Legislative Analysis

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PRIVATE WASTEWATER TREATMENT FACILITIES

Senate Bill 356 (Substitute H-1)
Sponsor: Sen. Bruce Patterson

Senate Bill 419 (Substitute H-3)
Sponsor: Sen. Jason E. Allen

House Committee: Natural Resources, Great Lakes, Land Use, and Environment
Senate Committee: Economic Development, Small Business and Regulatory Reform

Complete to 6-21-05

A SUMMARY OF SENATE BILLS 356 AND 419 AS REPORTED FROM COMMITTEE 6-16-05

The bills would regulate the construction and rate structure of private, investor-owned wastewater facilities.

Senate Bill 356

Part 41 (Sewerage Systems) of the Natural Resources and Environmental Protection Act regulates the construction and operation of public sewerage systems and grants the Department of Environmental Quality the authority to ensure that such systems are properly planned, constructed, and operated in order to prevent the pollution of waters of the state.

Senate Bill 356 would add that the activities of a private, investor-owned wastewater facility would have to comply with all applicable laws of the NREPA, local zoning and other ordinances, the Federal Water Pollution Control Act (i.e. the Clean Water Act) and the National Environmental Policy Act of 1969. The bill would also delete language in Part 41 related to the DEQ's role as a mediator in disputes of sewerage service or sewage treatment rates.

MCL 324.4108

Senate Bill 419

Public Act 3 of 1939 grants the Public Service Commission regulatory authority over public utilities, including electric light and power companies; water, telegraph, oil, gas, and pipeline companies; motor carriers; and transportation and communications agencies.

Senate Bill 419 would provide the PSC with the regulatory authority over rates, fares, fee, and charges of private, investor-owned wastewater utilities, upon application from the utility.

Both bills define "private, investor-owned wastewater utility" to mean a utility that delivers wastewater treatment services through a sewerage system and the physical assets of which are wholly owned by an individual or group of individual shareholders.

MCL 460.6

HOUSE COMMITTEE ACTION;

The House Committee on Natural Resources, Great Lakes, Land Use, and Environment reported a substitute version for each of the bills.

-- The committee substitute for Senate Bill 356 amends Part 41 of NREPA. The Senate-passed version of the bill amended Part 53 of NREPA.

-- The committee substitute for Senate Bill 419 limits the PSC's regulatory authority to rates, fees, and charges that may be assessed. The actual construction of these utilities would continue to be regulated by the DEQ.

BACKGROUND INFORMATION:

Pursuant to Part 41, the DEQ promulgated Rule 33 (R 299.2933), which provided, in part, that when the owner of a proposed sewerage system is not a governmental agency, the application for a construction permit must include a resolution from the local government having jurisdiction stating that it will assume responsibility for the effective and continued operation of the sewerage system should the actual owner fail to do so.

In November 2003, the Michigan Court of Appeals invalidated Rule 33 in *Lake Isabella Development, Inc. v. Village of Lake Isabella* (259 Mich App 393), finding the rule to be inconsistent with legislative intent and to be "arbitrary and capricious." In response to the *Lake Isabella* decision, the DEQ established a new policy for when the owner of a proposed treatment facility is not a governmental agency. Under the revised policy, the application for a construction permit must include a program that ensures the continued operation of the facility. This can be accomplished in one of two ways: (1) the application can include a resolution from the local governmental agency stating that it will assume responsibility for the effective and continued operation and maintenance of the proposed sewerage system if the owner fails, along with a copy of the contractual agreement between the owner and governmental agency; or (2) the application can include a program establishing a legal entity to own the proposed facility, a fund in escrow maintained for the perpetual operation and maintenance of the proposed facility, and a covenant running with the land for each parcel in the development to place the financial responsibility on land owners (through the assessment of user fees) for the continued operation and maintenance of the system. The DEQ notes that they have approved 24 permits utilizing this second option, with another 15 currently pending.

The DEQ requires the escrow be established and approved by the department before a construction permit will be issued. Initially, the escrow is to be established by the

developer or system owner in an amount sufficient to properly operate the facility, and for conducting maintenance and necessary repairs, for a period of at least two years. Each individual user is required, through the covenant, to contribute an additional prorated amount to cover the costs of operating, maintaining, and repairing the system for five years. The amount user fee is to be determined by a licensed professional engineer or certified wastewater treatment plant operator, and the covenant is to provide for periodic rate increases as necessary.

FISCAL IMPACT:

Senate Bill 356 would have no fiscal impact on the state or local units of government.

Senate Bill 419 requires additional regulatory and administrative duties for the Michigan Public Service commission, the cost of which would be funded by increased utility assessments on regulated industries. The number of private wastewater facilities that would be subject to regulation is indeterminate. Initially, it may be difficult to estimate assessments needed to fund the new responsibilities.

POSITIONS:

The Michigan Realtors Association supports the concept of the bills. (6-16-05)

The Michigan Environmental Council opposes the bills. (6-16-05)

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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.