

WATER TREATMENT GRANT PROGRAM EXPANSION

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Senate Bill 402 as passed by the Senate
Sponsor: Sen. Phil Pavlov
House Committee: None
Senate Committee: Natural Resources
Complete to 7-5-17

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

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.

Section 5204e 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.

FISCAL IMPACT:

The bill could increase costs to the state and increase revenues to at least one local unit of government.

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 for such assistance since this community is the only recipient of a stormwater, asset management, and wastewater (SAW) grant that would be eligible for additional assistance under the bill. All SAW grants have all be 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.

BACKGROUND:

According to a Senate Fiscal Agency analysis of the bill¹, 72 residential septic systems in Worth Township, Sanilac County, were discovered in 2006 to be failing and discharging raw sewage into Lake Huron. Reportedly, by 2017, the number of systems known to be failing had increased to over 500.

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)

¹ <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/Senate/pdf/2017-SFA-0402-A.pdf>

According to the Supreme 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.

As a result of the litigation, the township is required to take corrective measures to prevent the discharge of raw sewage. 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 million, the statute that provides for this program, however, currently sets a \$2 million cap on the amount of funds that a municipality may receive for this type of project.

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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.