

WATER TREATMENT GRANT PROGRAM EXPANSION

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Senate Bill 402 reported from House committee as amended

Sponsor: Sen. Phil Pavlov

House Committee: Natural Resources

Senate Committee: Natural Resources

Complete to 10-13-17

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 147 of 2017)

BRIEF SUMMARY: Currently, a municipality may not receive more than \$2 million in total grant assistance from the Strategic Water Quality Initiatives Fund. Senate Bill 402 would amend Section 5204e of the Natural Resources and Environmental Protection Act (NREPA) so that a municipality could receive up to an additional \$2 million for projects to address substantial health risks, for a potential total of up to \$4 million.

FISCAL IMPACT: The bill could increase costs to the state and increase revenues to at least one local unit of government, as described below.

THE APPARENT PROBLEM:

A combined sewer system has both sanitary sewers and storm drains flowing into the same pipes to be treated for public use. However, when heavy rains occur, excess water is forced out of the system, releasing untreated or partially treated water into public waterways.

The Department of Environmental Quality (DEQ) conducted water quality surveys in Worth Township in 2003, 2006, and 2008. These surveys found fecal coliform and E. coli bacteria in the surface waters of the town, and the data collected showed that conditions were worsening. At the time, Worth Township did not have a municipal sewerage system, which meant that all contamination came from septic systems on privately owned properties.

In 2004, the DEQ and Worth Township entered into a district compliance agreement, where the township agreed to construct a municipal sewerage system by June 1, 2008 to separate the sanitary and stormwater systems. However, Worth Township did not construct the sewerage system due to a lack of funds to complete the project. The DEQ then filed a lawsuit to compel Worth Township to prevent the discharge of raw sewerage into public waters. 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, but it did not compel the construction of a sewerage system. Worth Township appealed to the Michigan Court of Appeals, which reversed the trial court decision (*Dep't of Environmental Quality v. Worth Twp.*, 289 Mich App 414).

In 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." (*Dep't*

of *Environmental Quality v. Worth Twp.*, 491 Mich. 227). The court agreed with the trial court, noting that the construction of a sewerage system is not the only method available to remedy the discharge. However, the DEQ and Worth Township agreed that the most practical and comprehensive remedy is the construction of a municipal sewerage system.

To help cover the costs of the new sewerage project, Worth Township is using an \$8.9 million grant and \$30.9 million loan from the USDA, in addition to \$2 million total in grants from the Stormwater Asset Management and Wastewater Program (SAW) and the Wetland Mitigation Bank Funding Program, which is the cap on the amount of funds that a municipality may receive for this type of project. Construction bids for a new municipal sewerage system apparently have exceeded \$40 million. The bill aims to provide more monetary support to municipalities by increasing the funds available to eligible projects.

THE CONTENT OF THE BILL:

Section 5204e within NREPA created the Strategic Water Quality Initiative Fund, which provides grants to municipalities for sewage collection and treatment systems or stormwater or nonpoint source pollution control. Senate Bill 402 would amend that section to say that a municipality:

- Shall not receive more than \$2 million in grant assistance for purposes described in subsection (2)(B)(i) to (iv); and
- Shall not receive more than [an additional] \$2 million in grant assistance for the purposes described in subsection (2)(B)(v).

This new second \$2 million cap would apply to projects to address a substantial public health risk from treatment system failure, up to 50% of the project costs related to the planning, design, and construction of a sewage collection and treatment system.

The original \$2 million cap would now apply to the following:

- Development of an asset management program for a sewage collection and treatment system or a stormwater system.
- Development of management plans for the treatment of stormwater.
- Planning and design of a sewage treatment works project or stormwater treatment project as defined in Section 5301(n) or (o) or planning and design of construction activities designed to reduce nonpoint source pollution.
- Project costs of a municipality related to the testing and demonstration of innovative wastewater and stormwater technologies approved by the department.

MCL 324.5204e

HOUSE COMMITTEE ACTION:

The House Natural Resources Committee offered an amendment to allow for the bill to take immediate effect if enacted.

FISCAL INFORMATION:

Senate Bill 402 could increase costs for the Department of Environmental Quality by raising the aforementioned \$2.0 million cap on grants for projects to address a substantial public health risk which could lead to an increase in the expenditure of departmental funds. The magnitude of this impact is expected to be limited as only Worth Township is likely to qualify since this community is the only recipient of a SAW grant that would be eligible for additional assistance under the bill. SAW grants have all been awarded and no other recipients are expected to qualify for this additional assistance. The bill would not affect departmental revenues.

The bill is likely to have a positive fiscal impact on Worth Township by increasing financial assistance available to the community. The DEQ estimates that Worth Township would be awarded \$1.2 million from the Wetland Mitigation Bank Fund as a result of the grant cap increase included in the bill.

ARGUMENTS:

For:

Supporters of the bill argue that Worth Township's need is grave and prolific. Worth Township has been plagued by raw sewage in public waters for many years, but the township's financial status and low-income population has halted any progress of cleaning the water and preventing new contamination. As such, any additional funds that can be allocated to help clean raw sewage from the township's public waters is welcomed.

Against:

No arguments were presented in opposition to the bill.

POSITIONS:

Representatives from the following organizations showed support for the bill:

- Worth Township Supervisor (9-27-17)
- Michigan Municipal League (9-27-17)
- Michigan Townships Association (9-27-17)
- Michigan Department of Environmental Quality (9-27-17 and 10-4-17)
- Michigan Association of County Drain Commissioners (10-4-17)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.