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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 352 (Substitute S-3 as passed by the Senate)

Sponsor: Senator Dick Posthumus

Committee: Local Government and Veterans

Date Completed: 10-6-89

RATIONALE

As a result of sewer overflow problems in and around Grand Rapids, some people have suggested that a regional authority is needed in that area to address that and other concerns affecting not only the city but surrounding communities as well. Reportedly, when excessive rainwater enters the city's sewer system, the reservoirs overflow into the Grand River and the sewage is conveyed to communities downstream. Instead of the city's handling this problem by itself, or individual local units' handling it in a piecemeal fashion, the communities involved apparently would like to work together at the regional level, but no statutory framework exists to accommodate such a scenario.

CONTENT

The bill would create the "Metropolitan Council Act" to:

- Authorize local governments in the "Ottawa-Kent metropolitan area" (Ottawa and Kent Counties) to form a metropolitan council.
- Specify that a metropolitan council would be considered an authority under the State Constitution.
- Prescribe the powers and duties of a metropolitan council.
- Authorize a council to require each participating local government to pay the council 0.2 mill on all taxable property in the local government.

- Authorize a metropolitan council to levy up to 0.5 mill on the taxable property in the council area, upon voter approval of the proposed tax.
- Include various provisions concerning employees of a local government that joined a council, such as the effect on employment status, labor agreements, and pension or retirement benefits.
- Provide for a local government to join or withdraw from a metropolitan council after it had been incorporated.

Formation of a Metropolitan Council

A combination of two or more local governmental units (counties, townships, cities, and villages) in the Ottawa-Kent metropolitan area could form a metropolitan council by adopting articles of incorporation pursuant to the bill's requirements.

A council would be a corporate body with power to sue and be sued in any court of the State and would be an agency and instrumentality of the State. A council also would be an authority under Section 6 of Article IX of the State Constitution of 1963. (That Section establishes a 50-mill property tax limitation but creates an exception for, among other things, an authority whose tax limitations are provided by law.)

S.B. 352 (10-6-89)

Articles of Incorporation

To the extent not set forth in the bill, a council's articles would have to state the council's name, the names of the participating local governmental units; the purposes for which the council was formed; the power, duties, and limitations of the council and its officers; the qualifications, method of selection and terms of office of delegates sitting on the council and of council officers; the manner in which participating local governments would take part in the governance of the council; the method of amending the articles; and, any other matters that the participating local governmental units considered advisable.

The articles could:

- Require each participating local government to pay annually to the council an amount equal to 0.2 mill multiplied by the State equalized valuation (SEV) of all the taxable real and personal property within the local government.
- Authorize the council to levy on all the taxable real and personal property within the council area an ad valorem tax of up to 0.5 mill of the SEV on each dollar of assessed valuation of taxable property within the council area. The levy of a tax under this provision would be subject to provisions in the bill requiring an election on a tax proposal.

A council's articles would have to be adopted by an affirmative vote of a majority of the members of the legislative body of each participating local government.

A local unit of government would have to submit the articles to the electors for approval. A governmental unit could not be a member of the council without voter approval.

The bill outlines requirements as to publication in a newspaper of the articles before they were adopted; the endorsement on a specified form by a clerk of a local government that the articles were adopted; and, the filing of a printed copy of the articles with the Secretary of State and the clerk of each county in which all or part of the council area was located.

Council Officers

A council would have to have a chair who would act as principal executive officer and preside at council meetings. Meeting times and places would be fixed by the council and special meetings could be called by a majority of the council delegates or by the chair. The chair also would be required to organize the work of the council; appoint administrative officers, subject to the council's approval; and, carry out the council's policy decisions.

A council also could have other officers that it considered necessary. These officers would be elected by the council and would have to be council delegates. A secretary and treasurer would not have to be council delegates.

Upon recommendation of the chair, a council could appoint an executive director to serve at the council's pleasure as the principal administrator for the council. The director would have to be selected on the basis of training and experience in the field of municipal and urban affairs. If specifically authorized by law, a council could make appointments to other governmental agencies.

The bill also provides for the per diem compensation and expense reimbursement for council delegates. Compensation and reimbursement could be paid to the chair and other council delegates only if budgeted.

Council Duties

A council could:

- Propose standards, criteria, and suggested model ordinances to regulate the use and development of land and water within the metropolitan area.
- Plan, promote, finance, acquire, improve, enlarge, extend, own, construct, replace, or contract for the following public improvements and services in the council area: water and sewer public improvements and services; solid waste collection, recycling, and disposal; parks, museums, zoos, wildlife sanctuaries, and recreational facilities; special use facilities; ground and air transportation and facilities, including airports; economic development and planning for

the council area; and, higher education public improvements and services.

- Establish and staff departments to operate and maintain the public services described above. If the council established a water and sewer department, the department would have exclusive power to issue permits for water and sewer extensions, hookups, and capital expenditures in the council area.
- Establish and staff divisions, bureaus, and committees, including advisory committees. Members of advisory committees would serve without compensation but could be reimbursed for reasonable expenses, as determined by the council.
- Develop, in cooperation with other State agencies, departments and universities, a center for data collection and storage to be used by the council and other governmental users, and furnish information on subjects such as population, land use, and governmental finances.

A council also could do one or more of the following:

- Adopt rules of administration.
- Acquire and hold, by purchase, lease, grant, gift, devise, land contract, installment purchase contract, bequest, condemnation, or other legal means, real and personal property within or without the council area. The property could include franchises, easements, or rights of way on, under, or above any property. The council could pay for the property from, or pledge for the payment of the property, revenue of the council. A council could not condemn public property.
- Condemn private property for water and sewer public improvements and services.
- Apply for and accept grants, loans, or contributions from the Federal government or any of its agencies, the State, or other public or private agencies to be used for any of the purposes in the bill.
- Sell or lease property acquired for the purposes of the bill but not needed for those purposes.

- Contract with a participating local government for the provision of a service described above in the local government for up to 30 years. The service could be established or funded in conjunction with a service of a local governmental unit, and a service of a local government could be delegated to a council. A charge specified in the contract could be increased by the council, if necessary to provide funds to meet its obligations. A council also could enter into a contract with a nonparticipating local government for up to 30 years; a charge for a service under such a contract could be greater than a charge to a participating local government, and would be subject to change from time to time without notice.
- Hire employees, attorneys, accountants, and consultants.

A council would be required to prepare budgets and appropriations acts as required of local governmental units in accordance with the Uniform Budgeting and Accounting Act; and, if ending a fiscal year with a deficit, file a financial plan to correct the deficit in the same manner as provided in the State Revenue Sharing Act.

In instances in which studies were not otherwise authorized by law, a council could study the feasibility of programs relating to but not limited to water supply, refuse disposal, surface water drainage, communication, transportation, and other subjects of concern to the council area, and could institute demonstration projects in connection with the studies.

A council could coordinate emergency services and community shelter planning within the council area and contract with local governmental agencies and consultants in connection with these purposes.

A council would possess all the powers needed for carrying out the purposes of its formation. The bill specifies that the enumeration of specific powers in the bill could not be construed as a limitation on the general powers of a council. A council could not issue bonds.

A council would be subject to the Open Meetings Act and the Freedom of Information

Act.

Local Employees/Labor Agreements

An employee of a local government whose duties were transferred to a council would have to be given a comparable position of employment with the council, and would maintain his or her seniority status and all benefit rights of the position held with the local government before the transfer. If a sufficient position of comparable employment were not available at the time of transfer, however, a less senior employee who was not transferred to a comparable position would have to be placed on layoff status with the council and recalled to any position for which he or she qualified, which could occur after a reasonable training period, or as soon as a vacancy occurred, or both. The layoff status, or a layoff list, would not have to be honored beyond three years from the date of layoff. The council would have to determine the number of positions necessary to perform a council function, and would not be required to create or maintain unnecessary positions.

A council could bargain collectively and enter into agreements with labor organizations pursuant to the Public Employment Relations Act. When powers or duties of a local government were transferred to a council, the council would immediately assume and be bound by an existing labor agreement applicable to those powers or duties for the remainder of the agreement's term. Subject to the provisions above concerning employees on layoff status, the members and beneficiaries of a pension or retirement system or other benefits established by a local government whose powers and duties were transferred to a council, would have the same rights, privileges, benefits, obligations, and status with respect to the council. A representative of the employees or a group of employees in a local government who represented or was entitled to represent the employees or group would continue to represent the employees or group after the employees were transferred to the council. The bill states that this provision would not limit the rights of employees, pursuant to applicable law, to assert that a bargaining representative protected by this provision was no longer their representative.

An employee who left the employ of a local government to enter the U.S. military service would have the same employment rights as to the council as the employee would have had with the local government under Public Act 263 of 1951.

Taxing Authority and Election

A tax authorized to be levied by a council pursuant to the bill would have to be levied and collected at the same time and in the same manner as provided by the General Property Tax Act. A council could not levy a tax except upon the approval of a majority of the qualified and registered electors residing in the council area and voting on the tax.

A tax proposal could not be placed on the ballot unless it was adopted by resolution of the council and certified to the respective county clerks by the council at least 70 days before the election, as outlined in the bill. The proposal would have to state the amount and duration of the millage and be certified for inclusion on the ballot at the next general election, the State primary immediately preceding the general election, or a special election at a proposed date not within 45 days of a State primary or a general election, as specified by the council's resolution. A proposed special election date would have to be approved by the election scheduling committee of the largest county in the manner required in the Michigan Election Law. The bill outlines procedures for conducting the election.

The bill also would provide for the canvassing of the results of an election and for the payment by the council for the cost of conducting an election.

If a majority of the votes cast on the tax proposal by voters residing in the council area were in favor of the proposal, the tax levy would be authorized. No more than two elections could be held in a calendar year on a tax question.

Joining a Council

A local government could be added to a council after the council's incorporation upon satisfying the following requirements:

- A majority of the members elected to and serving on the legislative body of the local government voted to adopt a resolution stating that the local government wanted to be added to the council and that it accepted the requirements of the articles as amended to reflect the addition of the local governmental unit.
- Two-thirds of the council delegates voted to adopt a resolution amending the articles to reflect the addition of the local governmental unit, notwithstanding any requirements for amending the articles set forth in the bill.
- If a tax were levied by the council, the tax was authorized by a majority of the electors of the local government voting on the proposal.

Upon addition of a local government to a council, a printed copy of the amended bylaws would have to be filed, as required in the bill, by the clerk of the local government added to the council.

Withdrawal from a Council

A participating local government could withdraw from membership in a council if both of the following conditions were met:

- A resolution requesting withdrawal was adopted by a majority of the members of the legislative body of the local government.
- Payment or the provision for payment was made regarding any obligations of the local government to the council or its creditors.

If, upon withdrawal, a local government had unpaid obligations to the council, a tax levied by the council before the withdrawal of the local government would have to continue to be levied in that local government until the obligations were paid or the tax expired, whichever happened first. A local government that withdrew from a council would continue to receive services from the council until the local government was no longer required to pay a tax levied by the council.

Withdrawal of a local government from a council would have to be evidenced by an

amendment to the articles executed by the recording officer of the council and filed and published in the same manner as the original articles.

FISCAL IMPACT

Senate Bill 352 would have no fiscal impact on State government. The bill would authorize a local property tax of up to 0.5 mill if approved by voters in the metropolitan council. An additional 0.2 mill of property tax revenue could be transferred from the participating local governmental units to the metropolitan council if the articles of the council required such a transfer.

ARGUMENTS

Supporting Argument

The bill would provide a mechanism for local units of government within Kent and Ottawa Counties to work together to solve their common problems. While the sewer overflow situation served as the impetus for this proposal, there are other matters, such as transportation and economic development issues, that could be handled more efficiently at the regional level. In addition to addressing a specific and immediate problem like the sewer system, the proposed council could plan strategically and set priorities. A single entity representing the participating local units also would function far more efficiently and reach a consensus far more easily than could a couple hundred officials from all of the affected units. Further, the proposed council would be particularly appropriate for Michigan communities because of their strong tradition of home rule: the bill would create an authoritative voice without weakening the powers of local government. Members of the council would be locally selected and its articles locally approved.

Supporting Argument

By including explicit language authorizing the council to contract with participating local units for the provision of certain services, the bill would make it clear that those units would be responsible for paying for the services. Thus, although the council with voter approval could tax property within the council area, the local units that did not require a particular service would not be subsidizing the units that did

contract for the service.

Supporting Argument

The bill contains language concerning employment and pension rights and benefits, and union representation, to protect the interests of employees of a local unit that joined the council, since it is not clear who actually would be their employer. The bill's language is similar to that included in other legislation establishing new governmental entities and authorities.

Opposing Argument

The bill provides that, upon voter approval, the council could levy a tax of 0.5 mill on the property within the council area. This means that, if a county joined the council, all county residents presumably would be subject to the tax. If a local unit within the county voted not to join the council, however, it is not clear whether the residents of that local unit would be subject to the tax.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.