Sponsored by:
Senator  BOB SMITH
District 17 (Middlesex and Somerset)

SYNOPSIS
Modifies requirements for local unit to dissolve certain authorities.

CURRENT VERSION OF TEXT
As introduced.

AN ACT concerning the dissolution of environmental authorities, amending and supplementing P.L.1983, c.313

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 20 of P.L.1983, c.313 (C.40A:5A-20) is amended to read as follows:

20. Notwithstanding the provisions of any [other] law other than section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill) to the contrary, the governing body of a local unit which has established an authority shall have the power and is authorized by ordinance in the case of a municipality, and ordinance or resolution, as appropriate, in the case of a county, to dissolve the authority, except that the ordinance or resolution, as the case may be, shall be approved by the Local Finance Board prior to adoption. Any authority established by more than one municipality or county may be dissolved by the adoption of parallel ordinances or resolutions, as appropriate. The Local Finance Board shall approve the dissolution if it finds that the ordinance or resolution makes adequate provision in accordance with a bond resolution or otherwise for the payment of all creditors or obligees of the authority and that adequate provision is made for the assumption of those services provided by the authority which are necessary for the health, safety and welfare of the recipients of those services. The ordinance or resolution shall be introduced and adopted in the manner provided by law, shall take effect immediately after final adoption, and shall not be subject to referendum. A copy of the ordinance or resolution as adopted shall be filed immediately with the Local Finance Board and with the Secretary of State. In the event that an authority has obligations outstanding at the time of the taking effect of the ordinance or resolution to dissolve the authority, the local unit or units
dissolving the authority are authorized to either issue obligations in furtherance of the dissolution or assume the responsibility for and payment of the obligations of the authority being dissolved; if an authority created by a local unit or units is dissolved and has obligations outstanding at the time that the ordinance or resolution to dissolve the authority takes effect, an existing authority which serves the same local unit or units, or that serves one of the local units which is served by the authority being dissolved, is authorized to issue obligations in furtherance of the dissolution or to assume the responsibility for and payment of the obligations of the authority being dissolved, as provided in this section. No such assumption of responsibility for and payment of the obligations of the dissolved authority shall be effective, however, until the local unit or units or the existing authority proposing to undertake such assumption determines, by resolution of the governing body setting forth facts that constitute the basis for the determination, that such assumption will be a cost effective means of meeting those obligations as compared with the issuance of obligations of the local unit or units, or of the existing authority, and transmits a certified copy of that resolution to the Local Finance Board. An ordinance or resolution dissolving an authority shall designate which local unit or units or which authority, as the case may be, will assume the outstanding debt, and no such ordinance or resolution including a provision for assumption of responsibility for and payment of that outstanding debt by the local unit or units or existing authority shall take effect until there shall have been a public hearing, conducted by the governing body pursuant to the "Open Public Meetings Act," P.L.1975, c.231 (C.10:4-6 et seq.), on the question of such assumption. Any obligations issued in furtherance of dissolution shall have a period of usefulness not exceeding 40 years from the date of issuance. The assumption by the local unit of the obligations of the authority sought to be dissolved for which the local unit is not the guarantor or any bonds to be issued in furtherance of a dissolution shall be authorized by a bond ordinance to be introduced and adopted in accordance with the provisions of the "Local Bond Law," N.J.S.40A:2-1 et seq., except for the provisions of sections 40A:2-11, 40A:2-26, 40A:2-27 and 40A:2-31 of the New Jersey Statutes, and except that the bond ordinance shall take effect immediately after final adoption and shall not be subject to referendum. The bonds or other indebtedness for which the responsibility and payment is assumed may be deducted from the gross debt of the local unit by action of the Local Finance Board in accordance with subsection d. of N.J.S.40A:2-7. Notwithstanding any of the provisions of the "Local Bond Law" regarding the sale of bonds, bonds issued for this purpose shall be sold under the direction and supervision of the Local Finance Board on terms prescribed by the Local Finance Board, and may be sold at either public or private sale as the board shall prescribe.

Notwithstanding the provisions of any law, rule or regulation other than section 2 of P.L. ___, c. ___ (pending before the Legislature as this bill) to the contrary, if in order to make adequate provision for the payment of outstanding obligations of an authority being dissolved, the local unit or authority determines, with the approval of the Local Finance Board, to assume the responsibility and payment of the obligations of such authority, the local unit or authority, as the case may be, is hereby authorized, for so long as any bonds issued by the authority being dissolved remain outstanding, to exercise directly all of the powers of such authority, as if it had not been dissolved including the power and authority to assume the responsibility and payment of such outstanding obligations on the same terms and conditions as the outstanding authority obligations and to exercise all rights under any law, including the right to create pledges of revenue or create liens on property or grant security interests as appropriate and necessary to comply with the terms of the bond
indenture or to assure that the security of the holders of such authority obligations shall not be adversely affected by the assumption of such obligations by the local unit or authority.

Nothing contained in this section or in this act shall limit the powers accorded under any other law to any county or municipality to dissolve any authority which it has created or of which it has joined in the creation, nor limit any general reorganization powers accorded under law to any county or municipality to alter or abolish its agencies, but the provisions of this section and this act shall be supplementary to the powers accorded under any other law.

(cf: P.L.2001, c.29, s.1)

2. (New Section) a. For the purposes of this section, "environmental authority" means a sewerage authority established pursuant to P.L.1946, c.138 (C.40:14A-1 et seq.); a utilities authority established pursuant to P.L.1957, c.183 (C.40:14B-1 et seq.); a county improvement authority established pursuant to P.L.1960, c.183 (C.40:37A-44 et seq.); a pollution control financing authority established pursuant to P.L.1973, c.376 (C. 40:37C-1 et seq.); an incinerator authority established pursuant to P.L.1948, c.348 (C.40:66A-1 et seq.); or a solid waste management authority established pursuant to P.L.1968, c.249 (C.40:66A-32 et seq.).

b. Notwithstanding the provisions of any other law to the contrary, the governing body of a local unit that has established an environmental authority shall have the power and is authorized by ordinance in the case of a municipality, or ordinance or resolution, as appropriate, in the case of a county, to dissolve the environmental authority, except that the ordinance or resolution, as the case may be, shall not take effect unless approved by the Local Finance Board. Any environmental authority established by more than one municipality or county may be dissolved by the adoption of parallel ordinances or resolutions, as appropriate. Ordinances and resolutions proposing dissolution of an environmental authority shall not be subject to referendum.

c. The Local Finance Board may approve an ordinance or resolution proposing dissolution of an environmental authority if it determines, by written findings, that:

(1) the ordinance or resolution makes adequate provision in accordance with a bond resolution or otherwise for the payment of all creditors or obligees of the environmental authority;

(2) the ordinance or resolution makes adequate provision for the assumption of services provided by the environmental authority that are necessary for the health, safety, and welfare of the recipients of those services;

(3) the ordinance or resolution designates a local unit, local units, or an existing authority to assume the services provided by the environmental authority and the local unit, local units, or existing authority can provide those services and finance infrastructure improvements in a more effective and cost-efficient manner;

(4) the dissolution of the environmental authority shall not result in any adverse financial impact on the rate payers of the environmental authority;

(5) all restricted fund balances held by the environmental authority shall be used only for the purposes authorized by the bond covenants of the environmental authority;

(6) all unrestricted fund balances held by the environmental authority shall be used only for the purposes of the utility system that generated the fund balance, and shall not be used for general local unit purposes; and
(7) all fund balances shall be used only for the benefit of the users of the system that generated the fund balance, or for the system itself, and shall not be used for the benefit of non-users of the system.

d. The local unit or units shall prepare a statement of its reasons for dissolving the environmental authority. The statement shall provide detailed information addressing all of the requirements set forth in subsection c. of this section sufficient to allow the Local Finance Board to make a determination.

e. (1) After introduction of an ordinance or resolution proposing dissolution of an environmental authority, or parallel ordinances or resolutions, if appropriate, and preparation of the statement required by subsection d. of this section, the local unit or units shall conduct a public hearing on the proposed dissolution and shall afford all interested parties a sufficient opportunity to present questions and information relevant to the proposed dissolution.

(2) The local unit or units shall provide notice of the public hearing at least 60 days prior to the date set forth for the hearing. The notice shall set forth the date, time and place of the public hearing, a summary of the reasons for the proposed dissolution, and the location or locations at which the detailed statement of reasons for the proposed dissolution is on file and the times during which the statement may be reviewed.

(3) Notice of the public hearing shall be: posted on the official bulletin boards and websites of each local unit proposing the dissolution and on the official bulletin boards of each local unit served by the environmental authority; published as a legal advertisement; and submitted to the environmental authority proposed to be dissolved and the Local Finance Board, together with a copy of the statement of reasons required pursuant to subsection d. of this section.

(4) The Local Finance Board may require the local unit or units to prepare a stenographic transcript of the hearing.

f. Prior to adoption of an ordinance or resolution to dissolve an environmental authority, the local unit or units shall submit a copy of the introduced ordinance or resolution to the Local Finance Board together with the statement required by subsection d. of this section and a transcript of the public hearing, if required pursuant to subsection e. of this section. The Local Finance Board may request the local unit or units to present additional information necessary or desirable for the board to make a determination concerning dissolution of the environmental authority. Upon receipt of Local Finance Board approval, the local unit or units may adopt the ordinance or resolution in the manner otherwise provided by law. A copy of the ordinance or resolution, as adopted, shall be filed immediately with the Local Finance Board and the Secretary of State.

g. In the event that an environmental authority has obligations outstanding at the time the ordinance or resolution to dissolve the environmental authority takes effect, the local unit or units dissolving the environmental authority may:

(1) issue obligations in furtherance of the dissolution;

(2) with the consent of the holders of majority of the principal amount of the bonds then outstanding, assume the responsibility for and payment of the obligations of the authority being dissolved; or

(3) provide that an existing authority which serves the same local unit or units, or that serves one of the local units that is served by the environmental authority being dissolved, may issue obligations in furtherance of the dissolution or, with the consent of a majority of the bondholders, assume the responsibility for and payment of the obligations of the environmental authority being dissolved, as provided in this section.
h. An assumption of responsibility for and payment of the obligations of a dissolved environmental authority shall not take effect until the local unit or units or the existing authority proposing to undertake the assumption of responsibility determines, by resolution of the governing body setting forth facts that constitute the basis for the determination, that the assumption will be a cost effective means of meeting those obligations as compared with the issuance of obligations of the local unit or units, or of the existing authority, and transmits a certified copy of that resolution to the Local Finance Board.

i. An ordinance or resolution dissolving an environmental authority shall designate a local unit, local units, or an existing authority to assume the outstanding debt or issue obligations in furtherance of the dissolution. Any obligations issued in furtherance of dissolution shall have a period of usefulness not exceeding 40 years from the date of issuance. A local unit’s assumption of obligations of an environmental authority being dissolved for which the local unit is not the guarantor of bonds to be issued in furtherance of a dissolution shall be authorized by a bond ordinance to be introduced and adopted in accordance with the provisions of the "Local Bond Law," N.J.S.40A:2-1 et seq., except for the provisions of sections 40A:2-11, 40A:2-26, 40A:2-27 and 40A:2-31 of the New Jersey Statutes, and except that the bond ordinance shall take effect immediately after final adoption and shall not be subject to referendum. The bonds or other indebtedness for which the responsibility and payment is assumed may be deducted from the gross debt of the local unit by action of the Local Finance Board in accordance with subsection d. of N.J.S.40A:2-7. Notwithstanding any of the provisions of the "Local Bond Law" regarding the sale of bonds, bonds issued for this purpose shall be sold under the direction and supervision of the Local Finance Board on terms prescribed by the Local Finance Board, and may be sold at either public or private sale as the board shall prescribe.

j. Notwithstanding the provisions of any other law, rule or regulation to the contrary, if in order to make adequate provision for the payment of outstanding obligations of an environmental authority being dissolved, the local unit or authority determines, with the consent of a majority of the bondholders and approval of the Local Finance Board, to assume the responsibility and payment of the obligations of the environmental authority, the local unit or authority, as the case may be, is hereby authorized, for so long as any bonds issued by the authority being dissolved remain outstanding, to exercise directly all of the powers of such environmental authority, as if it had not been dissolved, including the power and authority to assume the responsibility and payment of such outstanding obligations on the same terms and conditions as the outstanding environmental authority obligations, and to exercise all rights under any law, including the right to create pledges of revenue or create liens on property or grant security interests as appropriate and necessary to comply with the terms of the bond indenture or to assure that the security of the holders of such environmental authority obligations shall not be adversely affected by the assumption of such obligations by the local unit or authority.

k. Nothing contained in this section or the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.), shall limit the powers accorded under any other law to any county or municipality to dissolve any environmental authority which it has created or of which it has joined in the creation, nor limit any general reorganization powers accorded under law to any county or municipality to alter or abolish its agencies, but the provisions of this section shall be supplementary to the powers accorded under any other law.
3. This act shall take effect immediately.

STATEMENT

This bill would establish a new procedure for municipalities and counties to follow when they seek to dissolve environmental authorities. The bill uses the term “environmental authority” to address sewerage authorities, utilities authorities, county improvement authorities, pollution control financing authorities, incinerator authorities, and solid waste management authorities.

The process through which a local unit may dissolve an authority that it has created is set forth in the "Local Authorities Fiscal Control Law," P.L.1983, c.313 (C.40A:5A-1 et seq.). This bill would require local units to comply with a more meaningful and transparent process when they seek to dissolve environmental authorities.

Many environmental authorities contribute service charges and investments to infrastructure replenishment and replacement funds in order to ensure the proper operation of sewerage, water, pollution control and waste management facilities. Some municipalities and counties, struggling to balance their budgets under the current economic crisis, have resorted to raiding infrastructure reserves. Decisions to deplete these infrastructure reserves, which fund the maintenance and upgrades of water and sewerage utilities, is the result of short-term thinking. In fact, the New Jersey Clean Water Council, which serves as an advisory board to the Commissioner of Environmental Protection, has published a report, Recommendations on Water Infrastructure Financing (adopted 10 February 2009), outlining the negative impact the loss of funds dedicated for infrastructure sustainability will have on environmental protection.

The bill does not prohibit municipalities and counties from dissolving environmental authorities. Rather, it adds transparency to the current dissolution process by allowing ratepayers and bondholders enhanced notice of attempts to dissolve environmental authorities and adequate time for thoughtful review of a proposed dissolution. This bill would maintain New Jersey’s clean water and environmental protection efforts while protecting ratepayers and bondholders that have paid service charges to and invested in environmental authorities.