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Senate Bills 363 and 364 (as passed by the Senate)

Sponsor: Senator Rudy J. Nichols

Committee: Local Government and Veterans

Date Completed: 7-14-89

RATIONALE

Oakland County is in the process of developing a countywide solid waste management system that will involve the use incineration, recycling, composting, and land fills. An integral part of the proposed system is the construction of an incinerator that will be able to convert into energy as much as 1,500 tons of waste per day. During the development of the proposed waste management system, county officials have been seeking ways to finance the system. Oakland County was organized under Public Act 139 of 1973, which provides for the adoption of an optional unified form of county government involving either an appointed county manager or an elected county executive. While the department of public works, in a county organized under Public Act 139, is authorized to construct, maintain, and operate county solid waste systems, the Act does not authorize counties to finance such systems. Oakland County officials had considered financing the system under Public Act 185 of 1957, which authorizes the establishment of a county department and board of public works and provides methods for financing public works projects. The county was advised by bond counsel, however, that Public Act 185 was not applicable. Now the county is seeking other ways to finance its proposed solid waste management system. Some people believe that counties organized under Public Act 139 should be permitted to establish and finance a solid waste management system in order to meet the solid waste disposal needs of these counties.

CONTENT**Senate Bill 363 would create the "County**

Department of Solid Waste Management Act" to allow the board of commissioners of a county organized under Public Act 139 of 1973, which provides for unchartered counties, to establish a department of solid waste management. Senate Bill 364 would exempt solid waste facilities, resulting from the Act proposed in Senate Bill 363, from the approval requirements of Public Act 261 of 1927, which concerns the construction and maintenance of garbage disposal plants. Senate Bill 364 is tie-barred to Senate Bill 363.

Senate Bill 363

In addition to providing for the establishment of a department of solid waste management in unchartered counties, the bill would:

- Provide for the establishment of a department of solid waste management in certain counties.
- Prescribe the powers and duties of a county that established such a department.
- Provide for the issuance of revenue bonds to finance the acquisition, improvement, enlargement, or extension of a solid waste system.
- Require that the bonds be issued pursuant to the Municipal Finance Act and, where required by Article IX of the State Constitution, be subject to a vote of the people.
- Permit a county to contract with a "public corporation" for the acquisition, improvement, enlargement, or extension

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of a solid waste system.

- Authorize public corporations with taxing powers and townships to levy a tax to pay obligations under a contract for the acquisition or improvement of a solid waste system.
- Permit a public corporation to establish special assessment districts to pay the system's costs.
- Allow a county or public corporation to contract for solid waste services.
- Permit a county treasurer, when a public corporation failed to make a contract payment, to notify the State Treasurer, who would be required to deduct that amount from the public corporation's money in the Treasurer's possession that was not pledged to pay debts.
- Permit a county to take private property and to require that condemnation proceedings be instituted under the Uniform Condemnation Proceedings Act.

Establishment

The board of commissioners of a county organized under Public Act 139 of 1973 could establish a department of solid waste management as an additional department, pursuant to Public Act 139. The department would function as provided in that Act and as provided in and subject to the resolution of the county board. The department would be under the control of the manager or the elected county executive in the same manner as other county departments.

The county manager or executive would be required to prepare an annual budget for the solid waste management department and to submit the budget to the county board for approval. The county manager or executive also would be required to appoint a department director in accordance with Public Act 139.

A county that established a solid waste management department under the bill could:

- Acquire, construct, improve, enlarge, or extend a solid waste system within one or more areas of the county, and operate and maintain the system. A county and a public or private corporation could contract for the construction, operation, and maintenance of a solid waste system

by the corporation on behalf of the county. ("Public corporation" would mean any county however organized, a city, village, township, charter township, district, or authority existing under State law.)

- Acquire outside of its corporate boundaries any part of a solid waste system that was determined by the county board to be necessary in order to collect; transport; recycle; process; store; or dispose, by treatment, incineration, or otherwise, of the county's solid waste.
- Acquire, in order to provide solid waste disposal services, any part of a solid waste system in one or more public corporations outside the county's corporate boundaries. Before making an acquisition, a county would have to obtain the consent of each public corporation that was in the county where part of the system was to be located or that was to be served by part of the system, through resolution of the public corporation's governing body or through a contract with the public corporation.

A county could not furnish solid waste service to the individual users within a public corporation without the consent of the public corporation.

The establishment of a solid waste system, the method of financing that system, and all contracts relating to the financing, acquisition, operation, maintenance, and administration of the system, including all contracts between the county and a public corporation, including itself, relating to the system would have to be approved by resolution of the county board. The department could, as provided in the resolution, acquire the system or make improvements and improve, enlarge, extend, operate, and maintain the system, subject to any restrictions placed on the department by the county board in a resolution or by the bill. A county could merge two or more systems established by that county by resolution of the county board. After such a resolution was adopted, the merged system could be improved, enlarged, extended, operated, and maintained under the bill as a single system serving the total areas of the separate systems. A merger would not affect either the rights or obligations

or an unlimited tax pledge in support of the contract had been approved by the electors, the tax could be in addition to any tax that the public corporation otherwise could be authorized to levy and could be imposed without limit on the rate or amount, but could not exceed the rate or amount needed to pay the contractual obligation. For the payment of contractual obligations, a township could levy a tax only on the township's taxable property not incorporated as a village unless the township and a village agreed that a part of the capacity in the county system allocated to the township by contract would serve areas in a village located wholly or partly within the township, and the village had not agreed to purchase that capacity in the county system. If a contracting public corporation, at the time of its annual tax levy, had on hand in cash or had budgeted any amount pledged to the payment of the current obligations for which the tax levy was to be made, then the annual tax levy could be reduced by that amount.

In order to obtain credit, money could be raised by a public corporation by one or more of the following methods:

- Imposing service or availability charges on users or customers of the system.
- Imposing special assessments on lands benefited, directly or indirectly or at a present or future time.
- Setting aside State-collected money disbursed to the public corporation and usable for this purpose.
- Setting aside other available money.

Money raised or to be raised by one of these methods could be pledged to secure the payment of the public corporation's contractual obligations.

Special Assessments

If a public corporation other than a county that had established a solid waste management department under the bill elected to raise money to pay all or a portion of its share of the system's cost by assessing the cost on benefited lands, the governing body would have to make this determination by resolution and fix the district for the assessment. The governing body then would have to cause that a special assessment roll be prepared, and

these assessments would have to be collected in accordance with provisions of the statute or charter governing special assessments in the corporation. The total assessment could be divided into any number of installments, but not more than 30. A person assessed would have the right at the special assessment hearing to object to the district previously established.

Contracting for Services

A county and one or more public corporations, within or outside the county, could contract for solid waste services furnished by the county to the public corporation(s). A county and a public or private corporation could contract for the purchase by the county from or for the sale by the county to the corporation of solid waste services or for any aspect of the acquisition, operation, management, or use of one or more solid waste systems. A contract could not be for more than 50 years. A contract authorized under this provision would be a general obligation of the public corporation, which could raise money to pay its obligations as provided in the bill.

Costs of a System

The following could be included as part of the costs of a system funded under the bill: engineering fees, legal fees, administration expenses before and during the construction period, feasibility study costs, grant application costs, financing costs, a reasonable amount for contingencies and/or reserves, interest on bonds to be issued, operation and management expenses, and other costs incident to the acquisition and financing of the project.

Nonpayment

A contract could provide that if a public corporation failed to pay to a county an amount required to be paid under the contract when due, the county treasurer would be required to notify the State Treasurer, or other appropriate disbursing official, who would be required to deduct the amount from money in the Treasurer's possession belonging to the public corporation that was not pledged to pay debts. Upon notifying the State Treasurer in writing, a public corporation could authorize, in a contract with a county, the deduction and

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Taking of Property

A county could take private property needed for a purpose under the bill for the use and benefit of the public and could institute proceeding for that purpose. Proceedings to take private property would have to be commenced under the Uniform Condemnation Proceedings Act whenever the county, by resolution of its board of commissioners, determined that it was necessary to take certain private property for a designated public improvement and that the improvement was for public use or benefit.

Proposed MCL 123.276

Senate Bill 363 would have no fiscal impact on State government. The bill would provide counties with the option of selling revenue bonds to be used to finance a solid waste management system in the county. Senate Bill 364 would have no fiscal impact on State or local government.

Supporting Argument

Opposing Argument

Response: Some people believe that a number of laws that involve counties' providing for public works already make exceptions to the approval requirements of Public Act 261. For example, Public Act 261 is superseded by the Solid Waste Management Act, which requires that counties develop a solid waste management plan. The Act requires that a planning committee made up of representatives of local governments in the county and the general public, along with other representatives as specified in the Act, assist in the preparation

of a plan, and that a public hearing be held on the proposed plan before it is adopted. The Act also requires that at least 67% of the governing bodies of the municipalities in the county approve the plan before it can take effect. Furthermore, it has been argued that Public Act 342 of 1939, which authorizes counties to establish and provide water, sewer, or sewage disposal improvements and services within or between cities, villages, townships, or charter townships, and Public Act 185 of 1957, which authorizes the establishment of a county department of public works, also provide exceptions to the approval requirements of Public Act 261.

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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.