

## EXPEDITED SEWER PROJECT PERMITS

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**House Bill 6668 (H-1)**

**Sponsor: Rep. John Pastor**

**Committee: Natural Resources, Great Lakes, Land Use, and Environment**

**Complete to 12-8-06**

## **A REVISED SUMMARY OF HOUSE BILL 6668 AS REPORTED FROM COMMITTEE 11-30-06**

The bill would amend Part 41 (Sewerage Systems) of the Natural Resources and Environmental Protection Act to do the following:

- Establish a pilot project allowing expedited review of permit applications for certain sewer projects located in Southeastern Michigan through September 30, 2010. Eligible projects would be conventional gravity sewer extensions of 10,000 feet or less of sewer line; simple pumping stations and force mains; and small diameter pressure sewer and grinder pumping stations. The projects would have to be located in a county with a population between 750,000 and 1,000,000 (Macomb County) and any contiguous county with a population greater than 160,000 (Wayne, Oakland, and St. Clair counties).
- Provide the Department of Environmental Quality (DEQ or department) authority to issue a permit *with conditions* to correct minor design problems.
- Allow the DEQ to issue verbal, rather than written, approvals of certain minor modifications to certain construction permits.
- Authorize the Attorney General to bring civil actions to enforce Part 41, including actions for permanent or temporary injunctions and for the following civil fines:
  - For failure to obtain a permit required under Part 41, first violations -- \$1,500 to \$2,500; second violations -- \$2,500 to \$10,000; subsequent violations -- \$10,000 to \$25,000.
  - For violations of Part 41 or a provision of a permit or order issued under Part 41 or a rule promulgated under Part 41 (other than failure to obtain a permit), first violations -- \$500 to \$2,500; second violations -- \$1,000 to \$5,000; subsequent violations -- \$2,500 to \$10,000 (all violations of a specific construction permit would be treated as a single violation).
- Increase the maximum fines for misdemeanor violations of Part 41 from \$100 to \$500.
- Eliminate the subsection making each day that a violation of Part 41 occurs a separate and additional violation.
- Allow law enforcement officers to issue and serve appearance tickets for minor offenses.
- Create an Infrastructure Construction Fund within the State Treasury.

- Would require fines from Part 41 to be deposited into the Infrastructure Construction Fund and specify permissible uses of the Fund.
- Require the DEQ to prepare an annual report on its expedited review process under Part 41 by January 2, 2009 and annually thereafter until January 1, 2011. For the first three years of the expedited review process, the DEQ would have to submit quarterly reports of certain items.

More detail is provided below.

Elimination of ban on expending money unless a permit has been issued. The bill would eliminate language in Section 4105(2) that prohibits a person from issuing a voucher or check or otherwise expending money for construction of a sewerage system (or other purification plant or treatment works in connection with a sewerage system) unless a permit has been issued by the DEQ.

Requests for expedited review. The bill would allow eligible persons to request expedited review of an application for a construction permit under proposed Section 4112.

Permits issued with conditions. The bill would give the DEQ authority to issue a permit *with conditions* to correct minor design problems.

Verbal approval of minor modifications. Generally, written approvals are required for all modifications. The bill would permit the DEQ to verbally approve minor modifications to construction permits because of “unforeseen site conditions that become apparent during construction.” Minor modifications would include a minor change of location of the sewer or the location of manholes. A person requesting a minor modification would be required to provide information pursuant to R 299.2931 to R 299.2945 of the Michigan Administrative Code and the DEQ-provided application form related to the requested modification. A person receiving either written or verbal approval of a minor modification would be required to submit revised plans or specifications to the DEQ within 10 days of the approval.

Confirmation of verbal approval of a minor modifications. To obtain confirmation of the DEQ's verbal approval of a minor modification, a person would be required to notify the department electronically, at a specified address, with a detailed description of the request for the modification. The DEQ would be required to make reasonable efforts to respond within two business days, confirming whether the request had been approved. If the department did not respond within two business days, the verbal approval would be considered confirmed.

Amendment to definition of misdemeanor (constructing a sewerage works without a permit or not in accordance with approved plans). Under the act currently, a municipal officer or an officer or agent of a *governmental agency, corporation, association, partnership, or individual* who allows construction to proceed on a sewerage works without a valid permit or not in accordance with approved plans and specifications is guilty of a misdemeanor punishable by a fine of not more than \$500, or imprisonment for not more than 90 days, or both. The bill would amend this section to cover to cover municipal officers and officers or agents of a “*person*.”

Circuit Court Enforcement proceedings. The bill would allow the DEQ to ask the Attorney General to bring civil actions for appropriate relief, including permanent or temporary injunctions, for violations of Part 41 or permits, orders, or rules promulgated under Part 41. Civil actions could be brought in either Ingham County or the county in which the defendant is located, resides, or is doing business. The court would have jurisdiction to restrain the violation and to require compliance.

Civil fines. In addition to injunctive or other relief, a person who violates Part 41 would be subject to the following civil fines:

- For failure to obtain a permit required under Part 41, a civil fine not less than \$1,500 or greater than \$2,500 for the first violation, not less than \$2,500 or greater than \$10,000 for the second violation, and not less than \$10,000 or greater than \$25,000 for each subsequent violation.
- For violations of Part 41 or a provision of a permit or order issued under Part 41 or a rule promulgated under Part 41 (other than failure to obtain a permit), a civil fine of not less than \$500 or greater than \$2,500 for the first violation, not less than \$1,000 or greater than \$5,000 for the second violation, and not less than \$2,500 or greater than \$10,000 for each subsequent violation. For purposes of these fines, all violations of a specific construction permit would be treated as a single violation.

Misdemeanor prosecutions for violating Part 41 or a written order. A person who violates Part 41 or a written order of the department is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than \$25 or more than \$100, or both, and payment of the costs of prosecution. By adding the proviso “[s]ubject to Section 4105(3),” the bill would appear to exempt persons who receive verbal approval from the department for minor modification to a construction permit from misdemeanor prosecution for violating Part 41 or a written order. The bill would raise the maximum fine under this section from \$100 to \$500.

Continuing violations. The act currently provides that each day that a violation of Part 41 occurs is a separate and additional violation. This provision would be deleted.

Appearance tickets. The bill would permit law enforcement officers to issue and serve appearance tickets on persons for a minor offense under Sections 9c to 9g of Chapter IV of the Code of Criminal Procedure (MCL 764.9c to 764.9g). “**Minor offense**” would mean a violation of a permit issued under Part 41 “that does not functionally impair the operation or capacity of a sewerage system.”

Attorney General. The bill would amend and renumber current Section 4110(3) which currently provides that the Attorney General shall prosecute all cases arising under Part 41, including the recovery of penalties. Under the bill, this section would simply state: “The Attorney General shall enforce this part.”

Expedited review. Not later than October 1, 2007, the DEQ would be required to establish an expedited review process for construction permit applications for eligible sewer projects located in a county with a population between 750,000 and 1,000,000

(Macomb County) and any contiguous county with a population greater than 160,000. Applications for expedited review would have to be submitted by September 30, 2010.

Projects eligible for expedited review. The following projects in Macomb County and contiguous counties with a population greater than 160,000 would be eligible for expedited review (unless funded by the State Water Pollution Control Revolving Fund):

- A conventional gravity sewer extension with 10,000 feet or less of sewer line.
- A simple pumping station and force main.
- A small diameter pressure sewer and grinder pumping station.

Requirements for requesting expedited review. A person requesting an expedited review would have to do all of the following:

- Notify the department electronically, in accordance with instructions provided on the department's website, at least two weeks before submitting a request for expedited review.
- Submit a request for expedited review electronically and include, via credit card, the appropriate fee.
- Provide hard copies of the construction plans and specifications for the project to the department postmarked not later than the same date that the application is submitted electronically.

Fees and Notices of Deficiencies. Section 4110(5) of the bill would establish the following fees for expedited review of eligible sewer projects:

- Conventional gravity sewer extension lines less than 2,000 feet -- \$1,000.
- Conventional gravity sewer extension lines at least 2,000 feet but less than 4,000 feet -- \$1,500, plus \$500 for each additional 2,000 feet of sewer line [up to 10,000 feet].
- Simple pumping station and force main -- \$2,000.
- Small diameter pressure sewer and grinder pumping station with not more than 2,000 feet of sewer line and not more than 10 but fewer than 25 grinder pumping stations, \$4,000.

Except as provided in subsection (8), if an applicant did not submit a complete application and the appropriate fee, or if proper preapplication notification were not made, the department would not conduct an expedited review and any submitted fee would not be refunded. Within 10 business days after receipt of an application, the DEQ would have to notify the applicant of the reasons why the department's review of the application would *not* be expedited. Upon receipt of this notification, a person could correct the deficiencies and submit a new request for expedited review with the appropriate fee specified under subsection (7) for second submissions. The DEQ would

not be allowed to reject a resubmitted application and request for expedited review solely because it failed to fully identify the deficiencies in the original application.

Fees for second submissions. For a second submission of an application that originally failed to meet specified requirements, the application the fee would be ten percent of the original fee. However, if the deficiency included failure to pay the appropriate fee, the fee for the second submission would be the unpaid balance of the original fee plus ten percent of the original fee. If an applicant makes changes in a second submission other than those identified by the department as being deficient, the applicant would instead include an additional fee equal to the original fee. For the third and each subsequent submittal of an application that failed to meet specified requirements, the applicant would have to include an additional fee equal to the original fee.

If an applicant fails to provide a complete application or the appropriate fee, the department would have to notify the applicant within five business days. The application would not be processed until the deficient items were addressed. If the applicant does not provide the deficient items within five business days after notification by the department, the application would be handled as provided for in the subsection (6).

Deadlines. The fee for an expedited review under this bill would be refunded if the department did not meet the following deadlines for making decisions on completed applications for expedited review of eligible sewer permit applications:

- Until September 30, 2008, the DEQ would have to make a permit decision within **20** business days of receipt of a complete application.
- From October 1, 2008, through September 30, 2009, within **15** business days.
- From October 1, 2009, through September 30, 2010, within **10** business days.

If the department failed to meet these deadlines, it would continue to expedite review of the application.

Infrastructure Construction Fund. The bill would create a new Infrastructure Construction Fund within the State Treasury. The fees collected for expedited review of eligible sewer projects would be transmitted by the department to the State Treasurer for deposit into the Fund. [Note: the fees collected for expedited review of certain water main project permits pursuant to House Bill 6577 would also be deposited into the Fund.]

The State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer would direct its investments and credit to the Fund interest and earnings from investments. Money in the Fund at the close of the fiscal year would remain in the Fund and not lapse to the General Fund. The department would expend money from the Fund, upon appropriation, only to administer Part 41 and the Safe Drinking Water Act, including the following:

- Maintenance of program data.
- Development of program-related databases and software.

- Compliance assistance, education, and training directly related to Part 41 and the Safe Drinking Water Act.
- Program administration activities.

Required reports. By January 1, 2009 and by January 1 of each subsequent year until January 1, 2011, the Department would be required to prepare and submit a report to the Governor, the chairs of the standing committees of the Senate and House of Representatives with primary responsibility for issues related to natural resources and the environment, and to the chairs of the subcommittees of the Senate and House Appropriations Committees with primary responsibility for DEQ appropriations. The report would be required to detail the department's administration of the expedited review process in the previous fiscal year, and include, at a minimum, all of the following:

- The number of requests for expedited review received by the department.
- The percentage and number of requests for expedited review that were properly submitted.
- The percentage and number of requests for expedited review that were reviewed for completeness within statutory time frames.
- The percentage and number of requests for expedited review for which a final action was taken by the department within the statutory timeframes, indicating the type of final action.
- The amount of revenue in the Fund at the end of the fiscal year.

For the first three years of the expedited review process, the department would have to submit quarterly summary reports of the first four items listed above to the chairs of the standing committees of the Senate and House of Representatives with primary responsibility for issues related to natural resources and the environment, and to the chairs of the subcommittees of the Senate and House Appropriations Committees with primary responsibility for DEQ appropriations.

[As drafted, it would appear that these reports would have to cover only expedited review of sewer projects to be created by the bill.]

Definitions. “**Complete application**” would mean a department-provided application form has been completed and all requested information has been provided, including: the submitted construction plans and specifications are prepared, signed, and sealed by a licensed professional engineer; (2) the application and construction plans and specifications can be processed without additional information; and (3) for nongovernmental entities, the applicant has certified to the DEQ that all necessary contractual service agreements and financial assurance plans are in place.

**“Conventional gravity sewer extension”** would mean the installation of a new gravity sewer and connection to an existing collection system to provide sewer service to new areas previously not served by the public sewer system.

**“Expedited review”** means an expedited review of an application for a construction permit under proposed Section 4112.

**“Fund”** would mean the Infrastructure Construction Fund to be created by Section 4113.

**“Project”** would mean a proposal to install within one general area a new wastewater collection system. Systems proposed for construction on separate land parcels would be considered separate projects.

**“Simple pumping station and force main”** would mean the installation of a duplex pumping station and a force main with only one high point and of a length no more than 2,000 feet to be connected to an existing gravity collection system to provide sewer service to new areas previously not served by the public sewer system.

**“Small diameter pressure sewer and grinding pumping station”** would mean a single project that includes the installation of new pressure sewers totaling not more than 5,000 feet and not more than 25 grinder pumping stations with each grinder pumping station serving not more than five separate owners and that is to be connected to an existing gravity collection system to provide sewer service to new areas previously not served by the public sewer system.

## **FISCAL IMPACT:**

To the extent that the bill led to increased collections of misdemeanor fine revenues, it could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.