House
Legislative
Analysis
Section

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CLEAN MICHIGAN INITIATIVE BOND PROPOSAL

House Bill 5620 as enrolled
Public Act 285 of 1998
Sponsor: Rep. James M. Middaugh

House Bill 5622 as enrolled
Public Act 284 of 1998
Sponsor: Rep. Tom Alley

House Bill 5719 as enrolled
Public Act 286 of 1998
Sponsor: Rep. Gloria Schermesser

Senate Bills 902 and 904 as enrolled
Public Acts 287 and 288 of 1998
Sponsor: Sen. Don Koivisto

Second Analysis (8-26-98)
House Committee: Conservation, Environment and Recreation
Senate Committee: Natural Resources and Environmental Affairs

THE APPARENT PROBLEM:

A decade ago, the governor's state of the state message stressed the need for a long-term funding commitment to meet environmental challenges facing the state. The voters responded by approving the "Quality of Life Bond Proposal." The bond proposal -- actually two proposals, the Environmental Protection Bond Proposal and the Recreation Bond Proposal, each of which had to be approved separately -- authorized the state to issue $660 million in general obligation bonds to finance environmental protection programs, and $140 million to finance public recreation projects. Proceeds from the Environmental Protection Bond Proposal were deposited in the Environmental Protection Bond Fund (established under Public Act 328 of 1988). A major portion of the $660 million -- $435 million -- was allocated to clean up sites of environmental contamination. The fund was also used for solid waste projects, including recycling; to capitalize a state water pollution control revolving fund; and to finance the state's participation in a regional Great Lakes Protection Fund. Proceeds from the Recreation Bond Proposal were deposited in the Recreation Bond Fund (established under Public Act 329 of 1988) and disbursed to build recreational facilities at state parks, and to provide grants and loans for local public recreation projects. Grants and loans were also provided to local governments from this fund to redevelop vacant or abandoned industrial sites for recreational facilities.

When the Quality of Life Bond Proposal was first contemplated, it was estimated that there were some 1,800 sites of environmental contamination where response activities would have to be conducted. By 1995, 1,000 of these sites had been cleaned up. However, additional sites had been detected, so that the total number of sites had actually increased to 2,812. Based on the argument that reduced cleanup standards -- from those that required restoration of contaminated land to a pristine condition, to ones that used variable standards based on land use -- would allow the state to clean up three times as many sites, Public Act 71 of 1995 restructured the "polluter pay" provisions of the Natural Resources and Environmental Protection Act (NREPA) to reduce cleanup standards at commercial and industrial contaminated sites. (For additional information, see HLAS analysis of House Bill 4596 of 1995). At present, according to the Department of Environmental Quality, there are approximately 9,700

contaminated sites, 6,926 of which are leaking underground storage tanks. Cleanup activities of some type are being carried out at 562 of the sites. Of the $425 million allocated to clean up these sites, approximately $58 million remains, and more contaminated sites are being discovered each year.

The state of the state address in 1998, in the portion pertaining to environmental concerns, echoed the 1988 address and its Quality of Life Bond Proposal recommendation. Pointing to the fact that the state's credit rating has been upgraded on Wall Street to "AA+," and to low interest rates and Michigan's economic strength, the governor suggested that $500 million be raised through "Clean Michigan Initiative" bonds. In his address, the governor pointed out specific projects that could be remedied under the initiative. For example, it could "accelerate the cleanup of sites like a PCB saturated landfill in Bay City, sludge pits in Van Buren County and a rusting tank yard in Eaton County." The governor suggested that the bonds would benefit the state in three ways: $400 million would be used to restore polluted and abandoned sites; and $50 million each would be used for state park improvements and to protect the quality of the state's drinking water.

It is proposed that the "Clean Michigan Initiative" bond proposal be submitted to the electorate, with some modifications: the total bond proposal would be $675 million, rather than $500 million; $335 million would be used to clean up "brownfields" (former urban industrial property); $50 million would be used for state park infrastructure improvements; $50 million would be used for waterfront improvements; up to $90 million would be allocated for water quality improvement; $20 million would be used for pollution prevention programs; $25 million would be used for the cleanup of contaminated river sediments; and $5 million would be allocated for lead abatement. It is also proposed that $50 million be used to establish a Clean Water Fund to provide grants for water pollution, wellhead protection, and storm water treatment projects. Further, it is proposed that $50 million be authorized to provide grants and loans for local public recreation projects, as was provided under the Quality of Life Bond Proposal in 1988. Consequently, legislation has been introduced in both the House and the Senate that would put the issue before the voters at the November, 1998, general election.

THE CONTENT OF THE BILLS:

House Bills 5620, 5622 and 5719 and Senate Bills 902 and 904 are part of a package of bills that would place a "Clean Michigan Initiative" bond proposal on the ballot for the November, 1998 general election. The voters would be asked to approve $675 million in general obligation bonds to finance environmental and natural resources protection programs, including components for pollution prevention, for the remediation of environmentally contaminated sites and contaminated river sediments, for waterfront improvements, for nonpoint source pollution prevention and control, for state park infrastructure improvements, for the abatement of lead contamination, and for local public recreation projects, as follows:

- House Bill 5622 would establish the Clean Michigan Initiative Act, which would authorize the state, with voter approval, to borrow up to $675 million and issue general obligation bonds to finance environmental and natural resources protection programs.

- Senate Bill 904 would provide for the distribution of the $675 million in general obligation bonds issued under the proposed Clean Michigan Initiative Act.

- House Bill 5620 and Senate Bill 902 would establish programs for waterfront redevelopment grants, and nonpoint source pollution prevention and control grants, respectively.

- House Bill 5719 would require that the Department of Natural Resources (DNR) establish a Local Recreation Grant Program to fund local projects financed under the bond proposal.

The bills are tie-barred to each other. House Bill 5622 would take effect immediately. The other bills would specify an effective date of December 1, 1998, provided that the proposed Clean Michigan Initiative bond proposal was approved by a majority of the voters at the November, 1998, general election.

House Bill 5622 would establish the Clean Michigan Initiative Act. If approved by the voters, the bill would allow the state to borrow up to $675 million and issue general obligation bonds to finance environmental and natural resources protection programs, as follows:

General Obligation Bonds. The bonds would be backed by the full faith and credit of the state, and would be issued in accordance with conditions, methods, and procedures to be established by law. After issuing the bonds, a sufficient amount to pay the principal and interest on all outstanding bonds, and the costs incidental to payment of the bonds, would be appropriated from the general fund each fiscal year. The bill would require that the governor include an appropriation for this amount in annual executive budget recommendations to the legislature. The proceeds from the bonds would be deposited into the Clean Michigan Initiative Bond Fund that would be established under the NREPA under the provisions of Senate Bill 904, and expended only for the environmental clean up purposes specified under the act, and for the expense of issuing the bonds.

Environmental Cleanup. The bill would specify that the bonds would finance environmental and natural resources protection programs that would clean up and redevelop contaminated sites, protect and improve water quality, prevent pollution, abate lead contamination, reclaim and revitalize community waterfronts, enhance and increase recreational opportunities at Michigan state parks, and clean up contaminated sediments in lakes, rivers, and streams.

Ballot Question. The secretary of state would be required to perform all acts necessary to properly submit the question of borrowing $675 million to finance environmental cleanup by issuing general obligation bonds to the electors at the next general November election. The bill would require that the question be submitted to the voters substantially as follows:

"Shall the state of Michigan finance environmental and natural resources protection programs that would clean up and redevelop contaminated sites, protect and improve water quality, prevent pollution, abate lead contamination, reclaim and revitalize community waterfronts, enhance recreational opportunities, and clean up contaminated sediments in lakes, rivers, and streams, by borrowing a sum not to exceed $675 million and issuing general obligation bonds of the state, pledging the full faith and credit of the state for the payment of principal and interest on the bonds, the method of repayment of the bonds to be from the general fund of this state?"

House Bill 5620 (MCL 324.79501) would add a new part, Part 795, Waterfront Revitalization, to the Natural Resources and Environmental Protection Act (NREPA) to establish a waterfront redevelopment grant program . (Under the bill, "waterfront" would be defined to mean land that was contiguous to the Great Lakes or their connecting waterways, a river, or a lake or impoundment with a surface area of at least 50 acres; and a "waterfront redevelopment plan" would mean a plan prepared by a local unit of government under the requirements of the bill, or a state approved recreation plan that included waterfront improvements.)

Use of Funds. The bill would specify that a grant could not be provided for a project located on land sited for use as a gaming facility, stadium, or arena that was to be used by a professional sports team; land or facilities owned or operated by a casino, stadium, or arena; or land within a project area that was described in a project plan in accordance with the provisions of the Economic Development Corporations Act (MCL 125.1601 et al.).

Waterfront Redevelopment Grant Program. The bill would require that the Department of Environmental Quality (DEQ) establish a program that provided for the following:

- The response activities on waterfront property consistent with a waterfront redevelopment plan.

- The demolition of buildings and other facilities along a waterfront that were inconsistent with a plan.

- The acquisition or the assembly of waterfront property consistent with a plan.

- The public infrastructure and facility improvements to waterfront property consistent with a plan.

Under the bill, a local unit of government would have to provide at least 25 percent of the total project's cost from other public or private funding sources for any grant issued under the bill. In addition, each project would have to allow the general public access to the waterfront.

Grant Application Process. To apply for a grant, a local unit of government would have to prepare a waterfront redevelopment plan that would provide for the improvement of the waterfront. The plan would have to designate clearly the geographic area included within the waterfront planning area, and identify the economic impact on the improved area, the

surrounding neighborhood, and the waterfront planning area region. A grant application would have to include the following information:

• A detailed description of the project to be funded and how it would be used, including any private sector participation.

• A copy of the waterfront redevelopment plan for the area in which the project was to be located.

• An explanation of how the project would contribute significantly to the local unit of government's economic and community redevelopment or the revitalization of adjacent neighborhoods.

• An explanation of how the project would provide for public access to the waterfront or recreational opportunities for the public.

• An identification of the intended use of the property, if the project included the purchase of property, and a time line for its redevelopment.

• The total cost of the project and the source of the local unit contribution.

• A detailed description of practices that the local unit of government would implement and maintain to control nonpoint source pollution from the project site -- both during construction and during the period of time that the state was paying off the bonds.

• Other relevant information.

After receiving a grant application, the DEQ would have to forward a copy to the Michigan Jobs Commission. The DEQ and the commission would jointly review each grant application, and consider several factors, including whether the project was authorized under, and the grant application complied with, the provisions of the bill; the project was consistent with the waterfront redevelopment plan for the area in which it was located; the project provided significant public access to the waterfront or provided recreational opportunities for the public; and the level of public and private commitment to improving abandoned real property with the waterfront planning area in which the project was located.

Issuance and Conditions of Grants. The DEQ, with the commission's approval, would have to issue grants for projects that met the requirements of the bill and that would contribute to the revitalization of waterfront throughout the state that were not being used in a manner that maximized economic and public value. The DEQ and the Department of Attorney General could recover costs expended for response activities on waterfront property from persons considered liable under the NREPA. Actions to recover costs would have to proceed in the manner specified under the act. Further, grants provided under the provisions of the bill would have to comply with the applicable provisions of Part 196 of the NREPA, which would provide for the implementation of the Clean Michigan Initiative Fund, including reporting of the grants to the legislature.

House Bill 5719 (MCL 324.71601 et. al) would add a new part -- Part 716 -- to the Natural Resources and Environmental Protection Act (NREPA) to provide grants for local projects that would receive funds under the "Clean Michigan Initiative" bond proposal, which would be put before the voters at the next general election under the provisions of House Bills 5620 and 5622 and Senate Bills 902 and 904. The bill would define "local recreation projects" to mean capital improvement projects, including, but not limited to, the construction, expansion, development, or rehabilitation of recreational facilities, except that the operation, maintenance, or administration of those facilities, wages, or administration of projects or purchase of facilities already dedicated to public recreational purposes would not be included. In addition, "local unit of government" would be defined under the bill to mean a county, city, township, village, the Huron-Clinton metropolitan authority, or any authority composed of counties, cities, townships, villages, or any combination of those entities, which authority is legally constituted to provide public recreation.

Department Requirements. Under House Bill 5719, the Department of Natural Resources (DNR) would establish a local recreation grant program for local units of government for projects whose purpose could be defined as either infrastructure improvement, community recreation, or tourist attraction. Under the bill, "infrastructure improvement" would mean the restoration of the natural environment or an existing facility, such as a recreation center, sports field, beach, trail, skating rink, toboggan run, sledding hill, or playground, that was at least 15 years old.

The bill would specify that the DNR could promulgate rules to implement the provisions of Part 716 of the NREPA. Also, grants provided under the provisions of the bill would be subject to the applicable

requirements of Part 196 of the NREPA, which would be established under the provisions of Senate Bill 904 to distribute the general obligation bonds that would be funded by the proposed Clean Michigan Initiative bond proposal. In addition, the DNR would have to comply with the provisions of Part 196 -- including the reporting requirements to the legislature -- in administering the grant program.

State Zones. The state would be divided into the following three zones for the purpose of distributing grants for local recreation projects:

• Zone 1: All of the counties of the Upper Peninsula.

• Zone 2: Emmet, Charlevoix, Cheboygan, Presque Isle, Leelanau, Antrim, Otsego, Montmorency, Alpena, Benzie, Grand Traverse, Kalkaska, Crawford, Oscoda, Alcona, Manistee, Wexford, Missaukee, Roscommon, Ogemaw, Iosco, Mason, Lake, Osceola, Clare, Gladwin, Arenac, Isabella, Midland, Bay, Huron, Saginaw, Tuscola and Sanilac counties.

• Zone 3: Oceana, Newaygo, Mecosta, Muskegon, Montcalm, Gratiot, Ottawa, Kent, Ionia, Clinton, Shiawassee, Genesee, Lapeer, St. Clair, Allegan, Barry, Eaton, Ingham, Livingston, Oakland, Macomb, Van Buren, Kalamazoo, Calhoun, Jackson, Washtenaw, Wayne, Berrien, Cass, St. Joseph, Branch, Hillsdale, Lenawee and Monroe counties.

Use of Funds. House Bill 5719 would specify that a grant could not be provided for land acquisition or for a commercial theme park, nor could a grant be provided for a project located on land sited for use as a gaming facility or as a stadium or arena that would be used by a professional sports team, or on other land or facilities owned or operated by any of these entities. In addition, the bill would prohibit a grant from being provided for a project located on land within a project area that was described and would be developed in a project plan under the provisions of the Economic Development Corporations Act (MCL 125.1601 et al.) for a gaming facility.

The bill would also specify that a grant would require a 25 percent match by the local unit of government, and that not more than 50 percent of a local unit of government's contribution could be in the form of goods and services directly rendered to the construction of the project, or federal funds, or both. In addition, a local unit of government would have to establish to the satisfaction of the DNR the cost or fair market value, whichever was less, as of the date of the notice of approval by the DNR, of any of the items with which it sought to meet the match requirement. Further, the bill would specify that a facility funded by a grant could not be sold, disposed of, or converted to a use that was not specified in the application for the grant without the DNR's express approval.

Of the $50 million that would be provided for local public recreation projects (as specified in Senate Bill 904), grants made to local units of government would be allocated by the DNR in the following proportions: projects within Zone 1, 3.6 percent; projects within Zone 2, 14.4 percent; projects within Zone 3, 72 percent; and projects at regional parks, 10 percent. (A "regional park" would be defined under the bill to mean a public recreation site that was under the applicant's control and that would attract at least 25 percent of its users from areas that were 30 minutes or more in driving time from the site, that provided passive, water-based, and active recreation opportunities, and that was contiguous to, or encompassed, a natural resource feature.)

Grant Applications. In order to be considered for funding, a project application would have to be submitted on the form required by the DNR by the established deadline, be complete, and include certain information, such as a project location map, a preliminary site development plan, a certified resolution from the governing body of the local unit of government designating an authorized project representative, a statement that the proposal would be undertaken if a grant was awarded, and other information as determined by the DNR.

The bill would also specify that a project application would be considered if the local unit of government had a community recreation plan on file with the DNR, the project was listed and justified in the recreation plan, the local unit had submitted notice to the regional planning agency for review, and had fee title or a legal instrument demonstrating property control for at least 15 years. In addition, a local unit's grant request could not be less than $15,000 nor more than $750,000, only one grant could be received in a funding cycle, and a proposed project would have to comply with the bill's definition of "local recreation project."

An application would not be considered, under the bill, for a project involving a school physical education and athletic program. The bill would also specify that, on projects that *were* funded on school

grounds, public use could not be restricted to less than 50 percent of operating hours. In addition, the DNR could request a schedule of when such sites were open to the public. The bill would also specify that projects that would compete unfairly with private enterprises would not be eligible for funding, unless the local unit of government provided written justification of the need for a proposed facility, in light of the private sector's presence.

Final Grant Awards. The director of the DNR would determine final grant awards, using three factors to evaluate projects, all of which would have equal importance. Each factor would be rated "exceptional," "good," or "fair," which would correspond to ratings of 80, 60, or 10, respectively. The factors that would be considered would include the need for the project, the capability of the local unit of government to complete the project and to operate and maintain it once completed, and the quality of the site and project design, all of which would be determined by an overall assessment of certain criteria.

The bill would also specify that, if the score on two or more projects was the same and did not determine which project should be recommended within available dollars, the DNR would have to consider the following factors to determine priority: the amount of local recreation grants previously received by a local unit of government, a local unit of government's need for financial assistance, a local unit's commitment to provide more than the required 25 percent match, and the amount of Michigan Natural Resources Trust Fund development grants and/or land and water conservation grants the local unit had previously received. Further, a grant award for a project would have to be used first to upgrade drinking water systems or rest room facilities if the project location required these upgrades.

Senate Bill 902 (MCL 324.8801 et al.) would add Part 88, "Water Pollution Prevention and Monitoring," to the Natural Resources and Environmental Protection Act (NREPA), to allow the Department of Environmental Quality (DEQ), in consultation with the Department of Agriculture, to establish programs to provide grants for local units of government that were exempt from taxation under the Internal Revenue Code for nonpoint source pollution prevention and control projects, or for wellhead protection projects. (Note: a "local unit of government" would be defined under this bill to mean a county, city, village, or township, or an agency of these entities; the office of a county drain commissioner; a soil conservation district established under the NREPA; a watershed council; a local health department as defined in the Public Health Code [MCL 333.1105]; or an authority or any other public body created under state law.) Senate Bill 902 would also establish a Clean Water Fund that would be used to establish certain water quality monitoring and control programs, as follows:

Clean Water Fund. The first priority for expenditures from the fund would be for programs described in the departmental document "A Strategic Environmental Quality Monitoring Program for Michigan's Surface Water," dated January, 1997. The bill would specify that money in the fund could not be expended for combined sewer overflow (CSO) corrections. Otherwise, money would be appropriated, after rules were promulgated, for loans or grants for any of the following:

- For water pollution control activities.
- For wellhead protection activities.
- For storm water treatment projects and activities.

Nonpoint Source Pollution Prevention and Control and Wellhead Protection Grants Programs. The bill would require the DEQ, in consultation with the Department of Agriculture, to establish programs to provide grants to local units of government or entities that were exempt from taxation under Section 501(c)(3) of the Internal Revenue Code for nonpoint source pollution prevention and control and wellhead protection projects. Nonpoint source pollution prevention and control grants would be issued for projects that implemented the physical improvement portion of watershed plans and/or reduced specific nonpoint source pollution. Wellhead protection grants would be issued for projects that were consistent with a wellhead protection plan and that either plugged abandoned wells; provided for the acquisition of land to protect aquifer recharge areas; or implemented the physical improvement portion of the wellhead protection plan. ("Nonpoint source pollution" would mean water pollution from diffuse sources, including runoff from precipitation or snowmelt contamination through contact with pollutants in the soil or on other surfaces and either infiltrating into the groundwater or being discharged to surface waters, or runoff or wind causing erosion of soil into surface waters.)

For any grant issued under the bill, a local unit of government would have to contribute 25 percent of the

total project's cost from other public or private funding sources. The DEQ could approve in-kind services to meet all or a portion of the match requirement. The bill also would allow the DEQ to accept as the match requirement a contract between the DEQ and grant applicant providing for maintenance of the project or practices that were funded under terms acceptable to the DEQ. The contract would have to require maintenance of the project or practices throughout the period of time the state was paying off the CMI bonds issued to implement Part 88.

Among other information, the DEQ would have to consider the following criteria in selecting projects for a grant award:

-- The expectation for long-term water quality improvement.

-- The expectation for long-term protection of high quality waters.

-- The consistency of the project with remedial action plans and other regional water quality or watershed management plans approved by the DEQ.

-- The placement of the watershed on the list of impaired waters pursuant to the federal Water Pollution Control Act.

-- Commitments for financial and technical assistance from the partners in the project.

-- Financial and other resource contributions, including in-kind services, by project participants in excess of that required in the bill.

-- The length of time the applicant had committed to maintain the physical improvements.

-- The commitment to provide monitoring to document improvement in water quality or the reduction of pollutant loads.

-- Whether the project provided benefits to drinking water sources.

Application Process. Under the bill, a local unit of government wishing to apply for a grant would have to submit a written grant application to the DEQ in the prescribed manner and containing the required information. The grant application would have to include a detailed description of the project the grant would fund; an explanation, if applicable, of how the project was consistent with an approved watershed plan; and a description of the total cost of the project and the source of the local government's contribution to the project. Upon receiving a grant application, the DEQ would have to consider the proposed projects for funding and the extent that money would be available for grants, and issue grants for projects that the director determined would assist in the prevention or control of pollution from nonpoint sources, or that would provide for wellhead protection.

Grants made under the provisions of Part 88 would also be subject to the applicable requirements of Part 196 of the act, which would be established under the provisions of Senate Bill 904. The bill would also specify that the DEQ would have to administer the provisions of Part 88 in compliance with the applicable requirements of Part 196, including the requirement that the DEQ provide the legislature with a report of the grants. In addition, the bill would specify that the DEQ could promulgate rules to implement Part 88, including rules that would establish a grant program or a loan program, or both, to expend money from the Clean Water Fund.

Senate Bill 904 (MCL 324.19601 et al.) would add Part 196, "Clean Michigan Initiative Implementation," to the Natural Resources and Environmental Protection Act (NREPA) to carry out the provisions of the Clean Michigan Initiative Act proposed under House Bill 5622 in order for the state to issue tax exempt bonds, as follows:

Legislative Finding. The bill states the following legislative finding and declaration: " . . . that the environmental and natural resources protection programs implemented under this part [the Clean Michigan Initiative Act] are a public purpose and of paramount public concern in the interest of the health, safety, and general welfare of the citizens of this state."

Bond Issuance. The bill describes the manner and form in which bonds would have to be issued under the proposed CMI Act. Under the bill, the State Administrative Board would have to rotate legal counsel services when issuing bonds. The board could also:

- Authorize and approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds, and any other

transaction to provide security to assure timely payment or purchase of any bond issued.

• Authorize the state treasurer, within limitations contained in the board's authorizing resolution, to do the following activities: sell, deliver, and receive payment for the bonds; deliver bonds to refund bonds; select which outstanding bonds would be refunded by new bonds; approve interest rates or methods necessary to complete transactions; and execute, deliver, and pay the cost of any transaction to provide timely payments or purchase of any bond.

Bonds issued under the proposed act would be fully negotiable under the Uniform Commercial Code and the interest on them would be exempt from all taxation by the state or any political subdivision of the state. The bonds issued would be securities in which banking businesses, insurance businesses, and fiduciaries could properly and legally invest funds, including capital, belonging to them or within their control. The bonds, or any series of the bonds, would have to be sold at such price and at a publicly advertised sale, as determined by the State Administrative Board, and in accordance with a schedule established by the board. They would have to be approved by the Department of Treasury before their issuance, but would not otherwise be subject to the provisions of the Municipal Finance Act (MCL 131.1 to 139.3).

Clean Michigan Initiative Bond Fund. The total proceeds of all bonds issued under the proposed Act would have to be deposited into the proposed Clean Michigan Initiative Bond Fund and allocated as follows:

--Up to $335 million for response activities at facilities ("urban brownfields").

--Up to $50 million for waterfront redevelopment grants, as established under the provisions of House Bill 5620.

--Up to $25 million for response activities to remove contaminated sediments from lakes and rivers.

--Up to $50 million for the programs established under Senate Bill 902 for nonpoint source pollution prevention and control or wellhead protection grants.

--Up to $90 million would be deposited into the Clean Water Fund established under Senate Bill 902 for water quality monitoring and water resources protection and pollution control activities.

--Up to $20 million for pollution prevention programs: $10 million would be deposited into the Retired Engineers Technical Assistance Program Fund that would be established under House Bill 4849; $5 million into the Small Business Pollution Prevention Assistance Revolving Loan Fund that has been proposed under House Bill 4988; and $5 million would be used by the DEQ to implement other pollution prevention activities.

--Up to $5 million to be used by the Department of Community Health for lead abatement.

--Up to $50 million for state park infrastructure improvements, with the DNR giving first priority to installing or upgrading drinking water systems or rest room facilities.

--Up to $50 million for local recreation project grants as proposed under House Bill 5719.

(Note: A "facility" would be defined as it is in Part 201 of the NREPA, which refers to a place where a hazardous substance in excess of particular concentrations or cleanup criteria has been released, deposited, or disposed of, or otherwise comes to be located.)

The money allocated for response activities at facilities would have to be used by the DEQ for corrective actions to address releases from leaking underground storage tanks; response and site assessment activities at facilities; grants and loans (up to $20 million) for local units and brownfield redevelopment authorities for response activities at known or suspected facilities; and grants (up to $12 million) for the municipal landfill grant program. Of the money allocated, between $40 and $60 million would be used to cleanup facilities that posed an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment (including those facilities where public access posed hazards because of potential exposure to chemicals or safety risks and where drinking water supplies were threatened by contamination), and up to $50 million could be used to provide grants (but not loans) for local recreation projects. In addition, before expending any funds to remediate contaminated lake and river sediments at a site that was an area of concern, as designated by the parties to the Great Lakes Water Quality Agreement, the DEQ would be required to notify the public advisory council established to oversee that area of concern regarding the development, implementation,

and evaluation of response activities to be conducted there. The bill would also specify that the fund could not be used to develop a municipal or commercial marina.

The state treasurer would have to direct the fund's investment and allocate interest and earnings in the same proportion as earned on the investment of the proceeds of the bond issue. Further, bond proceeds would have to be expended in an appropriate manner to maintain the bonds' tax exempt status. In addition, the DEQ would have to provide an annual accounting of bond proceeds spending on a cash basis to the Department of Treasury so that the state could comply with tax exempt bond requirements. This accounting would have to be submitted to the governor, the standing committees of the House and Senate concerned with natural resources and environmental issues, and the House and Senate appropriations committees.

Use of Funds. Money in the fund could be used by the Department of Treasury for the cost of issuing bonds and by the DEQ for its costs. Of the total amount of fund allocations for response activities, waterfront improvements, contaminated lake and river sediment cleanup, and nonpoint source pollution prevention and control, up to three percent would have to be available for appropriation to pay DEQ costs directly associated with the completion of those projects. In addition, of the total amount of fund allocations for state park infrastructure improvements and local public recreation projects, up to three percent would have to be available for appropriation to the Department of Natural Resources (DNR) to pay its costs directly associated with the completion of those projects. The bill specifies a legislative intent that general fund appropriations to the DEQ and the DNR not be reduced as a result of costs funded under these provisions.

The bill further specifies that a grant could not be provided for a project located at any of the following:

- Land sited for use as a gaming facility (regulated under the Michigan Gaming Control and Revenue Act) or as a stadium or arena for use by a professional sports team.

- Land or other facilities owned or operated by a gaming facility or by a stadium or arena for use by a professional sports team.

- Land within a project area described in a project plan under the Economic Development Corporations Act.

Appropriations. The bill would require the DEQ, the DNR, and the Department of Community Health (DCH) to submit annually, by February 15, a list of all projects recommended for funding under the bill. The list would have to be submitted to the governor, the House and Senate standing committees that primarily address natural resources and the environmental protection issues, and the House and Senate Appropriations Committees. However, before submitting the first cycle of recommended projects that involved response activities at facilities, the criteria used by the DEQ to evaluate and recommend these projects for funding would have to be published and disseminated.

The list would have to be submitted before any request for supplemental appropriation of bond funds. It would have to include the nature of the project, the county, the estimated total cost, and other pertinent information. A project that was funded by a grant or loan with money from the fund would not need to be included on the list. Money in the fund that was appropriated for grants and loans, however, could not be encumbered or spent until the DEQ had reported projects that had been approved for a grant or loan to the House and Senate committees that primarily address natural resources and environmental protection issues and to the appropriations subcommittees that address these issues.

The legislature would have to appropriate prospective or actual bond proceeds for projects that were proposed for funding. Appropriations would have to be carried over to succeeding fiscal years until completion of the project for which the funds were appropriated.

By December 31 each year, the DEQ, DNR, and DCH would have to submit a list of projects financed under the bill to the governor and the legislative committees and subcommittees described above. The list would have to include the name, address, and telephone number of the recipient or participant; the name, location, and nature of the project; the amount allocated; the county; a brief summary of what the project had accomplished; and other information considered pertinent by the administering state department.

Grant or Loan. The following conditions would apply to the funds allocated for grants and loans to local units of government and brownfield redevelopment authorities for response activities at known or suspected facilities. A recipient of a grant or loan could receive a maximum of one grant or loan per year of up to $1,000,000 per grant or loan. A grant or loan would be rewarded only if the property were a "facility" (a contaminated site as defined above) and the proposed redevelopment of the property would result in measurable economic benefit that would exceed the requested grant amount or the property had economic development potential based on the planned use of it.

The administering department would have to consider the extent to which the grant or loan would contribute to the achievement of a balanced distribution of grants and loans throughout the state before making a grant or loan with money from the fund.

A grant or loan recipient would have to keep an accounting of the money (subject to a postaudit) spent on the project or facility in a generally accepted manner. A recipient also would have to obtain authorization from the DEQ before implementing a significant change to the proposed project.

Applications. A grant or loan application would have to be made on a form or in a format prescribed by the administering state department, which could require the applicant to provide any necessary information. The administering department could not make a grant or a loan unless the applicant met the following conditions: demonstrated that the proposed project complied with all applicable state laws and rules or would result in compliance; demonstrated to the administering state department its capability to carry out the proposed project; demonstrated that there was an identifiable source of funds for the future maintenance and operation of the proposed project; had successfully undergone an audit within the last 24 months; and, within the last 24 months, had not had any previous grant from the administering state department revoked or terminated or demonstrated an inability to manage a grant.

Revocation, Withholding, Cancellation, or Termination. The bill would allow the administering department to revoke a grant or a loan made from the fund, or withhold payment if the recipient failed to comply with the terms and conditions of the grant or loan agreement, the bill's requirements, or rules. The administering department could recover all funds awarded under a grant or loan that was revoked.

The administering department also could withhold a grant or a loan until it determined that the recipient was able to proceed with the proposed project. To assure timely completion of a project, the administering department could withhold 10 percent of the grant or loan until the project was complete.

The administering department could cancel a grant or loan offer if an approved applicant failed to sign a grant or loan agreement within 90 days of a written grant or loan offer by the DEQ. The applicant could not appeal or contest a cancellation pursuant to this provision.

The administering department could terminate a grant or loan agreement and require immediate repayment of the grant or loan if the recipient used grant or loan funds for any purpose other than for the approved activities specified in the grant or loan agreement. The department would have to give the recipient written notice of the termination 30 days prior to the termination.

Loans. A loan that was made with money in the fund would have to have a loan interest rate of up to 50 percent of the prime rate as of the date of the loan's approval. Loan recipients would have to repay loans in equal annual installments of principal and interest beginning not later than five years after execution of a loan agreement and concluding not later than 15 years after execution of a loan agreement. A loan recipient would have to enter into a loan agreement with the administering state department. The loan agreement would have to contain a commitment that the loan was secured by the applicant's full faith and credit pledge, or, if the recipient were a brownfield redevelopment authority, a commitment from the municipality that created the authority. Loan payments and interest would have to be deposited in the fund. Upon default of a loan, or upon the request of the loan recipient as a method to repay the loan, the Department of Treasury would have to withhold state payments from the loan recipient in amounts consistent with the repayment schedule in the loan agreement until the loan was repaid. The DEQ would have to deposit the funds that were withheld into the fund until the loan was repaid.

Other Provisions. The DEQ and the attorney general could recover costs spent for facilities' corrective actions, response activities and site assessments, and

all other recoverable costs from persons liable under Part 201 (Environmental Remediation) of the NREPA. Actions to recover costs would have to be done in the manner as prescribed under Part 201.

The bill further provides that the auditor general would have to conduct a performance audit of state programs funded with money from the fund, every two years. The auditor general would have to submit a copy of the performance audit to the audited department and the legislature when the performance audit was completed.

FISCAL IMPLICATIONS:

House Bill 5622 would require that the state issue $675 million in general obligation bonds. Assuming a 25-year term for the bonds, and a 4.8 percent interest rate, the Department of Treasury reports that the bill would cost the general fund/general purpose budget about $47 million annually in debt service, or a total of $1.173 billion for the 25-year period. This amount would include $675 in principal and $498 million in interest during the 25-year period. In addition, according to the department, costs totaling about $3.6 million would be incurred for the year that the bonds were sold for underwriting fees and other costs associated with selling long-term bonds. This cost would be amortized. (8-19-98)

ARGUMENTS:

For:

The 1988 Quality of Life Bond Proposal initiated a commitment to confront environmental challenges. The current ballot initiative is needed to make funds available to continue the commitment. In his 1998 state of the state address, the governor praised the state's accomplishments as steward of the Great Lakes. He noted the progress made in monitoring the quality of the state's drinking water -- Michigan was first in the nation to meet federal drinking water standards. Pointing to the progress the state has made in monitoring air quality, he observed that Grand Rapids and the metro Detroit area were the first major metropolitan areas in the nation to be designated as having attained federal clean air standards. Among other improvements, he noted that Michigan was the first state to craft a comprehensive environmental code, which took effect in 1995; and that Ballot Proposal P in 1994 set up a State Park Endowment Fund to provide a stable source of funding for these resources.

Notwithstanding these achievements, the state faces environmental problems that need to be addressed immediately. In 1988, when the Quality of Life Bond Proposal was first contemplated to address the state's environmental problems, it was estimated that there were some 1,800 sites of environmental contamination where response activities would have to be conducted. Public Act 71 of 1995 reduced cleanup standards. However, by then, the number had increased to 2,812. According to the Department of Environmental Quality (DEQ), there are now some 9,700 contaminated sites, and more are being discovered each year. Also, according to the DEQ, of the 562 sites at which cleanup activities of some type are being carried out, only 19 percent have been fully cleaned up.

For:

According to the state constitution, the state may borrow money for specific purposes in amounts provided by acts of the legislature and adopted by a vote of two-thirds of the members serving in each house, and approved by a majority vote of the public at a general election. Within the past 50 years, several general obligation bond proposals have been approved. In 1968, for example, the Public Recreation Bond Proposal Act was approved for $100 million, and the Clean Water Bond Proposal Act was approved for $335 million. In 1974, the Vietnam Veterans Bonus Bond Proposal Act was approved for $205 million. More recently, in 1988, the Quality of Life Bond Proposal authorized the sale of $800 million in bonds to improve the environment, as well as state parks.

Recalling the 1988 Quality of Life Bond Proposal, the governor observed, in his 1998 state of the state address, that Michigan citizens have always supported environmental ballot initiatives, and that the selling of bonds is a way to invest in the environment for future generations. Nonetheless, some have suggested that there are only two legitimate reasons to burden future taxpayers with bonded indebtedness: to use a significant sum of money now to save a larger sum in the future, and to fund an expensive project whose life and usefulness would outlive the repayment of the bond. Others note that issues such as environmental problems are of such magnitude and cost that they can be properly addressed only by long-term planning and payment. The sale of general obligation bonds would allow the state to make the necessary long-term plans for the environment and the state's recreational industry.

Response:

Some fear that the state is mortgaging its children's future by borrowing huge sums of money in good financial times. According to this viewpoint, if the economy slows over the next 30 years, the state will be saddled with close to a billion dollars in debt that it might find difficult to repay.

For:

By reducing cleanup standards at industrial and commercial contaminated sites, Public Act 71 of 1995 led the way for a new emphasis to be placed on the private redevelopment of contaminated urban areas, or so-called "brownfield" sites. However, the act also eliminated retroactive liability for cleanup at these sites by private companies. The combination of this provision, together with the insolvency of the Michigan Underground Storage Tank Financial Assurance (MUSTFA) Fund, left the state with the problem of financing the cleanup of new "orphan sites," or "orphan shares" -- i.e. contaminated industrial or commercial sites or sections of sites for which no culpable party can be found, or for which the culpable party no longer exists. Appropriations from the Quality of Life Bond program provided a source of funding for this work. In addition, Public Acts 380 through 384 of 1996 provided funds and encouraged the redevelopment of these sites by allowing brownfield areas to be treated in a manner similar to the treatment of tax increment financing and other economic development districts.

It is especially important that contaminated sites be cleaned up in urban areas. Developers tend to avoid them, and, instead, concentrate on pristine "greenfields" in suburban areas. As a result, local communities suffer a loss of jobs, must contend with a smaller tax base, a waste of the public infrastructures that were built to support the exiting businesses, and the security, health, and aesthetic problems inherent in vacant properties. The flight of developers also results in a loss of habitat for the state's flora and fauna, costly construction of public infrastructure to support the new industries, and overdevelopment of the state's constantly shrinking open spaces.

Response:

Michigan businesses and industry already have been relieved of substantial cleanup responsibilities by the weakening of the polluter pay law under the provisions of Public Act 71 of 1995. In addition, under the provisions of Public Act 380 of 1996, businesses were not required to make any kind of significant contribution to the cleanup program. If the bond proposal is passed, Michigan taxpayers will have spent three-quarters of a billion dollars to restore contaminated sites, and will have added approximately $52 to the state's per capita tax supported debt. Meanwhile only a fraction of the sites have been cleaned up. At the current rate of spending, taxpayers may end up pouring millions more dollars into cleanup efforts without rescuing even a fraction of the state's brownfields. Further, it is pointed out that no inventory has been made of the state's brownfields, so it is impossible to assess how much will be needed to clean them up.

For:

Agricultural runoff from nitrogen fertilizers and pesticides has polluted many of the state's rivers and streams. In some areas, such as those located adjacent to hog farms, runoff that includes animal wastes depletes the water's oxygen and kills off fish and aquatic plants. Under the bond proposal, environmental improvement projects would be designed to protect and enhance these areas. The bond proposal would also enable local governments to reclaim and revitalize local waterfronts that were currently abandoned or underdeveloped and clean up contaminated waterfront property. Waterfront property has not always been used effectively in terms of its economic value and the public enjoyment. Further, as the demands for waterfront property exceed the supply, pressure is put on environmentally sensitive areas that are not suitable for some types of development. The proposal also would help establish nonpoint source pollution prevention and control grants programs for local governments or tax-exempt organizations and implement the physical improvement portion of watershed plans to protect and improve water quality. Nonpoint source pollution includes, among other things, soil and sediment, nutrients, paint and used motor oil, and fecal coliform, which contribute to the depreciation of Michigan's water quality. In addition, the bond proposal would provide funding for state park revitalization projects.

Response:

Recent polls suggest that 75 percent of the state's voters would support using the bond proposal for a farmland preservation trust, and to keep sewers from overflowing into rivers and streams, and some have suggested that the bond proposal should have been increased to include money for these purposes. Otherwise, it is argued, the bond proposal would be an economic development bond, rather than an environmental bond, and would be inadequate because it would fail to address certain key environmental issues.

Under a farmland preservation trust, land would be purchased from farmers who otherwise would sell their land for development. As a result, farmland and open spaces would be preserved and urban sprawl would be contained. With regard to combined sewer overflows (CSOs), although local communities have had bonds issued to construct, improve, and replace CSO abatement facilities, which separate sanitary sewers and storm sewers, only a fraction of the amount required to provide loans to communities is currently provided. More funds should be provided to correct this problem.

For:

Under House Bill 5719, the Clean Michigan Initiative bond proposal would parallel the provisions of the 1988 Quality of Life bond proposal. Under each, a major portion of the proceeds is allocated to clean up sites of environmental contamination, with lesser amounts provided for state parks, water quality programs, and grants for local public recreation projects. The grants would provide local communities with funds to restore and renovate local parks, to remove unsafe playground equipment, and to build swimming pools, athletic courts, and community centers. In addition, the bill would allow projects that addressed tourism priorities to be considered. This provision would allow towns that have an influx of visitors for short periods of time, such as ski or lakeside resort areas, to receive grants for projects designed to benefit tourism businesses. However, all Michigan citizens, including future generations, would benefit from improved recreational opportunities.

Response:

Some people have raised concerns regarding the inclusion of "tourism" priorities in the consideration of grant proposals. Those who are concerned argue that tourism is an economic, rather than recreational, issue. In addition, others point out that, of the $50 million that would be provided for public recreation projects under the Clean Michigan Initiative bond proposal, local units of government would receive allocations in proportion to their populations. According to this formula, Zone 1, which consists of the Upper Peninsula, would receive 3.6 percent of the $50 million, while Zone 3 in southeast Michigan would receive 20 times as much. However, some have pointed out that Zone 1 covers a much larger geographic area than that of Zone 3, and, since this area is afflicted by many of the same problems as southeast Michigan, it should receive equal consideration.

Against:

House Bills 5620 and 5622 are part of a package of bills that would place a "Clean Michigan Initiative" bond proposal on the ballot for the November, 1998, general election. The voters would be asked to approve $675 million in general obligation bonds to finance environmental and natural resources protection programs. In Senate Bill 904, to which these bills are tie-barred, provisions have been included to assure that the Department of Environmental Quality (DEQ) provide the governor and the legislature with a list of projects that were to be funded by grants or loans with money from the Clean Michigan Initiative Bond Fund. In fact, Senate Bill 904 would require that the list be submitted no later than February 15th each year, and before any request for supplemental appropriation of bond funds. In addition, the DEQ would have to submit a list of projects financed under the bill by December 31st each year. And, before submitting the first cycle of recommended projects, the DEQ would have to publish and distribute the criteria it used to evaluate these projects. Some have suggested that the state should first establish a list of potential projects, similar to the list proposed under Senate Bill 904, and provide it as public information *before* the bond proposal is voted on, and that the department specify what percentage of the state's brownfields would be restored by the bond money. With this information, the public would be able to decide whether the prospective environmental gains justified the additional debt burden.

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■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.