



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #586

### **Contaminated Sediment Removal Bonding (DNR -- Water Quality)**

[LFB 2009-11 Budget Summary: Page 482, #13]

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#### **CURRENT LAW**

Two general obligation bonding authorizations are generally used for contaminated sediment cleanup. The state's debt service costs for the bonds are paid from the segregated environmental management account of the environmental fund.

Under 2007 Wisconsin Act 20 (the 2007-09 biennial budget act), the Department of Natural Resources (DNR) was authorized \$17 million in general obligation bonding authority for removal of contaminated sediment from Lake Michigan or Lake Superior or their tributaries under section 281.87 of the statutes if federal funds are provided for the project under the federal Great Lakes Legacy Act.

DNR is also authorized \$7 million in general obligation bonding authority for remediation activities under s. 281.83, that clean up or restore the environment (including, but not limited to contaminated sediment cleanup) in an area that is in or adjacent to Lake Michigan or Lake Superior or their tributaries if the activities are included in a remedial action plan that is approved by the Department.

#### **GOVERNOR**

Provide \$5,000,000 BR, to increase, from \$17 million to \$22 million, the amount of general obligation bonds authorized for s. 281.87. Authorize DNR to use the bonding authority to pay for 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. Eliminate the current requirement that the bonding can only be used if federal funds are provided for the project under the federal Great Lakes Legacy Act.

## **DISCUSSION POINTS**

1. The federal Great Lakes Legacy Act of 2002 (GLLA) authorized up to \$270 million in funding over five years, from federal fiscal year 2004 through 2008, to assist with the remediation of contaminated sediment in 30 designated U.S. Areas of Concern (AOCs). In federal fiscal years 2004 through 2008, approximately \$126 million was appropriated for remediation projects. The GLLA requires 35% of project costs to be paid from non-federal sources. Funding priority is given to projects that have been identified in a remedial action plan and are ready to be implemented, including commencement of remediation, within one year after receipt of federal funding. The Great Lakes Legacy Reauthorization Act of 2008, effective October 8, 2008, provided two additional years of funding.

2. The AOCs are defined as severely degraded areas within the Great Lakes basin whose beneficial uses are impaired because of changes to the physical, chemical, or biological integrity of the system. The four major categories of beneficial use impairments are contaminated sediments, habitat loss or destruction, nonpoint source pollution, and beach issues. AOCs generally experienced many years of discharges of pollutants from industrial sources, including contaminants such as polychlorinated biphenyls (PCBs), heavy metals, and polycyclic aromatic hydrocarbons (PAHs). The five AOCs in Wisconsin are the: (a) St. Louis River and Bay (between Superior, Wisconsin and Duluth, Minnesota); (b) Menominee River (between Marinette, Wisconsin and Menominee, Michigan); (c) Lower Green Bay and the Fox River; (d) Sheboygan River (which flows into Lake Michigan at the City of Sheboygan); and (e) Milwaukee Estuary.

3. In 2005, a contaminated sediment removal project in Superior, Wisconsin, was the second completed GLLA project in the country. Under the \$6.3 million project, 60,000 tons of contaminated sediment was removed from the mouth of Newton Creek and Hog Island Inlet. GLLA funds provided \$4.1 million and DNR's general environmental cleanup bonding authority (used for cleanup of contaminated site and groundwater projects) provided \$2.0 million of the \$2.2 million non-federal share (Murphy Oil USA Inc. provided the remaining \$200,000).

4. The \$17 million in bonding authority approved in 2007 Act 20 for contaminated sediment removal projects that receive GLLA funds was primarily intended for two projects in the Milwaukee Estuary AOC. The first is a project to remove contaminated sediments from the Kinnickinnic River between Becher Street and Kinnickinnic Avenue on the south side of Milwaukee. The project will cost over \$22 million, with a federal GLLA share of \$14.3 million and state share of \$8 million to remove approximately 170,000 cubic yards of sediments contaminated with PCBs, and PAHs. (Recently identified costs increased DNR's estimated costs from \$7.7 million to \$8 million). Dredging is beginning in 2009.

5. The second project intended to be funded with the \$17 million would be to remove

PCB contaminated sediment in the Lincoln Park lagoons and channels of the Milwaukee River up river from the Estabrook Dam. This project is located between the Cities of Milwaukee, Glendale and Whitefish Bay. The project is a joint Environmental Protection Agency (EPA), DNR, and Milwaukee County project. During the last two years, DNR worked with EPA to amend the boundary of the Milwaukee Estuary AOC to include all of the Lincoln Park / Milwaukee River project area. EPA is currently funding a remedial investigation feasibility study to determine the distribution and volume of contamination, and the options for a remediation approach. The estimated project cost is \$34 million, with a federal GLLA share of \$22 million and state share of \$12 million. DNR officials anticipate the Department will sign a GLLA agreement with EPA during the summer of 2009, complete final engineering design and project bidding during the fall and winter, begin remediation in 2010, and complete remediation in 2011. A complicating factor is that, separate from the contaminated sediment project, the Estabrook Dam is also in need of significant repairs or removal. Cost estimates for the dam project have varied between \$2 million and \$12 million.

6. The two GLLA projects funded from the \$17 million authorized in 2007 will require a non-federal cost share of approximately \$20 million, including \$8 million already committed for the Kinnickinnic River and \$12 million anticipated to be needed for the Lincoln Park / Milwaukee River project. Thus, the current \$17 million in bonding authority is short by \$3 million needed for the full non-federal match to obtain \$22 million in federal GLLA funds for the project. If it is not provided from the bonding recommended under the bill, an alternative revenue source would be needed.

7. The administration intends that the expansion of project eligibility criteria in the bill would make bonding available for contaminated sediment projects in addition to those funded under GLLA. There are 66 sections of Great Lakes rivers, harbors or tributaries on DNR's list of impaired waters, where the major source of impairment is contaminated sediment.

8. Projects are not eligible for GLLA funding if they are on, or have been nominated to, the Superfund National Priorities List. Thus, the major PCB contaminated sediment cleanup in the Fox River, and an area of the Sheboygan harbor which is a Superfund site, are not currently eligible for GLLA funding. These projects would meet the eligibility requirements under the bill because they are on the list of impaired waters.

9. DNR officials indicate it is not their intent to use the revised eligibility criteria under the bill for projects such as the Fox River. Rather, they intend to use it on projects that might cost \$1 million to \$10 million. They plan to evaluate the level of toxicity of the sediments at a project site, the potential for direct human contact, the health risks to humans and other life, and the readiness of the project to proceed to construction.

10. Examples of projects in GLLA AOCs include additional contaminated sediment removal work in the Sheboygan River that is not in the Superfund site and the Marinette harbor in the Menominee River AOC. The Marinette downtown harbor needs removal of contaminated sediments as the first step in a downtown revitalization project, at a cost of roughly \$2 million.

While it is in an AOC, DNR officials indicate the level of contamination is probably not big enough to be a high priority on the GLLA funding lists.

11. Examples of projects that are not in GLLA AOCs and that need cleanup of contaminated sediment and could potentially use some of the funding under the bill include (in no specific priority order): (a) the Marinette inner harbor; (b) the Hayton area remediation project in the Manitowoc River basin, including PCB removal traced back to a former paper mill, with removal work completed along Jordan Creek, and ongoing in Pine Creek (the paper mill has paid for cleanup to date); (c) the Kewaunee Marsh site approximately one mile from Lake Michigan next to the Kewaunee River, where \$1.5 to \$2 million might be needed to clean up arsenic contamination from a very old train spill, stop arsenic from moving through groundwater and sediment to the river, and remove high concentrations of arsenic that are killing birds (the railroad company has agreed to pay a portion of costs); and (d) coal tar contaminated sediment sites in the Manitowoc River in the City of Manitowoc and Sheboygan River in the City of Sheboygan.

12. Of the existing \$7 million in general obligation bonding authority for contaminated sediment cleanup other than GLLA projects, \$5,759,200 has been expended or encumbered for four projects. The projects include \$1,356,800 spent to remove some and cap other contaminated sediments located behind the North Avenue Dam on the Milwaukee River in the City of Milwaukee when the dam was removed. Second, \$3,057,400 was spent to clean up a three-acre PCB hotspot in the Fox River near Kimberly, as a demonstration project to test the effectiveness of large-scale hydraulic dredging of contaminated sediment. Third, \$248,800 was paid to Minergy Corporation in Neenah to determine the cost-effectiveness of vitrification (conversion to glass) of PCB contaminated sediment from the Fox River. Fourth, \$1,096,200 was spent to remove PCB contaminated sediment at the Blatz Pavilion lagoon in Lincoln Park in 2008.

13. There is a remaining uncommitted balance of \$1,240,800 from the \$7 million in bonding authority for non-GLLA projects. This could potentially be used for a portion of the additional \$3 million needed for the non-federal match for the Lincoln Park / Milwaukee River project. It could also be used for other contaminated sediment removal projects which are not eligible to receive GLLA funds.

14. The \$17 million currently authorized for contaminated sediment bonding authority for GLLA projects will incur estimated debt service costs of \$464,000 SEG in 2009-10 and \$635,200 SEG in 2010-11. The \$5 million in contaminated sediment bonding authority under the bill would not be expected to result in an increase in debt service costs in 2009-11, 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 \$400,000 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 for debt service would increase.

15. It is likely that the debt service requirements for \$5 million in bonding authority would either increase the long-term need for additional revenue to the environmental management

account or require future reductions in expenditures for contaminated land and brownfields cleanup activities. (A separate budget paper describes funding sufficiency issues related to the environmental management account.)

16. It is likely that other contaminated sediment projects could utilize some of the proposed bonding authority and federal GLLA funds in the next several years. It is also likely that other contaminated sediment removal projects which do not receive GLLA funds, or are not eligible for GLLA funds, could draw on existing environmental fund supported cleanup authority. However, these sources are not expected to be adequate to fund all currently identified projects. Therefore, it is likely that there would be future discussions of increasing the level of bonding or expenditures for contaminated sediment removal projects.

17. Some may argue that any increases in bonding authority should continue to be prioritized for GLLA projects because any available federal funding will leverage more cleanup dollars. The bill could be amended to maintain the current requirement that the bonding authority be used for GLLA projects (Alternative 2). However, expanding the eligible uses of the bonding to impaired waters could provide additional flexibility for DNR to fund contaminated sediment cleanups when projects reach the stage of readiness for sediment removal.

18. Another option could be to specify the bonds may only be used for Great Lakes area contaminated sediment projects where non-state funds (federal funds, donations, local governments or other sources) are paying at least one-half of project costs (Alternative 3). This would have the effect of ensuring state resources were leveraging at least an equal amount of other revenues for cleanup.

19. It could be argued that increases in bonding authority should be limited during the current economic times. The Committee could consider providing an increase of \$3 million, rather than \$5 million, in bonding authority to fund the remaining need for the non-federal share for the Lincoln Park / Milwaukee River GLLA project (Alternative 4). This would also leave \$1.2 million remaining from the \$7 million authorized for non-GLLA projects.

20. If the \$5 million in bonding authority is not provided, the state would have to look for other ways of providing the non-federal share to obtain the GLLA funds for the Lincoln Park / Milwaukee River project. It is possible that local governments, responsible parties, and property owners might be able to provide a portion of the non-federal match.

## **ALTERNATIVES**

1. Approve the Governor's recommendation to: (a) provide \$5,000,000 BR, to increase, from \$17 million to \$22 million, the amount of general obligation bonds authorized for removal of contaminated sediment; and (b) authorize DNR to use the bonding authority to pay for 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.

2. Approve the Governor's recommendation to increase the bonding authority, but maintain the current requirement that the bonding can only be used if federal funds are provided for the project under the federal Great Lakes Legacy Act.

3. Approve the Governor's recommendation to increase the bonding authority, but specify the bonding can only be used for contaminated sediment removal from Lake Michigan or Lake Superior or their tributaries if non-state funds are paying for at least one-half of project costs (instead of the criteria under current law or the bill).

4. Increase the bonding authority by \$3,000,000 (instead of \$5,000,000 under the bill), and maintain the current requirement that the bonding can only be used if federal funds are provided for the project under the federal Great Lakes Legacy Act. (This would be expected to be sufficient to provide the remaining match needed for the Lincoln Park / Milwaukee River project.)

<b>ALT 4</b>	<b>Change to Bill</b>
	Revenue
BR	- \$2,000,000

5. Delete provision.

<b>ALT 5</b>	<b>Change to Bill</b>
	Revenue
BR	- \$5,000,000

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