



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



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

Senate Bill 789 (as enrolled)
Senate Bill 790 (as enrolled)
Senate Bill 799 (as enrolled)
House Bill 4572 (as enrolled)
House Bill 4573 (as enrolled)
House Bill 5297 (as enrolled)

Sponsor: Senator Patricia L. Birkholz (S.B. 789)
Senator Gerald Van Woerkom (S.B. 790)
Senator Liz Brater (S.B. 799)
Representative John Stakoe (H.B. 4572)
Representative Neal Nitz (H.B. 4573)
Representative Aldo Vagnozzi (H.B. 5297)

Senate Committee: Natural Resources and Environmental Affairs
House Committee: Local Government and Urban Policy

PUBLIC ACT 253 of 2005
PUBLIC ACT 257 of 2005
PUBLIC ACT 255 of 2005
PUBLIC ACT 254 of 2005
PUBLIC ACT 256 of 2005
PUBLIC ACT 252 of 2005

Date Completed: 2-23-06

RATIONALE

In the 2002 general election, Michigan voters approved the Great Lakes water quality bond proposal, authorizing the State to borrow up to \$1 billion and issue general obligation bonds to finance sewage treatment projects, storm water projects, and nonpoint source projects that improve the State's water quality. Public Act 397 of 2002 added Parts 52 (Strategic Water Quality Initiatives) and 197 (Great Lakes Water Quality Bond Implementation) to the Natural Resources and Environmental Protection Act to implement the bond proposal, effective November 5, 2002.

Public Act 397 created the Great Lakes Water Quality Bond Fund within the State Treasury; the Fund consists of the proceeds of sales of the bonds and any premium and accrued interest received on the delivery of the bonds, any interest or earnings generated by the sale proceeds, and any Federal or other funds received. The Act also required the State Treasurer to distribute 90% of the money to the State Water Pollution Control Revolving Fund (SRF), and the remaining 10% to the Strategic Water Quality Initiatives Fund (SWQIF). The SRF provides low-interest loans to assist municipalities in funding wastewater treatment improvements. The

projects may include wastewater treatment plant upgrades or expansions, combined sewer overflow abatement, new sewers designed to reduce existing sources of pollution, nonpoint source pollution management measures, and other related wastewater treatment efforts. Qualified municipalities must meet Federal and State program requirements, and demonstrate environmentally sound water pollution control project plans.

Under the State Water Quality Initiatives Loan Program, the Michigan Municipal Bond Authority, in consultation with the Department of Environmental Quality (DEQ), provides low-interest loans from the SWQIF to municipalities to provide assistance for one or both of the following sewage system improvements: improvements to reduce or eliminate the amount of groundwater or storm water entering a sanitary sewer lead or a combined sewer lead; and upgrades or replacements of failing on-site septic systems that are adversely affecting public health and/or the environment.

Apparently, local governments have not taken advantage of the available funding due to the significant initial planning and engineering costs of the loan application

process, which reportedly range from \$20,000 to \$50,000. It was suggested that some of the money from the sale of the bonds be directed to a grant program to assist municipalities in applying for the loans.

CONTENT

House Bill 4572 amended Part 52 of the Natural Resources and Environmental Protection Act (NREPA) to require the Michigan Municipal Bond Authority, in consultation with the DEQ, to establish a program to provide grants from the Strategic Water Quality Initiatives Fund to governmental units to cover up to 90% of the cost of developing a project plan in applying for a loan from the State Water Pollution Control Revolving Fund.

House Bill 4573 amended Part 197 of NREPA to revise the allocation of money received from the sale of Great Lakes water quality bonds.

Senate Bill 789 amended Part 52 of NREPA to allow the Michigan Municipal Bond Authority, in consultation with the DEQ, to spend money from the SWQIF, upon appropriation, for grants under House Bill 4572.

Senate Bill 790 amended Part 52 of NREPA to define "grant" as a grant from the program that House Bill 4572 established.

Senate Bill 799 amended Part 53 (Clean Water Assistance) of NREPA to include actions undertaken the planning of sewage treatment works projects, stormwater treatment projects, or nonpoint source projects in the definition of "construction activities".

House Bill 5297 amended the Shared Credit Rating Act to allow a governmental unit and the Michigan Municipal Bond Authority to enter into grant agreements under provisions of NREPA added by House Bill 4572.

The bills took effect on December 1, 2005, and were tie-barred to each other. They are described below in further detail.

House Bill 4572

The bill requires the Michigan Municipal Bond Authority, in conjunction with the DEQ, to establish a Strategic Water Quality Initiatives Grant Program that provides grants totaling not more than \$40.0 million to eligible municipalities to complete the loan application requirements of Section 5308.

(Section 5308 requires a municipality to submit certain documents in order to apply for assistance from the SQWIF, including financial documentation that a dedicated source of revenue is established; an approved project plan; a certification that the municipality is capable of operating and maintaining the project; a letter of credit; a set of plans and specifications suitable for bidding; an application fee, if required; and various certifications and agreements regarding compliance with applicable State and Federal laws, contracting procedures, accounting, and record-keeping.)

The grant program must provide grants to cover a maximum of 90% of the costs a municipality incurs to complete an application for loan assistance from the SRF or the SWQIF. The 10% local match is not eligible for loan assistance from either Fund. Grant funds may not be used for general local government administrative activities or activities performed by municipal employees.

A municipality may not receive more than \$1.0 million in total grant assistance under the bill.

The grants are available for projects seeking or intending to seek loan assistance after September 30, 2006. The DEQ must stop accepting grant applications two years after the date the first grant agreement is entered into.

Within six months after the bill's effective date, the DEQ must establish an application and review process for considering grant applications. The application must contain the information required by the DEQ and the Authority.

Within 30 days after receiving an application, the DEQ must publish notice of it on the Department's calendar. Within 60 days after receiving an administratively

complete application, the Department must notify the applicant in writing whether the application is approved or rejected. If the DEQ approves a grant, the Department, along with the Authority, must enter into a grant agreement with the recipient before transferring funds. The grant agreement must contain terms established by the DEQ and the Authority and a requirement that the recipient repay the grant within 90 days of being informed to do so, with interest at a maximum rate of 8% per year, to the Authority for deposit into the SWQIF if any of the following occur:

- The applicant fails to submit an administratively complete loan application for assistance from the SRF or the SWQIF for the project within three years of the grant award.
- The project has been identified as being in the fundable range and the applicant declines loan assistance from the SRF or the SWQIF in that fiscal year.
- The applicant is unable to or decides not to proceed with constructing the project or opts to finance construction by means other than a grant from the SRF or the SWQIF.

For each year in which the DEQ receives applications under the bill, it must report by July 1 to the standing committees of the Senate and House of Representatives with primary jurisdiction over issues pertaining to natural resources and the environment and to the Senate and House Appropriations Committees on the use of funds under Part 52 that are received from the Great Lakes Water Quality Bond Fund. At a minimum, the report must include all of the following:

- The number of grant applications received.
- The name of each municipality applying for a grant.
- The individual and annual cumulative amount of grant funds awarded, including an identification of whether each award is for the purpose of applying for assistance from the SRF or the SWQIF.
- A summary of loan assistance, by year, tendered from the SRF and the SWQIF.

The Senate and House Appropriations Committees must review annually whether there is sufficient money in the SWQIF to implement the bill's requirements and

Section 5202 (which provides for the State Water Quality Initiatives Loan Program).

House Bill 4573

Previously, Part 197 required the State Treasurer to distribute 90% of the money in the Great Lakes Water Quality Bond Fund to the SRF, and the remaining 10% to the SWQIF. Under the bill, in aggregate, not more than \$900.0 million must be deposited into the SRF and, in aggregate, not more than \$100.0 million must be deposited into the SWQIF.

The bill also requires bonds that are directly deposited into the SRF or the SWQIF as authorized by Section 19703 to be taken into account for the purpose of determining the allocation and transfer of money set forth under the bill. (Under that section, the bonds may be deposited directly into either Fund as determined by or pursuant to a resolution of the State Administrative Board.)

Senate Bill 789

Previously, the Michigan Municipal Bond Authority, in consultation with the DEQ, could spend money from the SWQIF, upon appropriation, only for loans under the Strategic Water Quality Initiatives Loan Program and for the Authority's and the DEQ's costs in administering the SWQIF. Under the bill, the Authority also may spend the money for grants under House Bill 4572.

Senate Bill 790

For purposes of Part 52, the bill defines "grant" as a grant from the grant program, and defines "grant program" as the Strategic Water Quality Initiatives Grant Program established under Section 5204a of NREPA (the section added by House Bill 4572). The bill also defines "state water pollution control revolving fund" as that Fund established under Section 16a of the Shared Credit Rating Act.

Senate Bill 799

Under Part 53, the term "construction activities" means any actions undertaken in the designing or building of sewage treatment works, stormwater, or nonpoint source projects. The term includes engineering, legal, and financial services;

design of plans and specifications; acquisition of land and structural components; building, erection, alteration, remodeling, or extension of a sewage treatment works, stormwater treatment project, or project designed to control nonpoint source pollution; and municipal supervision of these project activities.

Under the bill, "construction activities" also means any actions undertaken in the *planning* of sewage treatment works, stormwater treatment, or nonpoint source projects. The term also includes project planning services.

House Bill 5297

Under the bill, in addition to any other authority granted under law, each governmental unit may enter into grant agreements under Section 5204a of NREPA (which House Bill 4572 added to establish the Strategic Water Quality Initiatives Grant Program). A governmental unit also may pledge its limited taxing power as security for any repayment obligation. The bill provides that the grant agreements are not subject to the Revised Municipal Finance Act, and that a governmental unit's repayment obligations under an agreement are not a general obligation or debt within the meaning of any constitutional or statutory debt limitation and are not subject to any notice or referendum requirement.

The bill also provides that grant agreements under Section 5204a of NREPA may be entered into by the Municipal Bond Authority and do not have to be in fully marketable form.

MCL 324.5204 (S.B. 789)
324.5201 (S.B. 790)
324.5301 (S.B. 799)
324.5204a (H.B. 4572)
324.19708 (H.B. 4573)
141.1016d (H.B. 5297)

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

Sanitary and wastewater sewer systems are generally designed to handle expected sanitary waste flows generated from

residences and businesses during peak usage. Many sewer systems are aging, however, and maintenance, rehabilitation, and replacement are inevitable. In addition, the aging infrastructure is not equipped to handle the increased demands of current use. During extreme events such as heavy downpours or substantial snowmelt, the sewer capacity may become overloaded, which may lead to the back-up of sewage into basements and/ or overflows of untreated wastewater into nearby waterways. Sewer overflows may contain suspended solids, toxic chemicals, pathogens, grease, debris, drugs, pesticides, and detergents, and can pose a severe problem for the environment. These sewage discharges are among the largest threats to water quality, aquatic life, and public health.

In response to these concerns, the Great Lakes water quality bond program was implemented to provide a funding stream for critical upgrade and improvement projects, although the \$1.0 billion available is exceeded by the estimated need (said to be at least \$26.0 billion in the Detroit area alone, and perhaps twice that amount statewide). Municipalities, however, have not taken advantage of the funding available from the sale of bonds to the extent possible because the initial planning and engineering costs are prohibitive. Especially during tight economic times, when local governments have faced revenue sharing cuts, many simply cannot afford the up-front costs of critical sewer projects.

The bills will enable local governments to commence necessary sewer projects without raising taxes. The updated infrastructure, in turn, will improve the general health of the environment and may help attract business to the State.

Response: While the lack of financing for the application process was a problem that needed to be addressed, the bills represent a significant departure from the concept that was presented to voters for approval in 2002. Under the bond proposal, the money was to support a loan program, not grants that municipalities would not have to repay. Although the ballot language did not specify how the money would be distributed, it is questionable whether changing the voter-approved proposal is constitutional or prudent.

The bills also raise concerns about fairness. Some communities already have begun sewer projects by levying additional taxes; others were ordered to do so after litigation.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bills will cost the State \$40.0 million from the Strategic Water Quality Initiatives Fund. Providing the funding in the form of grants instead of loans will reduce loan capacity for the original purposes of the SWQIF program and the State will not recover the amounts awarded as grants.

A local unit of government will be eligible to receive a grant up to \$1.0 million for project planning services if it proceeds with loan funding under either the State Water Pollution Control Revolving Fund or the Strategic Water Quality Initiatives Fund. In aggregate, up to \$40.0 million will be available for local units of government as grant funding.

Fiscal Analyst: Jessica Runnels

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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.