to efficiently and effectively meet the water and sewer
11 system needs or where another procurement method is in the public's
12 best interests.

13 (3) The board shall review and make recommendations regarding
14 all contracts and contract renewals, extensions, and change orders
15 or appropriations in an amount greater than \$50,000.00 that are
16 approved or issued by the system.

17 (4) For all contracts less than \$50,000.00, the board shall
18 review and make recommendations if any renewals, extensions, or
19 overruns cause the total contract amount to exceed \$50,000.00.

20 (5) The board shall review and make recommendations regarding
21 all contracts approved or issued by the system under circumstances
22 described in subsection (2)(b) through (d) that were not subject to
23 competitive bidding.

24 (6) The board shall recommend policies and procedures for
25 hiring of professional service contractors.

26 (7) All contracts awarded by the system and the board's review
27 of and recommendations concerning the contracts required under this

1 section shall be posted on the board's website.

2 Sec. 8. The board created under this act is subject to the
3 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
4 the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

5 Sec. 9. (1) The board shall retain a certified public
6 accounting firm to conduct an annual financial audit of the system
7 and to conduct performance audits of the transactions and
8 operations of the system.

9 (2) The completed annual financial audit required under this
10 section shall be submitted to the board within 6 months from the
11 end of the system's fiscal year and posted on the board's website.
12 The performance audits conducted under this section shall be
13 submitted to the board upon completion and posted on the board's
14 website.

15 Sec. 10. (1) The chief financial officer of the water and
16 sewer system shall prepare and submit to the board for review and
17 recommendations a detailed operating and capital budget for each
18 fiscal year.

19 (2) The budget required under this section shall be submitted
20 at least 60 days before the beginning of each new fiscal year and
21 shall be posted on the board's website. The board shall complete
22 its review and issue its recommendations no later than 42 days from
23 the date the budget is received.

24 (3) The chief financial officer shall immediately notify the
25 board if actual expenditures exceed the budgeted amount submitted
26 under this section.

27 (4) The board shall also review and provide oversight of the

1 system's budget, budget administration, expenditures, finances, and
2 other financial matters and make recommendations regarding the
3 system's budget, budget administration, expenditures, finances, and
4 other financial matters. The chief financial officer of the system
5 shall provide the board with all budgetary and financial
6 information that the board considers necessary to carry out its
7 responsibilities under this act. The board's review and
8 recommendations and the information provided under this section
9 shall be posted on the board's website.

10 Sec. 11. (1) An employee of the water and sewer system who
11 becomes aware of or suspects that any actions by another employee
12 or entity of the system are prohibited by any law, rule,
13 regulation, or policy shall report the violation to the board and
14 to the system.

15 (2) A person who makes a report required under this section
16 shall have the same protections and rights as provided under the
17 whistleblowers' protection act, 1980 PA 469, MCL 15.361 to 15.369.

18 Sec. 12. This act does not limit or alter the powers and
19 rights to own and operate a water and sewer system granted to a
20 city under section 24 of article VII of the state constitution of
21 1963.

22 Sec. 13. A challenge to the validity of any provision of this
23 act shall be filed with and decided by the court of appeals under
24 section 10 of article VI of the state constitution of 1963.