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ANALYSIS

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Senate Bill 1442 (Substitute S-1)
Senate Bill 1443 (Substitute S-1)
Sponsor: Senator Patricia L. Birkholz (S.B. 1442)
Senator Jud Gilbert, II (S.B. 1443)
Committee: Natural Resources and Environmental Affairs

Date Completed: 8-20-10

CONTENT

Senate Bill 1442 (S-1) would amend Parts 52 (Strategic Water Quality Initiatives) and 197 (Great Lakes Water Quality Bond Implementation) of the Natural Resources and Environmental Protection Act to allow the Strategic Water Quality Initiatives Fund (SWQIF) to be used for response activities that would address nonpoint source water pollution at contaminated facilities, and for brownfield redevelopment grants and loans. Specifically, the bill would do the following:

- Authorize the Department of Natural Resources and Environment (DNRE) to spend up to \$100.0 million for response activities initially, and an additional \$100.0 million if specified performance objectives were achieved.
- Authorize the DNRE to spend up to \$25.0 million to provide brownfield redevelopment grants and loans to municipalities and brownfield redevelopment authorities.
- 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 State Water Pollution Control Revolving Fund (SRF).
- Require the Auditor General to audit the Great Lakes Water Quality Bond Fund.

Senate Bill 1443 (S-1) would amend Parts 52 and 53 (Clean Water Assistance) of the Act 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 it to evaluate Part 53 and make recommendations to the DNRE and the Legislature on how it could be amended to achieve prescribed outcomes.

The Great Lakes Water Quality Bond Fund, the SWQIF, and the SRF are described below, under **BACKGROUND**.

Senate Bills 1442 (S-1) and 1443 (S-1) are tie-barred to each other. They also are tie-barred to Senate Bills 1345, 1346, and 1348 and to House Bills 6359, 6360, and 6363, which would revise Michigan's program for the remediation of environmentally contaminated sites. Senate Bills 1442 (S-1) and 1443 (S-1) are described in further detail below.

Senate Bill 1442 (S-1)

Strategic Water Quality Initiatives Fund

The SWQIF exists within the State Treasury. The Michigan Municipal Bond Authority, in consultation with the DNRE, may spend SWQIF money, upon appropriation, only 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 could be spent, upon appropriation, on response activities to address nonpoint source water pollution and grants and loans for brownfield sites, as described below.

("Response activity" would mean that term as it is defined in Part 201 (Environmental Remediation), i.e., 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.)

Response Activities. Beginning on the bill's effective date, the DNRE could spend up to \$100.0 million from the SWQIF for response activities to address nonpoint source water pollution at facilities. Beginning on January 1, 2013, an additional \$100.0 million could be spent if the DNRE documented that it had achieved the following performance objectives:

- Increasing the level of investment in sewage collection and treatment systems.
- Providing incentives for actions that both improved water quality and resulted 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" would mean that term as it is defined in Part 201, i.e., 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. Senate Bill 1346 also would exclude 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 assure 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.)

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

The facilities would have to include property located within the identified planning area boundaries of a publicly owned sanitary sewer system eligible for funding under the SRF.

An expenditure would have to be used for response activities necessary to address existing or imminent unacceptable exposure risks arising from conditions that contributed 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 would have to select projects that, to the extent practicable, provided 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 would have to be spent pursuant to generally accepted accounting principles (GAAP).

The DNRE would have to submit an annual report describing the projects funded under the bill to the standing committees and Appropriations subcommittees of the Senate and House of Representatives with jurisdiction over natural resources and environmental issues. The report would have to include an evaluation of how the expenditures, to the extent practicable, provided maximum benefit to the State in protecting public health and the environment and contributing to economic development. In addition, the report would have to include all of the following:

- How the project met the bill's criteria.
- The extent to which the project improved water quality or prevented a risk to water quality as measured by the number of individuals who benefited from it.
- The extent to which the project preserved infrastructure investments that protected 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 would have to 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. Under the bill, the DNRE could spend up to \$25.0 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, a maximum of \$15.0 million could be used for grants and a maximum of \$10.0 million could be used for loans. The DNRE would have to develop grant and loan

application materials to implement these provisions. The Department also would have to accept applications at any time during the year.

Great Lakes Water Quality Bond Fund

Currently, under Part 197, the State Treasurer annually must transfer money in the Great Lakes Water Quality Bond Fund as follows:

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

The bill would reduce the maximum amount deposited in the SRF to \$675.0 million and increase the maximum amount deposited in the SWQIF to \$325.0 million. In addition, the bill provides that, whenever Great Lakes Water Quality Bonds were issued to support the transfer of money into the SWQIF, at least an equivalent amount of bonds would have to be issued to support the transfer of money into the SRF.

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

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

Senate Bill 1443 (S-1)

Strategic Water Quality Initiatives Grant Program

Part 52 required the Michigan Municipal Bond Authority, in conjunction with the DNRE, to establish a Strategic Water Quality Initiatives Grant Program that provides grants totaling a maximum of \$40.0 million to eligible municipalities. The bill would

increase the maximum amount 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 could 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.

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

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

Currently, the DNRE must publish notice of an application on its calendar within 30 days after receiving it. The bill would extend the deadline to 60 days.

Under Part 52, if the DNRE approves a grant, the DNRE 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, including situations in which the project has been identified as being in the fundable range and the applicant declines the loan assistance from the SRF or the SWQIF in that fiscal year. Under the bill, the repayment requirement would apply if the applicant declined loan assistance from any source for two consecutive fiscal years.

Currently, repayment also is required if the applicant opts to finance construction by means other than a grant from the SRF or the SWQIF. The bill would delete this provision.

Revolving Fund Advisory Committee

The bill would create the State Water Pollution Control Revolving Fund Advisory

Committee within the DNRE. The Committee would have to 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 Infrastructure and Transportation Association.
- The Michigan Water and Environment Association.
- A statewide organization of regional planning authorities.
- A statewide environmental or conservation organization.

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

Members would have to be appointed within 60 days after the bill took effect. The Director could remove a member for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The Director would have to call the first Committee meeting. The Committee would be subject to the Open Meetings Act and the Freedom of Information Act.

Committee members would serve without compensation. Staff from the DNRE would have to assist with the Committee's administrative tasks.

The Committee would have to 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 improved water quality and resulted in pollution prevention.

- Optimizing the cost-benefit ratio of alternative designs of sewage collection and treatment systems.

The Committee would have to 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.
- 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.

By August 1, 2011, the Committee would have to 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 would be abolished six months after it submitted its report.

MCL 324.5204 (S.B. 1442)
324.5204a (S.B. 1443)

BACKGROUND

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 (SRF), and the remaining 10% to the Strategic Water Quality Initiatives Fund (SWQIF). The SRF provides low-interest loans to assist municipalities in funding wastewater treatment improvements. The projects may include wastewater treatment plant upgrades or expansions, combined sewer overflow abatement, new sewers designed to reduce existing sources of pollution, nonpoint source pollution management measures, and other related wastewater treatment efforts. Qualified municipalities must meet Federal and State program requirements, and demonstrate environmentally sound water pollution control project plans.

Under the State Water Quality Initiatives Loan Program, the Michigan Municipal Bond Authority, in consultation with the 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.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 1442 (S-1) would allow the Legislature to appropriate funds from the Strategic Water Quality Initiatives Fund to address certain nonpoint source water pollution issues. The Legislature first would be allowed to appropriate up to \$100.0 million for this purpose. Another \$100.0 million could be appropriated starting January 1, 2013, if the Department of Natural Resources and Environment met certain performance standards outlined in the bill.

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 revenue bonds for the purpose of financing sewage treatment works projects, storm water projects, and nonpoint source projects. Senate Bill 1442 would increase the portion of this authorization for the SWQIF from \$100.0 million to \$325.0 million and reduce the authorization of the State Water Pollution Control Revolving Fund from \$900.0 million to \$675.0 million. Currently, the SWQIF has \$44.4 million in remaining bond authorization; the bill would increase this authorization to \$269.4 million. The SRF has an available authorization of \$810.0 million, which would be reduced to \$585.0 million under the bill.

Senate Bill 1442 (S-1) also would allow the Legislature to appropriate, and the DNRE to spend, up to \$25.0 million from the SWQIF on brownfield redevelopment grants and loans. The bill specifies that up to \$15.0 million could be spent on grants and \$10.0 million on loans.

Senate Bill 1443 (S-1) would allow 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 Senate Bill 1442 (S-1) nor Senate Bill 1443 (S-1) would require any additional spending, the appropriations/spending authorized by the bills, if acted upon, would come from new bond issuances under Proposal 2. Table 1, below, shows a breakdown of the additional annual debt service that would result from spending under the authorizations contained in these bills assuming a 4.5% coupon rate.

Table 1
(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	\$100.0	\$7.6
Brownfield Redevelopment Program – Grants	\$15.0	\$1.1
Brownfield Redevelopment Program – Loans	\$10.0	\$0.8
SWQIF – Loan application grants	\$40.0	\$3.0
Total	\$265.0	\$20.1

Senate Bill 1443 (S-1) would create a State Water Pollution Control Revolving Fund Advisory Committee, and would require DNRE staff to assist with various administrative functions associated with the Committee. This requirement could result in some relatively small additional costs to the DNRE.

Fiscal Analyst: Josh Sefton

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