Eric Vendel *Legislative Service Commission*

S.B. 285

123rd General Assembly
(As Introduced)

Sen. Oelslager

BILL SUMMARY

- Creates a special procedure for the withdrawal of a county from a joint solid waste management district that consists of three or more counties and in which the withdrawing county has generated 70% or more of the district's fees in any one of the three years prior to withdrawal.
- Provides for the division of assets between the withdrawing county and the remaining district.
- Establishes mediation requirements as part of the special withdrawal procedure if the reason for a withdrawal is a dispute concerning the expenditure of district moneys.

CONTENT AND OPERATION

Current law governing the withdrawal of a county from a joint solid waste management district

Current law establishes a procedure for the withdrawal of a county from a joint solid waste management district. Generally, the board of county commissioners of the county seeking to withdraw from the district may initiate withdrawal proceedings by adopting a resolution requesting the withdrawal. Upon adopting the resolution, the board of county commissioners of that county must deliver a copy of it to the board of directors of the district. Upon receipt of the resolution, the board of directors must deliver written notice of the proposed withdrawal to the boards of county commissioners of the other counties forming the district. Within 60 days after receiving the notice, the other boards of county commissioners each must adopt a resolution approving or disapproving the proposed withdrawal and deliver a copy of the resolution to the board of directors. If any of the other boards of county commissioners adopts a resolution of disapproval, the board of directors must declare the proposed withdrawal to be

disapproved and must deliver written notice of the disapproval to the boards of county commissioners of the affected counties. If all of the other boards of county commissioners adopt a resolution approving the proposed withdrawal, the board of directors must declare the withdrawal to be approved and must deliver written notice of the approval to the boards of county commissioners of the affected counties. Within 30 days after receipt of the resolutions of approval or disapproval from the boards of county commissioners, the board of directors must determine if the withdrawal has been approved or disapproved and deliver the required written notice of the approval or disapproval to those boards. (Sec. 343.012(B).)

Promptly after the approval of the withdrawal, proceedings must be initiated to effect the withdrawal. Those proceedings include notification of the proposed withdrawal, division of assets, adoption and ratification of solid waste management plans for the resulting districts, and approval of those plans by the Director of Environmental Protection. (Sec. 343.012(B) and sec. 3734.521(E), not in the bill.)

With respect to the division of assets, upon the withdrawal of a county from a joint district, the board of directors must ascertain, apportion, and order a division of the funds on hand, credits, and real and personal property of the district, either in money or in kind, on an equitable basis between the district and the withdrawing county consistent with the agreement to establish and maintain the district and the prior contributions of the withdrawing county (sec. 343.012(B)).

Special withdrawal procedure under the bill for certain joint solid waste management districts

Eligible districts

The bill establishes a special procedure for the withdrawal of a county from certain joint solid waste management districts while retaining the existing procedures for other joint districts. However, some of the existing requirements governing withdrawal still apply to a withdrawal under the new procedure. In order to qualify for the special withdrawal procedure established by the bill, both of the following must apply to the district:

(1) Three or more counties form the district; and

(2) In any one of the three years prior to initiating a proceeding to withdraw from the district, the county withdrawing from the district generated more than 70% of the disposal and generation fees collected by the district.

When those requirements apply, the bill provides that the approval required under current law from the boards of county commissioners of the other counties forming the district is not required. In addition, the bill provides that satisfaction of those requirements constitutes approval of the withdrawal by the board of directors of the district for purposes of the withdrawal procedure under existing law. (Sec. 343.016(B)(1) and (2).)

Withdrawal procedure

The board of county commissioners of a county withdrawing from a district under the bill's special procedures must send written notice of the withdrawal to the board of directors of the district. Not later than 30 days after receipt of the written notice, the board of directors must send written notice of the withdrawal to the boards of county commissioners of the district. (Sec. 343.016(B)(3).) Written notice of the withdrawal constitutes written notice declaring the withdrawal to be approved as required under current law (sec. 343.016(B)(4)).

The withdrawal does not have to be approved by the Director of Environmental Protection and is final when the solid waste management policy committee of the withdrawing county declares that the solid waste management plan of the withdrawing county is ratified under the Solid, Hazardous, and Infectious Wastes Law (sec. 343.016(C)(1)). Thereafter, the solid waste management policy committee of the withdrawing county must submit the solid waste management plan that is declared to be ratified under that law to the Director for approval. Not later than 30 days after receipt of the plan, the Director must approve the plan or approve the plan with revisions. (Sec. 343.016(C)(2).)

Division of assets and escrow of moneys and fees

Once a county withdraws from a district in accordance with the procedure established by the bill, the assets must be divided. The amount that the withdrawing county receives upon the division of the former district's assets is calculated by dividing the total amount of those assets by the number of counties forming the district. The total amount of the district's assets must be calculated as of the date that the board of directors receives the notice of withdrawal from the board of county commissioners of the withdrawing county. (Sec. 343.016(D)(1).)

Immediately after the division of the district's assets, the calculated share of those assets of the withdrawing county must be deposited in an escrow account with one or more banks in the state. Except as otherwise provided in the bill, that share must be held in escrow and can be released only as ordered by the Director when the withdrawing county requests the Director to release moneys for operating purposes. (Sec. 343.016(D)(2).) Additionally, on and after the date that

the board of directors receives the notice of withdrawal from the board of county commissioners of the withdrawing county and until the solid waste management plan of the withdrawing county's new district receives final approval from the Director, any disposal or generation fee that is collected in the withdrawing county must be deposited in the escrow account. Once the solid waste management plan is approved by the Director or is approved with revisions, the Director immediately must release all moneys in escrow to the withdrawing county. (Sec. 343.016(D)(3) and (4).)

Mediation required if a withdrawal is sought due to a fiscal dispute

If a county seeks to withdraw from a joint district under the bill's provisions because the members of the board of directors of the district are in dispute concerning expenditures from the district's special fund, the board of county commissioners of the withdrawing county, prior to withdrawing, must enter into mediation with the board of directors under the bill. To initiate mediation, the board of county commissioners must send, by certified mail, a written request for mediation to the board of directors. Not later than seven days after receipt of the request, the board of directors must send, by certified mail, written notice of the request for mediation to the boards of county commissioners of the other counties forming the district. (Sec. 343.016(A)(1).)

The bill requires the board of directors, not later than 30 days after receipt of the request for mediation, to select, by unanimous vote, an impartial mediator. If the board fails to select an impartial mediator within 30 days, the board must send, by certified mail, written notice to the Director indicating that the board failed to select an impartial mediator. Not later than 30 days after receipt of the notice, the Director must select an impartial mediator and send written notice of the selection to the board of directors. (Sec. 343.016(A)(2).)

The board of county commissioners requesting mediation and the other boards of county commissioners whose counties form the district, not later than 30 days after the selection of a mediator, each must deliver to the mediator a written statement of the dispute and a recommended resolution of it. Not later than 60 days after receipt of the recommended resolutions, the mediator must preside at a meeting that must be attended by at least one authorized representative from each of the affected boards of county commissioners. The mediator must notify, by certified mail, each of the affected boards of county commissioners of the date, time, and location of the meeting. At the conclusion of the meeting, the mediator must establish a date for issuance of the mediator's written recommendations for resolution of the dispute, which must be not later than 30 days after the conclusion of the meeting. Not later than that date, the mediator must mail a copy of the

recommendations to each affected board of county commissioners. (Sec. 343.016(A)(3).)

The bill provides that not later than 30 days after receipt of the mediator's recommendations, the boards of county commissioners of the counties forming the district either must accept or reject the recommendations in their entirety by adoption of a resolution and must send, by certified mail, a copy of that resolution to the mediator. The mediator's recommendations for resolution of the dispute are not binding on the district unless the affected boards of county commissioners unanimously approve the recommendations in their entirety. The failure of a board of county commissioners to accept or reject the mediator's recommendations within 30 days after their receipt constitutes a rejection of the recommendations in their entirety. (Sec. 343.016(A)(4).)

If the mediator's recommendations for resolution are unanimously approved, the bill requires the mediator immediately to notify, by certified mail, each affected board of county commissioners and to send a copy of the approved recommendations to the board of directors of the district (sec. 343.016(A)(5)). However, if the mediator's recommendations for resolution are not unanimously approved, the mediator immediately must notify, by certified mail, each affected board of county commissioners; the board of county commissioners that requested mediation then may initiate proceedings to withdraw from the district under the bill's withdrawal procedure (sec. 343.016(A)(6)).

The bill provides that a board of county commissioners of a county forming the district may propose modifications to approved recommendations for resolution of the dispute by sending, by certified mail, proposed modifications to the board of directors. Not later than seven days after receipt of the proposed modifications, the board of directors must send, by certified mail, a copy of the proposed modifications to each affected board of county commissioners. Not later than 30 days after receipt of the proposed modifications, the boards of county commissioners either must accept or reject the proposed modifications by adoption of a resolution and must send, by certified mail, a copy of that resolution to the board of directors. A proposed modification is not binding on the district unless the affected boards of county commissioners unanimously approve the proposed modification. The failure of a board of county commissioners to timely accept or reject the proposed modifications constitutes a rejection of the modifications. The bill requires the board of directors immediately to notify, by certified mail, each affected board of county commissioners of the approval or rejection. If the proposed modifications are unanimously approved, the board of directors must send, by certified mail, a copy of the approved modifications to each affected board of county commissioners. (Sec. 343.016(A)(7).)

The bill provides that for purposes of the mediation provisions, all of the following apply:

(1) A board of county commissioners is responsible for the board's attorney's fees and other expenses related to mediation of the dispute;

(2) The selection of a mediator by the Director is not appealable and is not a final action that is subject to appeal. In addition, the Director cannot select a state employee as a mediator;

(3) Serving as a mediator does not constitute holding a public office or position of employment under Ohio law and does not confer a right to compensation from the Environmental Protection Agency or any other state agency; and

(4) A mediator may request documents or other materials necessary for the required meeting or for the written recommendations for resolution of the dispute, may submit written questions, may allow the meeting to be recorded, and may adopt other procedures governing the conduct of the meeting. (Sec. 343.016(A)(8).)

Miscellaneous

The bill provides that except as otherwise provided in the bill, all requirements and procedures established under the Solid Waste Management Districts Law and the Solid, Hazardous, and Infectious Wastes Law governing the withdrawal of a county from a joint solid waste management district apply to a withdrawal initiated under the bill's provisions (sec. 343.016(E)).

In addition, the bill states that it is the intent of the General Assembly that the purpose of the enactment of the provisions related to the division of a district's assets and fees and fiscal matters (see above) is to discourage the withdrawal of a county from a joint solid waste management district pursuant to the special withdrawal procedure established by the bill (Section 3).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-05-00	p. 1566

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