



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 402 (as reported without amendment)
Sponsor: Senator Phil Pavlov
Committee: Natural Resources

Date Completed: 6-23-17

RATIONALE

In 2006, 72 residential septic systems in Worth Township, Sanilac County, were discovered to be failing and discharging raw sewage into Lake Huron.¹ Reportedly, by 2017, the number of systems known to be failing had increased to over 500. As a result of litigation between the Department of Environmental Quality and Worth Township, leading to a Michigan Supreme Court decision (discussed below), the township is required to take corrective measures to prevent the discharge of raw sewage. Although the township was not specifically ordered to build a new sewage system, the parties evidently agreed that doing so would be the most practical and comprehensive solution. For this project, the township has received about \$1.2 million from the Stormwater Asset Management and Wastewater Program and \$800,000 from the Wetland Mitigation Bank Funding (WMBF) Program, which provides grant assistance for projects that mitigate substantial public risks from treatment system failure. Though construction bids for a new municipal sewage system apparently have exceeded \$30.0 million, the statute that provides for this program, however, sets a \$2.0 million cap on the amount of funds that a municipality may receive for this type of project. To address this situation, and perhaps others like it, some people believe that municipalities should be able to receive more money in grants from the State when there is a substantial public risk.

CONTENT

The bill would amend Part 52 (Strategic Water Quality Initiatives) of the Natural Resources and Environmental Protection Act (NREPA) to increase the amount of grants that a municipality may receive to help finance certain sewage treatment and water treatment projects.

Part 52 of NREPA establishes the Strategic Water Quality Initiatives Fund within the State treasury. The Michigan Municipal Bond Authority, in consultation with the Department of Environmental Quality, is required to spend money from the Fund, upon appropriation, for specified purposes, including grants to municipalities for sewage collection and treatment or storm water or nonpoint source pollution control. These grants are subject to the following limits:

- For grants of up to \$1.0 million, not more than 90% of the costs incurred by the municipality.
- For grants of more than \$1.0 million and less than \$2.0 million, not more than 90% of the costs incurred by the municipality up to \$1.0 million and not more than 75% of the municipality's costs above \$1.0 million.

(A grant may cover 100% of the costs incurred by a municipality that is a disadvantaged community, is in receivership, or is operating under an emergency manager, emergency financial manager, or a consent agreement as provided under the Local Financial Stability and Choice Act.)

¹ Parraghi, Christina, "Health Officials Defend Septic Policies", *Sanilac County News*, 7-25-2012.

Under the bill, for total grants of more than \$1.0 million, the program could grant up to 90% of the costs incurred by the municipality for up to \$1.0 million of the grant amount and up to 75% of the remaining costs incurred by the municipality for the balance of the grant amount.

Currently, a municipality may not receive more than \$2.0 million in total grant assistance.

Under the bill, a municipality could not receive more than \$2.0 million in grant assistance for the following purposes:

- The development of an asset management program for a sewage collection and treatment system or stormwater system.
- The development of management plans for the treatment of stormwater.
- The planning and design of a sewage treatment works project or stormwater treatment project or planning and design of construction activities designed to reduce nonpoint source pollution.
- The project costs of a municipality related to the testing and demonstration of innovative wastewater and stormwater technologies approved by the Department.

A municipality also could not receive more than \$2.0 million in grant assistance for projects to address a substantial public health risk from treatment system failure.

The bill would take effect 90 days after it was enacted.

MCL 324.5204e

BACKGROUND²

In 2003, the Department of Environmental Quality (DEQ) performed the first of several water quality surveys in the area of concern in Worth Township. The survey data demonstrated that the surface waters were contaminated with fecal coliform and *E. coli* bacteria, and indicated that the conditions were becoming progressively worse. In 2004, the DEQ and Worth Township entered into a district compliance agreement, in which the township agreed to construct a municipal sewerage system by June 1, 2008. After the township failed to do so, citing a lack of funds, the Department brought a lawsuit against the township. The trial court held in favor of the DEQ and ordered Worth Township to take necessary corrective measures to prevent the discharge of raw sewage. The township appealed to the Michigan Court of Appeals, which reversed the trial court decision (*Department of Environmental Quality v. Township of Worth*, 289 Mich App 414).

In May 2012, the Michigan Supreme Court reversed the Court of Appeals judgment, holding that "under NREPA, a municipality can be held responsible for, and required to prevent, a discharge of raw sewage that originates within its borders, even when the raw sewage is discharged by a private party and not directly discharged by the municipality itself" (*Department of Environmental Quality v. Township of Worth*, 491 Mich 227). According to the Court, NREPA does not specifically authorize a circuit court to compel a municipality to install a sewerage system to remedy a widespread failure of private septic systems, but the statute does authorize the court to restrain a NREPA violation and to require compliance with the Act. Although the trial court directed Worth Township to take necessary corrective action, and did not specifically compel the construction of a sewerage system, the parties agreed that the most practical and comprehensive method for restraining the discharge would be to construct such a system.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

² The source of this information is the Michigan Supreme Court opinion in *Department of Environmental Quality v. Township of Worth*.

Supporting Argument

The new sewer system in Worth Township will bring sanitary sewers to 1,654 homes and about 300 properties in the township. This system is preferable to the old system and preferable to the holding tanks that have been installed in some residential homes because "[w]hen you put a community on holding tanks, the problem becomes that people cannot afford to have them pumped out".³ If these tanks are not pumped regularly, they can cause problems similar to those that this township faces currently. The cost of connecting to a public sewer can be \$60,000 or more per home.⁴ In mid-February 2017, construction bids on the new sewer system totaled about \$33.9 million.⁵ Though the DEQ has approved an \$800,000 grant from the Wetland Mitigation Bank Funding Program help fund the new system, no more money can come from the WMBF because the township has already utilized \$1.2 million from the Stormwater Asset Management and Wastewater Program and the statute caps the amount of funds that a municipality may receive for this type of project at \$2.0 million. By allowing an additional \$2.0 million in grant assistance, the bill would provide authority for the township to receive additional funding.

The amendments also could benefit other municipalities experiencing a sewage treatment failure that presents a substantial public health risk. According to the December 2016 report of the 21st Century Infrastructure Commission, which was created by Executive Order 2016-5, most of Michigan's drinking water and wastewater management systems were built between 50 and 100 years ago, and approximately 10% of the State's 1.3 million septic systems are likely experiencing operational problems. The report also stated that, since 2008, "an average of 5.7 billion gallons of untreated sewage flowed into Michigan waterways". In addition, Michigan is the only state in the country without a sanitary code to protect its water and public health, according to the report. These factors make it quite possible that municipalities throughout the state might face problems similar to those confronting Worth Township and could require increased assistance from the Strategic Water Quality Initiatives Fund.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

The bill would not have a significant fiscal impact on the State.

The bill would allow municipalities that have already received a grant from the Strategic Water Quality Initiatives Fund to receive further grant awards of up to \$2.0 million for projects to address substantial health risks. This would not change the total amount of these funds that are available but would instead change how those grant funds are potentially allocated. Currently, \$10.0 million is allocated in statute for this purpose. According to the Department of Environmental Quality, of the \$10.0 million, \$6.0 million has been appropriated, and of that, \$2.5 million has already been allocated to various projects.

Fiscal Analyst: Josh Sefton

³ n. 1.

⁴ Methany, Keith, "Aging Septic Systems Fouling Michigan Waters", *Detroit Free Press*, 1-16-2017.

⁵ Smith, Jackie, "Worth Twp. Sewer Bill Jumps \$10 Million", *Times Herald*, 3-7-2017

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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.