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BILL ANALYSIS



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Senate Bill 995 (as enacted)
Sponsor: Senator Mike Green
Senate Committee: Transportation
House Committee: Transportation and Infrastructure

PUBLIC ACT 471 of 2018

Date Completed: 2-21-19

CONTENT

The bill amends Public Act 51 of 1951, the Michigan Transportation Fund law, to do the following:

- Create the Local Agency Wetland Mitigation Advisory Board, and specify its membership.
- Modify references to the Local Agency Wetland Mitigation Advisory Bank to refer instead to the Local Agency Wetland Mitigation Advisory Board.
- Dissolve the Local Agency Wetland Mitigation Bank Advisory Board, beginning on April 2, 2019.
- Increase the Local Agency Wetland Mitigation Bank Fund's cap, from \$5.0 million to \$8.0 million.
- Allow the Board to approve the use of local agency wetland mitigation funds for other activities needed to establish a premitigation wetland area or wetland preservation site or other mitigation as permitted by law upon a demonstrated need by a local road agency.
- Require the Local Agency Wetland Mitigation Program to provide funds to local road agencies for obtaining conservation easements in perpetuity and maintenance of endowment funds to manage wetland mitigation sites.
- Require the Program to provide funds to local road agencies for purchasing wetland mitigation bank credits from an established wetland mitigation bank approved by the Department of Environmental Quality to meet a local agency's wetland mitigation permit requirements.
- Increase, from 90 to 180, the number of days after receiving an application by which the Board must approve or deny the application.
- Revise the role of a part-time or full-time manager or engineer who is employed by the Board.

The bill will take effect on March 27, 2019.

Local Agency Wetland Mitigation Advisory Board

Currently, the Local Agency Wetland Mitigation Bank Advisory Board consists of the following nine members:

- One voting member appointed by the County Road Association of Michigan from a county with a population greater than 400,000.

- One voting member appointed by the County Road Association of Michigan from a county with a population greater than 65,000 but no more than 400,000.
- One voting member appointed by the County Road Association of Michigan from a county with a population of less than 65,000.
- One voting member who must be an engineer appointed jointly by the County Road Association of Michigan and the Michigan Municipal League.
- One voting member appointed by the Michigan Municipal League from a city with a population of more than 70,000.
- One voting member appointed by the Michigan Municipal League from a city with a population of 70,000 or less.
- One voting member appointed by the Michigan Municipal League from a village.
- Two nonvoting members appointed by the Michigan Department of Transportation (MDOT) and the Department of Environmental Quality (DEQ).

Under the bill, beginning March 27, 2019, the Local Agency Wetland Mitigation Advisory Board will be created and will consist of the following seven members:

- Four voting members from road agencies appointed jointly by the County Road Association of Michigan and the Michigan Municipal League.
- One voting member who would have to be an engineer appointed jointly by the County Road Association of Michigan and the Michigan Municipal League.
- Two nonvoting members appointed by MDOT and the DEQ.

Members first appointed to the Local Agency Wetland Mitigation Advisory Board must be appointed no later than April 1, 2019. Beginning on April 2, 2019, the Local Agency Wetland Mitigation Bank Advisory Board is dissolved.

Local Agency Wetland Mitigation Bank Fund

The Act establishes the Local Agency Wetland Mitigation Bank Fund in the State Treasury. The money appropriated to the Fund and the interest accruing to it must be spent for the Local Agency Wetland Mitigation Bank Program. The balance of the Fund may not exceed \$5.0 million at the beginning of a fiscal year, less the amount of funds that have been obligated but not yet spent. The bill increases the Fund's cap to \$8.0 million.

Local Agency Wetland Mitigation Bank Program

The Local Agency Wetland Mitigation Bank Program must provide funds to local road agencies for one or more of the following:

- Complete engineering design for a wetland mitigation bank.
- Purchase of land for a wetland mitigation bank.
- Construction of a wetland mitigation bank.
- Monitoring and maintenance necessary to ensure that the performance standards are or will be met.
- Funding for a wetland mitigation bank established before September 22, 2016.

The bill refers to wetland mitigation site, instead of wetland mitigation bank, and also requires the Local Agency Wetland Mitigation Program to provide funds to local road agencies for obtaining conservation easements in perpetuity and maintenance of endowment funds to manage wetland mitigation sites, and for purchasing wetland mitigation bank credits from an established wetland mitigation bank approved by the DEQ to meet a local agency's wetland mitigation permit requirements.

Currently, the Board may approve the use of grant funds for other activities needed to establish a wetland mitigation bank upon a demonstrated need by a local road agency. Under the bill, the Board may approve the use of local agency wetland mitigation funds for other activities needed to establish a wetland mitigation site, a pre-mitigation wetland area or wetland preservation site, or other mitigation as permitted by law upon a demonstrated need by a local road agency.

Application Review

The Act requires the Board to establish a review process for considering funding applications. No later than 90 days after receiving a funding application, the Board must notify the applicant in writing whether the application is approved or rejected. If the board fails to notify an applicant in writing whether the application is approved or rejected within 90 days after receiving the funding application, the application must be considered approved. The bill increases, from 90 to 180, the number of days after receiving an application by which the Board must approve or deny the application.

Full-Time and Part-Time Employees

The Act allows the Board to employ a part-time or full-time manager or engineer who must maintain and report the activities of the Local Agency Wetland Mitigation Bank Fund to the Board, work with local road agencies, engineers, and environmental consultants to implement the Act and promote efficiency and economy in the operations of the Local Agency Wetland Mitigation Bank Program, exercise general oversight of construction to ensure that environmental laws and regulations, plans, and specifications are followed, and perform other duties as directed by the Board. The bill modifies this provision to allow the Board to employ a part-time or full-time manager or engineer or contract with a person or firm to perform professional, technical, or administrative assistance or legal counsel. The Board must determine the duties of a person or firm employed under these provisions, and require the manager and the Board to retain insurances.

MCL 247.660 & 247.661h

BACKGROUND

Public Act 246 of 2016 established the Local Agency Wetland Mitigation Bank Fund and the Local Agency Wetland Mitigation Bank Advisory Board. The Michigan Transportation Fund law requires \$2.0 million to be allocated annually from three cents of gasoline tax to the Local Agency Wetland Mitigation Bank Fund. As stated above, the balance of the Fund currently may not exceed \$5.0 million at the beginning of a fiscal year.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill will have a minor positive impact on the Department of Transportation and a positive impact on local units of government seeking to retain wetland mitigation funding. By restructuring the Local Agency Wetland Mitigation Advisory Board from nine members to seven members, the Department will see a minor decrease in travel expenses for board member meetings. Members of the Board are unpaid, but their travel expenses are reimbursed through the Wetland Mitigation Bank Fund.

Although the cap for the wetland mitigation bank fund will be raised to \$8.0 million from \$5.0 million under the bill, this change does not increase the annual appropriation amount of \$2.0 million.

Lastly, the use of wetland mitigation bank funds is amended to include the acquisition of easements in perpetuity and maintenance of endowment funds, as well as wetland mitigation credits from a wetland mitigation bank approved by the Department of Environmental Quality. This will assist local agencies by allowing them to create mitigation sites and to obtain easements and permits without using other funding sources in advance of applying for wetland mitigation funds.

Fiscal Analyst: Michael Siracuse

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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.