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BILL ANALYSIS

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House Bill 4860 (Substitute S-2)

Sponsor: Representative Kevin Elsenheimer

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

Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 10-25-05

CONTENT

The bill would amend Part 31 (Water Resources Protection) of the Natural Resources and Environmental Protection Act to exempt a municipality from liability for an unauthorized discharge from a sewerage system that was permitted under Part 31 and owned by another party, unless the municipality had accepted responsibility for the system.

Part 31 prohibits a person from discharging into the waters of the State a substance that is or may become injurious to the public health, safety, or welfare; domestic, commercial, industrial, agricultural, recreational, or other uses that are being or may be made of the waters; the value or utility of riparian land; livestock, wild animals, birds, fish, aquatic life, or plants; or the value of fish and game.

Further, the discharge of any raw human sewage into the waters of the State is prima facie evidence of a violation of Part 31 by the municipality in which the discharge originated, unless the discharge is permitted by an order or rule of the Department of Environmental Quality (DEQ). (Prima facie evidence is evidence sufficient to establish a given fact unless it is rebutted or contradicted.) If the discharge is not the subject of a valid permit, a municipality responsible for the discharge may be subject to the remedies under Section 3115 (described below). If the discharge is the subject of a valid permit, and is in violation of it, a municipality responsible for the discharge is subject to the penalties provided in that section.

Under the bill, notwithstanding these provisions, a municipality would not be responsible for or subject to the remedies provided in Section 3115 for an unauthorized discharge from a sewerage system as defined in Section 4101 that was permitted under Part 31 and owned by a party other than the municipality, unless the municipality had accepted responsibility for the system in writing and, with respect to the civil fine and penalty under Section 3115, had been notified in writing by the DEQ of its responsibility for the system.

Under Section 4101, "sewerage system" means a system of pipes and structures including pipes, channels, conduits, manholes, pumping stations, sewage or waste treatment works, diversion and regulatory devices, outfall structures, and appurtenances, collectively or severally, actually used or intended for use by the public for the purpose of collecting, conveying, transporting, treating, or otherwise handling sanitary sewage or other industrial liquid wastes that are capable of adversely affecting the public health.

Under Section 3115, the DEQ may request the Attorney General to commence a civil action for appropriate relief for a violation of Part 31 or a provision of a permit or order issued or rule promulgated under Part 31. In addition to any other relief, the court must impose a civil fine of at least \$2,500 and may award reasonable attorney fees and costs to the prevailing party. The maximum fine the court may impose is \$25,000 per day of violation.

Additionally, a person who at the time of the violation knew or should have known that he or she discharged a substance contrary to Part 31, or contrary to a permit, order, or rule, is guilty of a felony and must be fined between \$2,500 and \$25,000 for each violation. The court may impose an additional fine of up to \$25,000 for each day the unlawful discharge occurred. For a subsequent conviction, the court must impose a fine of between \$25,000 and \$50,000 per day of violation. The court also may sentence the defendant to imprisonment for up to two years or impose probation.

The court must impose an additional penalty if it finds that a defendant's actions pose or posed a substantial endangerment to the public health, safety, or welfare. In a civil action, the court must impose an additional fine of between \$500,000 and \$5.0 million. In a criminal case, the court must impose an additional fine of at least \$1.0 million and a sentence of five years' imprisonment.

MCL 324.3109

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would have no fiscal impact on State government and no impact on local unit revenue. The bill would potentially reduce local unit expenditures to the extent that it would reduce the number of instances in which a local unit was held liable for an unauthorized discharge. To the extent that it would not affect a local unit's liability, the bill would not have any fiscal impact.

This estimate is preliminary and will be revised as new information becomes available.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.