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**Senate Bill 800**

Sponsor: Senator Mitch Irwin

Committee: Natural Resources and Environmental Affairs

Date Completed: 5-10-88

***SUMMARY OF SENATE BILL 800 as introduced 4-13-88:***

Senate Bill 800 would create the "State Clean Water Assistance Act" to provide for the administration of the State Water Pollution Control Revolving Fund, proposed by Senate Bill 801, for water pollution control activities. The bill would do all of the following:

- Establish criteria for receiving assistance from the Fund.
- Require a "project plan" to be submitted to the Director of the Department of Natural Resources (DNR) by a municipality that applied for assistance under the bill, and require the Director annually to develop a priority list of projects.
- Require the Director of the DNR annually to develop an "intended use plan" to identify proposed uses of the Fund.
- Establish an application procedure for assistance from the Fund.
- Require the issuance of an "order of approval" for a project whose application for assistance was approved.
- Authorize the Director of the DNR to terminate a project for cause.
- Allow the costs of the bill to be paid from various appropriated funds.
- Specify the powers and responsibilities of the Director of the DNR relative to the bill.
- Make other provisions relative to segmenting a sewage treatment work project; a previously required priority list; and the legislative purpose of the bill.

The bill would take effect on September 1, 1988.

Assistance from the Fund

The bill specifies that, except as authorized by the Federal Water Pollution Control Act, the State Water Pollution Control Revolving Fund proposed by Senate Bill 801 could not provide grant assistance to a municipality or provide loans for the local share of projects constructed with grants provided under Title II of the Federal Act. (The bill defines "project" as "a sewage treatment works project or a nonpoint source project, or both".) It also specifies that the State would not be liable to a municipality for costs incurred in developing or submitting an application for assistance under the bill.

Assistance from the Fund to municipalities for projects would have to be provided in the descending order for the "fundable range" of the priority lists that the bill would require the DNR Director to prepare. ("Fundable range" would be "those projects, taken in descending order on the priority list, for which sufficient funds are estimated by the director to exist to provide assistance at the beginning of each annual funding cycle".)

Project Plan and Priority List

A municipality could submit a project plan for the consideration of the Director of the DNR in developing a priority list. Such a plan would have to document the necessity of a proposed project in order to meet pollution control standards required by various State and Federal Acts. The documentation would have to establish all of the following:

- The need for the project.
- An evaluation of feasible alternatives, considering the demographic, topographic, hydrologic, and institutional characteristics of the area.
- That the project was cost-effective and implementable from legal, financial, institutional, and management standpoints.
- Other information required by the Director of the DNR.

The Director annually would have to develop separate priority lists for sewage treatment works projects and for nonpoint source projects. The priority lists would have to be based on the project plans submitted by municipalities and the following criteria and any other criteria established by the DNR by rule:

- Applicable standards in Public Act 245 of 1929, which created and regulates the Water Resources Commission, and the Federal Water Pollution Control Act would have to be complied with.
- An application for a segment of a project that received funds under the Title II construction grant program or Title VI State Revolving Loan Funds of the Federal Act, would have first priority for funding for up to three years after those funds were committed.
- For a sewage treatment works project the lists would have to include: 1) a determination of whether the project was necessary to comply with an order, permit, or other document issued by the DNR or entered as part of an action brought by the State (such a project would have a higher priority than others); 2) the population that would be served; 3) the dilution ratio existing between the discharge volume and the receiving stream; and 4) the severity of the water pollution problem that the project would address.
- Rankings for nonpoint source projects would have to be consistent with the State nonpoint source management plan developed under the Federal Act.

Intended Use Plan

The Director of the DNR would be required annually to prepare and submit an intended use plan to identify proposed uses of the Fund and to facilitate the negotiation

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process that he or she could conduct with the Environmental Protection Agency (EPA) for a capitalization grant agreement and schedule of payments under the Federal Act. In addition to the intended use plan, the Director would have to provide written descriptions and timetables for actions required under the bill, and could provide other information he or she considered appropriate to municipalities that requested assistance.

The Director would have to provide for a process that would require at least one public hearing for the intended use plan. The Director could make changes in the plan in response to comments received from the EPA through the public participation process without holding additional hearings. The Director's intended use plan would have to include all of the following:

- A copy of the priority lists and a description of the long- and short-term goals of the Fund.
- The proposed fundable range and an allocation of the funds available for projects on each priority list.
- A description of projects on the priority lists.
- Any assurances or proposals that indicated how the State intended to meet applicable Federal requirements, a description of the criteria and method for distribution of the Fund, and a description of the public participation process followed in developing the intended use plan.
- Any other information needed to comply with the Federal Act or considered appropriate by the Director of the DNR.

Upon notice from the EPA of the plan's approval, the Director would have to notify each municipality of its inclusion in the plan, and provide copies of the priority lists and the plan to all parties requesting such information.

#### Application for Assistance

The Director of the DNR would have to review the project plans of municipalities in the fundable range. Upon approval of the project plan, the municipality could apply for assistance from the Fund. If a municipality's project plan were not approved, the Director would have to notify the municipality of the deficiencies in the plan. To apply for assistance, a municipality would have to submit all of the following:

- If assistance were in the form of a loan, financial documentation that a "dedicated source of revenue" was established and pledged to the timely repayment of the loan and the provision of adequate revenues from a user-based source to fund the operation and maintenance of the project.
- An approved project plan, and a written certification affirming that the municipality had the legal, managerial, financial, and institutional capability to build, operate, and maintain the project.
- A letter of credit, insurance, or other credit enhancement to support the credit position of the municipality.
- Receipt of all applicable State and Federal permits, and a certified resolution from the municipality designating an authorized representative for the project.
- A written certification from the authorized representative that no undisclosed fact or event would materially or adversely affect the project.
- If applicable, all executed intermunicipal service agreements.
- Agreements that the municipality would operate the project in compliance with State and Federal standards; that the municipality would not sell, lease, abandon, or dispose of the project without an effective assignment of obligation and prior written approval of the Director of the DNR and the Natural Resources Authority proposed by Senate Bill 801; that all project accounts would be maintained in accordance with generally accepted

government accounting standards; and that the municipality would provide written authorizations to the Director of the DNR for the purpose of examining the project and that similar authorization would be required of all contractors, consultants, and agents.

- If the project were segmented, a schedule for completion of the project and assurances that the project would be completed with or without assistance or that the segmented portion would be operational without completion of the entire project.
- An agreement that the project would proceed in a timely fashion if the application were approved.
- An application fee, if required by the Director of the DNR.
- Other information or agreements that the Director considered necessary.

#### Order of Approval

The Director of the DNR would have to review a completed application for assistance for a project in the fundable range. If the Director approved the application, he or she would have to issue an order of approval to establish the terms of assistance. The order would have to include, at a minimum, the term of assistance, the maximum principal amount of the assistance, and the maximum rate of interest or method of calculation of the rate of interest to be used or premium to be charged.

If a project in the fundable range failed to demonstrate an ability to meet one or more of the criteria required of an applicant, that project could not be considered for approval until all other projects in the fundable range had been either funded or rejected. Such a failure would prohibit inclusion in the next annual priority list and the resubmission of the application in the next annual funding cycle.

An order of approval would have to incorporate all requirements, provisions, or information included in the application and other documents submitted during the application process. After issuance of the order, the Director would have to certify to the Authority that the municipality was eligible to receive assistance.

Within each annual funding cycle, the method of establishing the interest rate applicable to a loan would have to be applied equally to all municipalities receiving assistance in the form of a loan.

#### Project Termination

Under the bill, the Director of the DNR could terminate a project for cause and could issue an order recommending that the Authority take appropriate action with respect to assistance previously approved by the Director. Cause for termination would include but not be limited to one or more of the following:

- Substantial failure to comply with the terms and conditions of the assistance agreement.
- A legal finding or determination that the assistance was obtained through fraudulent actions.
- Practices in the administration of the project were illegal or could impair the successful completion or organization of the project.
- Misappropriation of assistance for uses other than those specified in the assistance agreement.

The Director would have to give written notice to the municipality of the intent to issue a termination order. Such notification would have to be issued at least 30 days before the Director forwarded the order to the Authority. Termination of a project would not excuse or otherwise

affect a municipality's requirement for repayment of the loan to the Fund. The Director would reserve the right to require the municipality or the designee of the Director to continue construction.

A municipality could petition the Director of the DNR to terminate a project for cause. The Director could issue an order to terminate that would be effective on the date the project ceased activities. Subject to project termination and payment of any appropriate settlement costs, the Director could issue an order to the Authority recommending appropriate action. A project's termination would not excuse or affect the municipality's requirement for repayment of the loan to the Fund. The Director would reserve the right to require the municipality or the Director's designee to continue construction.

#### Costs of the Bill

Costs of the DNR, its designated agents, and the Authority in administering and implementing the proposed Act could be paid from funds annually appropriated by the Legislature from one or more of the following sources:

- An amount taken from the Federal capitalization grant, subject to limitations prescribed in the Federal Act.
- Loan fees, not to exceed the ratio that the annual appropriation for the administration of the bill would bear to the total value of loans awarded for the fiscal year in which the appropriation was made.
- Interest or earnings realized on loan payments to the Fund.
- Proceeds of bonds sold by the Authority.
- Any other money appropriated by the Legislature.

#### Powers and Responsibilities of the Director

The bill would grant the Director of the DNR "the powers necessary or convenient to carry out and effectuate the purpose, objectives, and provisions" of the proposed Act. It also specifies that the Director would have powers delegated by other laws or executive orders, including the power to do all of the following:

- Execute, contracts, conveyances, and other instruments to exercise his or her powers.
- Solicit and accept gifts, loans, appropriations, and other aid; enter into agreements; or participate in any other way in any Federal, State, or local government program consistent with the bill.
- Negotiate and enter into agreements and amendments to agreements with the Federal government to implement the Fund.
- Engage personnel and services for professional management and technical assistance and advice.
- Impose and collect fees and charges, and provide for reasonable penalties for delinquent payment.
- Review and approve documents in an application for assistance and issue orders of approval of assistance to the Authority.
- Promulgate rules to carry out the purposes of the proposed Act.
- Administer, manage, and do all other things necessary to achieve the objectives of the Fund, the Authority, the bill, or other State and Federal laws relating to the purpose and responsibilities of the Fund.
- Make application requesting a capitalization grant.
- Establish priority lists and fundable ranges for projects and the criteria and methods to determine the distribution of the Fund.
- Prepare and submit an annual report required by the Federal Act.

#### Other Provisions

Segmented Projects. In order to ensure that a disproportionate share of available funds was not committed to a single project, the Director of the DNR could segment a sewage treatment work project if any of the following applied:

- The cost of the project was more than 30% of the amount available in the Fund.
- The time required to construct the project was greater than two years.
- Upon application for assistance, the Director approved a municipality's application for segmenting the project.

Previous Priority Lists. Until a priority list was developed by the Director pursuant to the bill, the priority list developed under former Public Act 329 of 1966, and rules promulgated under that Act, would remain in effect.

Legislative Purpose. The bill specifies that it would have to be "construed liberally to effectuate the legislative intent" and that all powers granted under the bill would have to be "broadly interpreted to effectuate the intent and purposes" of the proposed Act. The powers granted under the bill could not be interpreted as a limitation of powers.

Legislative Analyst: P. Affholter

#### **FISCAL IMPACT**

The bill would create indeterminate costs to the State. It is not clear whether S.B. 800 is to replace Public Act 329 of 1966. If it were to replace that Act, then S.B. 800 should include a repealer.

Fiscal Analyst: A. Rich

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.