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Bonding for Great Lakes Contaminated Sediment Removal and Milwaukee Dredged Material Management Facility (Natural Resources -- Waste, Remediation, and Air)

[LFB 2021-23 Budget Summary: Page 439, #9 and Page 440, #10]

CURRENT LAW

Bonding for Great Lakes Contaminated Sediment Removal

Since 2007, the Department of Natural Resources (DNR) has been authorized $36 million in contaminated sediment bonding authority to pay a portion of the costs of removal of contaminated sediment from Lake Michigan, 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 by contaminated sediment. Of these amounts, DNR has expended or committed $34.7 million as of March, 2021, on projects in which the state was responsible for cleanup, or a viable responsible party could not be identified. Debt service costs to repay the bonds are paid from a sum-sufficient appropriation from the segregated (SEG) environmental management account of the environmental fund, and totaled $1,536,200 in 2019-20.

Milwaukee Metropolitan Sewerage District

The Milwaukee Metropolitan Sewerage District is created under Subchapter II of Chapter 200 of the statutes. The District provides sewerage and storm water management services for 28 jurisdictions in Milwaukee, Ozaukee, Waukesha, and Racine Counties. The District is overseen by a board of 11 commissioners. The statutes give the District the general authority to plan, design, construct, operate and maintain sewerage transmission infrastructure and sewage treatment facilities, storm sewers, and other facilities and structures for the collection and transmission of storm water and groundwater. Additionally, s. 200.35 of the statutes authorizes several specific activities, including waterway diversions or stream improvements to manage storm water.

DISCUSSION POINTS

1. Assembly Bill 68/Senate Bill 111 would increase DNR's bonding authority by $25,000,000 for removing contaminated sediments in Lake Michigan, Lake Superior, and their tributaries. Funding under the provision would support a portion of approximately $37.25 million in additional state funding obligations identified for remediation in the Milwaukee Estuary and St. Louis River (Douglas County) Areas of Concern (AOC). DNR reports that most of the $1.3 million remaining in existing bonding authority would also be designated for these areas.

2. Additionally, Assembly Bill 68/Senate Bill 111 would allow a commission for a metropolitan sewerage district serving a first-class city (the Milwaukee Metropolitan Sewerage District) to finance and construct a dredged material management facility (DMMF). The bill would specify that the authority to construct a dredged material management facility expires January 1, 2032. The bill would provide that MMSD, notwithstanding requirements to the contrary, shall cover costs of the facility through its capital budget and is to finance the cost over a period of 35 years. Finally, the bill would allow the MMSD Commission to reserve space in the dredged material management facility for disposal of sediment from flood management projects.

Bonding for Great Lakes Contaminated Sediment Removal

3. 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 was provided, and in 2019-21 an additional $4 million was provided to reach the current total authorization of $36 million. Under 2009 Wisconsin 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 projects must be in Lake Superior or Lake Michigan or their tributaries, and DNR must have identified the waterway as being impaired by contaminated sediment.

4. DNR has focused use of the contaminated sediment bonding authority on five Great Lakes AOCs under EPA designation. These include the Milwaukee Estuary, Sheboygan River, Lower Green Bay and Fox River, Lower Menominee River (in Marinette, shared with Michigan), and St. Louis River (in Superior, shared with Minnesota). A general goal of listing AOCs is to implement practices to remediate the identified contamination and abate current pollution sources. Such management practices are intended to restore beneficial uses of the waterways by the public, as well as for fish and wildlife populations.

5. Table 1 shows the contaminated sediment cleanup projects as of April 1, 2021, that were funded, are currently being funded, or are committed from the current bonding authority, totaling $34.7 million.

TABLE 1

Contaminated Sediment Projects Funded from Existing Bonding Authority

Project	Bonding Expenditures Encumbrances/Commitments
Milwaukee – Kinnickinnic River	$7,617,953
Milwaukee – Lincoln Park / Milwaukee River Phase I	9,719,434
Milwaukee – Lincoln Park / Milwaukee River Phase II	3,387,420
Sheboygan Harbor	3,319,998
Marinette – Menominee River (Ansul/Tyco)	1,000,000
Marinette – Menekaunee Harbor	500,000
Portage Canal – Phase 1	533,814
Howard's Bay*	1,300,000
Munger Landing*	1,300,000
Milwaukee AOC Remedial Action/DMMF*	5,000,000
Superior Slips Feasibility*	525,000
Milwaukee Feasibility and Design Project Agreement	500,000
Total	$34,703,619
Remaining Uncommitted Currently Authorized Authority	$1,296,381

* All or part of the funding shown is committed but not yet encumbered.

6. Table 2 shows the potential contaminated sediment projects that meet eligibility requirements under current law. The timeline for each project 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 funding partners. While there is uncertainty about the timing of work at several of these sites, DNR anticipates committing all of the $25 million under the provision for the anticipated state costs for Lake Superior-area design and construction, and for Milwaukee AOC projects. DNR estimates that $34.7 million in state bonding expenditures for these projects would combine with at least $263.7 million in other expenditures, including $178.5 million in federal and local government funding, and $85.2 million by responsible parties. Approval of the $25 million would be expected to move these projects forward during the biennium [Alternative A1].

TABLE 2

Potential Sites for Cleanup with Additional Contaminated Sediment Bonding Authority

Project	Potential Bonding Expenditures (state cost share)
Milwaukee AOC Projects	$20,000,000
Superior Slips Construction	4,200,000
Superior Slips Design	800,000
Total	$25,000,000

7. Generally, when DNR has bonding authority in place and available for allocation to a project, it is easier to assemble project funding packages that include federal and local governments, private responsible parties, or other entities that can contribute funding to a 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 results in development of a complete funding package.

8. Debt service costs for bonds issued under the contaminated sediment bonding authority are budgeted at $2.3 million in 2021-22 and $2.0 million in 2022-23 under Committee action to date. The $25 million in new bonding authority under the provision would not be expected to result in an increase in debt service costs in the 2021-23 biennium, 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 $25 million in general obligation bonds would be approximately $1.8 million annually when all of the bonds are issued, assuming a 20-year term and an interest rate of 4%. 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. This would decrease funding available for other purposes of the account, such as other contaminated land cleanup and recycling programs.

9. Another option would be to provide a smaller increase in bonding authority than the amount under the provision. For example, $12.5 million could be provided instead of $25 million [Alternative A2]. This would provide a total of $13.8 million in authority for use in the 2021-23 biennium ($1.3 million existing and $12.5 million new) that has not been allocated to projects yet. The Committee could also provide $4 million in bonding authority, the same amount as was authorized in 2019 Wisconsin Act 9 [Alternative A3]. This would provide DNR with authority to commit to some of the projects shown in Table 2.

10. The environmental management account is anticipated to have a June 30, 2021, balance of $23.9 million. Available balances are anticipated to increase under current law and Committee action to date to approximately $37.8 million by June 30, 2023. Although additional Committee action could reduce the anticipated June 30, 2023, balance, there is a sufficient balance that the Committee could consider providing funding in 2021-22 in a SEG continuing appropriation for contaminated

sediment removal. Such an appropriation from the account could be made instead of, or in addition to, any authorized bonding. The Committee could consider amounts of $5 million [Alternative A4a], $7.5 million [Alternative A4b], or $10 million [Alternative A4c].

11. 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 environmental repair bonding has included projects in Superior, Marinette, Milwaukee, and the Fox River. There is approximately $3.3 million in authorized, unallocated bonding from this source. DNR reports that no projects are currently prioritized for this $3.3 million. 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 2019-21 biennium.

12. If no action is taken to provide additional bonding authority, DNR would need to prioritize commitment of the currently authorized, unobligated authority for projects, or it could allocate remedial action bonding authority [Alternative A5]. Although uncertain, local governments and responsible parties might be able to provide part of the funding for priority projects.

Milwaukee Dredged Material Management Facility

13. The Milwaukee Estuary, encompassing parts of the Milwaukee, Menomonee, and Kinnickinnic Rivers, is one of five AOCs in Wisconsin. Part of the basis for the Milwaukee Estuary AOC designation is the accumulation of toxic substances in riverbeds from past heavy industrial activities, which has resulted in the deposition of such toxic substances as polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons, and heavy metals in area riverbeds. The AOC designation also is attributable to other identified impairments owing to ongoing activities in the heavily urbanized area. To ultimately resolve the Milwaukee Estuary's impairments and remove the AOC designation, planning has identified multiple remedial actions, including: (a) dredging of contaminated sediments in tributaries and nearshore waters of Lake Michigan; (b) nonpoint source pollution control; (c) wetland and waterway improvements for water quality and recreational purposes; and (d) enhancing fish and wildlife habitat and populations.

14. Dredging of contaminated sediment would include approximately 10.9 miles of the Milwaukee, Kinnickinnic, and Menomonee Rivers, with an estimated 1.4 million cubic yards of contaminated sediment to be removed. Funding of approximately $260 million is expected mostly from the federal Great Lakes Legacy Act, primarily for dredging activities.

15. Planning has identified a dredged material management facility (DMMF) as the most cost-effective method for proper disposal of contaminated sediment from the rivers' beds, as opposed

to hauling dredge spoils to landfills for disposal. A DMMF would function by receiving contaminated sediment in a secured, walled containment facility that prevents migration of toxic substances outside the structure. The DMMF would allow dredge spoils to settle over time and water to evaporate. Over time, the land formed from the accumulated sediment can be capped and reclaimed for other uses. The DMMF would occupy approximately 42 acres of lakebed southeast of downtown Milwaukee situated north of and adjoining an existing Jones Island sediment combined disposal facility (CDF) and along the eastern side of Interstate 794. The DMMF is designed to store up to 1.9 million cubic yards of sediment. The project is estimated to take two to four years.

16. MMSD indicates that the current estimated cost of the DMMF is $96.2 million. DNR, MMSD and other state, local and private entities would contribute various cash and in-kind amounts to the DMMF project, which is the primary local commitment to match federal funding. The provision under AB 68/SB 111 is primarily intended to grant authority to the MMSD to construct the DMMF using the District's existing processes for capital budgeting. The bill would amend obsolete statutory language for a 1990s shore protection project relating to the MMSD Deep Tunnels to accomplish the authorization. AB 68/SB 111 would specify that the District may finance the project over a period of 35 years.

17. MMSD would finance the DMMF and manage construction. At this time, MMSD would intend to finance the project using district general obligation bonding authority and a loan under the federal Water Infrastructure Finance and Innovation Act (WIFIA). The WIFIA loan program is administered by the EPA for eligible local, state, tribal, and federal water and wastewater infrastructure environmental rehabilitation projects. WIFIA loans can fund up to 49% of project costs. Interest rates on WIFIA loans are set based on the rate for similarly termed U.S. Treasurys on the date of loan closing. It is assumed that the MMSD project could borrow 49% of the $96.2 million project total, or $47.1 million, under a maximum repayment term of 30 years and at an estimated interest rate of perhaps 2% to 2.5%. WIFIA also allows loan repayment to be deferred for five years from the first disbursement of loan proceeds.

18. MMSD's revenues consist of two primary sources. Operating revenues consist mostly of user charges for sewerage conveyance and treatment paid by the municipalities that are part of the District, as well as fertilizer (Milorganite) sales. Additionally, s. 200.55 (6) of the statutes authorizes MMSD to levy a property tax to pay principal, interest, and any premiums on general obligation bonds or notes issued by the District. Audited financial statements for the District show 2019 operating revenues of $99.1 million and property tax revenues of $100 million. MMSD staff indicate that the District's levy has increased an average of approximately 2% over the last 10 years, and the District would not anticipate any appreciable change during the financing of the DMMF.

19. The District contends that current statutory provisions do not give sufficient authorization for the District to finance the DMMF through its capital budget process. The provision would allow MMSD to finance the debt obligations under both its general obligation bond issuance and the WIFIA loan repayment from its tax levy. The District indicates that the WIFIA loan process requires the statutory change before the District can proceed with the loan. AB 68/SB 111 would not affect other provisions regarding District powers or its regulatory or taxing authority.

20. As shown in Tables 1 and 2, DNR has preliminarily committed $5 million to the

Milwaukee Estuary AOC and the construction and permitting of the DMMF. Most of the additional authorization of contaminated sediment bonding under AB 68/SB 111 would also be planned for commitment to the Milwaukee Estuary AOC. State funding that may be allocated to the DMMF would reduce financing costs that MMSD would otherwise incur.

21. DNR and others argue that the removal of contaminated sediment, and ultimately the delisting of the Milwaukee Estuary as an AOC, will create significant benefits in and beyond the Milwaukee area. The Department contends that the state as a whole would benefit from healthier aquatic environments, cleaner water, and beneficial uses such as fishing, swimming, boating, and wildlife habitat. DNR also anticipates state contractors being used for consulting, engineering, and dredging activities in the project's implementation.

22. Considering the environmental remediation planned for the Milwaukee Estuary, coupled with the potential benefits of carrying out the dredging project and DMMF construction, the Committee could consider modifying s. 200.35 of the statutes to allow MMSD to finance and construct a dredged materials management facility [Alternative B1]. The Committee could also take no action [Alternative B2].

ALTERNATIVES

A. Bonding for Great Lakes Contaminated Sediment Removal

1. Provide bonding authority of $25,000,000 for removing contaminated sediments in Lake Michigan, Lake Superior, and their tributaries.

ALT A1	Change to Base
BR	$25,000,000

2. Provide bonding authority of $12,500,000 for removing contaminated sediments in Lake Michigan, Lake Superior, and their tributaries.

ALT A2	Change to Base
BR	$12,500,000

3. Provide bonding authority of $4,000,000 for removing contaminated sediments in Lake Michigan, Lake Superior, and their tributaries.

ALT A3	Change to Base
BR	$4,000,000

4. Create a continuing appropriation from the environmental management account of the segregated environmental fund for contaminated sediment removal projects under s. 281.87 of the statutes. Provide one of the following amounts in 2021-22:

a. $5,000,000 SEG;

ALT A4a	Change to Base
SEG	$5,000,000

b. $7,500,000 SEG; or

ALT A4b	Change to Base
SEG	$7,500,000

c. $10,000,000 SEG.

ALT A4c	Change to Base
SEG	$10,000,000

(Any of the Alternatives under A4 could be selected in addition to any of Alternatives A1, A2, or A3.)

5. Take no action.

B. Milwaukee Dredged Material Management Facility

1. Allow a commission for a metropolitan sewerage district serving a first-class city (the Milwaukee Metropolitan Sewerage District) to finance and construct a dredged material management facility. Specify that the authority to construct a dredged material management facility expires January 1, 2032. Provide that MMSD, notwithstanding requirements to the contrary, shall cover costs of the facility through its capital budget and is to finance the cost over a period of 35 years. Allow the MMSD Commission to reserve space in the dredged material management facility for disposal of sediment from flood management projects. (This alternative could be selected independently of, or in addition to, any of Alternatives under A1 through A5.)

2. Take no action.

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