



Legislative Fiscal Bureau

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TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 266/Senate Bill 252: Flood Risk Reduction Projects in Ashland County

Assembly Bill 266 and Senate Bill 252, identical bills, would provide \$150,000 GPR on a one-time basis in the 2019-21 biennium for the development of natural flood risk reduction practices in Ashland County. AB 266 was introduced June 7, 2019, and referred to the Assembly Committee on Rural Development. Assembly Amendment 1 was subsequently introduced on August 12, 2019. On August 15, 2019, a public hearing was held, and on September 19, 2019, an executive session was held. By votes of 11 to 0, the Committee on Rural Development recommended both adoption of Assembly Amendment 1 and passage of the bill as amended.

Senate Bill 252 was introduced on May 30, 2019, and referred to the Senate Committee on Natural Resources and Energy. A public hearing was held on June 12, 2019. On June 18, 2019, Senate Amendment 1 was introduced. An executive session was held on June 20, 2019, and by votes of 5 to 0, the Committee on Natural Resources and Energy recommended adoption of Senate Amendment 1 and passage of the bill as amended.

BACKGROUND

Since July, 2016, Wisconsin has received federal disaster declarations for six events in which severe storms caused significant flooding events in various parts of the state. The first such event, in 2016, impacted several northwestern Wisconsin counties in and near the Lake Superior basin. Following the flood event, staff of the Wisconsin Wetlands Association undertook a study in the region to assess how impaired floodplain, waterway, and wetland functionality throughout the watershed had influenced storm damage, particularly to public infrastructure, during significant storm events. In general, the study found: (a) instances where effective water retention either was or was not present to mitigate high-energy water flows, which can damage existing infrastructure and endanger populated areas; and (b) ample wetland restoration opportunities in the region were available but not adequately used, nor demonstrated on a sufficient scale to encourage broader use.

Ashland County subsequently began planning to use wetland and floodplain restoration as a disaster mitigation strategy, and the Federal Emergency Management Agency (FEMA) preliminarily awarded Ashland County a \$200,000 grant beginning in January, 2020, to plan the implementation of various strategies and practices in the Marengo River watershed. The results of the planning are expected to prompt demonstration projects to test the methods and practices that are proposed.

CURRENT LAW

Under Chapter 87 of the statutes (flood control), counties, cities or villages are to exercise floodplain zoning to “determine and fix by order the limits of any or all floodplains within a county, city or village within which serious damage may occur.” (Local floodplain ordinances also are required for participation in the National Flood Insurance Program, which may be required for some properties.) The Department of Natural Resources (DNR) is authorized to issue orders delineating floodplains for any county, city or village that has not established a “reasonable and effective” ordinance in a timely fashion after maps and data are available.

Additionally, state law requires certain activities that would fill or discharge material to wetlands to be authorized under a permit issued by the DNR. (Certain wetland-impacting activities may also require federal approval.) State law generally requires wetland-impacting activities to avoid, minimize, or compensate for the impacts to wetlands.

Several state agencies administer programs for municipal planning, construction, and property acquisition to preserve floodways or the structures therein, to plan for the mitigation of flood disasters, or to restore damage from disasters. The DNR municipal flood control and riparian restoration program provides up to 50% grants for both planning and design costs or construction and real estate acquisition costs. Construction or acquisition projects may include: (a) acquisition and removal of repetitive loss or substantially damaged structures, or structures in the 100-year floodplain; (b) flood-proofing and elevation of structures; (c) acquisition of vacant land or flowage easements; and (d) certain flood control structures. Municipal flood control grant awards totaled \$2.5 million for the grant cycle covering 2018 and 2019. The program is funded through the segregated (SEG) nonpoint account of the environmental fund and nonpoint SEG-supported bonding revenues. The nonpoint account is anticipated to have a June 30, 2021, closing available balance of approximately \$4.9 million.

DNR also administers a wetland compensatory mitigation program known as the Wisconsin Wetland Conservation Trust (WWCT). Under the WWCT, wetland-impacting activities receiving state permits pay surcharges or fees that are deposited to a state reserve for support of the construction or restoration of wetlands, generally in the area of the wetland-impacting activity. DNR reports the WWCT had an uncommitted balance of \$5.9 million as of June 30, 2019.

FEMA administers hazard mitigation assistance grant programs with assistance from the Wisconsin Department of Military Affairs (DMA). Funded activities include property acquisition, dry flood-proofing, elevation of structures, minor localized flood reduction, and safe room construction to protect life and property from future disaster damages.

The U.S. Department of Housing and Urban Development administers the Community Development Block Grant - Emergency Assistance Program with assistance from the Wisconsin Department of Administration. The program assists local units of government in addressing emergency housing, public facility, and infrastructure that occur as a result of natural or manmade disasters.

The State Disaster Assistance Program, administered by DMA, reimburses local units of government for governmental damages and costs incurred as the result of a qualifying major catastrophe. In 2019-20, the program is provided \$1,711,200 petroleum inspection fund SEG.

The Department of Transportation (DOT) disaster damage aids program provides financial assistance to local governments to repair any highway under its jurisdiction that has had significant damage caused by a disaster event that is not located on the state trunk highway system. The program is appropriated \$1.0 million transportation SEG annually from a sum sufficient appropriation. In addition, in the second fiscal year of each biennium, the Department is required to calculate the amount of disaster damage aid to be paid during the biennium in excess of \$1,000,000 in connection with damage resulting from a single disaster. This amount is transferred under a sum sufficient appropriation from the general fund to the transportation fund in the second fiscal year of each biennium. DOT may not pay aid in excess of \$1,000,000 in connection with disaster damage resulting from a single disaster unless the payment of aid is approved by the Governor.

SUMMARY OF BILL AND AMENDMENT

Assembly Bill 266/Senate Bill 252

The bills would provide \$75,000 GPR in each of 2019-20 and 2020-21 in a new biennial appropriation for DNR to expend on a flood risk pilot project. The appropriation would be repealed July 1, 2021. In a nonstatutory provision, the bill would require DNR to allocate \$150,000 to Ashland County to design, implement and evaluate not more than three demonstration projects that test natural flood risk reduction practices in the county. The provision would make the following costs eligible: (a) engineering and design; (b) materials; (c) construction costs; (d) pre-construction and post-construction monitoring; and (e) project management.

As introduced, the bill would require DNR to require Ashland County to submit, no later than June 30, 2021, a report summarizing results of the demonstration projects. DNR would be required to submit to the Legislature and Wisconsin Emergency Management (WEM) within DMA a report summarizing the projects and recommendations for how existing state policies or funding could be adapted to create incentives to protect and restore natural infrastructure and reduce floods.

Assembly/Senate Amendment 1

AA1/SA1 would modify the reporting requirement to specify that DNR require Ashland County to submit a report summarizing the results to date of the demonstration projects. The amendment would maintain the June 30, 2021, reporting deadline.

FISCAL EFFECT

The bill would appropriate \$150,000 GPR on a one-time basis in the 2019-21 biennium. Ashland County officials note while the FEMA grant would mostly support planning and certain stages of designs, state funding under the bill would support field implementation of the demonstration projects. Ashland County officials also suggest other state and federal funds would be used in conjunction with the GPR, including from the soil and water resource management program in the Department of Agriculture, Trade and Consumer Protection. This would owe to certain project sites occurring on former or current farms, which would align with eligibility under those programs due to state requirements that changes or discontinuations in certain agricultural practices may require state cost-sharing of 70%. However, it is anticipated not all aspects of the demonstration projects would be eligible for funding under current programs, and GPR funding is in part intended to support such costs. Ashland County indicates that without GPR funding, there currently are insufficient funds identified to execute the maximum number of demonstration projects in the near term.

In a fiscal estimate for the bill, DNR has identified several agency costs that would be absorbed with existing resources primarily in the watershed management and finance program areas: (a) up to \$2,000 per project, consisting of an estimated 40 hours of staff time at \$50 per hour in salary and fringe benefit costs for a water regulation and zoning engineer to attend project status meetings and conduct oversight and monitoring; (b) an estimated \$2,000 for DNR to compose and submit the required report to the Legislature and WEM; and (c) an unspecified amount to administer the grant with Ashland County. DNR expects field costs associated with project status meetings and monitoring would be lower if projects were conducted simultaneously. In the 2019-21 biennium, the DNR watershed management and finance programs are budgeted at approximately \$17.4 million and \$7.6 million annually, respectively.

Prepared by: Paul Ferguson