



S.B. 37
124th 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 when three or more counties form the district, the landfills in the withdrawing county have collected 70% or more of the disposal fees received by the district in any one of the three years prior to withdrawal, and the landfills located in the counties not withdrawing from the district collected at least \$200,000 of the disposal fees received by the district in any one of three years prior to withdrawal.
- Establishes arbitration requirements as part of the special withdrawal procedure if the reason for a withdrawal is a dispute concerning the expenditure of district moneys.
- Provides for the division of assets between the withdrawing county and the remaining district.

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, all of the following must apply to the district:

(1) Three or more counties form the district;

(2) In any one of the three years prior to initiating a proceeding to withdraw from the district, the landfills located in the county withdrawing from

the district collected more than 70% of the disposal fees received by the district; and

(3) In any one of the three years prior to initiating a proceeding to withdraw from the district, the landfills located in the counties not withdrawing from the district collected, at a minimum, \$200,000 of the disposal fees received 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)).

A county that withdraws under the bill's special procedure must submit a solid waste management plan to the Director of Environmental Protection for approval pursuant to current law. However, the bill provides the Director 60 days after the submission of the plan to approve or disapprove it by order instead of the 90 days prescribed in current law. A withdrawal is final when the Director approves the solid waste management plan of the withdrawing county pursuant to current law. (Sec. 343.016(C)(1).)

After a withdrawal is final, the bill requires the remaining counties from the former district to submit to the Director a solid waste management plan for approval pursuant to current law. If the remaining counties fail to initiate the plan approval process or fail to complete the plan approval process within 18 months after the withdrawal is final, the Director must prepare the plan pursuant to current law. (Sec. 343.016(C)(2).)

Not later than 12 months after a withdrawal is final, the board of county commissioners of a county withdrawing under the bill's special procedures must establish and convene a solid waste management policy committee to prepare a

solid waste management plan, and the boards of county commissioners of the remaining counties from the former district must do likewise (sec. 343.016(C)(3)).

Arbitration 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 arbitration with the board of directors under the bill. To initiate arbitration, the board of county commissioners must send, by certified mail, a written request for arbitration 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 arbitration 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 arbitration, to select, by unanimous vote, an impartial arbitrator. If the board fails to select an impartial arbitrator within 30 days, the board must send, by certified mail, written notice to the Director indicating that the board failed to select an impartial arbitrator. Not later than 30 days after receipt of the notice, the Director must select an impartial arbitrator and send written notice of the selection to the board of directors. (Sec. 343.016(A)(2).)

The board of county commissioners requesting arbitration and the other boards of county commissioners whose counties form the district, not later than 30 days after the selection of an arbitrator, each must deliver to the arbitrator a written statement of the dispute and a recommended resolution of it. Not later than 60 days after receipt of the recommended resolutions, the arbitrator 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 arbitrator 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 arbitrator must establish a date for issuance of the arbitrator'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 arbitrator 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 arbitrator'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 arbitrator. The arbitrator'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 arbitrator's recommendations within 30 days after their receipt constitutes a rejection of the recommendations in their entirety. (Sec. 343.016(A)(4).)

If the arbitrator's recommendations for resolution are unanimously approved, the bill requires the arbitrator 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 arbitrator's recommendations for resolution are not unanimously approved, the arbitrator immediately must notify, by certified mail, each affected board of county commissioners; the board of county commissioners that requested arbitration 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 arbitration provisions, all of the following apply:

(1) Each board of county commissioners is responsible for that board's attorney's fees and other expenses related to arbitration of the dispute. However, the board of county commissioners of the county seeking arbitration must pay the arbitrator's fees.

(2) The selection of an arbitrator 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 arbitrator.

(3) Serving as an arbitrator 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) An arbitrator 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).)

Division of assets and escrow of moneys and fees

Upon the receipt of a written request for arbitration under the bill's special procedures, the bill requires the board of directors of a solid waste management district to immediately deposit in an escrow account with one or more banks in the state the share of the district's special fund of the county requesting arbitration. That county's share is calculated by dividing the total amount of the district's special fund by the number of counties forming the district. Except as discussed below, that share must be held in escrow and can be released for use by the district only upon the unanimous approval of the board of directors of the district. (Sec. 343.016(D)(1).)

If the boards of county commissioners of the counties forming the district unanimously approve the arbitrator's recommendations or unanimously approve the arbitrator's recommendations with modifications, the moneys held in escrow from the district's special fund must be released to the board of directors of the joint solid waste management district (sec. 343.016(D)(2)). However, if instead the county requesting arbitration withdraws from the district under the bill's special procedures and the Director approves the solid waste management plan submitted by that county, the moneys held in escrow from the district's special fund immediately must be released to the withdrawing county. In addition, the withdrawing county receives both of the following:

(1) The withdrawing county's share of the district's assets other than moneys in the district's special fund. 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 Director approves the withdrawing county's plan.

(2) An amount equal to the withdrawing county's share of the district's revenues that are received from disposal and generation fees collected by the former district from the date that the arbitration was initiated until the date that the Director approves the withdrawing county's plan. The share of the withdrawing county is calculated by dividing the total revenues received from those fees during that period by the number of counties forming the district. (Sec. 343.016(D)(3).)

Miscellaneous

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 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	02-08-01	p. 127

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