

Legislative Analysis



SEWAGE AND STORMWATER PROJECTS

Phone: (517) 373-8080
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House Bill 5890 (H-1) as reported from committee
Sponsor: Rep. Beth Griffin

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

House Bill 5891 as reported from committee
Sponsor: Rep. David Martin

House Bill 5892 (H-1) as reported from committee
Sponsor: Rep. Sara Cambensy

Committee: Natural Resources and Outdoor Recreation
Complete to 6-4-22

(Enacted as Public Acts 132, 133, and 134 of 2022)

SUMMARY:

House Bill 5890 would amend 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 would 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 would make several revisions to NREPA regarding stormwater and sewage plans. The bill would do all of the following:

- Replace stormwater “treatment” projects with stormwater “management” projects.
- Remove the term *disadvantaged community* in Parts 53 and 54.
- Revise references to reflect updates to federal laws and programs.
- Replace “project plan” with “planning document” throughout Parts 53 and 54.
- Allow municipalities (Part 53) and water suppliers (Part 54) to submit certain preexisting documents as part of the planning document.
- Remove provisions regarding project planning costs that are eligible for funding and reimbursement under Part 54, yet allow an overburdened community to generally receive direct reimbursement.
- Remove Part 54 provisions that require certain information in a project plan.
- Remove 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.
- Require municipalities (Part 53) and water suppliers (Part 54) to include documentation in a planning document that demonstrates certain conditions and remove certain current requirements from Part 54, including a description of the selected alternative plan.
- Add that planning documents under Part 53 must describe the public participation activities conducted during planning, including specific interactions. Part 54 currently requires these activities, but the bill would lengthen the public notice time requirement from 10 days to 30 days. The same requirement would be 15 days under Part 53.
- Require 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. Among other things, the scoring criteria would have to include impacts on *overburdened communities* and *significantly overburdened communities*. The definitions for *overburdened communities* and *significantly overburdened communities* would be developed by EGLE and have to include specific criteria.

- Require 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 would have to describe and identify specific information regarding projects.
- Require a municipality to correct deficiencies in a planning document and submit an amended document to EGLE within 45 days after receiving notice. EGLE would have 90 days, instead of 120, to approve or disapprove an amended document. (Part 53)
- Require EGLE to conduct an environmental review of the planning document submitted under Part 53, which could lead to a municipality having to complete an environmental impact statement.
- Require EGLE to reevaluate a project under Part 53 for compliance with national standards at most every five years.
- Allow EGLE to bypass a project that fails to meet certain scheduling criteria under Part 53 and require EGLE to provide to the municipality with written notice of its intent to bypass at least 30 days before the project is bypassed.
- Allow a municipality to request a schedule extension for a total of 90 days (Part 53).
- Require EGLE to annually establish interest rates under Part 53.
- Provide 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.
- Require 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.
- Require municipalities to enforce all applicable and appropriate conditions and mitigative measures under both Parts 53 and 54.
- Create the State Revolving Administrative Fund in Part 53 and provide that up to 0.25% of the interest charged on a loan issued under Part 53 or Part 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 Part 53 and Part 54.
- Allow 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.
- Repeal section 5317, which regulates the state water pollution control revolving fund advisory committee and remove references to this section in Part 52 (Strategic Water Quality Initiatives), Part 53, and Part 54.

MCL 324.5204d et seq.

House Bill 5891 would amend 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 that would be made in Parts 53 and 54 of NREPA, including accounting for the repeal of section 5317.

The bill would not take effect unless HB 5890 were also enacted.

MCL 141.1053

House Bill 5892 would amend 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.

The bill would not take effect unless HB 5890 were also enacted.

MCL 24.207

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.

POSITIONS:

Representatives of the following entities testified in support of the bills:

- Department of Environment, Great Lakes, and Energy (5-5-22)
- Michigan Section – American Water Works Association (3-24-22)
- Michigan Water Environment Association (3-24-22)
- Michigan Environmental Council (3-24-22)

The following entities indicated support for the bills:

- Michigan Townships Association (3-24-22)
- Southeast Michigan Council of Governments (3-24-22)
- People’s Water Board Coalition (3-24-22)
- Safe Water Initiative (3-24-22)
- Michigan League of Conservation Voters (5-5-22)

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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.