

Legislative Analysis



STRATEGIC WATER QUALITY INITIATIVES FUND & STATE REVOLVING FUND GRANT & LOAN PROGRAMS

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House Bill 5673 (Substitute H-1)
Sponsor: Rep. Al Pscholka

House Bill 5675 (Substitute H-1)
Sponsor: Rep. Peter MacGregor

House Bill 5674 (Substitute H-1)
Sponsor: Rep. Paul Opsommer

House Bill 5676 (without amendment)
Sponsor: Rep. Eileen Kowall

Committee: Natural Resources, Tourism, and Outdoor Recreation
Complete to 11-7-12

A REVISED SUMMARY OF HOUSE BILLS 5673-5676 AS REPORTED FROM COMMITTEE 9-19-12

Taken together, the bills would expand the current state-based Strategic Water Quality Initiatives Loan Program and establish a new state-based grant program. Additionally, it would expand the pool of eligible communities to allow for more access to funding for disadvantaged communities. A summary of each bill is provided below.

House Bill 5673 (H-1) would amend Part 52 (Strategic Water Quality Initiatives) of NREPA to make changes to the Strategic Water Quality Initiatives Loan Program, which provides low-interest loans to municipalities for sewage system improvements to (1) reduce or eliminate groundwater or storm water entering sanitary sewer or combined sewer leads and (2) upgrade or replace failing on-site septic systems that adversely affect public health and/or the environment. The bill would allow for loans to also be issued for construction activities that are undertaken in the planning, designing, or building of sewage treatment works projects, storm water treatment projects, when identified through an asset management program or storm water project plan designed to protection water quality.

Strategic Water Quality Initiatives Grant Program

The bill would expand on the Strategic Water Quality Initiatives grant program (MCL 324.5204a) to provide assistance to municipalities to increase investments in sewage collection and treatment systems and improve water quality. The grant program would be subject to all of the following:

The grant program would have to provide grants of up to \$1million to cover up to 90% of the costs incurred by a municipality. The program would be limited to covering up to 75% for grants between \$1 million and \$2 million. Municipalities may receive a 100% grant if designated as a "disadvantaged community." A municipality that is in receivership or under a consent agreement under the Local Government and School District Accountability Act (PA 4 of 2011) or a successor statute, or operating under an appointed emergency financial manager or a consent agreement under the Local

Government Fiscal Responsibility Act (PA 72 of 1990) may receive a 100% grant. Grant funding could be used (1) to develop an asset management plan for a sewage collection and treatment system or a storm water system, including development of a funding structure and implementation schedule that provides sufficient resources for implementation; (2) to develop management plans for storm water treatment; (3) or to plan and design a sewage treatment works or storm water treatment project.

The local match is not eligible for loan assistance from the State Revolving Fund or the SQWIF and grant funds could not be used for general administrative activities or activities performed by municipal employees that are unrelated to the grant project. Municipalities could not receive more than \$2 million in total grant assistance from this program.

Application and Review

The bill would also require the DEQ to establish an application and review process with time frames on processing and determination. A grant agreement would have to be entered into before funds are transferred and must contain a requirement that the recipient proceed with a project within 3 years after receiving approval and terms on repayment of funds, with 8% interest, if the project is not initiated.

Reporting

The DEQ would be required to file a report with the Legislature for each year it receives grant applications on how funds received from the Great Lakes Water Quality Bond Fund were utilized. At minimum, it would have to include (1) the number of applications, (2) name of applicants, (3) project type, (4) number of affected users, (5) amount of local match, and (6) the individual and cumulative amounts awarded, including whether each award was for applying for assistance from the Water pollution Control Revolving Fund or the Strategic Water Quality Initiatives Fund.

Wetland Mitigation Bank Funding Program

The bill would also establish a new wetland mitigation bank funding program to provide grants and loans of up to \$10 million to eligible municipalities. Up to \$500,000 could be used for grants, and funding could be used as long as funds remain available.

Grants

Grants would be intended to provide assistance to municipalities to complete loan application requirements for funding from the wetland mitigation bank funding program or to complete loan application requirements from other financing sources, and would be subject to the following:

- Could not cover more than 90% of the costs incurred to complete an application.
- May be used to develop an approvable wetland mitigation banking proposal, notify affected local units of government and property owners of the proposed wetland mitigation bank and work to resolve objections, plan and design the mitigation bank, and complete the wetland mitigation bank funding program loan application or requirements for loan applications from other financing sources.

The 10% local match would not be eligible for loan assistance through the program and grant funds could not be used for general local government administrative activities or activities performed by municipal employees that are unrelated to the development of the loan application.

Application review

The DEQ would have to establish a review process for considering grant applications and would have to notify applicants in writing of a determination. Approved grants would require a grant agreement between the applicant and the DEQ and the Municipal Bond Authority before any funds could be transferred.

The agreement would have to contain terms as established by the DEQ and the Bond Authority concerning repayment of the grant (at 8% per year) if any of the following occur:

- The applicant fails to submit an administratively complete application to the wetland mitigation bank funding program within one year of the date the grant expires.
- The applicant declines the loan assistance for two consecutive years, unless the applicant moves forward with funding from another source.
- The applicant is unable to enter into a signed wetland mitigation banking agreement with the DEQ within two years of the grant expiring.
- The applicant is unable to or decides not to proceed with the project.

Loans

Wetland mitigation bank funding program loans are intended to provide assistance to municipalities to establish a wetland mitigation bank and would be subject to the following:

- Loans are made to (1) complete and execute the wetland mitigation banking agreement with the DEQ, (2) complete engineering and design for the wetland mitigation bank, (3) purchase land for the wetland mitigation bank, (4) construct the wetland mitigation bank, and (5) conduct monitoring and maintenance necessary to ensure the performance standards are met. The DEQ may also approve loan funds for other activities needed to establish a wetland mitigation bank upon a demonstrated need by a municipality.
- Loan applications are made on forms provided by the DEQ and contain all the required information. Applications may be made at any time.

Application Review

The DEQ would be required to establish a process for reviewing loan applications and notify applicants in writing of a determination. A loan agreement would have to be entered into with the recipient before funds could be released.

Reporting

The DEQ would be required to file a report with the Legislature by October 1 for each year it receives grant applications on how funds received from the Great Lakes Water Quality Bond Fund were utilized. At minimum, it would have to include (1) the number of applications, (2) names of municipalities applying for a grant or loan, (3) amount of local match, and (6) the individual and cumulative amounts awarded, including the purpose of each grant or loan.

"*Wetland mitigation bank*" would mean a site where wetlands are restored, created, or, in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in accordance with Part 303 of NREPA, in advance of authorized, unavoidable impacts to wetlands.

House Bill 5674 (H-1) would amend Part 53 (Clean Water Assistance) of NREPA to define "*disadvantaged community*," which would mean a municipality that has met all of the following:

- Users within a sewage treatment works project or storm water treatment project service area are directly assessed for construction costs.
- Median household income of the sewage treatment works project or storm water treatment project service area does not exceed 120% of the statewide median annual household income.
- Demonstrates (1) more than 50% of the sewage treatment works project or storm water treatment project service area is identified as a poverty area by the U.S. Census; (2) the median household income sewage treatment works project or storm water treatment project service area is less than the most recently published federal poverty guidelines for a family of four in the 48 contiguous United States, which would be determined by using the most recent statistics from the Census Bureau, updated to reflect current dollars, for the community most reflective of the area being served by the project; (3) the median annual household income of the sewage treatment works project or storm water treatment project service area is less than the most recently statewide median household income for Michigan, and annual user costs for sewage and storm water treatment exceed 1% of the median annual household income of the sewage treatment works project or storm water treatment project service area; or (4) the median annual household income of the sewage treatment works project or storm water treatment project service area is not greater than 120% of the statewide median annual household income for Michigan, and annual user costs for sewage and storm water treatment exceed 3% of the median annual household income of the sewage treatment works project or storm water treatment project service area.

The bill would also clarify that if the project is a sewage treatment works project or a storm water treatment project and is within a disadvantaged community, the project would be awarded up to 50 points in the manner that points are awarded under Part 53.

House Bill 5675 (H-1) would amend Part 54 (Drinking Water Assistance) of NREPA to broaden the definition of "disadvantaged community" to make funding more accessible to eligible communities. Specifically, the bill would do the following:

- To qualify, communities must show that users within the public water supply project service area are directly assessed for the construction costs and that the median annual income of the project service area does not exceed 120% of the statewide median household income, and must meet guidelines related to poverty and median annual household income. The bill would alter one of those criteria to lower the current ratio that annual user water supply costs exceed 1.5% of the median annual household income for the public water supply project service area. The ratio would be reduced to 1%.
- In determining the points assigned to individual projects eligible for assistance under Part 54, specify that points awarded for formal enforcement actions would be in addition to the maximum points allowed in any category.
- If after projects are scored and two or more projects are tied, and the tie-breaker does not produce a winner, current law would calculate the cost per population served by the water system and rank affected projects with the lowest ratio higher. The bill would rank the projects with the highest ratio of cost to population higher.

House Bill 5676 would amend Part 197 (Great Lakes Water Quality Bond Implementation) of NREPA to alter the amount of funds that could be transferred from the Great Lakes Water Quality Bond Fund to other funds, as follows:

- Reduce from \$710 million to \$90 million, the amount that could be transferred to the State Water Pollution Control Revolving Fund.
- Increase from \$290 million to \$910 million, the amount that could be transferred to the Strategic Water Quality Initiatives Fund.

All of the bills are tie-barred to each other, meaning none can take effect unless all are signed into law.

FISCAL IMPACT:

HB 5673

House Bill 5673 would increase the administrative costs for the Department of Environmental Quality. However, in PA 200 of 2012, the FY 2012-13 appropriations budget bill for DEQ, the Legislature appropriated an additional \$725,000 restricted funding from the **Strategic Water Quality Initiative Fund (SWQIF)** and authorized an additional 5.0 FTE positions to the Municipal Assistance line item in anticipation of these program expansions. It is expected that this additional funding and increase in staff will cover any increased costs to the DEQ from the bill's provisions.

Because the bill expands the **grant** programs of the SWQIF—which require no repayment—the provisions of the bill would likely lead to less funding being available in the future for GLWQB projects in general compared to the program under current law.

The amount of reduced funding is indeterminate and would be dependent upon how many grants are awarded in these programs.

House Bill 5673 expands the current SWQIF grant program to include individual grants of up to \$2 million to municipalities for investments in sewage collection treatment systems and improvements in water quality and pollution prevention. It also establishes a Wetland Mitigation Bank funding program that would provide grants and loans totaling up to \$10 million. Of that amount, up to \$500,000 may be used for grant awards to municipalities.

HB 5674

By modifying the definition of a disadvantaged community, House Bill 5674 would allow more communities to be eligible to qualify for loans from the **State Water Pollution Control Revolving Fund**, commonly known as the **State Revolving Fund (SRF)**. This fund is used to fund loans to local governmental units to finance the construction of sewage and storm water treatment facilities. The interest offered in FY 2010 on these loans was 2.5%. The SRF is capitalized through federal grant funding and requires a 20% state match. (See House Bill 5676 below for further SRF fiscal information.)

HB 5675

House Bill 5675 would allow more communities to be eligible to qualify for loans from the **Drinking Water Revolving Fund (DWRf)** program. The DWRf provides low-interest loans to public water providers to be used in the construction of drinking water infrastructure. The interest offered in FY 2010 on these loans was 2.5%. The DWRf is capitalized through federal grant funding and requires a 20% state match.

At the end of FY 2011, the DWRf had provided 218 loans totaling over \$635 million since it was established. The Fund provides loan funding for the following types of projects:

- Drinking water treatment facilities
- Storage facilities
- Wells or intake structures
- Water transmission / distribution facilities
- Rehabilitation of existing facilities

FY 2013 Appropriations

In PA 200 of 2012, the FY 2012-13 appropriations budget bill for DEQ, there is \$33.6 million appropriated for the DWRf. Of this amount, \$28.6 million is from federal funding and \$5.0 million is state funding that is used as the state match for these federal funds. This state funding is an additional \$5.0 million General Fund funding that was not appropriated in the previous year. It is anticipated that this funding will help enable the program to secure the amount of federal program money available to the state and increase the number of communities that will receive DWRf funding.

HB 5676

Background

In 2002, Michigan voters approved Proposal 2 which authorized the **Great Lakes Water Quality Bond**, a \$1.0 billion general obligation bond program intended to help finance sewage treatment works upgrades or expansions and storm water treatment projects. The revenues generated by any bond issues under the program and interest earnings are deposited into the Great Lakes Quality Bond Fund (GLQBF) within Treasury. The Michigan Municipal Bond Authority issued the first series of Great Lakes Water Quality Bonds totaling \$100 million in December of 2003.

Under current law, up to \$710 million of the bond revenues within the GLQBF must be deposited into the **State Water Pollution Control Revolving Fund**, commonly known as the **State Revolving Fund (SRF)**. This fund is used to fund loans to local governmental units to finance the construction of sewage and storm water treatment facilities. Current law also stipulates that up to \$290 million of the bond revenues be deposited into the **Strategic Water Quality Initiatives Fund (SWQIF)**, which provides low-interest loans to municipalities for improvements to reduce or eliminate groundwater or storm water from entering sanitary sewer leads and for the replacement or upgrades of failing septic systems. SWQIF funding may also be appropriated for nonpoint source water pollution issues and certain types of grants (brownfield development and loan application assistance).

FY 2013 Appropriations

In PA 200 of 2012, the FY 2012-13 appropriations budget bill for DEQ, there is \$54.3 million appropriated for the SRF. Of this amount, \$42.9 million is from federal funding and \$11.4 million is state funding that is used as the state match for these federal funds. In a separate line item, \$9.6 million state restricted funding is appropriated for SQWIF loans to municipalities. Because the SQWIF programs are state-funded and receive no federal funding, they do not have the federal requirements and limitations that apply to the SRF program. In addition, they can also be used for both public and private sewer issues.

State Spending Implications

House Bill 5676 would change the amount of GLWQ Bond revenue allowed to be deposited into the SRF and SWQIF by allowing the SWQIF to receive up to \$910 million (instead of \$290 million currently) and allowing the SRF to receive up to \$90 million (instead of \$710 million currently). Because the SRF program offers loans to municipalities that would eventually be repaid to the Fund, while the SWQIF offers both loans and grants—the latter of which requires no repayment—the provisions of the bill would likely lead to less funding being available in the future for GLWQB projects in general, compared to the program under current law.

House Bill 5676's provisions could increase the costs to the state by an indeterminate amount, depending upon any new bond issues that might be issued to fund additional projects. The state is currently paying debt service payments on the funding from past bond issues and would be required to pay debt service payments for any new bonds that

would be issued. By statute, the debt service on these bonds must be paid by General Fund dollars. In FY 2012-13, \$6.5 million General Fund dollars are appropriated in the Treasury budget bill (PA 200 of 2012) for the annual debt service for the Great Lakes Water Quality Bond Program.

POSITIONS:

Michigan Department of Environmental Quality supports the bills. (9-11-12)

American Council of Engineering Companies supports the bills. (9-11-12)

City of Mason supports House Bill 5675. (9-19-12)

City of Grand Rapids supports the bills. (9-11-12)

Detroit Regional Chamber supports the bills. (9-11-12)

Michigan Environmental Council supports the bills. (9-11-12)

Michigan Infrastructure and Transportation Association supports the bills. (9-11-12)

Michigan Municipal League supports the bills. (9-11-12)

Michigan Townships Association supports the bills. (9-11-12)

Southeast Michigan Council of Governments supports the bills. (9-19-12)

Washtenaw County supports the bills. (9-11-12)

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