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House Bill 6577 (Substitute H-1 as passed by the House)
House Bill 6668 (Substitute H-2 as passed by the House)
Sponsor: Representative John Pastor
House Committee: Natural Resources, Great Lakes, Land Use, and Environment
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 12-11-06

CONTENT

House Bill 6577 (H-1) would amend the Safe Drinking Water Act to do the following:

- Require the Department of Environmental Quality (DEQ) to establish an expedited application review process for certain waterworks projects located in a county with a population of between 750,000 and 1.0 million (i.e., Macomb County) and any contiguous county with a population over 160,000.
- Require a water supplier to obtain written approval from the DEQ for a modification to a waterworks system, and allow the DEQ verbally to approve a minor modification.
- Authorize a law enforcement officer to issue an appearance ticket for a minor offense.

House Bill 6668 (H-2) would amend Part 41 (Sewerage Systems) of the Natural Resources and Environmental Protection Act to do the following:

- Require the DEQ to establish an expedited application review process for certain sewerage system construction projects in counties that met the population thresholds described above.
- Create the "Infrastructure Construction Fund" within the State Treasury, and require the DEQ to spend Fund money to administer Part 41 and the Safe Drinking Water Act.

- Require the DEQ to submit to the Governor and the Legislature an annual report detailing the DEQ's administration of the expedited review process during the previous fiscal year.
- Require the DEQ to submit to the Legislature quarterly summary reports for the first three years of the expedited review process.
- Allow the DEQ to request the Attorney General to commence a civil action for appropriate relief for a violation of Part 41.
- Prescribe civil penalties, and revise criminal fines, for a violation of Part 41.
- Authorize a law enforcement officer to issue and serve an appearance ticket for a minor offense.

The bills are tie-barred to each other. They are described below in further detail.

House Bill 6577 (H-1)

Expedited Review Process

Under the Act, before commencing the construction of, or an alteration, addition, or improvement to, a waterworks system, a water supplier must submit to the DEQ plans and specifications and secure a construction permit. The bill would allow a supplier to request an expedited application review. A request for an expedited review would be limited to projects consisting solely of installation of new water mains of less than or equal to 10,000 feet located in a county

with a population of between 750,000 and 1.0 million (Macomb County) and any contiguous county with a population over 160,000. Expedited permit application reviews would not be allowed for other projects requiring a permit under the Act, including projects involving water treatment processes, ground or elevated storage tanks, chemical feed systems, wells, booster stations, pumps, new proposed waterworks systems subject to a capacity assessment, or projects funded under the State Drinking Water Revolving Fund (which the Michigan Municipal Bond Authority may use to provide assistance to governmental units for community and noncommunity water supplies).

By October 1, 2007, the DEQ would have to make an expedited permit application review process available for the specified projects. The expedited review process would have to be available through September 30, 2010. A supplier planning to request an expedited application review would have to notify the DEQ electronically, in accordance with the instructions provided on the Department's website, at least two weeks before submitting a request for an expedited review. The supplier would have to submit the request electronically and would have to include the appropriate fee (described below). Credit card payment would be required with the electronic filing of the application. The supplier would have to submit a written copy of the construction plans and specifications for the project to the DEQ postmarked by the date the application was submitted electronically.

The expedited permit application review fee would be as follows:

- \$1,000 for water main projects with total lengths under 1,000 feet.
- \$1,500 for water main projects with total lengths of 1,000 feet or more but less than 3,000 feet.
- \$2,000 for water main projects with total lengths over 3,000 feet but not more than 10,000 feet.

Except as otherwise provided, if an applicant did not submit a complete application and the appropriate fee, or if the required notification were not made, the DEQ could not conduct an expedited review and the fee could not be refunded. Within 10 business days of receiving the application, the

Department would have to notify the supplier of the reasons why the application would not be expedited. The supplier could correct the deficiencies and submit a new request for an expedited review with the appropriate fee. The DEQ could not reject a resubmitted application solely because it failed to identify the deficiencies in the original application.

For a second submission of an application that originally failed to meet the bill's requirements, the applicant would have to include a fee equal to 10% of the prescribed application fee. If the deficiency included failure to pay the appropriate fee, however, the second submission would have to include the balance of the fee plus 10% of the fee. If the applicant made additional changes other than those items the DEQ identified as being deficient, the applicant would have to include the prescribed fee. For each subsequent submittal of an application that failed to meet the bill's requirements, the applicant would have to include the specified fee.

If an applicant failed to provide a complete application or the appropriate fee, the Department would have to notify the applicant within five business days. The application could not be processed until the deficient items were addressed. If the applicant did not provide the deficient items within five business days after being notified, the DEQ would have to handle the application as if the applicant had not submitted a complete application or the appropriate fee, or made the required notification.

The DEQ would have to review and make a decision on a complete application submitted in accordance with a request for expedited review within the following number of days of receiving the complete application, including plans and specifications:

- Until September 30, 2008, 20 business days.
- From October 1, 2008, through September 30, 2009, 15 business days.
- From October 1, 2009, through September 30, 2010, 10 business days.

The fee for an expedited review would have to be refunded if the DEQ failed to meet the deadline. Additionally, the DEQ would have to continue to expedite the review process.

Expedited permit application review fees would have to be deposited into the Infrastructure Construction Fund (which House Bill 6668 (H-2) would establish).

Under the bill, "complete application" would mean the application form provided by the DEQ was completed, all requested information was provided, the submitted construction plans and specifications were prepared, signed, and sealed by a licensed professional engineer, and the application and construction plans and specifications could be processed for issuance of the permit without additional information. The DEQ could issue a permit with conditions to correct minor design deficiencies.

"Project" would mean a plan or proposal to install new water mains within a waterworks system located in one general area where all the components were interconnected, but would not include a waterworks system proposed for construction in separate parcels of land or development areas.

Modification to Waterworks System

A supplier would have to obtain written approval from the DEQ for all modifications to a waterworks system, except for a minor modification. The DEQ verbally could approve minor modifications of a construction permit because of unforeseen site conditions that became apparent during construction. Minor modifications would include extending a hydrant lead or routing a water main around a manhole. A supplier requesting a modification would have to give the DEQ all relevant information required under the Act and the application form provided by the DEQ related to the modification. A supplier that received a written or verbal approval would have to submit revised plans and specifications to the Department within 10 days from the approval date.

If a supplier sought confirmation of the DEQ's verbal approval of a minor modification, it would have to notify the Department electronically, at an address specified by the Department, with a detailed description of the request for modification. The DEQ would have to make reasonable efforts to respond within two business days, confirming whether the request had been approved. If the DEQ did not respond within

two business days, the verbal approval would be considered confirmed.

Minor Offense

The bill would authorize a law enforcement officer to issue and serve an appearance ticket upon a person for a minor offense, pursuant to the Code of Criminal Procedure. "Minor offense" would mean a violation of a permit issued under the Act that did not functionally impair the operation or capacity of a waterworks system or the level of public health protection it provided.

(Under the Code of Criminal Procedure, an appearance ticket is a complaint or written notice issued and subscribed by a police officer or other public servant authorized by law or ordinance to issue it, directing a designated person to appear in a designated local criminal court at a designated future time in connection with his or her alleged commission of a designated violation of State law or local ordinance for which the maximum permissible penalty does not exceed 93 days in a jail and/or a fine. If a police officer has arrested a person without a warrant for such a violation, instead of taking the person before a magistrate and promptly filing a complaint ticket, the officer may issue to and serve upon the person an appearance ticket and release the person from custody. The officer then must file in the local criminal court a complaint charging the person with the specified offense.)

House Bill 6668 (H-2)

Expedited Review Process

Under Part 41, an application for a permit to construct a sewerage system or any filtration or other purification plant or treatment works in connection with a sewerage system must be submitted to the DEQ by the mayor of a city, the president of a village, a responsible member of a partnership, an individual owner, or the proper officer of any other person proposing the construction. The application must include required plans and specifications. Under the bill, a person could request an expedited review of an application.

By October 1, 2007, the DEQ would have to establish an expedited review process for construction permit applications for projects described below that were located in a

county with a population of between 750,000 and 1.0 million and any contiguous county with a population over 160,000. The expedited review process would have to be available through September 30, 2010. To be eligible for expedited review, an applicant would have to submit all of the items required under the bill by September 30, 2010.

The following projects would be eligible for expedited review:

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

("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. "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 length of not more than 2,000 feet that was 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 grinder pumping station" would mean a single project that included 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 was to be connected to an existing gravity collection system to provide sewer service to new areas previously not served by the public sewer system.)

An expedited review could not be conducted for a project that was being funded by the State Water Pollution Control Revolving Fund.

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

- At least 10 business days before submitting an application, notify the DEQ electronically, in accordance with the instructions provided on its website, of his or her intent to request expedited review.

- Submit electronically a complete application for a construction permit, including a request for expedited review and including, via credit card, the appropriate fee (described below).
- Provide to the DEQ a written copy of the construction plans and specifications for the project that had been prepared, signed, and sealed by a licensed professional engineer, postmarked by the same date that the application was submitted electronically.
- For nongovernmental entities, provide to the DEQ certification that all necessary contractual service agreements and financial plans were in place.

The fee for an expedited review would be as follows:

- For a conventional gravity sewer extension of less than 2,000 feet, \$1,000.
- For a conventional gravity sewer extension of between 2,000 feet and 4,000 feet of sewer line, \$1,500, and for each incremental increase of up to 2,000 feet of sewer line, an additional \$500.
- For a simple pumping station and force main, \$2,000.
- For a small diameter pressure sewer and grinder pumping station consisting of not more than 2,000 feet of sewer line and not more than 10 grinder pumping stations, \$2,000.
- For a small diameter pressure sewer and grinder pumping station project not described above and consisting of not more than 5,000 feet of sewer line and not more than 25 grinder pumping stations, \$4,000.

For a second submission of an application that originally failed to meet the bill's requirements, the applicant instead would have to include a fee equal to 10% of the prescribed fee. If the deficiency included failure to pay the appropriate fee, however, the second submission would have to include the balance of the fee plus 10% of that fee. If the applicant made additional changes other than those items identified by the DEQ as being deficient, the applicant instead would have to include an additional fee equal to the fee prescribed by the bill. For the third and each subsequent submittal of an application that failed to meet the bill's requirements, the applicant would have to

include an additional fee equal to the fee prescribed by the bill.

Except as provided below, if an applicant did not comply with the bill's notification and application requirements, the DEQ could not conduct an expedited review and could not refund any submitted fee. Within 10 business days after receiving the application, the DEQ would have to notify the applicant of the reasons why the review would not be expedited. Upon receiving this notification, a person could correct the deficiencies and resubmit the application and request for an expedited review with the appropriate fee. The DEQ could not reject a resubmitted application and request for expedited review solely because of deficiencies that it failed to identify fully in the original application.

If an applicant failed to sign the application, submitted construction plans and specifications that had not been prepared, signed, and sealed by a licensed professional engineer, or submitted an insufficient fee, the DEQ would have to notify the applicant within five business days of the deficiency. The application could not be processed until the deficient items were addressed. If the applicant did not provide the deficient items within five business days after notification, the application would have to be handled as if the applicant had not submitted a complete application or the appropriate fee, or made the required notification.

The DEQ would have to review and make a decision on a complete application submitted with a request for expedited review within the following number of days of receiving the complete application:

- Until September 30, 2008, 20 business days.
- From October 1, 2008, through September 30, 2009, 15 business days.
- From October 1, 2009, through September 30, 2010, 10 business days.

If the DEQ failed to meet the specified deadline, it would have to continue to expedite the application review process, and would have to refund the fee.

The DEQ would have to transmit the fees collected under the bill to the State Treasurer for deposit into the Infrastructure Construction Fund.

Infrastructure Construction Fund

The State Treasurer could receive money or other assets from any source for deposit into the Fund. The Treasurer would have to direct the investment of the Fund, and credit to it any interest and earnings. Money in the Fund at the close of the fiscal year would remain in the Fund and would not lapse to the General Fund.

The DEQ would have to spend Fund money, upon appropriation, only to administer Part 41 and the Safe Drinking Water Act, including all of 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.

DEQ Report

By January 1, 2009, 2010, and 2011, the DEQ would have to prepare and submit 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 the chairs of the subcommittees of the Senate and House DEQ Appropriations Committees a report that detailed the Department's administration of the expedited review processes under the bill and House Bill 6577 (H-1) in the previous fiscal year. The report would have to include all of the following as itemized for each expedited review process:

- The number of requests for expedited review received by the DEQ.
- The percentage and number of requests that were properly submitted.
- The percentage and number of requests that were reviewed for completeness within the statutory time frames.
- The percentage and number of requests for which the DEQ took a final action within statutory time frames, including an indication of the 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 DEQ also would have to submit quarterly summary reports of the

items included in the annual report to the chairs of the Senate and House standing committees and DEQ Appropriations Subcommittees.

Modification to Sewerage System

Under the bill, if the DEQ considered it appropriate, the Department could issue a permit with conditions to correct minor design problems.

The DEQ verbally could approve minor modifications of a construction permit as a result of unforeseen site conditions that became apparent during construction. Minor modifications would include a minor change of location of the sewer or location of manholes. The person requesting a modification would have to give the DEQ all relevant information pursuant to the Department's administrative rules and the application form provided by the Department related to the requested modification. Written approval from the DEQ would have to be obtained for all modifications, except when the DEQ provided verbal approval for a minor modification. The person receiving a written or verbal approval would have to submit revised plans or specifications to the DEQ within 10 days from the approval date.

If a person sought confirmation of the DEQ's verbal approval of a minor modification, the person would have to notify the Department electronically, at an address specified by the Department, with a detailed description of the request for modification. The DEQ would have to make reasonable efforts to respond within two business days, confirming whether the request had been approved. If the DEQ did not respond within two business days after it received the detailed description, the verbal approval would be considered affirmed.

Violation of Part 41

Under the bill, the DEQ could request that the Attorney General commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of Part 41 or a provision of a permit or order issued or rule promulgated under it. An action could be brought in the circuit court for Ingham County or for the county in which the defendant was located, resided, or was doing business. The court would have

jurisdiction to restrain the violation and require compliance.

In addition to any other relief, a person who violated Part 41 would be subject to the fine shown in Table 1.

Table 1

Violation	Minimum Fine	Maximum Fine
Failure to obtain required permit		
First violation	\$1,500	\$2,500
2nd violation	2,500	10,000
Subsequent violation	10,000	25,000
Other violation*		
First violation	500	2,500
2nd violation	1,000	5,000
Subsequent violation	2,500	10,000
*A violation of Part 41 or a provision of a permit, order, or rule other than failure to obtain a permit.		

All violations of a specific construction permit would be treated as a single violation.

Currently, a person who violates Part 41 or a written DEQ order is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of at least \$25 but not more than \$100, and payment of the costs of prosecution. The bill would eliminate the minimum fine, and increase the maximum fine from \$100 to \$500. Additionally, under the bill, this provision would apply subject to Section 4101(5).

(Under that section, a municipal officer of an officer or agent of a person who permits or allows construction to proceed on a sewerage works without a valid permit, or in a manner not in accordance with the plans and specifications approved by the DEQ, is guilty of a misdemeanor punishable by a fine of up to \$500 and/or imprisonment for up to 90 days.)

Appearance Ticket

The bill would allow a law enforcement officer to issue and serve an appearance ticket upon a person for a minor offense (i.e., a permit violation that did not functionally impair the operation or capacity of a sewerage system).

MCL 324.1004 et al. (H.B. 6577)
324.4101 et al. (H.B. 6668)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on the State. An expedited permit review process would require additional staff time, and the bills would provide for fees and penalties to cover those additional program costs. The fees would be deposited into the proposed Infrastructure Construction Fund. The exact cost of implementing the program is unknown, so the revenue collected from the assessed fees could be greater than or less than the increased costs.

House Bill 6668 (H-1) also would establish civil fines ranging from \$500 to \$10,000 for violations of Part 41. The amount of revenue collected would be determined by the number of violations and the fines imposed by a court.

Fiscal Analyst: Jessica Runnels

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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.