Legislative Analysis

FLINT WATER CASES SETTLEMENT AGREEMENT

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Senate Bill 1251 as reported from House committee
Sponsor: Sen. Jim Stamas

Senate Bill 1252 as reported from House committee
Sponsor: Sen. Jim Ananich

House Committee: Government Operations
Senate Committee: Committee of the Whole
Complete to 12-15-20

(Enacted as Public Acts 358 and 359 of 2020)

SUMMARY:

Taken together, Senate Bills 1251 and 1252 would authorize the Michigan Strategic Fund (MSF) to issue bonds for a loan to cover the state's $600.0 million dollar share of a settlement agreement[1] in a consolidated case arising from the Flint water crisis and would express the intent of the legislature to repay that loan through an annual appropriation of $35.0 million for fiscal years 2021-22 through 2050-51. (See **Fiscal Impact** for further discussion.) The bills are described in greater detail below.

Senate Bill 1251 would amend the Michigan Strategic Fund Act to authorize MSF to borrow money, issue bonds or notes, and/or make a loan to the Special Purpose FWC Settlement Entity (SPE), which could use the loan proceeds only to pay its expenses, costs, and fees; to reimburse the state for its initial $5.0 million payment to the FWC Qualified Settlement Fund; and to pay to the FWC Qualified Settlement Fund the amount agreed to by the state in the settlement agreement and related approval orders in the consolidated cases known as *In re Flint Water Cases*.[2]

MCL 125.2002 et seq.

Senate Bill 1252 would amend the Michigan Trust Fund Act to create the Flint Settlement Trust Fund in the state treasury to address the cases known as *In re Flint Water Cases*. The state treasurer could receive money or other assets for deposit into the fund and would direct its investment, crediting to it interest and earnings from those investments. Money in the fund at the close of the fiscal year would not lapse to the general fund. The Department of Treasury would be the fund administrator for auditing purposes and could expend money from the fund only as described below.

The bill would provide that it is the intent of the legislature to appropriate from the general fund and allocate to the Flint Settlement Trust Fund $35.0 million each state fiscal year from FY 2021-22 through FY 2050-51, to make an annual payment to the SPE under the

[1] https://www.mied.uscourts.gov/PDFFIles/FWC_ProposedSettlementDocs_1319-1.pdf
[2] *In re Flint Water Cases*, No. 5:16-cv-10444-JEL-MKM (ED Mich).

settlement agreement. The bill would require the governor to annually include this amount in his or her executive budget consistent with the orders of the court.

The Flint Settlement Trust Fund would pay the allocated amounts to the SPE as provided in the settlement agreement. The SPE could pledge these payments in connection with any loan it entered into under SB 1251, as well as paying its expenses, costs, and fees, but it could not pledge or assign those payments for any other purpose.

A pledge or assignment made by the SPE as described above would be conclusively presumed to be valid unless challenged within 30 days in an action brought in the Court of Appeals. Challenges would have to be heard and determined as expeditiously as possible, with priority over other matters. The Court of Appeals would have to base its consideration solely on the record before the settlement was approved by the court, and briefs to the court would be limited to whether the pledge or assignment conforms to the state constitution and state and federal law and is within the authority of the Flint Settlement Trust Fund under the Michigan Trust Fund Act and the Michigan Strategic Fund Act.

Finally, the bill would provide that the payments described above are offers of settlement and compromise of any claims that were or could have been asserted by the plaintiffs in *In re Flint Water Cases* in full satisfaction of those claims, and that the bill could not be construed as an admission of liability or a waiver of any defense available to this state or its agencies, employees, or agents in any litigation.

MCL 12.252 and proposed MCL 12. 261

FISCAL IMPACT:

Collectively, the bills would provide the framework necessary to facilitate the settlement agreement and related preliminary approval orders, any amendments to those orders, or the subsequent final approval orders that will be entered by the court in the consolidated cases known as *In re Flint Water Cases*. As part of the settlement the state agreed to pay $600.0 million, with $5.0 million to be paid within 15 days of the preliminary approval and $595.0 million to be paid within 185 days of that approval.

The bills would authorize the Michigan Strategic Fund (MSF) to issue a bond or bonds equal to $600.0 million for the purpose of making a loan to the Special Purpose FWC Settlement Entity (SPE). The bond or bonds would be secured by a pledge of repayment from anticipated state appropriations and from any other sources. The state appropriations would be provided to the SPE, which would use the state appropriations to repay the loan provided by the MSF. The SPE would use the loan proceeds to repay the state for its initial $5.0 million payment to the Qualified Settlement Fund, with the remaining $595.0 million provided to the Qualified Settlement Fund to provide payments to the plaintiffs pursuant to the settlement agreement.

Senate Bill 1252 includes a statement of legislative intent to appropriate approximately $35.0 million GF/GP annually to the Flint Settlement Trust Fund for the purpose of making an annual payment to the SPE primarily for the repayment of the loan provided by the MSF from the bond proceeds. Payments are expected to be made for 30 years beginning in FY 2021-22. It should be noted that this was structured as a statement of intent because one legislature cannot bind future legislatures. However, while the bonds are not subject to the full faith and credit of the State of Michigan and are an obligation of the MSF, there likely would be downside credit risks for the state of Michigan if funds were not appropriated in future fiscal years.

The Department of Treasury and MSF would incur certain administrative costs associated with fund management and bond issuance. MSF bond issuance costs likely would be capitalized and expensed over the term of the bonds and included in bond payments. While administration and investment of the Flint Settlement Trust Fund would impose costs on the Department of Treasury these costs likely would be covered under current appropriations, including the marginal administrative fee that would be collected for the administration and investment of the fund.

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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.