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BILL



ANALYSIS

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House Bill 5673 (Substitute H-2 as passed by the House)  
Sponsor: Representative Al Pscholka  
House Committee: Natural Resources, Tourism, and Outdoor Recreation  
Senate Committee: Natural Resources, Environment and Great Lakes

Date Completed: 12-5-12

## **CONTENT**

**The bill would amend Part 52 (Strategic Water Quality Initiatives) of the Natural Resources and Environmental Protection Act to do the following:**

- **Include construction activities related to sewage treatment works, stormwater treatment, and nonpoint source projects among the activities eligible for a low-interest loan through the Strategic Water Quality Initiatives Loan Program, when identified through an asset management program or stormwater project plan designed to protect water quality.**
- **Authorize the use of money from the Strategic Water Quality Initiatives Fund (SWQIF) for grants to municipalities for sewage collection and treatment systems, and grants and loans for wetland mitigation banks.**
- **Require the Department of Environmental Quality (DEQ) to report annually to the Legislature on the use of funds under Part 52 that were received from the Great Lakes Water Quality Bond Fund.**

The bill is tie-barred to House Bills 5674, 5675, and 5676. The Substitute (H-1) versions of those bills would do the following: require the DEQ to award up to 50 points to a proposed sewage treatment works, stormwater treatment, or nonpoint source project in a disadvantaged community, when developing its priority list for SWQIF project funding; provide that

formal enforcement action points awarded to a proposed project in the DEQ's development of a priority list for public water supply project funding would be in addition to the maximum points otherwise allowed, and revise the criteria used to break a tie between projects with even scores; and revise the allocation of money to the SWQIF and the State Water Pollution Control Revolving Fund (SRF) from the Great Lakes Water Quality Bond Fund.

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

### Strategic Water Quality Initiatives Loan Program

Part 52 requires the Michigan Municipal Bond Authority, in consultation with the DEQ, to establish a strategic water quality initiatives loan program to provide low-interest loans to municipalities to provide assistance for one or more of the following:

- Improvements to reduce or eliminate the amount of groundwater or stormwater entering a sanitary sewer lead or a combined sewer lead.
- Upgrades or replacements of failing on-site septic systems that are adversely affecting public health and/or the environment.

Under the bill, the loan program also could provide loans for assistance for construction activities as defined in Section 5301(d) designed to protect water quality, including

improvements that were water or energy efficient, where feasible, when identified through an asset management program or a project identified in an approved stormwater management plan. (That section defines "construction activities" as any actions undertaken in the planning, designing, or building of sewage treatment works projects, stormwater treatment projects, or nonpoint source projects. The term includes the following:

- Project planning, engineering, legal, and financial services.
- Design of plans and specifications.
- Acquisition of land and/or structural components.
- Building, erection, alteration, remodeling, or extension of a sewage treatment works; projects designed to control nonpoint source pollution; and a stormwater treatment project.
- Municipal supervision of these activities.)

The bill would define "asset management program" as the program that identifies the desired level of service at the lowest life cycle cost for rehabilitating, repairing, or replacing the assets associated with a municipality's wastewater or stormwater system.

Additionally, the loan program could provide loans for the municipality's project costs related to testing, demonstration, and construction activities for innovative wastewater and stormwater technologies approved by the DEQ.

#### Strategic Water Quality Initiatives Fund

Authorized Uses. Under Part 52, the Bond Authority, in consultation with the DEQ, may spend SWQIF money, upon appropriation, only for the following:

- Loans to municipalities, as described above.
- Grants to municipalities to complete loan application requirements and to fund specific wastewater treatment facility infrastructure improvement projects.
- Response activities to address nonpoint source water pollution.
- Grants and loans for brownfield sites.
- The costs of the Authority and the DEQ in administering the Fund.

The bill would allow SWQIF money also to be used as described below for grants to municipalities for sewage collection and treatment systems, and grants and loans for wetland mitigation banks.

#### Sewage Collection & Treatment Grant Program.

In addition to the other requirements of Part 52, the bill would require the grant program to provide grants to municipalities for sewage collection and treatment systems or stormwater or nonpoint source pollution control.

The grant program would have to provide grants of up to \$1.0 million to cover a maximum of 90% of the costs incurred by a municipality. For grants of more than \$1.0 million and less than \$2.0 million, the program could not cover more than 90% of the municipality's costs up to \$1.0 million and not more than 75% of the municipality's costs above \$1.0 million. A municipality could receive a 100% grant if any of the following conditions were met:

- The municipality was a disadvantaged community as defined in Part 53 (which House Bill 5674 (H-1) would amend as described below).
- The municipality was in receivership.
- The municipality was operating under an emergency manager or an emergency financial manager appointed under State law.
- The municipality was operating under a consent agreement as provided under the Local Government Fiscal Responsibility Act.

(Under House Bill 5674 (H-1), "disadvantaged community" would mean a municipality in which both of the following conditions are met:

- Users within the area served by a proposed sewage treatment works project or stormwater treatment project are directly assessed for the costs of construction.
- The median household income of the area served by the proposed project does not exceed 120% of the statewide median annual household income for Michigan.

Additionally, the municipality would have to demonstrate that more than 50% of the area served by a proposed project is

identified as a poverty area by the U.S. Census Bureau, or that the median annual household income of the area served by a proposed project does not exceed specified levels.)

A grant could be used for the following purposes:

- Development of an asset management program for a sewage collection and treatment system or a stormwater system.
- Development of management plans as determined by the DEQ for the treatment of stormwater.
- Planning and design of a sewage treatment works project or stormwater treatment project as defined in Part 53 or construction activities designed to reduce nonpoint source pollution.
- A municipality's project costs related to the testing and demonstration of innovative wastewater and stormwater technologies approved by the DEQ.

(Part 53 defines "sewage treatment works project" as construction activities on any device or system for the treatment, storage, collection, conveyance, recycling, or reclamation of a municipality's sewage, including combined sewer overflow correction and major rehabilitation of sewers. "Stormwater treatment project" means construction activities of a municipality on any device or system for the treatment, storage, recycling, or reclamation of stormwater that is conveyed by a storm sewer that is separate from a sanitary sewer.)

For sewage collection and treatment systems, the program would have to include the development of a funding structure and implementation schedule that provided sufficient resources to implement the program. The municipality would have to coordinate, as feasible, with other infrastructure activities in the same geographic area.

The local match would not be eligible for loan assistance from the SRF or the SWQIF.

Grant funds could not be used for general local government administrative activities or activities performed by municipal employees that were unrelated to the project.

A municipality could not receive more than \$2.0 million in total grant assistance under these provisions.

The DEQ would have to establish an application and review process for considering grant applications. The application would have to contain the information required by the DEQ and the Authority. Within 60 days after receiving an application, the DEQ would have to publish notice on its calendar. Within 120 days after receiving an administratively complete application, the DEQ would have to notify the applicant in writing whether the application was approved or rejected. If the DEQ approved a grant, the Department and the Authority would have to enter into a grant agreement with the recipient before transferring the funds. The agreement would have to contain terms established by the DEQ and the Authority, and require the recipient to proceed with the project within three years after the Department approved the grant. The agreement also would have to require the recipient to repay the grant, within 90 days of being informed to do so, with interest at a maximum annual rate of 8% per year, to the Authority for deposit into the SWQIF if the applicant were unable to, or decided not to, proceed with a construction project or implementation of an asset management program for which grant funding was provided under the bill.

For asset management programs, the requirement that the recipient proceed with the project within three years would include significant progress, as determined by the DEQ, toward achieving the funding structure necessary to implement the program.

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

- The number of grant applications received.
- The name of each municipality applying for a grant.

- The type of project being funded for each grant awarded.
- The number of users potentially affected by each grant awarded.
- The amount of the local match for each grant awarded.
- The individual and annual cumulative amount of grant funds awarded, including an identification of whether each award was for the purpose of applying for assistance from the SRF.

#### Wetland Mitigation Bank Funding Program.

The bill would require the DEQ, in conjunction with the Michigan Municipal Bond Authority, to establish a wetland mitigation bank funding program that provided grants and loans totaling a maximum of \$10.0 million to eligible municipalities. Up to \$500,000 of the total could be used for grants. The funding could be used for this program as long as funds remained available.

The grants would have to provide assistance to municipalities to complete loan application requirements for funding from the wetland mitigation bank funding program or other sources of financing.

Grants could not cover more than 90% of a municipality's costs to complete an application for loan assistance.

Grant funding could be used for the following purposes:

- Developing an approvable wetland mitigation banking proposal.
- Notifying affected local units of government and adjacent property owners of the proposed mitigation bank, and working to resolve objections to the project.
- Planning and designing the bank.
- Completing the bank funding program loan application or loan application requirements for other sources of financing.

The 10% local match would not be eligible for loan assistance from the wetland mitigation bank funding program.

Grant funds could not be used for general local government administrative activities or activities performed by municipal employees that were unrelated to development of the loan application.

Applications for grants from the program would have to be made on a form provided by the DEQ and contain the information required by the Department and the Authority. Grant applications could be made at any time.

The DEQ would have to establish a review process for considering the grant applications. The Department would have to notify an applicant in writing whether the application was approved or rejected. If the grant were approved, the DEQ and the Authority would have to enter into a grant agreement with the recipient before transferring funds.

The agreement would have to contain terms established by the DEQ and the Authority. The agreement also would have to contain a requirement that the recipient repay the grant, within 90 days of being informed to do so, with interest at a maximum rate of 8% per year, to the Authority for deposit into the SWQIF if any of the following occurred:

- The applicant failed to submit an administratively complete loan application for assistance from the wetland mitigation bank funding program or other source of financing for the project within one year of the date on which the grant expired.
- The applicant declined the loan assistance for two consecutive years, unless the applicant proceeded with funding from another source.
- The applicant was unable to enter into a signed wetland mitigation banking agreement with the DEQ within two years of the grant's expiration date.
- The applicant was unable or decided not to proceed with constructing the project.

Loans under the wetland mitigation bank funding program would have to provide assistance to municipalities to establish a wetland mitigation bank. The loans would have to be for at least one of the following:

- Completing and executing the wetland mitigation banking agreement with the DEQ.
- Completing engineering and design for the wetland mitigation bank.
- Purchasing land for the bank.
- Constructing the bank.

- Conducting monitoring and maintenance necessary to ensure that the performance standards would be met.

In addition, the DEQ could approve the use of loan funds for other activities needed to establish a wetland mitigation bank upon a demonstrated need by the municipality.

Applications would have to be made on a form provided by the DEQ, and contain the information required by the Department and the Authority. Loan applications could be made at any time.

The DEQ would have to establish a review process for considering loan applications. The Department would have to notify the applicant in writing whether the loan was approved or rejected. Before releasing a loan, the Authority, in consultation with the DEQ, would have to enter into a loan agreement with the recipient.

For each year in which the DEQ received grant or loan applications for the wetland mitigation bank funding program, the Department would have to report by October 1 to the standing committees of the Senate and House of Representatives with primary jurisdiction over issues pertaining to natural resources and the environment, and to the Senate and House Appropriations Committees, on the use of funds received from the Great Lakes Water Quality Bond Fund. At a minimum, the report would have to include the following:

- The number of grant and loan applications received.
- The name of each municipality applying for a grant and/or loan.
- The amount of local match for each grant awarded.
- The individual and annual cumulative amount of grant and loan funds awarded, including an identification of the purpose of each grant and loan.

MCL 324.5201 et al.

## **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, stormwater projects,

and nonpoint source projects that improve the State's water quality. Public Act 397 of 2002 added Parts 52 and 197 (Great Lakes Water Quality Bond Implementation) to the 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 allocate prescribed amounts to the SRF and the SWQIF. (The allocation of money to the two funds under Part 197 has been revised several times, most recently by Public Act 232 of 2010.) 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 DEQ, provides low-interest loans from the SWQIF to municipalities to provide assistance for one or both of the following sewage system improvements: improvements to reduce or eliminate the amount of groundwater or stormwater 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.

Public Act 254 of 2005 amended Part 52 to require some of the money from the sale of the bonds to be directed to a grant program to assist municipalities in the SRF loan application process, which can result in significant planning and engineering costs. Public Acts 231 and 232 of 2010 again amended Part 52 to do the following:

- Increase the amount available for grants to eligible municipalities under the grant program.
- Allow the grants to be used for assistance to complete loan application requirements for financing sources other than the SRF.
- Allow the SWQIF to be used for wastewater facility infrastructure improvement projects, response activities that address nonpoint source water pollution at contaminated facilities, and brownfield redevelopment grants and loans.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bill would have a negative fiscal impact on State government. The bill would allow up to \$10.0 million in grants and loans from the Strategic Water Quality Initiatives Fund to be made to municipalities for wetland mitigation banks. Up to \$500,000 would be distributed as grants, and the remainder would be loans. The bill also would allow the SWQIF to be used for grants of up to \$2.0 million for sewage collection and treatment systems, stormwater, and nonpoint source pollution control. Revenue for the grants and loans would come from bond issues under Proposal 2 of 2002. Associated debt service would be paid by the Department of Treasury from General Fund/General Purpose revenue.

Any new administrative costs introduced by the bill would be covered by an additional \$725,000 appropriation contained in Article VII of Public Act 200 of 2012, which is the fiscal year 2012-13 Department of Environmental Quality budget.

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.