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BILL ANALYSIS

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Senate Bill 1267 (as enacted) **PUBLIC ACT 263 of 2010**
Senate Bills 1345, 1346, and 1348 (as enacted) **PUBLIC ACTS 228-230 of 2010**
Senate Bill 1443 (as enacted) **PUBLIC ACT 231 of 2010**
House Bill 6359 (as enacted) **PUBLIC ACT 227 of 2010**
House Bills 6360 and 6363 (as enacted) **PUBLIC ACTS 233 & 234 of 2010**
House Bill 6416 (as enacted) **PUBLIC ACT 232 of 2010**

Sponsor: Senator Dennis Olshove (S.B. 1267)
Senator Patricia L. Birkholz (S.B. 1345)
Senator Alan Sanborn (S.B. 1346)
Senator John Gleason (S.B. 1348)
Senator Jud Gilbert, II (S.B. 1443)
Representative Ed Clemente (H.B. 6359)
Representative Woodrow Stanley (H.B. 6360)
Representative Marty Knollenberg (H.B. 6363)
Representative Martin Griffin (H.B. 6416)

Senate Committee: Natural Resources and Environmental Affairs (S.B. 1267, 1345, 1346, 1348, & 1443)
House Committee: Appropriations (S.B. 1267)
New Economy and Quality of Life (all bills except S.B. 1267)

Date Completed: 1-4-11

RATIONALE

In 1995, amendments to Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act (NREPA) made significant changes to Michigan law regarding the cleanup of sites contaminated by hazardous substances, or "brownfields". Key to these revisions was a shift from strict liability for environmental contamination to a causation-based standard, which protects new owners from liability for contamination previously caused by others. In 2005, the former Department of Environmental Quality (now the Department of Natural Resources and Environment, or DNRE) asked Public Sector Consultants to facilitate a stakeholder-driven process to review the cleanup law. The review process used four workgroups to address specific aspects of Part 201. A report compiled by Public Sector Consultants containing the workgroups' recommendations was issued in 2007. The recommendations included changing the basis for liability protection, streamlining the program, reducing the technical complexity of Part 201 rules, and simplifying DNRE administrative procedures. It was suggested that adopting some of the recommendations, along with other revisions to Part 201, would increase the efficiency and cost-effectiveness of the cleanup process.

In a related matter, some people proposed that money from the State Water Pollution Control Revolving Fund (SRF) and the Strategic Water Quality Initiatives Fund (SWQIF) also could be used to facilitate the cleanup of abandoned brownfields. These funds were created as a result of the Great Lakes Water Quality Bond proposal, which voters approved at the 2002 general election. The program authorizes the State to borrow up to $1.0 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.

In addition, it was suggested that a fee imposed on the sale of petroleum products, which was set to expire at the end of 2010, should be extended for two years. This money is used to fund remediation of leaking underground storage tanks (LUSTs). Reportedly, more than 9,000 LUSTs have been identified in Michigan; in approximately half of those cases, there is no party that can be held responsible.

CONTENT

The bills would amend various parts of NREPA to revise provisions related to the cleanup of environmental contamination and funding for strategic water quality initiatives.

Senate Bill 1267 amended Part 215 (Refined Petroleum Fund) to extend for two years an environmental protection regulatory fee imposed on the sale of refined petroleum products.

Senate Bill 1345 amended Part 201 to do the following:

-- Allow a liable facility owner or operator to pursue response activities by conducting a self-implemented cleanup or obtaining DNRE approval of his or her response activities.
-- Require a person who pursues a self-implemented cleanup to submit to the DNRE a "no further action" report detailing completion of the response activities.
-- Prescribe factors that the DNRE must consider in selecting or approving a remedial action.
-- Revise the categories used in determining the appropriate remedial action.
-- Allow the DNRE to approve a response activity plan based on site-specific criteria under certain circumstances.
-- Rescind administrative rules related to a DNRE list identifying and categorizing environmental contamination sites.
-- Prescribe methods to demonstrate compliance with Part 201 in regard to a response activity involving venting groundwater.
-- Rescind certain administrative rules pertaining to response activities.

The bill also repealed a section prescribing a process to petition the DNRE for an exemption from liability after completion of a baseline environmental assessment (BEA), and a section providing for a municipal landfill cost-share grant program.

Senate Bill 1346 amended Part 201 to provide that a guideline, bulletin, interpretive statement, or operational memorandum of the DNRE may not be given the force and effect of law. Additionally, the bill defined several terms used in the other bills and revised definitions of existing terms used in Part 201, including "facility".

Senate Bill 1348 amended Part 201 to revise provisions regarding civil and criminal penalties (reflecting changes made by the other bills).

House Bill 6359 amended Part 201 to do the following:

-- Require the DNRE Director to establish a Response Activity Review Panel to advise him or her on technical or scientific disputes concerning response activity plans or "no further action" reports.
-- Allow a person to petition the Panel for review of a DNRE determination, and prescribe a $3,500 petition fee.
-- Exempt a person from liability for environmental contamination if the DNRE approves his or her no further action report.
-- Delete provisions allowing a lender that is not responsible for an activity causing a release at a facility to transfer the property to the State under certain circumstances.
-- Prohibit the DNRE from enforcing specific administrative rules pertaining to BEAs.

House Bill 6360 amended Part 201 to do the following:

-- Expand the responsibilities of the owner or operator of a facility where hazardous substances are present.
-- Require the State or a local unit of government to take certain actions regarding hazardous substances if it invites the public onto its property.
-- Authorize the DNRE to renegotiate the terms of an outstanding loan

from the Revitalization Revolving Loan Fund.

House Bill 6363 amended Part 201 to do the following:

- **Require the owner or operator of a facility from which a hazardous substance has emanated to notify the DNRE and the owners of property to which the substance migrated.**
- **Require the DNRE to create an inventory of known facilities.**
- **Require the DNRE to compile data on and notify the Legislature of requests for approval of response activity plans and no further action reports and BEAs the Department receives.**

House Bill 6416 amended Parts 52 (Strategic Water Quality Initiatives) and 197 (Great Lakes Water Quality Bond Implementation) to allow the SWQIF to be used for wastewater facility infrastructure improvement projects, response activities that address nonpoint source water pollution at contaminated facilities, and for brownfield redevelopment grants and loans. Specifically, the bill does the following:

- **Authorizes the DNRE to spend up to $140.0 million for response activities.**
- **Authorizes the DNRE to spend up to $10.0 million to provide brownfield redevelopment grants and loans to municipalities and brownfield redevelopment authorities.**
- **Specifies a legislative intent that SWQIF money not be used for response activities to address nonpoint source water pollution at facilities once the combined $150.0 million is spent.**
- **Allow the State to establish a grant program within SWQIF for specific wastewater treatment facility infrastructure improvement projects.**
- **Revise the allocation of money from the Great Lakes Water Quality Bond Fund, increasing the amount deposited in the SWQIF and decreasing the allocation to the SRF.**

Senate Bill 1443 amended Parts 52 and 53 (Clean Water Assistance) to do the following:

- **Increase from $40.0 million to $80.0 million the maximum amount available for grants to eligible municipalities from the Strategic Water Quality Initiatives Grant Program.**
- **Allow grants from the Program to be used for assistance to municipalities to complete loan application requirements for financing sources other than the SRF.**
- **Create the SRF Advisory Committee.**
- **Require the Committee to evaluate Part 53 and make recommendations to the DNRE and the Legislature on how it might be amended to achieve prescribed outcomes.**
- **Require the Committee to review and make recommendations regarding a proposed grant program to fund wastewater treatment facility infrastructure improvement projects.**

House Bill 6416 was tie-barred to all of the other bills. Senate Bills 1345, 1346, and 1348 and House Bills 6359, 6360, and 6360 were tie-barred to each other. Senate Bill 1443 was tie-barred to all of the other bills, except Senate Bill 1267.

All of the bills took effect on December 14, 2010.

Senate Bill 1267

Section 21508 of NREPA imposes on all refined petroleum products sold for resale or consumption in Michigan a 7/8-cent-per-gallon environmental protection regulatory fee. The fee is charged for capacity use of underground storage tanks measured on a per-gallon basis. Section 21508 governs the collection of the fee, and requires regulatory fee revenue to be deposited into the Refined Petroleum Fund.

Previously, Section 21508 was set to be repealed on December 31, 2010. The bill delayed the expiration date until December 31, 2012.

(The Refined Petroleum Fund is described in **BACKGROUND**, below.)

Senate Bill 1345

Petition for Exemption from Liability

The bill repealed Section 20129a, which prescribed the process by which a person could petition the DNRE for a determination that the person met the requirements for an exemption from liability. The person had to submit the petition, along with a fee of $750, to the DNRE within six months after completion of a BEA. The DNRE had to deposit the fee into the Cleanup and Redevelopment Fund.

A person who received an affirmative determination under these provisions was not liable for a claim for response activity costs, fine or penalties, natural resources damage, or equitable relief under Part 17 (Michigan Environmental Protection Act), Part 31 (Water Resources Protection), or common law resulting from the contamination identified in the petition or existing on the property when the person took ownership or control.

Response Activity: Self-Implemented

Under the bill, subject to applicable NREPA requirements and other applicable law, a person may undertake response activities without prior approval by the DNRE unless they are being conducted under an administrative order or agreement or judicial decree that requires prior Department approval. Except as otherwise provided, conducting response activities does not relieve any person who is liable under Part 201 from the obligation to conduct further response activities as required by the DNRE under Part 201 or other applicable law.

(As described below, House Bill 6363 deleted comparable provisions in the previous law.)

Upon completion of remedial actions that satisfy the cleanup criteria established under Part 201, a person undertaking the actions may submit to the DNRE a no further action report.

(Part 201 defines "response activity" as evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or natural resources. The term also includes health assessments or health effect studies carried out under the supervision, or with the approval, of the Department of Community Health and enforcement actions related to any response activity. "Remedial action" includes cleanup, removal, containment, isolation, destruction, or treatment of a hazardous substance released or threatened to be released into the environment, monitoring, maintenance, or the taking of other actions that may be necessary to prevent, minimize, or mitigate injury to the public health, safety, or welfare, or to the environment.)

Response Activity: DNRE Approval

Under the bill, upon the DNRE's request, a person undertaking response activity may submit to the Department a response activity plan that includes a request for approval of one or more aspects of response activity. If the person is not subject to an administrative order or agreement or judicial decree that requires prior Department approval, the person must submit a plan review request form with the response activity plan. The DNRE must specify the required content of the request form and make it available on the Department's website.

(Under Senate Bill 1346, "response activity plan" means a plan for undertaking response activities. A response activity plan may include a plan to undertake interim response activities, a plan for evaluation studies, a feasibility study, and/or a remedial action plan.)

Upon receiving a response activity plan submitted for approval, the DNRE must approve, approve with conditions, or deny the plan, or notify the submitter that it does not contain sufficient information for the Department to make a decision. The DNRE must provide its determination within 150 days after receiving the plan, or within 180 days if the plan requires public participation. If the Department responds that the plan does not include sufficient information, the DNRE must identify the information it requires. If the plan is approved with conditions, the approval must specify the conditions. If the plan is denied, the denial must specify the reasons, to the extent practical.

If the DNRE fails to provide a written response within the required time frame, the response activity plan will be considered approved. If the Department denies a plan,

a person may revise it and resubmit it for approval. Any time frame established by the bill may be extended by mutual agreement of the DNRE and a person submitting a plan.

A person requesting approval of a plan may appeal the DNRE's decision by petitioning to convene the Response Activity Review Panel (created by House Bill 6359), if applicable.

Remedial Action

Previously, Part 201 provided for a remedial action plan to be implemented in the cleanup of environmental contamination. A remedial action plan had to include certain elements, such as land use and resource use restrictions if necessary to protect human health, safety, and welfare, or the environment and to assure the effectiveness and integrity of a remedial action. Under certain circumstances, the restrictions had to be described in a restrictive covenant. A remedial action could rely on an institutional control in lieu of a restrictive covenant, if exposure to hazardous substances could be restricted reliably that way.

The bill deleted all of the provisions pertaining to a remedial action plan, but reenacted similar provisions, referring instead to a postclosure plan.

(Part 201 defines "remedial action plan" as a work plan for performing remedial action under Part 201.)

Under the bill, upon completion of remedial actions at a facility for a category of cleanup that does not satisfy cleanup criteria for unrestricted residential use, the person conducting the actions must prepare and implement a postclosure plan for that facility. A postclosure plan must include land use or resource use restrictions as prescribed in the bill; and permanent markers to describe restricted areas of the facility and the nature of the restrictions. A permanent marker is not required if the only applicable land or resource use restrictions relate to one or more of the following:

-- A facility at which remedial action satisfies the cleanup criteria for the nonresidential category (described below).
-- Use of groundwater.
-- Construction requirements or limitations for structures that could be built in the future.
-- Protecting the integrity of exposure controls, composed solely of asphalt, concrete, or landscaping materials, that prevent contact with soil.

The provision regarding the exposure controls does not apply if the hazardous substances that the barrier addresses exceed a cleanup criterion based on acute toxic effects, reactivity, corrosivity, ignitability, explosivity, or flammability, or if any of the hazardous substances are present at a concentration of more than 10 times the applicable soil direct contact cleanup criterion.

No Further Action Report; Postclosure Plan & Agreement

Under the bill, upon completion of remedial actions that satisfy applicable cleanup criteria and all other requirements under Part 201 applicable to remedial action, a person may submit to the DNRE a no further action report. The report must document the basis for concluding that the remedial actions have been completed. A report may include a request that, upon approval, the facility be designated as a residential closure. A report must be submitted on a form developed by the DNRE, which must make the form available on its website.

(Under Senate Bill 1346, "no further action report" means a report detailing the completion of remedial actions and including a postclosure plan and postclosure agreement. "Residential closure" means a facility at which the contamination has been addressed in a no further action report that satisfies the limited residential cleanup criteria or the site-specific residential cleanup criteria, that contains land use or resource use restrictions, and that has been approved or is considered approved by the DNRE.)

If the remedial action at the facility satisfies the cleanup criteria for unrestricted residential use, neither a postclosure plan nor a proposed postclosure agreement must be submitted with a no further action report. If the remedial action requires only land use or resource use restrictions and financial assurance is not required or is de minimis, a postclosure plan must be submitted, but a proposed postclosure agreement is not

required. For all other facilities, a postclosure plan and a proposed postclosure agreement must be submitted with a no further action report.

(Under Senate Bill 1346, "postclosure plan" means a plan for land or resource use restrictions or permanent markers at a facility upon completion of remedial actions. "Postclosure agreement" means an agreement between the DNRE and a person who has submitted a no further action report that prescribes, as appropriate, activities required to be undertaken upon completion of remedial actions.)

A proposed postclosure agreement submitted as part of a no further action report must include all of the following:

-- Provisions for monitoring, operation and maintenance, and oversight necessary to assure the effectiveness and integrity of the remedial action.
-- Financial assurance to pay for monitoring, operation and maintenance, oversight, and other costs the DNRE determines necessary to assure the effectiveness and integrity of the remedial action.
-- A provision granting the DNRE the right to enter the property at reasonable times to determine and monitor compliance with the plan and agreement, including the right to take samples, inspect the operation of the remedial action measures, and inspect records.
-- A provision requiring notice to the DNRE of the owner's intent to convey any interest in the facility 14 days in advance.

The property owner may not convey title, an easement, or other interest in the property without adequate and complete provision for compliance with the terms and conditions of the postclosure plan and agreement.

The person submitting a no further action report must include a signed affidavit attesting to the fact that the information upon which the report is based is complete and true to the best of that person's knowledge. The report also must include a signed affidavit from a qualified environmental consultant who prepared the report, attesting to the fact that the remedial actions detailed in it comply with all applicable requirements and that the information is true and complete to the best of that person's knowledge. In addition, the environmental consultant must attach a certificate of insurance demonstrating that the consultant obtained at least all of the following from an authorized carrier:

-- Statutory worker compensation insurance as required in Michigan.
-- Professional liability errors and omissions insurance.
-- Contractor pollution liability insurance, if not included under the professional liability errors and omissions insurance.
-- Commercial general liability insurance.
-- Automobile liability insurance.

Each type of liability insurance must have limits of at least $1.0 million per claim, and the commercial general liability insurance must have a limit of at least $2.0 million aggregate. The professional liability errors and omissions insurance policy may not exclude bodily injury, property damage, or claims arising out of pollution for environmental work. The contractor pollution liability insurance requirement does not apply to environmental consultants who do not perform contracting functions.

A person submitting a no further action report must maintain all documents and data prepared, acquired, or relied upon in connection with the report for at least 10 years after the DNRE approves the report, or the date on which no further monitoring, operation, or maintenance is required to be undertaken, whichever is later. All of the documents and data must be made available to the DNRE upon request.

Upon receiving a report, the DNRE must approve or deny it, or notify the submitter that it does not contain sufficient information for the Department to make a decision. If the report requires a postclosure agreement, the DNRE may negotiate terms alternative to those proposed. The DNRE must provide its determination within 150 days after receiving the report, or within 180 days if the report requires public participation. If the Department responds that the report does not include sufficient information, the DNRE must identify the information it requires. If the report is denied, the denial must specify the reasons, to the extent practical. If the report, including any required postclosure plan and agreement, is approved, the Department must give the

person who submitted it a no further action letter (a written response confirming the DNRE's approval). If the DNRE fails to provide a written response within the required time frame, the no further action report will be considered approved.

The bill requires the DNRE to review and provide a written response within the prescribed time frames for at least 90% of the reports submitted in each calendar year.

A person who requests approval of a report may appeal the DNRE's decision by submitting a petition to convene the Response Activity Review Panel.

Any time frame established by the bill may be extended by mutual written agreement of the DNRE and a person submitting a no further action report.

Following approval of a no further action report, an owner or operator may submit to the DNRE an amended report, which must include the proposed changes to the original report and an accompanying rationale for them. The process for review and approval is the same as the process for original no further action reports.

Remedial Action Selection & Approval

Under the bill, when the DNRE is selecting or approving a remedial action, or when another person is selecting a remedial action, all of the following must be considered:

-- The effectiveness of alternatives in protecting the public health, safety, and welfare and the environment.
-- The long-term uncertainties associated with the proposed remedial action.
-- The hazardous substances' persistence, toxicity, mobility, and propensity to bioaccumulate.
-- The short- and long-term potential for adverse health effects from human exposure.
-- Reliability of the alternatives.
-- The potential for future remedial action costs if an alternative fails.
-- The potential threat to human health, safety, and welfare and the environment associated with excavation, transportation, and redisposal or containment.
-- The ability to monitor remedial performance.
-- The public's perspective about the extent to which the proposed remedial action effectively addresses requirements of Part 201, for remedial actions that require the opportunity for public participation.
-- Costs of remedial action, including long-term maintenance costs.

The cost of a remedial action, however, must be a factor in choosing only among alternatives that adequately protect the public health, safety, and welfare and the environment, consistent with the requirements of Part 201 pertaining to cleanup criteria.

Evaluation of the prescribed factors must consider all factors in balance with one another as necessary to achieve the objectives of Part 201. No single factor may be considered the most important.

Cleanup Criteria Categories

Part 201 authorizes the DNRE to establish cleanup criteria and approve of remedial actions in prescribed categories. The proposed category is the option of the person proposing the remedial action, subject to DNRE approval, if required, considering the appropriateness of the categorical criteria to the facility. Previously, the categories were as follows:

-- Residential.
-- Commercial.
-- Recreational.
-- Industrial.
-- Other land use-based categories established by the DNRE.
-- Limited residential.
-- Limited commercial.
-- Limited recreational.
-- Limited industrial.
-- Other limited categories established by the DNRE.

Under the bill, the categories are residential, limited residential, nonresidential, and limited nonresidential. The nonresidential cleanup criteria are the former industrial categorical cleanup criteria developed by the DNRE until it develops and publishes new nonresidential cleanup criteria.

Under Part 201, remedial actions had to meet the residential categorical cleanup criteria or provide for acceptable land use or resource use restrictions. Under the bill,

response activities must meet the cleanup criteria for unrestricted residential use or provide for acceptable land or resource use restrictions in a postclosure plan or agreement.

Previously, Part 201 required the DNRE annually to evaluate cleanup criteria and revise them if appropriate. Under the bill, within two years after its effective date, the DNRE must evaluate and revise the criteria. The Department then must periodically evaluate whether new information is available regarding the cleanup criteria and make revisions as appropriate. As previously required, the DNRE must prepare and submit to the Legislature a report detailing the revisions.

Part 201 prescribes methods for the derivation of cleanup criteria for hazardous substances that pose a carcinogenic risk and/or a risk of an adverse health effect other than cancer. If a cleanup criterion derived under those provisions for groundwater in an aquifer differed from either the State drinking water standard established under the Safe Drinking Water Act or criteria for adverse aesthetic characteristics derived under the Michigan Administrative Code, the cleanup criterion had to be the more stringent of the two unless the DNRE determined that compliance with the requirement was not necessary because the use of the aquifer was reliably restricted under Part 201.

The bill deleted the reference to the criteria under the Michigan Administrative Code, and requires the cleanup criterion to be the most stringent of the State drinking water standard; the national secondary drinking water regulations established under the Federal Safe Drinking Water Act; or, if there is no national secondary drinking water regulation for a contaminant, the concentration determined by the DNRE according to methods approved by the U.S. Environmental Protection Agency below which taste, odor, appearance, or other aesthetic characteristics are not adversely affected.

The bill authorizes the DNRE to approve cleanup criteria if necessary to address conditions that prevent a hazardous substance from being measured reliably at levels that are consistently achievable in samples from the facility in order to allow for comparison with generic cleanup criteria. A person seeking approval of a criterion under this provision must document the basis for determining that the relevant published target detection limit cannot be achieved in samples from the facility.

Response Activity Plan: Site-Specific Criteria

Part 201 previously authorized the DNRE to approve a remedial action plan based on site-specific criteria that satisfied applicable requirements and rules. Under the bill, as an alternative to the categorical criteria, the DNRE may approve a response activity plan or a no further action report containing site-specific criteria that satisfy the requirements described below and other applicable requirements of Part 201.

The bill requires the DNRE to approve site-specific criteria in a response activity plan if such criteria, in comparison to generic criteria, better reflect best available information concerning the toxicity or exposure risk posed by the hazardous substance or other factors.

Site-specific criteria may do the following, as appropriate:

-- Use the algorithms for calculating generic criteria established by rule or propose and use different algorithms.
-- Alter any value, parameter, or assumption used to calculate generic criteria.
-- Consider the depth below the ground surface of contamination, which may reduce the potential for exposure and serve as an exposure barrier.
-- Be based on information related to the specific facility or information of general applicability, including peer-reviewed scientific literature.
-- Use probabilistic methods of calculation.
-- Use nonlinear-threshold-based calculations where scientifically justified.

Venting Groundwater

Previously, under Part 201, if a remedial action plan allowed for venting groundwater, the discharge had to comply with Part 31 (Water Resources Protection) and the rules promulgated under it or an alternative method established by rule. The bill deleted this provision.

Previously, if the discharge of venting groundwater was provided for in a remedial

action plan that was approved by the DNRE, a permit for the discharge was not required. Under the bill, a permit is not required if the discharge complies with Part 201.

The bill allows a person to demonstrate compliance with Part 201 for a response activity providing for venting groundwater by meeting any of the following, singly or in combination:

-- Generic groundwater-surface water interface (GSI) criteria, which are the water quality standards for surface water developed by the DNRE.
-- Mixing zone-based GSI criteria established under Part 201.
-- Site-specific criteria established under the bill.

The use of surface water quality standards is allowable in any of the designated cleanup categories. The use of mixing zone-based criteria is allowable in any of the designated cleanup categories and under the site-specific criteria. With regard to site-specific criteria, the use of mixing zones may be applied to, or included as, site specific criteria.

Under the bill, a person may proceed to undertake the following response activities without prior DNRE approval:

-- Evaluation activities associated with a response activity providing for venting groundwater using GSI monitoring wells or alternative monitoring points.
-- Response activities that rely on monitoring from GSI monitoring wells to demonstrate compliance with the generic GSI criteria.
-- Except as otherwise provided, response activities that rely on monitoring from alternative monitoring points to demonstrate compliance with generic GSI criteria if the person gives the DNRE, at least 30 days before relying on the alternative points, a notice that contains substantiating evidence that they comply with the bill's requirements.

The bill requires a person to submit to the DNRE a response activity plan containing a request for approval to undertake response activities that rely on monitoring from alternative monitoring points to demonstrate compliance with the generic GSI criteria, if one or more of the following conditions apply to the venting groundwater:

-- An applicable criterion is based on acute toxicity endpoints.
-- The venting groundwater contains a bioaccumulative chemical of concern as identified in the water quality standards for surface waters developed under Part 31 and for which the person is liable under Part 201.
-- The venting groundwater is entering a surface water body protected for coldwater fisheries identified in publications of the former Department of Natural Resources.
-- The venting groundwater is entering a surface water body designated as an outstanding State resource water or outstanding international resource water as identified in the water quality standards.

Alternative monitoring points may demonstrate compliance with the bill if they meet the following standards:

-- The locations where venting groundwater enters surface water have been identified sufficiently to allow monitoring for the evaluation of compliance with criteria.
-- The alternative monitoring points allow for venting groundwater to be sampled at a point before mixing with surface water.
-- The alternative points allow for reliable, representative monitoring of groundwater quality at the GSI.
-- The potential fate and transport mechanisms for groundwater contaminants are identified.

In addition, sentinel monitoring points must be used in conjunction with the alternative points to assure that any potential exceedance of the applicable water quality standard can be identified with sufficient notice to allow the implementation of necessary additional response activity that will prevent the exceedance.

If a person intends to use mixing zone-based GSI criteria or site-specific criteria in conjunction with alternative monitoring points, the person must submit to the DNRE a response activity plan that includes a demonstration of compliance with the prescribed standards. The plan also must include documentation that it is possible to estimate accurately the volume of venting groundwater, if compliance with a mixing

zone-based GSI criterion is to be determined with data from the alternative points.

If the DNRE denies a response activity plan containing a proposal for alternative monitoring points, it must state the reasons, including the scientific and technical bases for the denial.

Notwithstanding any other provision of Part 201, a response activity plan that includes a mixing zone relating to groundwater venting to surface water is subject to a 30-day comment period.

A person may appeal a Department decision in a response activity plan or no further action report regarding venting groundwater as a scientific or technical dispute by petitioning for the Response Activity Review Panel to be convened.

Municipal Landfill Grant Program

The bill repealed Section 20109a, which established a municipal landfill cost-share grant program to make grants to reimburse local units of government for a portion of the response activity costs at certain municipal solid waste landfills. The grant program was administered by the Brownfield Redevelopment Board, which had to allocate the funds available for cost-share grants to eligible facilities according to specific criteria, which were listed in priority order.

Site Identification & List

The bill repealed Section 20105, which provided for a prioritized list of contaminated sites. Upon discovering a site of environmental contamination, the DNRE was required to identify and evaluate it for the purpose of assigning to it a priority score for response activities. Every four years, the Department had to give the Legislature a list of the sites, categorized by response activity, ownership, and status. The Department also had to report to the Legislature and the Governor those sites that were removed from the list and the source of the funds used to undertake response activities at each site, and perform other specified duties. A site could not be removed until any necessary response activity was complete.

The bill rescinded administrative rules R 299.5209 through R 299.5219, which did the following:

-- Required the DNRE to notify certain people and entities of sites proposed to be added to the list.
-- Prescribed procedures for a person who wished to dispute the inclusion of a site on the list.
-- Prescribed criteria that a site had to meet in order for the DNRE to consider it for inclusion on the list.
-- Required the list to include the status of response activity implemented or completed at each site.
-- Required the DNRE to review site information on an ongoing basis and revise it as needed.
-- Required the DNRE to rescore listed sites using a specific site assessment model.

The bill also rescinded administrative rules R 299.5801 to R 299.5823, which prescribed the site assessment model and scoring procedure for the inclusion of sites on the DNRE's environmental contamination list, and prescribed categories for the designation of sites based on their scores.

Remedial Action Rules

The bill rescinded administrative rules R 299.5601 to R 299.5607, which did the following:

-- Required remedial actions to achieve a degree of cleanup that was protective of the public health, safety, and welfare, and the environment; and to meet applicable State and Federal requirements.
-- Prescribed factors that had to be considered when a remedial action was selected or approved; and provided that no single factor should be considered the most important.
-- Required the DNRE to compile an administrative record of the decision process leading to the selection or approval of any remedial action.

Senate Bill 1346

DNRE Authority

Part 201 required the DNRE to promulgate rules to provide for the performance of response activities, to provide for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a release, and to implement the Department's powers and duties under

Part 201, and as otherwise necessary to carry out the requirements of Part 201.

The bill, instead, permits the DNRE to promulgate rules necessary to implement Part 201.

Under the bill, a guideline, bulletin, interpretive statement, or operational memorandum under Part 201 may not be given the force and effect of law, and are not legally binding on any person.

Definitions

In addition to the terms described elsewhere, the bill amended the definitions of "facility" and "baseline environmental assessment".

Part 201 defines "facility" as any area, place, or property where a hazardous substance in excess of the concentrations satisfying requirements specified in that part or the cleanup criteria for unrestricted residential use under Part 213 (Leaking Underground Storage Tanks) has been released, deposited, or disposed of, or otherwise comes to be located. The term does not include any area, place, or property at which response activities that satisfy the residential category cleanup criteria in Part 201 have been completed, or at which corrective action under Part 213 that satisfies cleanup criteria for unrestricted residential use has been completed.

The bill also excludes from the definition of "facility" any area, place, or property where site-specific criteria approved by the DNRE for application at that location are satisfied and both of the following conditions are met:

-- The site-specific criteria do not depend on any land or resource use restriction to ensure protection of the public health, safety, or welfare or the environment.
-- Hazardous substances at the area, place, or property that are not addressed by site-specific criteria satisfy the cleanup criteria for unrestricted residential use.

Previously, "baseline environmental assessment" meant "an evaluation of environmental conditions which exist at a facility at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the facility so that, in the event of a subsequent release, there is a means of distinguishing the new release from existing contamination." The bill deleted this definition.

The bill defines "baseline environmental assessment" as a written document that describes the results of an all appropriate inquiry and the sampling and analysis that confirm that the property is a facility. "All appropriate inquiry" means an evaluation of environmental conditions at a property at the time of purchase, occupancy, or foreclosure that reasonably defines the existing conditions and circumstances at the property in conformance with 40 CFR 312. (That Federal regulation governs "all appropriate inquiries" for purposes of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). It requires all appropriate inquiries to be conducted within one year before a site is acquired, and requires certain components or updates to be conducted within 180 days before acquisition.) For purposes of a BEA, however, the all appropriate inquiry under the Federal regulation may be conducted within 45 days after the date of acquisition, and certain components may be conducted or updated within 45 days after the date of acquisition.

Senate Bill 1348

Under Part 201, a person who commits certain violations is guilty of a felony and must be fined at least $2,500 but not more than $25,000 for each violation. This previously applied to a person who misrepresented his or her qualifications in a document prepared in relation to a petition for exemption from liability after completion of a BEA.

Under the bill, the penalty applies to a person who misrepresents his or her qualifications in relation to a no further action report or an appeal to the Response Activity Review Panel.

The bill also revised the provisions regarding civil and criminal penalties to reflect amendments made by the other bills.

House Bill 6359

Response Activity Review Panel

The bill requires the DNRE Director to establish a Response Activity Review Panel

to advise him or her on technical or scientific disputes, including those regarding assessment of risk, concerning response activity plans and no further action reports. The Panel must consist of 15 people appointed by the Director. Each member must meet one or more of the following:

-- Hold a current professional engineer's or professional geologist's license or registration from a state, tribe, U.S. territory, or Puerto Rico, and have the equivalent of six years of full-time relevant experience.
-- Have a bachelor's degree in engineering or science and the equivalent of 10 years of full-time relevant experience.
-- Have a master's degree in engineering or science and the equivalent of eight years of full-time relevant experience.

In addition, each member must remain current in his or her field through participation in continuing education or other activities.

An individual may not be a Panel member if any of the following are true:

-- The person is a current employee of any office, department, or agency of the State.
-- The person is a party to one or more contracts with the DNRE and the compensation paid under those contracts represented more than 5% of his or her annual gross revenue in any of the preceding three years.
-- The person is employed by an entity that is a party to one or more contracts with the DNRE and the compensation paid to his or her employer under those contracts represented more than 5% of the employer's annual gross revenue in any of the preceding three years.
-- The person was employed by the DNRE within the preceding three years.

An individual appointed to the Panel will serve for a term of three years and may be reappointed for one additional three-year term. After serving two consecutive terms, he or she may not be a member for at least two years. The terms of the first members must be staggered so that not more than five vacancies will occur in a single year. Panel members will serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

The Panel is subject to the Open Meetings Act and the Freedom of Information Act.

A person who submitted a response activity plan or a no further action report may appeal a decision made by the DNRE regarding a technical or scientific dispute, including a dispute regarding risk assessment, concerning a response activity plan or a no further action report, by submitting a petition to the Director. The petition must include the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis, opinion, and supporting documentation. In addition, the petitioner must submit a fee of $3,500. The Director must forward the fee to the State Treasurer for deposit into the Cleanup and Redevelopment Fund.

If the DNRE Director believes that the dispute can be resolved without convening the Panel, he or she may contact the petitioner and negotiate a resolution. The negotiation period may not exceed 45 days. If the dispute is resolved without the Panel's convening, any fee submitted with the petition must be returned.

If a dispute is not resolved through negotiation, the DNRE Director must schedule a meeting of five members, selected on the basis of their expertise, within 45 days. A selected member must agree not to accept employment by the person bringing the dispute before the Panel, or to undertake any employment concerning the facility in question for one year after the decision is made if that employment would represent more than 5% of the member's gross revenue in any of the preceding three years.

The Director must give the selected members a copy of all supporting documentation. Any action by the selected members requires a majority of the votes cast. At a meeting scheduled to hear the dispute, representatives of the petitioner and the DNRE each must be given an opportunity to present their positions to the Panel.

Within 45 days after hearing the dispute, the participating Panel members must make a recommendation and notify the DNRE Director and the petitioner. The written

recommendation must include the specific scientific or technical rationale for it. The recommendation may be to adopt, modify, or reverse, in whole or in part, the DNRE's decision. If the Panel does not make its recommendation within 45 days, the Department's decision will be the final decision of the Director.

Within 60 days after receiving the notice, the DNRE Director must issue a final decision regarding the petition. This time period may be extended by agreement between the Director and the petitioner. If the Director agrees with the Panel's recommendation, the DNRE must incorporate it into the Department's response to the response activity plan or the no further action report. If the Director rejects the Panel's recommendation, he or she must issue to the petitioner a decision with a specific rationale. If the Director fails to issue a final decision within 60 days, the Panel's recommendation will be considered the Director's final decision. The final decision is subject to review by the circuit court.

A recommendation, notice, decision, or agreement must be in writing.

Upon the Director's request, the Panel must make a recommendation to the DNRE on whether a member should be removed. Before making this recommendation, the Panel may convene a peer review panel to evaluate the member's conduct with regard to compliance with Part 201.

A Panel member may not participate in the dispute resolution process for any appeal in which he or she has a conflict of interest. A member may be selected to replace a member who has a conflict of interest. For these purposes, a member would have a conflict of interest if a petitioner had hired him or her, or his or her employer, on any environmental matter within the preceding three years.

Part 201 Liability

People who are liable under Part 201 include a person who became an owner or operator of a facility after June 5, 1995, unless a baseline environmental assessment is conducted before or within 45 days after the earliest of the date of purchase, occupancy, or foreclosure; and the owner or operator gives a BEA to the DNRE and subsequent purchaser or transferee. Under the bill, the owner or operator must give the BEA to the subsequent purchaser or transferee within six months after the earliest of the date of purchase, occupancy, or foreclosure. Previously, a BEA had to be given only if it confirmed that the property was a facility; the bill deleted that limitation. An owner or operator who was in compliance with the BEA provisions existing before the bill's effective date is considered in compliance with these requirements.

Under Part 201, certain people are not liable for a release or threat of release unless they are responsible for an activity causing it. These people include a lessee who uses the leased property for a retail, office, or commercial purpose. Under the bill, this exemption applies regardless of the lessee's level of hazardous substance use. The bill also exempts from liability a person who holds a license, easement, or lease, or who otherwise occupies or operates property, for the purpose of siting, constructing, operating, or removing a wind energy conversion system or component.

Under Part 201, certain people are not subject to any liability. Under this exemption, the bill includes any person for environmental contamination addressed in a no further action report approved by the DNRE or considered approved (as provided by Senate Bill 1345). Such a person, however, may be liable for either of the following:

-- A subsequent release not addressed in the no further action report if the person is otherwise liable under Part 201 for that release.
-- Environmental contamination not addressed in the no further action report and for which the person is otherwise liable under Part 201.

In addition, if the no further action report relies on land or resource use restrictions, an owner or operator who desires to change the restrictions is responsible for any response activities necessary to comply with Part 201 for any land or resource use other than the use that is the basis for the report. If the report relies on monitoring necessary to assure the effectiveness and integrity of the remedial action, an owner or operator who is otherwise liable for environmental contamination addressed in a report is liable under Part 201 for response activities to the

extent necessary to address any potential exposure to the contamination demonstrated by the monitoring in excess of the levels relied on in the no further action report. If the remedial actions that were the basis for the report fail to meet identified performance objectives, an owner or operator who is otherwise liable for environmental contamination addressed in the report is liable under Part 201 for response activities necessary to satisfy the performance objectives or otherwise comply with Part 201.

Part 201 provides that the DNRE bears the burden of proof in establishing liability. Previously, if the Department provided a prima facie case against a person, he or she bore the burden of showing by a preponderance of the evidence that he or she was not liable; the bill deleted this provision.

Previously, a lender that was not responsible for an activity causing a release at a facility and that established that it had met certain BEA requirements with respect to that facility could transfer the property to the State if the lender listed the facility with an agent or advertised it as being for sale or disposition, had taken reasonable care in maintaining and preserving the property, gave the DNRE related environmental information, and had undertaken appropriate response activities to abate a threat of fire or explosion or a hazard through direct contact with hazardous substances. The bill deleted these provisions.

Baseline Environmental Assessments

Previously, Part 201 required the DNRE to establish minimal technical standards for BEAs in guidelines. The bill deleted this requirement. Beginning on the bill's effective date, the DNRE may not implement or enforce R 299.5901 through R 299.5919 of the Michigan Administrative Code (which pertain to a BEA conducted to establish an exemption from liability for pre-existing contamination), except for the following:

-- Subrules (2), (6), (8), and (9) of Rule 903 (R 299.5903).
-- Subrules (2) through (6) of Rule 905 (R 299.5905).
-- Rule 919 (R 299.5919).

The specified subrules of Rule 903 do the following:

-- Prescribe requirements for a BEA that describes the condition of property that is being transferred.
-- Provide that a BEA may include reliable and relevant data and information from studies prepared by others or conducted for other purposes to define conditions at the property at the time of purchase, occupancy, or foreclosure.
-- Prescribe a specific time period and DNRE notice requirements for the purposes of a BEA prepared to establish a liability exemption for a person who is a permittee for subsurface oil, gas, storage, or mineral rights.
-- Provide that, for purposes of compliance with BEA rules, an acquiring agency in a condemnation proceeding is not the owner or operator of property that is a facility or a portion of a facility until possession has been transferred to the agency.

The specified subrules of Rule 905 do the following:

-- Provide that a person who was the operator of a facility before the date provided by law and who becomes the owner on or after that date without interruption in his or her status as owner or operator is not eligible or required to complete a BEA to establish his or her liability for existing contamination.
-- Provide that a person who was a lessee or who held another possessory interest in a facility, but who did not become the owner or operator until on or after the date provided by law is eligible to conduct a BEA.
-- Require a person who does not have continuous status as an owner or operator to conduct a BEA if he or she wishes to establish liability protection for contamination attributable to intervening owners or operators.
-- Require a land contract vendor who, on or after the date provided by law, regains possession of a facility as a result of default and who wishes to establish an exemption from liability for contamination existing when the vendor regains possession, to conduct a BEA within 45 days.

("Date provided by law" means March 6, 1996, with regard to underground storage

tanks and June 5, 1995, for all other facilities.)

Rule 919 requires a person who wishes to effectuate and maintain liability protection under Part 201 to disclose the results of a BEA to the DNRE and subsequent purchasers or transferees, and prescribes disclosure procedures.

House Bill 6360

Facility: Hazardous Substances

Under Part 201, a person who owns or operates property that he or she knows is a facility must take certain actions with regard to hazardous substances at the facility. Under the bill, the actions include the following:

-- Providing reasonable cooperation, assistance, and access to the people authorized to conduct response activities at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response activity at the facility.
-- Complying with any land or resource use restrictions established or relied on in conjunction with the response activities at the facility.
-- Not impeding the effectiveness or integrity of any land or resource use restriction employed at the facility in connection with response activities.

The bill specifies that the provision regarding reasonable cooperation, assistance, and access may not be interpreted to provide any right of access not expressly authorized by law, including access authorized pursuant to a warrant or court order, or to preclude access allowed under a voluntary agreement.

The owner's or operator's obligations must be based upon the numeric cleanup criteria.

Liability: Exacerbation of Existing Contamination

Under Part 201, a person who does not take the required actions with regard to hazardous substances at a facility is liable for response activity costs and natural resource damages attributable to any exacerbation of existing contamination and any fines or penalties imposed under Part 201 resulting from the violation, but is not liable for the performance of additional response activities unless the person is otherwise liable under Part 201. Under the bill, this provision applies to a person who is not otherwise liable under Part 201 for a release at the facility.

State or Local Unit Liability

The actions a person is required to take regarding hazardous substances at a facility include the following:

-- Undertaking measures as necessary to prevent exacerbation.
-- Exercising due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the facility in a manner that protects the public health and safety.
-- Taking responsible precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that could foreseeably result.

These requirements do not apply to the State or a local unit of government that is not liable under certain circumstances or to the State or a local unit that acquired property before June 5, 1995, or to a person who is exempt from liability for contamination that has migrated onto his or her property. Under the bill, however, if the State or local unit, acting as the operator of a parcel of property knowing that it is a facility, offers access to the property on a regular or continuous basis pursuant to an express public purpose and invites the general public to use the property for that purpose, these requirements apply but only with respect to the portion of the facility that is opened to and used by the general public for that express purpose. "Express public purpose" includes activities such as a public park, municipal office building, or municipal public works operation. The term does not include activities surrounding the acquisition or compilation of parcels for future development.

Revolving Loan Program

Under Part 201, the DNRE administers the Revitalization Revolving Loan Fund to make loans to local units of government for

eligible activities at certain properties in order to promote economic development.

Under the bill, upon request of a loan recipient and a showing of financial hardship related to the project that was financed in whole or in part by the loan, the DNRE may renegotiate the terms of any outstanding loan, including the length, interest rate, and repayment terms.

House Bill 6363

Notification of Release; Pursuit of Response Activities

Under Part 201, an owner or operator of property who knows that the property is a facility and who is liable must determine the nature and extent of a release at the facility, and, if the release is a reportable quantity of a hazardous substance under specific Federal regulations, report it to the DNRE within 24 hours after obtaining knowledge of it. Previously, the reporting requirement applied unless the DNRE established through rules alternate or additional reportable quantities; the bill eliminated that provision.

In addition, under the bill, if the owner or operator has reason to believe that one or more hazardous substances are emanating or have emanated from and are present beyond the boundary of his or her property at a concentration in excess of cleanup criteria for unrestricted residential use, he or she must notify the DNRE and owners of property where the substances are present within 30 days after obtaining knowledge that the release has migrated.

Also, if the release results from an activity that is subject to permitting under Part 615 (Supervisor of Wells) and the owner or operator does not own the surface property and the release results in hazardous substance concentrations in excess of cleanup criteria for unrestricted residential use, he or she must notify the DNRE and the surface owner within 30 days after obtaining knowledge of the release.

Under Part 201, an owner or operator who knows that the property is a facility and who is liable must diligently pursue response activities necessary to achieve the cleanup criteria specified in Part 201. Under the bill, except as otherwise provided, in pursuing response activities, the owner or operator may follow the procedures either to conduct self-implemented activities or to obtain DNRE approval of one or more aspects of planning response activities.

The bill also amended provisions requiring the owner or operator to take certain actions concerning interim response activities, evaluation activities, and other response activity, upon the DNRE's written request. Under the bill, the owner or operator must do one or more of the following:

-- Provide a response activity plan containing a plan for undertaking interim response activities, and undertake those activities consistent with the plan.
-- Provide a response activity plan containing a plan for undertaking evaluation activities, and undertake those activities consistent with the plan.
-- Pursue remedial actions under a self-implemented cleanup and, upon completion, submit a no further action report.
-- Take any other response activity determined by the DNRE to be technically sound and necessary to protect the public health, safety, or welfare, or the environment.
-- Submit to the DNRE for approval a response activity plan containing a remedial action plan that, when implemented, will achieve the cleanup criteria established under Part 201.
-- Implement an approved response activity plan in accordance with a schedule approved by the DNRE.
-- Submit a no further action report after completion of remedial action.

Previously, Part 201 allowed a person to undertake response activity without prior DNRE approval unless it was being done pursuant to an administrative order or agreement or judicial decree that required prior approval. Such action did not relieve the person of liability for further response activity as the DNRE required. The bill deleted these provisions.

Under the bill, the requirements imposed on an owner or operator do not preclude a person from simultaneously undertaking one or more aspects of planning or implementing response activities at a facility under the self-implemented cleanup provisions without the prior approval of the Department, unless one or more response activities are being conducted pursuant to an administrative order or judicial decree that requires prior

approval, and submitting a response activity plan to the DNRE.

Previously, upon a DNRE determination that a person had completed all response activity at a facility under an approved remedial action plan, the Department, upon a person's request, had to execute and present a document stating that all required response activities had been completed. The bill deleted this provision.

The bill also deleted provisions setting a timetable for the DNRE to grant or deny any request for approval of a plan, and specifying that a request was considered approved if the Department did not act within that time period.

DNRE Inventory; Data Compilation

The bill requires the DNRE to create, and update on an ongoing basis, an inventory of residential closures and a separate inventory of other known facilities. Each inventory must contain at least the following information, if applicable, for each facility:

-- Location.
-- Whether one or more response activity plans have been submitted to the DNRE and the status of Department approval.
-- Whether a no further action report has been submitted to the DNRE and whether it includes a postclosure plan or proposed postclosure agreement and the status of Department approval.

The DNRE may categorize facilities on the inventory in a manner that the Department believes is useful for the general public, and must make the inventories available on its website.

Also, the DNRE must compile on a quarterly basis and post on its website the number of response activity plans and no further action reports received by the Department, itemized as follows:

-- Approved by the DNRE.
-- Disapproved by the DNRE.
-- Recommended for approval by the Response Activity Review Panel.
-- Recommended for disapproval by the Panel.
-- Approved by operation of law.

Additionally, the DNRE must compile and make available on its website the number of baseline environmental assessments the Department receives.

Annually, the DNRE must determine the percentage of no further action reports approved by operation of law (under Senate Bill 1345). If the percentage in any year exceeds 10%, the Department must notify the standing committees of the Legislature with jurisdiction over issues related to natural resources and the environment.

Report

The bill deleted a requirement that the DNRE submit to the Legislature a biennial report on the effectiveness of Part 201 in restoring the economic value of sites of environmental contamination.

Cleanup & Redevelopment Fund

Money required to implement Part 201 programs and to pay for recommended response activities must be appropriated from the Cleanup and Redevelopment Fund and any other source the Legislature considers necessary to implement the requirements of Part 201.

Previously, money from the Fund could be appropriated only for response activities at sites that had been subjected to the risk assessment process described in Section 20105 (which Senate Bill 1345 repealed). The bill deleted this provision.

Part 201 requires the DNRE annually to submit to the Governor a request for appropriation from the Fund, and prescribes the purposes for which Fund money may be used. Previously, the request had to include a lump sum amount for national priority list municipal landfill cost-share grants. The bill eliminated that requirement, and deleted those grants from the list of eligible purposes.

The bill refers to a "facility", rather than a "site", throughout these provisions.

House Bill 6416

Strategic Water Quality Initiatives Fund

The SWQIF exists within the State Treasury. In consultation with the DNRE, the Michigan Municipal Bond Authority may spend SWQIF money, upon appropriation, for loans and grants to municipalities under the Strategic

Water Quality Initiatives Loan Program and the costs of the Authority and the DNRE in administering the Fund. Under the bill, SWQIF money also may be spent, upon appropriation, on wastewater treatment facility infrastructure projects, response activities to address nonpoint source water pollution, and grants and loans for brownfield sites, as described below.

("Response activity" means that term as it is defined in Part 201.)

Response Activities. The bill created Section 5204b, which authorizes the DNRE to spend up to $140.0 million, upon appropriation, for response activities to address nonpoint source water pollution at facilities. A maximum of $50.0 million may be authorized for expenditure each year for State fiscal years 2010-11 and 2011-12. Beginning on October 1, 2012, any remaining money may be spent only if the DNRE documents that it has achieved the following performance objectives:

-- Increasing the level of investment in sewage collection and treatment systems.
-- Providing incentives for actions that both improve water quality and result in pollution prevention.
-- Optimizing the cost-benefit ratio of alternative designs of sewage collection and treatment systems.
-- Demonstrating progress toward maximizing risk reduction and economic development objectives identified for funded projects.

("Facility" means that term as it is defined in Part 201.)

An expenditure under these provisions must be used to improve the quality of the State's water. The expenditure may be used only for facilities in which the DNRE does not know the identity of the person or people who are liable under Part 201 for the release resulting in the water pollution, or in which the person or people who are liable do not have sufficient resources to fund the required response activities.

The facilities must include property located within the identified planning area boundaries of a publicly owned sanitary sewer system eligible for funding under the State Water Pollution Control Revolving Fund.

The expenditure also must be used for response activities necessary to address existing or imminent unacceptable exposure risks arising from conditions that contribute to nonpoint source water pollution, including expenses for project management within the DNRE.

In using funds to address nonpoint source water pollution projects, the DNRE must select projects that, to the extent practicable, provide maximum benefit to the State in protecting public health and the environment and contributing to economic development.

Money spent to support project management within the DNRE to manage response activities at a facility must be spent pursuant to generally accepted accounting principles (GAAP).

The DNRE must submit an annual report describing the projects funded under Section 5204b to the Senate and House standing committees and Appropriations subcommittees with jurisdiction over natural resources and environmental issues. The report must include an evaluation of how the expenditures, to the extent practicable, provide maximum benefit to the State in protecting public health and the environment and contributing to economic development. In addition, for each project funded, the report must include all of the following:

-- How the project met the criteria in Section 5204b.
-- The extent to which the project improved water quality or prevented a risk to water quality as measured by the number of individuals who benefit from it.
-- The extent to which the project preserved infrastructure investments that protect public health or prevented risks to water quality as measured by the risk posed or the public health protected.
-- A breakdown of the amount used to support the project management as justified using GAAP, if the project included funding for project management within the DNRE.

The report also must indicate the extent to which the project enhanced economic development as measured by a net increase in the value of the properties in the project's

vicinity, the creation of jobs, and the extent to which the project contributed to leveraging private investment in its vicinity.

Brownfield Redevelopment. The bill added Section 5204c to authorized the DNRE to spend $10.0 million from the SWQIF to provide brownfield redevelopment grants and loans to municipalities and brownfield redevelopment authorities for response activities to address nonpoint source water pollution at facilities. Of this money, $5.0 million must be used for grants and $5.0 million must be used for loans. On September 30, 2014, if any of the money has not been appropriated for these purposes, the money may be used for the purposes of Section 5204b.

The DNRE must develop grant and loan application materials to implement Section 5204c, and must accept applications at any time during the year.

Legislative Finding & Intent. The bill specifies a legislative finding that "use of the [SWQIF] for response activities to address nonpoint source water pollution at facilities is appropriate and necessary at this time". The bill also specifies a legislative intent that "money from the fund shall not be utilized for response activities to address nonpoint source water pollution at facilities when the $150,000,000.00 has been expended".

Wastewater Treatment Facility Grant Program. Under the bill, the State may establish a grant program within the SWQIF to fund specific wastewater treatment facility infrastructure improvement projects designed to prevent chronic discharges and projected to have significant regional benefits to Great Lakes water quality and recreational opportunities. In establishing the program, the State may consider the recommendations of the SRF Advisory Committee (created by Senate Bill 1443).

Great Lakes Water Quality Bond Fund

Under the bill, for fiscal year (FY) 2010-11, bonds under Part 197 may not be issued or spent for response activities to address nonpoint source water pollution unless the DNRE establishes a fundable range of at least $210.0 million to fund projects under the SRF. For FY 2011-12, bonds may not be issued or spent for those response activities unless the DNRE establishes a fundable range of at least $259.0 million to fund projects under the SRF, to the extent administratively possible and as long as sufficient applications are submitted to the Department. If the DNRE is not able to establish that minimum fundable range in FY 2011-12, it must submit to the Legislature a report detailing the reasons why.

"Fundable range" means those projects, taken in descending order on the priority lists, for which sufficient funds are estimated by the DNRE to exist to provide assistance at the beginning of each annual funding cycle.

For each fiscal year beginning with FY 2012-13, the DNRE, in conjunction with the Department of Treasury, must seek to fully fund all eligible projects applying for assistance under Part 53 (Clean Water Assistance), to the extent administratively possible, using the proceeds from Great Lakes Water Quality Bonds as necessary to achieve this goal, considering the recommendations of the SRF Advisory Committee.

Previously, Part 197 required the State Treasurer annually to transfer money in the Great Lakes Water Quality Bond Fund as follows:

-- In aggregate, not more than $900.0 million deposited into the SRF.
-- In aggregate, not more than $100.0 million deposited into the SWQIF.

The bill reduced the maximum amount deposited in the SRF to $710.0 million and increased the maximum amount deposited in the SWQIF to $290.0 million. In addition, the bill provides that, whenever Great Lakes Water Quality Bonds are issued to support the transfer of money into the SWQIF, at least an equivalent amount of bonds must be issued to support the transfer of money into the SRF.

Previously, money from the Great Lakes Water Quality Bond Fund could not be used as the State match for receiving Federal funds for purposes of the SRF at 2002 State match levels. If Federal revenue became available at higher levels than were provided in 2002, however, money from the Fund could be used to match Federal revenue in excess of 2002 levels. The bill deleted these provisions.

Within two years after the bill's effective date, the Auditor General must conduct an audit of the Fund to assure that money in it has been spent in compliance with law. Within four years after the bill takes effect, the Auditor General must update its initial audit.

Senate Bill 1443

Strategic Water Quality Initiatives Grant Program

Part 52 requires the Michigan Municipal Bond Authority, in conjunction with the DNRE, to establish a Strategic Water Quality Initiatives Grant Program that provides grants to eligible municipalities. The bill increased the maximum amount of total grants from $40.0 million to $80.0 million.

Part 52 requires the grant program to provide assistance to municipalities to complete the requirements to apply for a loan from the SRF. Under the bill, the grant program also may provide assistance to municipalities to complete the loan application requirements for other sources of financing for sewage treatment works projects, stormwater treatment projects, or nonpoint source projects.

Part 52 limits assistance from the grant program to 90% of the costs incurred by a municipality, and specifies that the required 10% match is not eligible for loan assistance from the SRF or the SWQIF. These provisions also apply to assistance under the bill.

The bill deleted a provision that required the DNRE to cease accepting grant applications two years after the first grant agreement was entered into.

Previously, the DNRE had to publish notice of an application on its calendar within 30 days after receiving it. The bill extended the deadline to 60 days.

Under Part 52, if the DNRE approves a grant, the Department and the Authority must enter into a grant agreement with the recipient before transferring the funds. The agreement must contain a requirement that the recipient repay the grant, with a maximum of 8% annual interest, under certain circumstances. Previously, these included situations in which the project had been identified as being in the fundable range and the applicant declined the loan assistance from the SRF or the SWQIF in that fiscal year. Under the bill, the repayment requirement applies if the project has been identified as being in the fundable range or is approved for funding from another source and the applicant declines the loan assistance for two consecutive fiscal years, unless the applicant proceeds with funding from another source.

The bill deleted a provision that also required repayment if the applicant opted to finance construction by means other than a grant from the SRF or the SWQIF.

Revolving Fund Advisory Committee

The bill created the State Water Pollution Control Revolving Fund Advisory Committee within the DNRE. The Committee must consist of a representative of the DNRE and additional members appointed by the Department Director upon recommendation from at least the following organizations:

-- The American Council of Engineering Companies.
-- The American Waterworks Association.
-- The Michigan Townships Association.
-- The Michigan Chamber of Commerce.
-- The Michigan Association of Counties.
-- The Michigan Infrastructure and Transportation Association.
-- The Michigan Water and Environment Association.
-- A statewide organization of regional planning authorities.
-- A statewide environmental or conservation organization.
-- A statewide association representing drain commissioners.

The organizations also include the Michigan Municipal League with regard to appointing members from the following: a rural municipality with a maximum population of 10,000 that operates a sewage treatment works system; a suburban municipality that operates a sewage treatment works system; and a city that operates a sewage treatment works system.

Members must be appointed within 60 days after the bill's effective date. The Director may remove a member for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The Director must call the first Committee meeting. The Committee is subject to the Open Meetings Act and the Freedom of Information Act.

Committee members will serve without compensation. Staff from the DNRE must assist with the Committee's administrative tasks.

The Committee must evaluate Part 53 and make recommendations on how it could be amended to achieve the following outcomes:

-- Increasing the level of investment in sewage collection and treatment systems.
-- Providing incentives for actions that both improve water quality and result in pollution prevention.
-- Optimizing the cost-benefit ratio of alternative designs of sewage collection and treatment systems.

The Committee also must review and make recommendations on revisions to Part 53 related to at least all of the following:

-- Revising procedures to accommodate concurrent design and build type procurement and other nontraditional contracting procedures.
-- Allowing project planning and preconstruction as costs eligible for assistance from the SRF.
-- Reducing and streamlining the cost-effectiveness review requirements to be more consistent with local planning needs.
-- Updating the scoring system to take into account infrastructure asset management.
-- Simplifying application procedures.
-- Reviewing options to provide grants to municipalities for timely and appropriate project planning, including disincentives for failure to demonstrate progress.
-- Establishing protocols for a premeeting process for the DNRE to provide informal feedback to review an application and determine the likelihood of funding.
-- Recommending a new model for establishing interest rates on a sliding scale based on the percentage of income paid in utility fees.
-- Reviewing options to enable municipalities to roll project plan expenses into the loans.
-- Alternative financing mechanisms for funding sewage treatment works projects, stormwater projects, and nonpoint source projects.

In addition, the Committee must review and make recommendations regarding the need for and design of a grant program for the purpose of funding specific wastewater treatment facility infrastructure improvement projects designed to prevent chronic discharges and projected to have significant regional benefits to Great Lakes water quality and recreational opportunities.

By August 1, 2011, the Committee must submit a report containing its conclusions and recommendations to the DNRE and to the Senate and House standing committees with jurisdiction over natural resources and environmental issues. The Committee will be abolished six months after it submits its report.

MCL 324.21550 (S.B. 1267)
324.20114a et al. (S.B. 1345)
324.20101 et al. (S.B. 1346)
324.20129 et al. (S.B. 1348)
324.5204a & 324.5317 (S.B. 1443)
324.20126 et al. (H.B. 6359)
324.20107a & 324.20108b (H.B. 6360)
324.20112a et al. (H.B. 6363)
324.5204 et al. (H.B. 6416)

BACKGROUND

Public Act 71 of 1995

To a large extent, the provisions in Part 201 of NREPA were enacted by Public Act 71 of 1995. In general, this Act eliminated liability for owners or operators who did not cause contamination at a facility. Previously, if there was a release or threatened release of contaminated or contaminating substances from a facility that caused response activity costs to be incurred, the people who were liable for the costs included virtually everyone who owned or operated the property at the time of or since the release, regardless of whether a person caused the contamination.

This liability, based on the status of the property rather than on who was responsible for the causation of the contamination, evidently made many potential investors reluctant to purchase commercial or industrial property for fear that it might be contaminated and they would be burdened with the costs and responsibility of remediating the facility. It was considered

safer and less costly to develop "greenfields", rather than try to redevelop contaminated urban areas, or brownfields.

Public Act 71 thus eliminated strict liability based on status in favor of liability based on causation, incorporating requirements for a baseline environmental assessment to distinguish a new release from preexisting contamination, so a new owner or operator would not be held liable for releases previously caused by others.

Water Quality Funds

In the 2002 general election, Michigan voters approved the Great Lakes Water Quality Bond proposal, authorizing the State to borrow up to $1.0 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, and the remaining 10% to the Strategic Water Quality Initiatives Fund. 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 DNRE, 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.

Several years after adoption of the bond proposal, local governments had not yet taken advantage of the available funding due to the significant initial planning and engineering costs of the loan application process. In response, Public Acts 253 through 257 of 2005 were enacted to direct some of the money from the sale of the bonds to a grant program to assist municipalities in applying for the loans from the SRF and SWQIF. Under that legislation, a grant may cover up to 90% of a municipality's costs to complete a loan application. The legislation also revised the distribution of money in the Bond Fund. Previously, 90% of the money had to be transferred to the SRF and the remaining 10% to the SWQIF. The legislation changed the amounts to $900.0 million and $100.0 million, respectively.

Refined Petroleum Fund

Public Act 390 of 2004 created the Refined Petroleum Fund to replace the Michigan Underground Storage Tank Financial Assurance (MUSTFA) Fund, which was used to fund the following:

-- Administrative costs.
-- An interest subsidy program to help underground storage tank (UST) owners seeking to upgrade or install new USTs.
-- Indemnification payments to parties affected by petroleum product releases on behalf of UST owners found responsible for those releases.
-- Payments for corrective action where UST owners complied with registration and inspection requirements and a leak was discovered and promptly disclosed.

Public Act 390 transferred the balance of the MUSTFA Fund to the RPF. Under that Act and subsequent legislation, the allowable uses of the Fund include the following:

-- Gasoline inspection programs under the Weights and Measures Act and the Motor Fuels Quality Act.
-- LUST cleanups.
-- Administrative costs.
-- Up to $15.0 million for an orphan site cleanup program.
-- Up to $45.0 million for a temporary program to reimburse a limited pool of applicants for remediation actions taken on LUSTs.

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

An effective law regulating the cleanup of environmentally contaminated sites is critical to restoring the State's brownfields to productive use. The 1995 revisions facilitated advances toward that end; experience since then, however, showed that the law could be further improved. By addressing several issues that emerged regarding the efficiency and cost-effectiveness of the environmental cleanup program, Senate Bills 1345, 1346, and 1348 and House Bills 6359, 6360, and 6363 will facilitate the redevelopment of thousands of contaminated sites in Michigan.

The Public Sector Consultants report noted that the previous cleanup process under Part 201 was "overly complex and the endpoint is ambiguous". By establishing clear timelines for DNRE action on no further action reports and automatic approval if the Department fails to meet the deadlines, Senate Bill 1345 streamlines the closure process. In addition, the bill allows the use of private sector consultants in the self-implemented cleanup process, which will reduce the time and cost to the DNRE. These updated practices bring Michigan in line with other states and will help provide certainty for lenders regarding redevelopment projects, which will be conducive to the State's economic growth.

House Bill 6359 establishes an appropriate venue to address disputes between facility owners and the DNRE through the Response Activity Review Panel. Previously, the only recourse for an owner who was dissatisfied with a DNRE determination was the court system, which frequently deferred to the Department's judgment due to the highly technical nature of the subject matter. In contrast, the Review Panel will consist of experts in the field of environmental remediation, ensuring that decisions are based on sound science.

Senate Bill 1345 will further facilitate cleanups by giving land owners more flexibility in using site-specific criteria. The previous cleanup criteria under Part 201 were outdated and relied on broad assumptions about property use that might not have applied to a particular property, resulting in an inefficient use of resources. While Part 201 did allow for the use of site-specific criteria, in practice the process was often cumbersome and hindered the use of the best available science. Under the bill, property owners will be able to focus their efforts on genuine contamination problems. In addition, the bill allows for more flexibility in monitoring to accurately measure water quality at the GSI, which will help eliminate a significant barrier to obtaining site closure.

The legislation also streamlines the BEA process by aligning it with the Federal all appropriate inquiry process under CERCLA. The bills eliminate the need for a person to differentiate a new release from contamination caused by a previous owner. These changes will reduce the costs of the BEA process while maintaining liability protection for those who obtain property with a history of releases.

The bills strike an appropriate balance between environmental protection and economic development. Overall, the legislation will provide clarity, transparency, and predictability for the regulated community, the lenders that supply the critical financing for cleanup projects, and the public.

Supporting Argument

For many of the State's environmentally contaminated sites, there is no party that can be held responsible; the owners are either insolvent or deceased. These "orphan sites" pose risks to natural resources, often having a direct impact on water quality. House Bill 6416 and Senate Bill 1443 extend an existing water quality grant and loan program to the cleanup of these sites. The requirement that the DNRE demonstrate that specified performance objectives are met before additional funding is made

available will ensure that the money is used effectively.

Response: Under the predominant model of wastewater management, water is transported to a site for use and then transported offsite for treatment. The emerging green building movement is examining ways to capture, treat, and recycle wastewater onsite multiple times, which conserves water resources and saves money. The Advisory Committee should include a member with expertise in alternative wastewater treatment to encourage these types of projects.

Supporting Argument

There are approximately 9,000 leaking underground storage tanks in Michigan, half with no identifiable responsible party. Reportedly, new contaminated sites are being identified more quickly than older releases can be addressed, and it is estimated that current cleanup costs exceed $2.0 billion. The continuation of the RPF fee is critical to sustained efforts to identify leaking tanks and remediate them. A lack of funding for cleanups could be a disincentive to report releases. Senate Bill 1267 will ensure that efforts to address LUST problems continue for the next few years.

Response: Due to the importance of continuing this funding stream, the fee sunset should be delayed longer than two years. A five-year extension would be more appropriate.

Opposing Argument

While the revisions to Part 201 might be beneficial, Senate Bills 1345, 1346, and 1348 and House Bills 6359, 6360, and 6363 create additional duties and costs for the DNRE at a time when funding and staff are being reduced. A funding source should be identified to implement the legislation.

In another matter, although the legislation might be effective in facilitating more cleanups and redevelopment, several elements fall short with regard to protecting public health and safety. For example, the use of site-specific criteria under certain circumstances might be problematic. Generic cleanup criteria are developed based on a large body of science; disregarding the known data in favor of criteria that apply to a limited number of sites is ill-advised. It also will be expensive and time-consuming for the DNRE. Furthermore, the feasibility of the timelines for Department action is questionable.

Also, under the bills, facility owners must report only large releases of pollutants to the State. They do not have to report many small releases over time, even though cumulatively those releases might constitute a quantity that will compromise public health.

The bills contain superficial changes without meaningful reform. When Part 201 was implemented in 1995, it increased the permitted standard for environmental toxins while reducing liability for polluters. This legislation continues in the same vein by giving facility owners more flexibility without protecting public health adequately.

Response: Retaining the previous risk standards would have shut down cleanups that are occurring now and prevented more in the future. Halting these efforts would result in greater public health risks.

Opposing Argument

Under House Bill 6416 and Senate Bill 1443, Great Lakes Water Quality Bond money will be used in ways that were not approved by voters. The purpose of the grant and loan programs is to address local sewage overflow problems, which continue to be extensive. This money should not be diverted to clean up pollution attributed to private industry, especially when there is still a significant need in Michigan for sewer infrastructure funding--reportedly, about $7.0 billion. According to the DNRE, more than 40 billion gallons of raw or partially treated sewage are released into the State's waterways every year. The shuffling of dollars between programs will not provide a long-term solution to the State's environmental problems. Instead, access to the money for sewer projects should be improved and adequate funding sources for brownfield redevelopment and other programs to protect the environment should be identified.

Response: Abandoned brownfields are often the source of substances that pollute drinking water and otherwise have a negative impact on water quality; thus, the use of Water Quality Bond money to remediate these sites is in keeping with voter intent. Furthermore, while the money for sewer projects has been available through the bond initiative for several years, communities have not used it as much as expected. For the first few years, some local units could not afford the costs associated with applying for loans, necessitating the creation of the grant

program. More recently, some municipal sewer projects have stalled due to uncertainty resulting from the case *Bolt* v *City of Lansing* (459 Mich 152). (In that case, decided in 1998, the Michigan Supreme Court held that Lansing's storm water service charge was a tax that required voter approval, rather than a valid user fee. Because the city ordinance imposing the charge was not approved by the voters, the Court found that it violated the "Headlee Amendment" to the State Constitution.) Presumably, voters did not intend for this money to go unused. House Bill 6416 and Senate Bill 1443 will spur the deployment of some of these funds to communities for their environmental and economic benefit.

Opposing Argument

One of the primary purposes of the Refined Petroleum Fund is the cleanup of LUST sites. Under the program, however, gas station owners were eligible for reimbursement only temporarily; the last reimbursements were made in 2009, and were available only to a limited pool of applicants. Also, in the past, RPF money has been appropriated to the Environmental Protection Fund to pay debt service on general obligation bonds, although that is not identified in statute as an authorized use of RPF money. Collecting the fee for another two years is inappropriate if the money will be diverted from remediation efforts and access by underground storage tank owners is otherwise limited.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 1267

The bill delays the sunset on the environmental protection regulatory fee of 7/8 cent on each gallon of refined petroleum products sold in the State. This fee is credited to the Refined Petroleum Fund, and is used to fund a number of programs including the cleanup of leaking underground storage tanks, the Weights and Measures Program in the Department of Agriculture, debt service on the Quality of Life environmental bonds, and several administrative units within the Department of Natural Resources and Environment. Annual revenue from this fee is approximately $50.0 million to $60.0 million, with $52.0 million collected during FY 2008-09.

The FY 2010-11 budgets that passed the House and Senate are predicated on the extension of this fee. Failure to delay the sunset would have resulted in a budget shortfall of approximately $57.0 million in FY 2010-11, and a similar shortfall in subsequent fiscal years.

Senate Bills 1345, 1346, & 1348

The bills change the way the adequacy of cleanups is determined. Under prior law, the Department could promulgate generic rules for the adequacy of different types of environmental cleanup efforts. Under the bills, the Department will be required to analyze the adequacy of a given cleanup on a case-by-case basis. The Department estimated in its analysis of a similar bill that this new standard could introduce inefficiencies into the determination process. Since no additional appropriations to the Department will occur under the package, these inefficiencies could lead to backlogs in the cleanup determination process.

Other changes to Part 201 from this legislation will have an indeterminate fiscal impact on State and local government.

House Bill 6359

The bill establishes a Response Activity Review Panel to advise the DNRE Director on technical or scientific disputes, including those regarding assessment of risk, response activity plans, and no further action plans. While the members of the Panel will serve uncompensated, they would still be eligible to receive reimbursement for costs associated with their service. This may result in some moderate costs to the Department.

House Bill 6360

The bill changes the Revitalization Revolving Loan Program to allow the DNRE to renegotiate a loan made through the Program in cases in which the recipient of the loan demonstrates financial hardship. These changes may include revising the length, interest rate, and repayment terms. The bill does not indicate what will constitute financial hardship, and therefore it is impossible to know how many of these loans will qualify to be renegotiated. It is reasonable to assume, however, that the overall fiscal impact of the bill will benefit local governments, as they would have no

reason to renegotiate terms of a loan that would be unfavorable relative to the terms they already have. If the Department renegotiates many of these loans, the stream of payments received under the Program might shrink as lower interest rates and longer loan terms are negotiated.

House Bill 6363

The bill requires the DNRE to create and update an inventory of residential closures and other known facilities that fall under the provisions of Part 201. The bill requires that the inventory contain certain detailed information for each site. To the extent that this information is already collected by the Department, compiling the information will likely result in few new costs.

House Bill 6416 & Senate Bill 1443

House Bill 6416 allows the Legislature to appropriate funds from the Strategic Water Quality Initiatives Fund to address certain nonpoint source water pollution issues, if certain fundable range benchmarks are met. The Legislature may appropriate up to $50.0 million in FY 2010-11 and $50.0 million in FY 2011-12 for these purposes. A total of $40.0 million will be available for appropriation in subsequent fiscal years if the DNRE meets performance standards outlined in the bill.

The bill requires the Department to establish a fundable range of at least $201.0 million in FY 2010-11 for projects under the State Water Pollution Control Revolving Fund in order to spend or issue bonds for response activities to address nonpoint source water pollution at facilities. These projects are undertaken by municipalities to make water and sewer upgrades, and the DNRE provides low-interest loans to the municipalities from the SRF for those purposes. The fundable range in a given fiscal year will be the amount of money that the Department dedicates to be used to help fund these municipal water and sewer projects, in order of priority. The requirement will be raised to $259.0 million in FY 2011-12, and the DNRE will have to fund all eligible projects to receive these funds in FY 2012-13.

Sufficient bond authorization remains for the Department to fulfill these guidelines as well as use bond revenue for cleanups that will address nonpoint source water pollution at facilities and brownfields.

The SWQIF was created as a part of (although not directly by) Proposal 2 of 2002, which authorized the issuance of up to $1.0 billion in general obligation bonds for the purpose of financing sewage treatment works projects, storm water projects, and nonpoint source projects. House Bill 6416 increases the portion of this authorization for SWQIF from $100.0 million to $290.0 million and reduces the authorization of the State Water Pollution Control Revolving Fund from $900.0 million to $710.0 million. Previously, SWQIF had $44.4 million in remaining authorization; the bill increases this authorization to $194.4 million. The SRF had an available authorization of $810.0 million, which is reduced to $620.0 million under the bill.

House Bill 6416 also allows the Legislature to appropriate, and the DNRE to spend, up to $10.0 million from the SWQIF on brownfield redevelopment grants and loans. The bill specifies that up to $5.0 million may be spent on grants and $5.0 million on loans.

Senate Bill 1443 allows the Michigan Municipal Bond Authority, in conjunction with the DNRE, to spend an additional $40.0 million on grants under the Strategic Water Quality Initiatives Grant Program.

While neither bill requires additional spending, the appropriation/spending authorized by the bills, if acted upon, will come from new bond issuances under Proposal 2. The table below shows a breakdown of the additional annual debt service that will result from spending under the authorizations contained in the bills assuming full amortization, 4.5% coupon rate, and a 20-year maturity on bonds issued.

(dollar amounts in millions)

Program	Authorized Amount	Annual Debt Service
SWQIF – Nonpoint source pollution, initial amount	$100.0	$7.6
SWQIF – Nonpoint source pollution, potential additional amount	$40.0	$3.0
Brownfield Redevelopment Program - Grants	$5.0	$0.4
Brownfield Redevelopment Program - Loans	$5.0	$0.4
Total	**$150.0**	**$11.4**

Senate Bill 1443 (S-2) also requires DNRE staff to assist with various administrative functions associated with the SRF Advisory Committee. This requirement may result in some relatively small additional costs to the DNRE.

Fiscal Analyst: Josh Sefton

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