



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #480

Contaminated Sediment Bonding (DNR -- Environmental Quality)

[LFB 2015-17 Budget Summary: Page 325, #9]

CURRENT LAW

Since 2007, the Department of Natural Resources (DNR) has been authorized a total of \$32 million in SEG-supported general obligation bonds to pay a portion of the costs of removal of contaminated sediment from Lake Michigan or Lake Superior or their tributaries, if the project is in a water body that DNR has identified, under the federal Clean Water Act, as being impaired and the source of the impairment is contaminated sediment. Debt service costs to repay the bonds are paid from a sum sufficient appropriation from the segregated environmental management account, and totaled \$1,410,900 in 2013-14.

GOVERNOR

Provide \$5,000,000 BR to increase, from \$32 million to \$37 million, the total amount of SEG-supported general obligation bonds authorized to pay for a portion of the costs of removal of contaminated sediment from certain water bodies. In addition, expand the eligible uses of the bonding to include projects to remove contaminated sediment from any waters of the state, if, as under current law, the project is in a water body that DNR has identified, under the federal Clean Water Act, as being impaired and the source of the impairment is contaminated sediment.

DISCUSSION POINTS

1. Under 2007 Wisconsin Act 20 (the 2007-09 biennial budget act), DNR was authorized \$17 million in general obligation bonding authority for removal of contaminated sediment from Lake Michigan or Lake Superior or their tributaries if federal funds were provided for the project

under the federal Great Lakes Legacy Act. In each of the three subsequent biennial budgets (2009-11 through 2013-15), an additional \$5 million in bonding authority has been provided, to reach the current authorization of \$32 million. Under 2009 Act 28, eligibility for use of the bonding authority was expanded so that projects do not have to receive federal funding under the Great Lakes Legacy Act for a portion of costs, but the project would have to be in Lake Superior or Lake Michigan or their tributaries, and would have to have been identified by DNR, under the federal Clean Water Act, as being impaired and the source of the impairment is contaminated sediment.

2. Contaminated sediment cleanup projects funded from the current bonding authority are shown in Table 1. A total of \$23.2 million in state bonding expenditures or encumbrances have funded or are currently funding five projects in Milwaukee, Sheboygan, and Marinette. DNR estimates the state expenditures leveraged approximately \$147 million in expenditures by other parties, including almost \$115 million in federal and local government funding and \$32 million by responsible parties.

TABLE 1

Contaminated Sediment Projects Funded from Existing Bonding Authority

| <u>Project</u> | <u>Bonding Expenditures/Encumbrances</u> |
|--|--|
| Milwaukee – Kinnickinnic River | \$7,527,916 |
| Milwaukee – Lincoln Park / Milwaukee River Phase I | 8,900,000 |
| Sheboygan Harbor | 3,319,998 |
| Milwaukee – Lincoln Park / Milwaukee River Phase II | 2,430,000 |
| Marinette – Menominee River, Ansul arsenic site | <u>1,000,000</u> |
| Total | \$23,177,914 |
| Remaining Uncommitted Currently Authorized Authority | \$8,822,086 |

3. As shown in Table 1, over \$8.8 million in currently authorized bonding has not been committed. This means that none of the \$5 million in bonding authority provided in 2013-15 has been allocated to projects. However, in 2012, the total allocated amount had reached \$26.7 million, but a portion of committed funds were eventually not needed to complete projects, and are now available for other eligible projects.

4. Table 2 shows the potential contaminated sediment projects that meet eligibility requirements under current law. The timeline for these projects varies, depending on the specific situation of each project, status of investigations of contamination, and status of negotiation or agreements with responsible parties and local and federal government funding partners. While there is uncertainty about the timing of work at several of these sites, DNR anticipates that some or all of the remaining \$8.8 million in existing bonding authority might be committed for the over \$12 million in anticipated projects in Superior, Milwaukee, Cedarburg and Manitowoc before the end of the 2015-17 biennium.

5. Table 2 also shows contaminated sediment projects DNR is working on that do not meet current eligibility requirements. If the eligibility change under the bill is adopted to allow funding of contaminated sediment cleanup projects in waters of the state outside of the Great Lakes, DNR hopes to commit bonding authority of up to \$2 million for a project in Eau Claire on the Chippewa River, which is on the list of impaired waters and would become eligible under the language change in the bill.

TABLE 2

Potential Sites for Cleanup with Contaminated Sediment Bonding Authority

| <u>Project</u> | <u>Potential Bonding Expenditures</u> |
|--|---------------------------------------|
| Meets Current Law Eligibility | |
| Superior – St. Louis River, Howard's Bay | \$1,000,000 |
| Superior – St. Louis River, Barker's Pickle Pond | 1,000,000 |
| Cedarburg – Cedar Creek (Milwaukee River tributary) | 1,500,000 |
| Superior – St. Louis River, Crawford Creek | 1,000,000 |
| Milwaukee – Milwaukee River Harbor, Solvay Coke manufacturing gas plant site | 2,000,000 |
| Milwaukee – Milwaukee River downstream of Estabrook Dam | 3,000,000 |
| Manitowoc – Manitowoc River mouth, manufactured gas plant site | 2,500,000 |
| Milwaukee - Menomonee River downstream of Kerr/McGee Superfund site | Unknown |
| Milwaukee - Kinnickinnic River harbor downstream of Solvay Coke Superfund site | Unknown |
| Not Eligible under Current Law or the Bill, Would Become Eligible Under the Bill Because on Current List of Impaired Waters | |
| Eau Claire - Chippewa River at City wastewater treatment plant | \$2,000,000 |
| Not Eligible under Current Law or the Bill, Would Become Eligible Under the Bill If Added to List of Impaired Waters | |
| Portage Canal | \$10,000,000 |
| Rusk County - Village of Bruce Pond | Unknown |
| Taylor County - Tannery Creek entering Little Rib Lake | Unknown |

6. DNR is also beginning to plan for potential expenditures of \$10 million in 2017 or later, for a Portage Canal mercury and lead contaminated sediment cleanup project, and unknown amounts for projects in Rusk and Taylor Counties. These three projects are not currently designated on the list of impaired waters, and thus would not be eligible under the bill unless and until they are added to the list. DNR would have to collect data about specific potential impaired waters and follow a public comment process before submitting a list of impaired waters to the U.S. Environmental Protection Agency (EPA) with a request to designate them as impaired waters. Only after EPA approval of the list would the sites become eligible for use of bonding authority under the change in the bill. It is uncertain whether the designation could happen before the end of 2016-17. DNR indicates that, if the Portage Canal completes internal review and approval for proposed listing in 2015, it could be included in the proposed list of impaired waters submitted to EPA by April 1, 2016. It is likely that, under this potential timeline, the Portage Canal would not be officially listed before the summer of 2017.

7. In general, when DNR has bonding authority in place and available for allocation to a project, it makes it easier to assemble project funding packages that include federal and local governments and private responsible parties or other entities who can contribute funding to a contaminated sediment project. The Department needs bonding authority in place before it can allocate it to a project. DNR commits or allocates funding for a project when the project study reaches a stage of feasibility, and negotiations with other potential funding partners result in development of a complete funding package.

8. Debt service costs for bonds issued under the contaminated sediment bonding authority are expected to total approximately \$1.6 million in 2014-15, \$1.7 million in 2015-16, and \$2.1 million in 2016-17. The \$5 million in new bonding authority under the bill would not be expected to result in an increase in debt service costs in 2015-17, but would be anticipated to increase debt service costs in future biennia as bonds are gradually issued to pay for contaminated sediment cleanup projects. Debt service costs on \$5 million in general obligation bonds would be approximately \$350,000 annually when all of the bonds are issued (assuming a 20-year term). As the amount authorized and spent for contaminated sediment cleanup increases, the amount spent from the environmental management account for debt service would generally increase.

9. The currently authorized and unallocated \$8.8 million in contaminated sediment bonding authority may be sufficient to fund projects anticipated to move forward during the 2015-17 biennium. Thus, the \$5 million in new authority might not be needed. The bill could be amended to maintain the current level of bonding authority [Alternative A3].

10. Another option would be to provide a smaller increase in bonding authority than the amount provided in the bill. For example, \$2 million could be provided instead of \$5 million [Alternative A2]. This would provide a total of \$10.8 million in authority (\$8.8 million existing and \$2 million new) that has not been allocated to projects yet. This might provide DNR with sufficient flexibility to commit to additional projects beyond the current level of authorization.

11. Approving the expanded eligible use of bonding under the bill to any impaired waters of the state could provide additional flexibility for DNR to fund contaminated sediment cleanup projects throughout the state when projects reach the stage of readiness for sediment removal [Alternative B1]. Under this view, expanding the eligible uses of bonding would be appropriate at this time even though the projects DNR most wants to use it for will still need to go through a lengthy process to become eligible, and may not be eligible for use of bonding authority until late in or after the end of the 2015-17 biennium.

12. Some may argue that any existing and additional bonding authority should continue to be prioritized for projects in the Great Lakes or their tributaries. In addition, expanding the use of environmental management account expenditures may be viewed as a concern when there are other demands for expenditures from the account. The bill could be amended to maintain the current eligibility requirements [Alternative B2].

13. Other contaminated sediment removal projects have been accomplished in the state with separate general obligation authority for remedial action and contaminated sediment cleanup, with debt service paid from a separate environmental management account SEG appropriation.

This has included projects in Superior, Marinette, Milwaukee, and the Fox River (excluding the Fox River PCB cleanup). There is approximately \$5.1 million in authorized, unallocated bonding from this source, and DNR officials anticipate the Department will allocate approximately \$2 million of it during the 2015-17 biennium, leaving approximately \$3.1 million authorized but unallocated. This bonding is used primarily for the state's share of cleanup of federal Superfund sites, and state-funded cleanups under the environmental repair and hazardous substances spills statutes. Since the separate contaminated sediment bonding authority was created in 2007, DNR has tried to separately manage the remedial action bonding authority for contaminated land cleanup projects, and the contaminated sediment bonding authority for projects in the Great Lakes and their tributaries. However, if the Committee chooses to not provide an increase in contaminated sediment bonding authority, DNR could choose to use the remedial action bonding authority for contaminated sediment projects if it allocates all of the existing contaminated sediment bonding authority and needs additional authority during the 2015-17 biennium.

14. If the bonding authority is not provided, DNR would need to prioritize commitment of the currently authorized, unobligated authority for projects, or could allocate remedial action bonding authority [Alternative A3]. It is possible that local governments and responsible parties might be able to provide part of the funding for priority projects.

ALTERNATIVES

A. Amount of Bonding Authority

1. Approve the Governor's recommendation provide \$5,000,000 BR, to increase from \$32 million to \$37 million, the amount of SEG-supported general obligation bonding authority for contaminated sediment cleanup.

2. Provide \$2,000,000 BR for contaminated sediment cleanup (instead of \$5,000,000 under the bill).

| ALT 2 | Change to Bill |
|-------|----------------|
| BR | - \$3,000,000 |

3. Delete provision.

| ALT 3 | Change to Bill |
|-------|----------------|
| BR | - \$5,000,000 |

B. Eligible Uses of Bonding Authority

1. Approve the Governor's recommendation to expand eligible uses of the bonding to include projects to remove contaminated sediment from any waters of the state, if the project is in a

water body that DNR has identified, under the federal Clean Water Act, as being impaired and the source of the impairment is contaminated sediment.

2. Delete provision.

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