

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 902 (Substitute S-3 as passed by the Senate)
Senate Bill 904 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Don Koivisto (S.B. 902)
Senator Loren Bennett (S.B. 904)
Committee: Natural Resources and Environmental Affairs

Date Completed: 4-16-98

RATIONALE

The Governor's 1998 State of the State message proposed the "Clean Michigan Initiative"(CMI), which would allow Michigan to borrow \$500 million to sell general obligation bonds for environmental improvement projects. The projects would do the following: clean up and redevelop contaminated sites, protect and improve water quality, reclaim and revitalize community waterfronts, enhance and increase recreational opportunities at State parks, and clean up contaminated sediments in Michigan waters. The Governor declared that the State has made tremendous progress and notable improvements in balancing solid economic growth and sound environmental management, but could use additional measures to continue addressing targeted environmental concerns.

The Governor's State of the State message stated that he believed "the time is right to take the next step", given the current level of interest rates and Michigan's credit rating of AA+, to borrow \$500 million and issue general obligation bonds. The bond proposal would be subject to voter approval at the next general November election.

Many people feel that indebting the State's taxpayers with general obligation bonds is proper in instances in which a large sum of money is needed to deal with an immediate problem. Article 9, Section 15 of the State Constitution allows the State to borrow money for specific purposes in amounts as provided by Public Acts. Approval by two-thirds of the Senate and House of Representatives, and by a majority of the electors voting in a general election, is required. The question submitted to the electors must state the amount to be borrowed, the specific purpose for which the funds are to be devoted, and the method of repayment.

Many people believe the proposed CMI bond would benefit the State's citizens, parks, water resources, communities, and families. The bond proposal would finance environmental and natural resources protection programs in targeted areas of environmental concern, such as brownfield redevelopment and environmental cleanups, waterfront improvement, river sediment cleanups, water quality programs, and State and local park improvements.

CONTENT

Senate Bill 902 (S-3) would add Part 88 to the Natural Resources and Environmental Protection Act (NREPA) to allow the Department of Environmental Quality (DEQ) to establish a nonpoint source pollution prevention and control grants program. Senate Bill 904 (S-3) would add Part 196 to the NREPA to provide implementation authority for the bonds issued under the Clean Michigan Initiative Act (proposed by House Bill 5622). The bills would take effect December 1, 1998.

The bills are tie-barred to each other, and House Bill 5622, which (as Substitute H-3) would provide for the issuance of \$550 million in bonds for environmental and natural resources protection programs. The bills also are tie-barred to House Bill 5620, which would allow the DEQ to establish a watershed redevelopment program, and House Bill 5719, which would allow the DEQ to establish local recreation grants. The bills would not take effect unless the ballot question provided for in the CMI Act were approved by the voters. The following is a detailed description of the bills.

Senate Bill 902 (S-3)

Nonpoint Source Pollution Prevention and Control

Grants Program

The bill would require the DEQ to establish a nonpoint source pollution prevention and control grants program 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 projects that would do either or both of the following as approved by the Department: implement the physical improvement portion of watershed plans and/or reduce specific nonpoint source pollution. ("Nonpoint source" 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% 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 Department 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.

Grant Criteria

The DEQ would have to consider the following criteria in relation to the nonpoint source pollution prevention and control project 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.
- Other information the DEQ considered relevant.

Application Process

Under the bill, a local unit of government wishing to apply for a grant would have to submit a 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; a discussion, 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 Director of 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.

Senate Bill 904 (S-3)

Legislative Finding

The bill states the following legislative finding and declaration: "...that the environmental and natural resources protection programs implemented under 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 State Administrative Board could 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.

The State Administrative Board also could 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.

Fund Allocation

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 \$325,000,000 for response activities at facilities.
- Up to \$50,000,000 for waterfront improvement.
- Up to \$25,000,000 for contaminated river sediments cleanup.
- Up to \$50,000,000 for nonpoint source pollution prevention and control.
- Up to \$50,000,000 for State park infrastructure improvements.
- Up to \$50,000,000 for local public recreation projects.

("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 Department for corrective actions to address releases from leaking underground storage tanks; response and site assessment activities at facilities; grants and

loans (up to \$20,000,000) for local units and brownfield redevelopment authorities for response activities at known or suspected facilities; and grants (up to \$12,000,000) for the municipal landfill grant program. Of the money allocated, up to \$60,000,000 would have to be used for facilities that posed an imminent and substantial endangerment to the public health, safety, or welfare, or to the environment.

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.

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 5% would have to be available for appropriation to pay Department 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 3% 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 Department of Natural Resources 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.

The bill would require the DEQ and the DNR to submit annually, by February 15, a list of all projects recommended to be funded under the bill

that would be undertaken by the Department. 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. 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 administering department 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 on natural resources and environmental quality.

The Legislature would have to appropriate prospective or actual bond proceeds for projects proposed to be funded. 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 and the DNR 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 pertinent information.

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" 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 Department before implementing a significant change to the proposed project.

Application

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 the 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 Department revoked or terminated or demonstrated an inability to manage a grant.

Revocation, Withholding, Cancellation, or Termination

The bill would allow the DEQ or DNR 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 Department could recover all funds awarded under a grant or loan that was revoked.

The 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 Department could withhold 10% of the grant or loan until the project was complete.

The 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 Department. The applicant could not appeal or contest a cancellation pursuant to this provision.

The 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% 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 Department would have to deposit the funds that were withheld into the Fund until the loan was repaid.

Other Provisions

The DEQ and the Department of 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.

Proposed MCL 324.8801-324.8806 (S.B. 902)
Proposed MCL 324.19601-324.19616 (S.B. 904)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Clean Michigan Initiative package has several essential objectives: clean up toxic sites that threaten public health and stifle development; make critically needed improvements at State parks; protect and enhance the quality of drinking water; clean up lakes, rivers, and streams; and revitalize local waterfronts. The proposed legislation would enable Michigan to go a long way toward meeting these objectives. Beneficiaries of this proposal would include all Michigan citizens, including future generations; people who visit State parks; people who enjoy fishing, swimming, and boating; and people who live, work, or play in Michigan's communities, whether large or small, or urban or rural; and Michigan's working families and farms. Potential benefits of the proposal would include protection of the public health and safety; cleaner waterways; the creation of jobs and opportunities to revitalize the State's communities; an enhanced reputation for the State as an outstanding travel destination; improved recreational opportunities; and improved roads and electrical, water, and sewer systems in State parks.

The bills would allocate up to \$325 million for contaminated facilities, including up to \$60 million for sites presenting an imminent and substantial danger to the public health, safety, or welfare, or to the environment. These funds would finance the safe restoration of contaminated property to productive use. Facilities eligible for funding could include projects that require additional funds to be completed and project needs at new acute sites that could not be met with base program funding. In addition, the bills would provide for brownfield cleanups and redevelopment to enhance local environments and promote effective land use by reducing urban sprawl and development pressures on open green spaces and farmland. The proposed bond, however, would retain the principle of "polluters pay" under which environmental polluters are held responsible for the restoration of

the State's natural resources.

The proposed CMI bond also would address problems concerning waterfront redevelopment and contamination by providing funding to acquire property for residential or commercial use and to relocate existing industries. 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 bills would enable local governments to reclaim and revitalize local waterfronts that were currently abandoned or underdeveloped and clean up contaminated waterfront property.

Under the bills, environmental improvement projects also would be designed to protect and enhance the State's river, lakes, and streams. Apparently, several rivers and lakes have contaminated sediments that cause harm to aquatic life and restrict fish and wildlife consumption. These contaminants include toxic substances such as PCBs, oils, metals, DDT, arsenic, and solvents. The targeted areas, which reportedly contain over 3,000,000 yards of extremely contaminated sediments, include the following: Deer Lake, Carp Creek River, Pine River, White Lake, Muskegon Lake, Black River, Clinton River, Detroit River, Rouge River, and River Raisin.

The bills 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 standards.

In addition, the proposed CMI bond would provide funding for State and local park revitalization projects. The funds would target State parks that possess a significant natural feature, are larger than 500 acres, and/or offer multiple recreational activities; infrastructure revitalization; critical construction needs; and standardization of building designs. Revitalizing our State and local parks and recreational facilities not only would preserve and enhance environmental quality, but also would increase the State's tourism industry, since over 20 million persons reportedly visit State and local parks yearly.

Supporting Argument

According to the State Treasurer, this would be an excellent time for the State to borrow tax-exempt money to invest in projects that require long-term financing because of the current level of interest rates and Michigan's improved credit rating of AA+.

Opposing Argument

The CMI 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. The CMI bond proposal should include funding for combined sewer overflow (CSO) abatement projects, since CSO is an environmental contamination problem and the Revolving Loan Fund has not been adequate to assist local communities. Local communities have had bonds issued for the construction, improvement, or replacement of CSO abatement facilities, which separate sanitary sewers and storm sewers in order to reduce the contamination of lakes and rivers that results when combined sewers overflow in heavy rainstorms. The CMI bond also should include measures to help prevent and remedy pollution by providing assistance to small and medium-size businesses that are unable to establish or fund projects to cease or decrease their amount of pollution.

Response: The CSO problem in southeastern Michigan would reportedly cost \$2.2 billion. If this were added on to the CMI bond proposal, the voters might not approve such a large bond issue. If the issue were so large that it was rejected by the voters, the State would end up back where it started, which would jeopardize the other less costly environmental projects.

Legislative Analyst: N. Nagata

FISCAL IMPACT

Senate Bill 902 (S-3)

The bill would have no fiscal impact in that it outlines a program to be funded by House Bill 5622.

Senate Bill 904 (S-3)

House Bill 5622 (H-3) would authorize the State to issue \$550 million in general obligation bonds. Assuming a 25-year term and 4.8% interest, this would cost the General Fund/General Purpose budget about \$35 million annually or about \$870 million during the 25-year period (\$500 million in

principal and \$370 million in interest). Additional costs totaling about \$5 million also would be incurred the year the bonds were sold, for underwriting fees and other costs associated with selling long-term bonds.

Senate Bill 904 (S-3) would direct the use of \$550 million in bond revenues. It could provide for up to \$182 million in additional funds for local recreation grants and environmental grants or loans. The remaining \$368 million would be allocated to the State; with up to \$318 million for cleanup of contamination sites and river sediments (up to \$60 million for acute public health threats), and up to \$50 million for State park infrastructure improvements. The Department of Environmental Quality would be authorized to receive 5%, or \$16.25 million, for administration of the environmental cleanup program. The Department of Natural Resources would be authorized to receive 3%, or \$3 million, for administration of the State park and local recreation grant programs.

Fiscal Analyst: J. Wortley
G. Cutler

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.