

Chapter 121

CHARTER WATER AUTHORITY

CHARTER WATER AUTHORITY ACT

Act 4 of 1957

AN ACT to provide for the incorporation of municipal authorities to acquire, own and operate water supply and transmission systems; to provide a municipal charter therefor; to prescribe the powers and functions thereof; and to prescribe penalties and provide remedies.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957 ;-- Am. 1998, Act 189, Eff. Mar. 23, 1999

The People of the State of Michigan enact:

121.1 Charter water authority; definition; intent of act, limitation on authority.

Sec. 1.

As used in this act, "water supply and transmission system" means plants, works, instrumentalities and properties used or useful in connection with obtaining a water supply and the treatment thereof, and necessary transmission mains and appurtenances for the distribution of the water to the cities, villages and townships within the territorial limits of the authority. The cities, villages and townships shall continue to own, operate and maintain their own water distribution systems. It is the intent of this act to provide an equitable and reasonable method and means of financing and acquiring a central water supply and transmission system to supply potable water in sufficient quantities to local governmental units for distribution and sale to their own customers and users. The authority shall be limited to acquiring, owning and operating the central water supply and transmission system in the manner authorized by this act, either within or without the corporate limits of the authority.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.2 Incorporating municipalities; act as charter.

Sec. 2.

Any 2 or more cities, villages or townships, or any combination thereof, having a combined current state equalized valuation of not less than \$200,000,000.00, by vote of their respective electors, may incorporate an authority comprising the territory within their respective limits for the purpose of acquiring, constructing, purchasing, operating and maintaining a water supply and transmission system. The authority shall be a public municipal corporation with the rights, powers and duties set forth in this act, which act shall constitute the charter of such municipal corporation.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.3 Referendum on joinder; form of ballot.

Sec. 3.

Each city, village or township desiring to become a part of the authority shall indicate, by resolution of its

legislative body, its desire to become a part thereof, and shall submit the proposition of becoming a part of the authority to a vote of its qualified electors at a general or special election to be called for such purpose. The procedures relative to conducting the election shall be as provided in the general election law. The proposition to be submitted in each city, village or township shall be substantially as follows:

“Shall the (city, village or township, as the case may be) of , become a part of an authority incorporated as a municipal corporation under the provisions of Act No. of the Public Acts of 1957, entitled 'An act to provide for the incorporation of municipal authorities to acquire, own and operate water supply and transmission systems; to provide a municipal charter therefor; and to prescribe the powers and functions thereof,' said municipal authority to have the power pursuant to its charter to issue general obligation bonds and to levy taxes for the payment thereof, the total principal amount of which bonds at no time shall exceed 5% of the total state equalized valuation of the governmental units comprising the authority?

Yes ()

No ().”

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.4 Referendum; simultaneous submission.

Sec. 4.

Any city, village or township shall become a member of the authority when a majority of the electors voting on the proposition vote in favor thereof. The proposition to incorporate the authority shall be submitted at a general or special election held simultaneously in each city, village or township having indicated its desire to become a part of the authority.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.5 Referendum; certificates, incorporation, name.

Sec. 5.

If on the vote being canvassed in each city, village or township, the result is determined to be in favor of the incorporation, the city clerk in the case of cities, the village clerk in the case of villages, and the township clerk in the case of townships, each shall file with the secretary of state and with the county clerk of the county in which the city, village or township is located, a certified copy of the resolution of their legislative body indicating its desire to become a part of the authority, a certified copy of the notice of election at which the question was submitted to the electors, and a certified copy of the canvassing resolution showing that the incorporation proposition was approved by a majority of the electors voting thereon, which resolution shall also give the number of votes cast on the proposition and the number cast for and against the same. From the date of the filing, the authority shall be deemed to be duly and legally incorporated under the provisions of this act if the total current state equalized valuation of such units of government so filing shall be \$200,000,000.00 or more. If the electors of 1 or more cities, villages or townships vote against becoming a part of the authority, such fact shall not defeat the incorporation if the incorporation was approved by the electors of any 2 or more remaining cities, villages or townships having a current state equalized valuation of \$200,000,000.00 or more; but the remaining cities, villages or townships shall constitute the boundaries of the authority, and a part thereof, if the legislative bodies of the remaining units of government, by resolution, approve the incorporation. Copies of the resolutions shall be filed in the office of the secretary of state and the county clerk of the county in which the units of government are situated. The incorporated authority shall then be known and designated as “The charter water authority of the (name cities, villages and townships becoming a part thereof), county (or counties) of , Michigan” unless the governing body of the authority adopts a distinctive name for the authority, and files it in the office of the secretary of state.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.6 Board of commissioners; voting strength, term.

Sec. 6.

The incorporated authority shall be directed and governed by a board of commissioners appointed as herein provided. The legislative body of each city, village or township constituting a part of the authority, within 30 days after the incorporation of the authority, shall elect a commissioner as its representative on the board of commissioners. The commissioner from each city, village or township shall have 1 vote. In determining the voting strength of a commissioner from a township in which is located a village or villages which are also constituent members of the authority, there shall be subtracted from the state equalized valuation of such township that proportion of such state equalized valuation of that township which the total assessed valuation of such member village or villages bears to the total assessed valuation of such township as a whole, as determined by the township board of review. In determining the voting strength of a commissioner from a village, such village shall be deemed to have a state equalized valuation equal to that proportion of the state equalized valuation of the whole township in which such village is located as the assessed valuation of such village, as determined by the township board of review, bears to the assessed valuation of the whole township in which such village is located, as last determined by the township board of review. In addition to such 1 vote, the commissioner from each city, village or township having a state equalized valuation in excess of \$40,000,000.00 shall have 1 cumulative and additional vote for each \$40,000,000.00 or any part thereof of state equalized valuation for the city, village or township he represents in excess of \$40,000,000.00. Each commissioner's voting strength shall be determined initially as of the date of incorporation of the authority, and shall be redetermined every 5 years thereafter. The state equalized valuation for each city, village or township shall be determined initially and redetermined by the latest official figures applicable to that city, village or township. The commissioners shall serve for 4 years or until their successors are appointed.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.7 Board of commissioners; first meeting, officers, employees, bylaws, office.

Sec. 7.

The board of commissioners shall hold their first meeting within 1 month after their selection, on the call of the mayor of the most populous city of the authority, or if no city is a part of the authority, the mayor or president of the most populous village, or if no city or village is a part of the authority, the supervisor of the most populous township, as determined by the last federal decennial census. At the first meeting the board of commissioners shall elect a chairman and a vice-chairman, who shall be members of the board of commissioners, and a secretary and a treasurer, who need not be members. The board shall select and employ such other officers and employees and engage such engineering, legal and other professional services as it deems necessary to effectuate its purposes and fix the compensation therefor. The board may adopt such rules of procedure and bylaws as it deems advisable and shall designate an office or location as its principal place of business.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.8 Board of commissioners; record of proceedings; accounts, audit, bond.

Sec. 8.

The board of commissioners shall keep a written record of every session of the board, which record shall be public. It shall also provide for a system of accounts to conform to any uniform system required by law, and for the auditing at least once yearly of the accounts of the treasurer by a competent certified public accountant, and the balance sheet showing the financial condition of the authority as of the date of the audit shall be published in 1 or

more newspapers which have a general circulation in the governmental units comprising the authority within 30 days after such audit is received by the board of commissioners. The board shall require of the treasurer a suitable bond by a responsible bonding company, to be paid for by the board.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.9 Rates and charges; revision; revenues, priority.

Sec. 9.

The board of commissioners, by resolution adopted by a 2/3 majority of the total authorized votes, prior to the acquisition or construction of a water supply and transmission system, and prior to the issuance of any bonds for such purposes, shall establish an initial schedule of rates and charges for the use of water to be furnished by the system to the governmental units within the corporate limits of the authority. The rates and charges may be fixed and revised from time to time by the board of commissioners within the limitations and conditions provided in the terms of any contract for the sale of water entered into between the authority and the governmental units within the corporate limits of the authority. Moneys derived from the collection of such rates and charges shall be applied and used by the authority in manner following, and in the following priority:

(1) To provide for the payment during each fiscal year of all current expenses of administration, operation and maintenance as may be necessary to preserve the system in good repair and working order.

(2) In the discretion of the board of commissioners, there may be set aside during each fiscal year moneys to provide a reserve fund for replacements or major repairs and improvements not anticipated or considered to be a part of current expenses of administration, operation or maintenance.

(3) Any balance remaining at the end of any fiscal year shall be deposited into the debt retirement fund to be established by the board of commissioners pursuant to the provisions of section 17 of this act and used only for the purpose of paying any bonded indebtedness incurred in accordance with the authorization contained in this act.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.10 Rates and charges; duration of contract with governmental unit.

Sec. 10.

After the establishment of initial rates and charges as required by section 9 of this act, the authority and the governmental units within its corporate limits may contract for the sale and purchase of water from any such system for a period of not exceeding 50 years.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.11 Budget; submission, hearing, adoption.

Sec. 11.

On or before February 1 of each year, the board of commissioners shall prepare and submit to the governing bodies of each governmental unit comprising the authority, a proposed budget covering its anticipated expenses of administration, operation and maintenance, plus any reserve therefor to be established, for the next succeeding fiscal year. The budget shall include a statement showing the amounts necessary to retire all principal and interest on any bonds of the authority maturing during the next ensuing fiscal year, the anticipated revenues to be derived from rates and charges during the fiscal year, and the proposed tax levy to provide funds for meeting its requirements for operation, administration, maintenance or debt retirement if necessary. Any governmental unit

within the corporate limits of the authority shall be entitled to a hearing before the budget is finally adopted, upon request being made to the authority within 30 days after receipt of a copy of the proposed budget. The annual budget shall be finally adopted by the authority on or before June 1 of each year.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.12 Fiscal year.

Sec. 12.

The fiscal year of the authority shall commence on July 1 of each year and end on June 30 of each year, unless the board of commissioners, by resolution, establishes a different fiscal year.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.13 Bonds; maximum; authorizing resolution, contents.

Sec. 13.

For the purpose of constructing, acquiring, improving, enlarging or extending a water supply and transmission system, including the payment of engineering, legal and financing expenses in connection therewith, and after the establishment of the initial rates and the execution of contracts for the sale and purchase of water with each governmental unit within the corporate limits of the authority as provided in sections 9 and 10 of this act, the authority may borrow money and issue its negotiable general obligation bonds for such purpose. The total principal amount of the bonds, at no time, shall exceed 5% of the total state equalized valuation of the combination of governmental units comprising the authority. The bonds shall be issued only after the adoption of a resolution by a 2/3 majority of the total authorized vote. The resolution shall briefly describe the water supply and transmission system to be constructed, acquired, improved or extended, the estimated cost thereof, shall state that contracts for the sale and purchase of water have been entered into with all the governmental units comprising the authority, that initial rates have been established for the sale of water by the authority to the governmental units, the date, maturities and maximum interest rate at which the bonds shall be sold, prior redemption features of the bonds, if any, and an irrevocable pledge on the part of the authority to levy annually the taxes necessary to provide sufficient funds for the payment of principal and interest on the bonds as they mature in the manner authorized by this act. The resolution shall specify such other details and matters as may be deemed necessary or advisable to provide for the prompt and orderly retirement of the bonds and the interest thereon at maturity. Interest for the period of construction of any water supply and transmission system and for 1 year thereafter, and operating expenses of the authority during the construction period and not to exceed 6 months thereafter, may be capitalized and included as a part of any bond issue.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.14 Repealed. 2002, Act 446, Imd. Eff. June 17, 2002.

Compiler's Notes: The repealed section pertained to terms, interest, redemption, and payment of bonds.

121.14a Violation of MCL 168.1 to 168.992 applicable to petitions; penalties.

Sec. 14a.

(1) The resolution authorizing the issuance of bonds by the authority shall be published in full in a newspaper of general circulation within the corporate limits of the authority within 1 week after its adoption. If, within 30 days from the publication of the resolution, a petition signed by not less than 2% of the registered electors in any part of the authority is filed with the secretary of the authority, requesting a referendum upon the question of the issuance of the bonds, then the bonds shall not be issued until approved by the vote of a majority of the qualified electors residing within the corporate limits of the authority voting on the question.

(2) If a petition for a referendum is filed with the secretary of the authority within the prescribed time period, the board of commissioners of the authority, by resolution, shall establish the date of the election, which shall be not less than 60 days or more than 90 days after the adoption of the resolution. The secretary of the authority, within 3 days after the adoption of the resolution, shall transmit a certified copy of the resolution to the governing body of each city, village, or township that is a part of the authority. The governing body of each city, village, or township shall forthwith provide for an election in accordance with the resolution so passed, in which the question of issuing the bonds shall be submitted. The ballots for use in the election shall be provided by the authority and the elections shall be conducted in the same manner as all special elections are required to be conducted in the respective cities, villages, and townships except that wherever any part or all of a village belonging to the authority is located in a township that is not a member of the authority, the village shall conduct the special election.

(3) The governing bodies of the cities, villages, and townships that are a part of the authority shall act as a board of canvassers and shall certify the results of the election to the board of commissioners of the authority within 5 days after the date of the election. The board of commissioners of the authority within 5 days after the date of election shall compile and tabulate the vote as received from the respective cities, villages, and townships and certify the result of the election by resolution upon the records of the authority and a majority of the total valid votes cast at the election voting "yes" on the question submitted shall constitute an approval.

(4) A petition under subsection (1), including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957 ;-- Am. 1998, Act 189, Eff. Mar. 23, 1999

121.15 Bonds; issuance subject to revised municipal finance act.

Sec. 15.

Bonds issued by any authority under the provisions of this act are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957 ;-- Am. 2002, Act 446, Imd. Eff. June 17, 2002

121.16 Taxes; rates; assessment; levy; collection; subjects.

Sec. 16.

The authority shall levy each year a sufficient tax, taking into account the probable delinquency in tax collections, to pay the principal and interest on all bonds lawfully issued by the authority under the provisions of this act, maturing prior to the next tax collection period. Except as otherwise provided by law, the tax for the purpose of paying the bonded indebtedness shall be unlimited as to rate or amount. The tax rate shall be uniform for all territory comprising the authority. The tax rate for all cities, villages, and townships that are members of the authority shall be based and assessed upon the current taxable value of the cities, villages, and townships. On or before August 1 of each year, the authority, by its board of commissioners, shall certify to the tax collecting officers of each city and township comprising the authority the tax rate determined by it to be necessary for the above

purposes, and the tax collecting officers shall include the tax rate as a separate item in the next county tax levied in the city or township. All the taxes shall be assessed, levied, collected, and returned in the same manner as county taxes under the general property tax act, 1893 PA 206, MCL 211.1 to 211.157, and shall have the same priority rights and bear the same interest and penalties as county taxes. In the levy and collection of the taxes, the tax collecting officials of the cities and townships comprising the authority, and the county treasurers in the event the taxes are returned delinquent, shall be considered to be acting as agents for and on behalf of the authority. All money collected by any tax collecting officer from the tax levied under the provisions of this act shall be transmitted as collected to the authority and used by it solely for the payment of principal and interest on its bonds issued under this act. Any village that is a part of the authority shall be considered a part of the township in which it is located for the purposes of this section, if the township is a part of the authority. If any village that is a part of the authority is located in a township that is not a part of the authority, the authority shall certify to the township treasurer of the township in which the village is located, the tax rate as determined in this section, and the taxes shall be levied and collected as a part of, and as an independent item in, the county tax bills levied in the village. The subjects of taxation for the authority purposes shall be the same as for state, county, and school purposes under the general law.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957 ;-- Am. 2002, Act 446, Imd. Eff. June 17, 2002

Constitutionality: This section, authorizing the levy of property taxes which statutorily are unlimited as to rate or amount, violates the 15-mill limitation of Const 1908, art 10, § 21, now Const 1963, art 9, § 6. *Bacon v Kent-Ottawa Metropolitan Water Authority*, 354 Mich 159; 92 NW2d 492 (1958).

121.17 Repealed. 2002, Act 446, Imd. Eff. June 17, 2002.

Compiler's Notes: The repealed section pertained to establishment of separate depository account as debt retirement fund.

121.18 Taxes; administration expenses.

Sec. 18.

The authority may levy in any year, in addition to the tax required for the payment of bonded indebtedness, a tax for the purpose of providing funds for administration expenses of the authority and such other purposes of the authority as may be determined to be necessary by the board of commissioners. The tax shall be uniform and shall in no event exceed 1/2 mill on the combined state equalized valuation for all governmental units comprising the authority, and shall be levied only after the adoption of a resolution therefor by unanimous vote of all the members of the board of commissioners of the authority. The tax shall be levied and collected in the same manner as taxes for the payment of bonded indebtedness are levied and collected under the provisions of section 16 of this act.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

Constitutionality: This section, authorizing the levy of property taxes which statutorily are unlimited as to rate or amount, violates the 15 mill limitation of Const 1908, art 10, § 21, now Const 1963, art 9, § 6. *Bacon v Kent-Ottawa Metropolitan Water Authority*, 354 Mich 159; 92 NW2d 492 (1958).

121.19 Taxes; payment by constituent municipality.

Sec. 19.

Any city, township or village which is located in a township which is not a part of the authority, within 30 days after certification of the tax rate by the authority as required by section 16 of this act, in lieu of the levy and collection thereof, may pay to the authority the full amount of the tax as though fully collected, out of funds available for such purpose, in which event it shall not be obligated to include the tax rate as a part of the county tax

bills as required by sections 16 and 18 of this act. Any such city, village or township may pay such moneys out of water rates and charges which it may charge users of water from its local distribution system, or from such revenues not earmarked for the payment of indebtedness by virtue of bonds issued under the provisions of Act No. 94 of the Public Acts of 1933, as amended, being sections 141.101 to 141.139 of the Compiled Laws of 1948, and any ordinance enacted pursuant to its provisions, or from such other moneys which may be lawfully used for such purposes.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.20 Contract payments; powers of municipal legislative body.

Sec. 20.

The legislative body of each city, village or township which is a part of the authority may raise by tax, pay from its general funds, or from its revenues derived from operation of its water system not earmarked or pledged for other purposes, any moneys required to be paid for water purchased from the authority by the terms of any contract between it and the authority pursuant to the provisions of section 10 of this act.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.21 Charter water authority; body corporate; charter, powers.

Sec. 21.

The authority shall be a municipal corporation, and a public body corporate with power to sue and be sued in any court of this state. This act shall be considered to be its charter, and it shall possess all powers necessary to carry out the purposes of its incorporation and those incident thereto as expressed in this act. The enumeration of any powers in this act shall not be construed as a limitation upon such general powers.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.22 Authority; acquisition of water supply and transmission system, condemnation.

Sec. 22.

The authority may acquire property for a water supply and transmission system by purchase, construction, lease, gift, devise or condemnation, either within or without its corporate limits, and may hold, manage, control, sell, exchange or lease such property. For the purpose of condemnation, it may proceed under the provisions of Act No. 149 of the Public Acts of 1911, as amended, being sections 213.21 to 213.41 of the Compiled Laws of 1948, or any other appropriate statute.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.23 Authority; change in municipal jurisdiction.

Sec. 23.

No change in municipal jurisdiction over any territory within an authority shall affect in any manner the authority or its boundaries. If a new city is incorporated from a township in the authority, then the new city shall be deemed to be a part of the authority, and a constituent municipality thereof. No change in the jurisdiction over any territory in any city, village or township which has contracted to purchase water from the authority pursuant to the provisions of section 10 of this act, shall impair in any manner the obligations of the contract, but the same shall be carried out, insofar as such territory is concerned, by the authority and the municipality as shall have jurisdiction to furnish water to the territory.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.24 Authority; advancements for administrative expense.

Sec. 24.

The legislative body of each municipality which is a part of the authority may advance or loan to the authority any moneys required for administrative expenses or for the purpose of obtaining maps, plans, designs, specifications and cost estimates of a proposed water supply and transmission system. Any advances or loans may be included as a part of any bond issue by the authority under the provisions of this act, and repaid to the municipality upon the sale of the bonds.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.25 Authority; contracts for water to nonconstituent municipalities, duration.

Sec. 25.

The authority and any municipality which is not a part thereof, may enter into a contract for the furnishing of water service from any water supply and transmission system owned or operated by the authority. The contract shall provide for reasonable charges or rates for the service furnished, which shall be not less than the rates charged to municipalities of the same classification which are a part of the authority. Any income derived from such contracts shall be applied and used by the authority in the same manner as provided in section 9 of this act. No such contract shall be for a period exceeding 40 years.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.26 Joinder of municipality after incorporation of authority; procedure.

Sec. 26.

(1) Any municipality which did not join in the incorporation of an authority may become a part thereof by:

(a) The adoption of a resolution by the legislative body of the municipality indicating its intent to become a part of the authority, a certified copy of which resolution shall be forwarded to the secretary of the board of commissioners of the authority;

(b) The adoption of a resolution by the board of commissioners of the authority approving the addition of the municipality to the authority as a part thereof and specifying the terms and conditions of admittance. The resolution shall require a 2/3 majority of the total authorized votes of the board of commissioners; and

(c) The submission of the question of joining the authority to a vote of the qualified electors of the municipality at any general or special election called for such purpose.

(2) The question submitted shall be in substantially the form provided in section 2 of this act, except the name of the incorporated authority may be expressed in the ballot. The proposition shall be deemed to have carried if a

majority of the qualified electors in the municipality voting thereon vote in favor of the proposition.

(3) Proof of the foregoing requirements shall be filed with the secretary of state and the county clerk of the county in which the municipality is located. The municipality, from the date of such filing, shall be deemed a part of the authority and subject to the provisions of this act.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.27 Additional powers.

Sec. 27.

The powers herein granted shall be in addition to those granted by any charter or other statute.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.28 Construction of act.

Sec. 28.

The provisions of this act shall be liberally construed in the interest of the public health and welfare and the safety of persons and property within the authority incorporated under the provisions of this act.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957

121.29 Charter water authorities; short title.

Sec. 29.

This act shall be known and may be cited as the “charter water authority act”.

History: 1957, Act 4, Imd. Eff. Mar. 20, 1957