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BILL ANALYSIS

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Senate Bill 1252 (as introduced 12-3-20)
Sponsor: Senator Jim Ananich
Committee: Committee of the Whole

Date Completed: 12-9-20

CONTENT

The bill would amend the Michigan Trust Fund Act to do the following:

-- **Create the "Flint Settlement Trust Fund" within the State Treasury and provide for the disposition of money from the Fund.**
-- **State that it is the intent of the Legislature to appropriate and allocate to the Fund, for the purpose of annual payments to the Special Purpose FWC Settlement Entity approximately $35.0 million from the General Fund for each State fiscal year, beginning in fiscal year (FY) 2021-22 fiscal year through the fiscal year ending September 30, 2051.**
-- **Require the Governor each year to include the payments in the Executive Budget.**
-- **Require the Fund to pay the amounts allocated to the Special Purpose FWC Settlement Entity, which could pledge and assign amounts paid and payable in connect with loans entered into by the Entity, or to pay the expenses, costs, and fees associated with it.**
-- **Prohibit the Settlement Entity from pledging or assigning payments for any other purpose beyond those specified under the Act.**
-- **Require all challenges of a pledge or assignments to be brought in an action before the Court of Appeals within 30 days after the pledge or assignment was made.**
-- **Require all challenges to be heard and determined as expeditiously as possible with priority over other matters.**
-- **Specify that amounts paid and payable would represent offers of settlement and compromise of any claim or claims that were or could have been asserted by the plaintiffs in In re Flint Water Cases.**

The bill would amend the Act to create the Flint Settlement Trust Fund within the State Treasury. The Fund would be established to address the consolidated cases known as *In re Flint Water Cases, No. 5:16-cv-10444-JEL-MKM (ED Mich)*, in connection with the preliminary approval orders, any amendments to those orders, or the subsequent final approval orders, that would be entered by the court pursuant to the State's settlement agreement for that case and its related Flint water cases. The State Treasurer could receive money or other assets from any source for deposit into the Fund, and would have to direct the investment of the Fund. The State Treasurer would have to credit to the Fund interest and earnings from the Fund's investments. Money in the Fund at the close of the fiscal year would remain in the Flint Settlement Trust Fund and would not lapse to the General Fund. The Department of Treasury would be the administrator of the Flint Settlement Trust Fund for auditing purposes. The Department could only spend money from the Fund, upon appropriation, for authorized purposes under the bill.

The bill states that it is the intent of the Legislature to appropriate for State purposes and allocate to the Fund, for the purpose of making an annual payment to the Special Purpose FWC Settlement Entity, under the settlement agreement approved in the court orders of *In re Flint Water Cases*, the sum of approximately $35.0 million from the General Fund for each State fiscal year, beginning with FY 2021-22 and through FY 2050-51, after which time the payments would cease. Each year, the Governor would have to include the payments in his or her Executive Budget consistent with the orders of the court.

"Special Purpose FWC Settlement Entity" would mean the Special FWC Settlement Entity described in the settlement agreement approved by the court in *In re Flint Water Cases*.

The Fund would have to pay the amounts allocated under the bill to the Special Purpose FWC Settlement Entity as provided in the settlement agreement. The Settlement Entity could pledge and assign amounts paid and payable in connection with one or more loans entered into by it, as provided in the Michigan Strategic Fund Act, to pay the expenses, costs, and fees associated with the Settlement Entity. The Settlement Entity could not otherwise pledge or assign the described payments for any other purpose. A pledge or assignment made under the bill would be conclusively presumed to be valid for all purposes unless challenged in an action brought in the Court of Appeals within 30 days after the pledge or assignment.

All challenges would have to be heard and determined as expeditiously as possible with priority over the matters. Consideration by the Court of Appeals would have to be based solely on the record before the settlement was approved by the court and briefs to the Court would have to be limited to whether the pledge or assignments conformed to the State Constitution of 1963, State law, and Federal law, and would be within the authority of the Fund under the Michigan Trust Fund Act and the Michigan Strategic Fund Act.

The amounts paid and payable under the bill would represent offers of settlement and compromise of any claim or claims that were or could have been asserted by the plaintiffs in *In re Flint Water Cases* in full satisfaction of those claims. The bill could not be construed to constitute an admission of liability to the plaintiffs or a waiver of any defense that was or would have been available to the State of Michigan or its agencies, employees, or agents in any litigation or future litigation with a plaintiff.

MCL 12.252 Legislative Analyst: Dana Adams

FISCAL IMPACT

The bill would have a negative fiscal impact on the State, Department of Treasury, and the Michigan Strategic Fund. As part of the settlement agreement in *In re Flint Water* Cases, the State is required to deposit $600.0 million into the Flint Settlement Trust Fund within 185 days of the approval of the Flint water settlement agreement, which is estimated to be in August 2021. Even though the State is not issuing the $600.0 million in bonds to make the deposits, it is taking a loan from the Michigan Strategic Fund with a pledge of repayment of loan in anticipated annual State appropriations. The bill states that the intent of the Legislature is to appropriate $35.0 million annually for the next 30 years because statute may not require future legislatures to make specific appropriations. Although the word "intent" is nonbinding, the loan agreement between the State and Michigan Strategic Fund pledges that the State will make annual appropriations to cover bond repayment, and while the State is not liable for repayment of the bond, the credit rating of the State would be affected significantly if the State failed to make the required annual appropriation over the next 30 years. The repayment of the $600.0 million bond in $35.0 million installments for 30 years implies an average interest rate of 4.07%. If financed as per the intent language, the repayments would reduce the revenue available for other General Fund appropriations by approximately $35.0 million per year for 30 years.

The Department of Treasury would experience minor administrative costs to administer and direct the investment of the Flint Settlement Trust Fund. Because of the size of the Fund and potential high activity, it is possible that the costs could be higher in the initial year as there likely would more activity then (i.e., paying out settlements to plaintiffs).

The Michigan Strategic Fund would experience minor costs to issue the bonds to cover the $600.0 million Flint water settlement agreement. These costs likely would be minor and within current appropriations. The Michigan Strategic Fund is liable for repayment of the bonds; however, it will use the loan agreement pledge from the State to secure the issuance of the bonds.

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