

JOINT GARBAGE AND RUBBISH DISPOSAL (EXCERPT)

Act 179 of 1947

123.311 Entering or extending contract, obligation, bond, or note; sale or transfer of property; determination of current market value; withdrawal of member from qualified authority; payment; dissolution of authority; payment of environmental activities; distribution of assets; articles of incorporation; definitions.

Sec. 11. (1) After the effective date of the 2002 amendatory act that added this section, a qualified authority shall 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 under section 5(1), unless the contract, obligation, bond, or note or extension thereof, is approved by all members.

(2) Within 90 days after a 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 the greater of the real property's current market value or the highest price offered for the real property in an arm's length, bona fide offer by a third party. The current market value of such real property shall be determined by an appraiser acceptable to the authority and the interested member. Any dispute regarding a determination of current market value shall be resolved by independent arbitration.

(3) Unless its withdrawal would cause an impairment of any contract, a member may withdraw from a qualified authority if all of the following requirements are met:

(a) The legislative body of the member 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.

(b) The withdrawal date specified in the resolution under subdivision (a) is not either of the following:

(i) Less than 60 days after the date the resolution is adopted.

(ii) Within 1 year before the termination date of the authority's most recently approved contract under section 5(1) unless the filings required by subdivision (c) are made more than 1 year before the specified withdrawal date.

(c) The clerk of the member promptly files a certified copy of the resolution adopted under subdivision (a) with the authority and the secretary of state.

(4) By the withdrawal date, the withdrawing member, at its option, either shall pay to the authority the amount of the withdrawing member's fair share of the negative equity of the authority, if any, determined as of the withdrawal date, or shall provide the authority with a bond or other independent, insured guarantee that any such amount will be paid not later than 30 days after the expiration date of the authority's most recently approved contract under section 5(1). This subsection does not relieve the withdrawing member from either of the following:

(a) The member's fair share of any obligation to reimburse the authority following the member's 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 former member's municipal solid waste, recyclable materials, or yard waste.

(b) The member's payment of any money damages, owed on account of its or the authority's default under a contract under section 6 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 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.

(5) At the option of the authority, by the withdrawal date, the authority shall pay to the withdrawing member the withdrawing member's fair share of the equity of the authority, determined as of the withdrawal date, or shall provide the withdrawing member with a bond or other independent, insured guarantee that such amount will be paid no later than 30 days after the expiration date of the authority's most recently approved contract under section 5(1). If an authority elects to provide such a bond or other guarantee, the withdrawn former member may direct the bonding company or guarantor at any time thereafter to pay from the bond or other guarantee any obligation or liability owed to the authority by the withdrawn former member, including, but not limited to, an obligation described in subsection (4)(a) or (b).

(6) Unless it would cause an impairment of an authority contract under section 6, a qualified authority shall

dissolve if both of the following requirements are met:

(a) The legislative bodies of 60% of the members, weighted by the percentage of recent waste delivery, each adopt 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 pursuant to this subsection and subsections (7) to (9).

(b) The clerk of each member whose legislative body adopts a resolution under subdivision (a) promptly files a certified copy of the resolution with the authority and the secretary of state.

(7) Within 6 months after the requirements of subsection (6) are met, the qualified authority shall establish a mechanism to manage and pay for environmental activities required under existing law and cease the activities described in section 1 for which it was incorporated. Within 6 months after ceasing activities described in section 1, the authority shall settle its accounts, including, but not limited to, all vested or accrued employee benefits, employment contracts, collective bargaining agreements, and unemployment compensation, and, 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.

(8) After the requirements of subsection (7) are met, the qualified authority shall distribute to each member that member's fair share of the authority's remaining assets.

(9) Upon distribution of the qualified authority's assets under subsection (8), both of the following apply:

(a) The authority is dissolved.

(b) All liabilities of each member and former member of the authority are terminated, except for both of the following:

(i) Any environmental liabilities attributed to the authority to the extent that the environmental liabilities 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.

(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.

(10) Subsections (6) to (9) do not prevent the incorporation of a new authority by some or all of the members or former members of an authority with respect to which the requirements of subsection (6) have been met.

(11) If, after the effective date of the amendatory act that added this section, a qualified authority is incorporated or amends its articles of incorporation, the qualified authority shall include in its articles the provisions of subsections (3) to (9).

(12) As used in this act:

(a) "Appraiser" means an individual licensed under article 26 of the occupational code, 1980 PA 299, MCL 339.2601 to 339.2637.

(b) "Authority" means an authority incorporated under this act.

(c) "Corrective action" means that term as defined in section 11502 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.11502.

(d) "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, 1994 PA 451, MCL 324.101 to 324.90106.

(e) "Equity of the authority" means 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 shall be reduced by any estimated liabilities that were included in determining total fund equity.

(f) "Former member" means a member that has withdrawn from a qualified authority under this section or a prior member of a qualified authority that has been dissolved under this section.

(g) "Impairment", in reference to an authority contract, means a material default in the contract that cannot be cured by the payment of monetary damages.

(h) "Member" means a municipality that incorporated a qualified authority under section 1 or that became part of a qualified authority under section 7 and that has not withdrawn from the authority under this section.

(i) "Member's fair share" means 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 of municipal solid waste, recyclable materials, and yard waste 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.

(j) "Percentage of recent waste delivery" means the amount of municipal solid waste, recyclable materials, and yard waste generated within a particular member's territory and disposed of by the authority during the latest full calendar year for which the authority disposed of such materials or waste generated within the territory of that member, divided by the sum of such amounts for all members, as determined, in the event of a dispute, by independent arbitration.

(k) "Qualified authority" means an authority that as of the effective date of this section or thereafter is composed of 10 or more members and has a population residing within its territory of 250,000 or more.

(l) "Response activity costs" means that term as defined in section 20101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.20101.

History: Add. 2002, Act 598, Imd. Eff. Dec. 16, 2002.

Compiler's note: Former MCL 123.311 to 123.319, deriving from Act 345 of 1978, were repealed by Act 60 of 1995, Imd. Eff. May 24, 1995.