

Legislative Analysis



SEWAGE AND STORMWATER PROJECTS

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House Bill 5890 as enacted
Public Act 132 of 2022
Sponsor: Rep. Beth Griffin

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5891 as enacted
Public Act 133 of 2022
Sponsor: Rep. David Martin

House Bill 5892 as enacted
Public Act 134 of 2022
Sponsor: Rep. Sara Cambensy

House Committee: Natural Resources and Outdoor Recreation
Senate Committee: Environmental Quality
Complete to 7-22-22

SUMMARY:

House Bill 5890 amends Part 53 (Clean Water Assistance) and Part 54 (Safe Drinking Water Assistance) of the Natural Resources and Environmental Protection Act (NREPA) to revise requirements for stormwater management and sewage treatment projects. House Bills 5891 and 5892 make complementary amendments to the Shared Credit Rating Act and the Administrative Procedures Act, respectively, to update provisions of those acts that refer to Parts 53 and 54 of NREPA.

House Bill 5890 makes several revisions to NREPA regarding stormwater and sewage plans. The bill does all of the following:

- Replaces stormwater “treatment” projects with stormwater “management” projects.
- Removes the term *disadvantaged community* in Parts 53 and 54.
- Revises references to reflect updates to federal laws and programs.
- Replaces “project plan” with “planning document” throughout Parts 53 and 54.
- Allows municipalities (Part 53) and water suppliers (Part 54) to submit certain preexisting documents as part of the planning document.
- Removes provisions regarding project planning costs that are eligible for funding and reimbursement under Part 54, yet allows an overburdened community to generally receive direct reimbursement.
- Removes Part 54 provisions that require certain information in a project plan.
- Removes the definitions for *Tier I project* and *Tier II project* from Part 53 as well as all references and provisions made in consideration of Tier I and Tier II projects.
- Requires municipalities (Part 53) and water suppliers (Part 54) to include documentation in a planning document that demonstrates certain conditions and removes certain requirements from Part 54, including a description of the selected alternative plan.
- Adds that planning documents under Part 53 must describe the public participation activities conducted during planning, including specific interactions. Part 54 previously required these activities, but the bill lengthens the public notice time requirement from 10 to 30 days. The same requirement is 15 days under Part 53.

- Requires the Department of Environment, Great Lakes, and Energy (EGLE) to develop new scoring criteria for priority lists of sewage treatment works projects and stormwater treatment projects under Part 53 and projects eligible for assistance under Part 54. The scoring criteria must include impacts on *overburdened communities* and *significantly overburdened communities*. The definitions for *overburdened communities* and *significantly overburdened communities* must be developed by EGLE as prescribed in the bill and include specific criteria.
- Requires EGLE to publish a draft of the intended use plan on its website at least 14 days before a final intended use plan is submitted under Part 53. The intended use plan must describe and identify specific information regarding projects.
- Requires a municipality to correct deficiencies in a planning document and submit an amended document to EGLE within 45 days after receiving notice. EGLE has 90 days, instead of 120, to approve or disapprove an amended document. (Part 53)
- Requires EGLE to conduct an environmental review of the planning document submitted under Part 53, which could lead to a municipality's having to complete an environmental impact statement.
- Requires EGLE to reevaluate a project under Part 53 for compliance with national standards at most every five years.
- Allows EGLE to bypass a project that fails to meet certain scheduling criteria under Part 53 and requires EGLE to provide to the municipality with written notice of its intent to bypass at least 30 days before the project is bypassed.
- Allows a municipality to request a schedule extension for a total of 90 days. (Part 53)
- Requires EGLE to annually establish interest rates under Part 53.
- Provides that municipalities (Part 53) and water suppliers (Part 54) are responsible for obtaining any federal, state, or local permits necessary for the project as well as performing any required surveys or studies.
- Requires municipalities (Part 53) and water suppliers (Part 54) to incorporate all appropriate provisions, conditions, and mitigative measures included in the studies, surveys, permits, and licenses into the construction documents.
- Requires municipalities to enforce all applicable and appropriate conditions and mitigative measures under Parts 53 and 54.
- Creates the State Revolving Administrative Fund in Part 53 and provides that up to 0.25% of the interest charged on a loan issued under Part 53 or 54 may be deposited into the fund and that EGLE may only expend money from the fund for the reasonable costs of administering and conducting activities under Parts 53 and 54.
- Allows funds collected from fees and charges by EGLE in connection with a transaction under Part 54 to be used for administering and implementing Part 54.
- Repeals section 5317, which regulated the state water pollution control revolving fund advisory committee, and removes references to this section in Part 52 (Strategic Water Quality Initiatives), Part 53, and Part 54.

MCL 324.5204d et seq.

House Bill 5891 amends the Shared Credit Rating Act to update references to federal laws and programs as well as update provisions of the act that refer to changes made in Parts 53 and 54 of NREPA, including accounting for the repeal of section 5317.

MCL 141.1053

House Bill 5892 amends the Administrative Procedures Act to provide that the definition of “rule” does not include scoring criteria and the definitions of *overburdened community* and *significantly overburdened community* developed by EGLE under the authority granted under Parts 53 and 54 of NREPA, as added by House Bill 5890.

MCL 24.207

The bills took effect June 30, 2022.

BRIEF DISCUSSION:

Michigan is no stranger to heavy rainfall, which can cause stress on local stormwater and sewage systems, both separate and combined. Additionally, contaminants such as PFAs and the use of lead water lines continue to threaten Michigan’s drinking water. Municipalities have been attempting to update their stormwater and sewage systems to best serve Michiganders, which is a costly endeavor. According to committee testimony, current state funds and grants in Parts 53 and 54 of NREPA go unused due to unnecessarily strict requirements. Supporters argue that the bills would provide the flexibility needed for more municipalities to apply for the funds that would enable them to make much-needed infrastructure developments to stormwater and sewage systems.

FISCAL IMPACT:

House Bill 5890 is likely to increase costs and increase revenues for EGLE. Cost increases are likely to result from the creation of new scoring criteria for clean water (sewer and stormwater) and drinking water funding assistance applications reviewed by EGLE. The department may also incur additional costs in conducting environmental reviews of planning documents submitted with clean water loan applications under the bill. The extent of these cost increases is unclear at present and likely to vary by loan applicant. The bill is also likely to increase revenue for the department by establishing the State Revolving Administrative Fund and allowing EGLE to use a portion of charged interest on clean water and drinking water loans to cover the cost of administering these loan programs. The extent of this revenue increase is likely to vary with the number and size of loans awarded, similarly to the aforementioned increase in departmental costs. Whether increased departmental revenue will meet increased departmental costs remains to be seen. The department uses the annual Water State Revolving Funds appropriation to provide these loans to local governments and water suppliers. This program is funded at \$1.9 billion Gross (\$41.4 million GF/GP) in FY 2021-22 after the passage of 2022 PA 53, which appropriated \$1.7 billion in available federal Infrastructure Investment and Jobs Act and Coronavirus State Fiscal Recovery funding.

The bill may also increase costs for local governments that apply for clean water or drinking water loans by instituting additional application requirements, including cost comparisons and planning documents. However, the bill also provides for certain preexisting documents to be used for these application requirements, though not all applicants are likely to have such extant resources. The bill does not provide an additional source of revenue for local governments.

House Bills 5891 and 5892 are unlikely to affect costs or revenues for EGLE or local governments.

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