

Legislative Analysis



STRATEGIC WATER QUALITY INITIATIVES FUND: EXPAND ALLOWED USES OF MONEY

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House Bill 6416 (Substitute H-1)

Sponsor: Rep. Martin Griffin

Committee: New Economy and Quality of Life

Complete to 11-29-10

A SUMMARY OF HOUSE BILL 6416 (H-1) AS PASSED BY THE HOUSE 11-10-10

House Bill 6416 would allow money in the Strategic Water Quality Initiatives Fund to be put to additional uses.

[Note: Senate Bill 1442 is a similar bill.]

The Strategic Water Quality Initiatives Fund (Fund) is a low-interest revolving loan program that provides loans to qualified municipalities for the construction of water pollution control facilities that aren't eligible for assistance under another state loan program (the Water Pollution Control Revolving Fund, better known as the State Revolving Fund). The SWQIF was established after Michigan voters approved a ballot proposal in November 2002 authorizing the state to issue bonds to raise funds to improve the quality of the waters of the state. Currently, money in the Fund may only be spent on loans and grants for projects eligible under the Strategic Water Quality Initiatives Loan Program and for the costs of administering the Fund. Two types of projects are eligible for this program—projects to upgrade or replace failing onsite wastewater systems and projects to remove ground water or storm water from sewer leads.

Generally speaking, the bill would allow this Fund to also provide: (1) \$140 million for response activities to address nonpoint source water pollution under Section 5204b; (2) \$10 million in grants and loans to municipalities and brownfield redevelopment authorities for response activities under Section 5204c; and (3) grants for specific wastewater treatment facility improvement projects (if a grant program is created for this under Section 5204d). The bill would raise the maximum possible allocation of bond proceeds to the Fund (from \$100 million to \$290 million) and reduce the allocation to the State Revolving Fund (from \$900 million to \$710). The bill would amend Parts 52 (Strategic Water Quality Initiatives) and 197 (Great Lakes Water Quality Bond Implementation) of the Natural Resources and Environmental Protection act.

["Nonpoint source pollution" in the act means "water pollution from diffuse sources, including runoff from precipitation or snowmelt contaminated through contact with pollutants in the soil or on other surfaces and either infiltrating into the groundwater or being discharged to surface waters, or runoff or wind causing erosion of soil into surface waters."]

More specifically, the bill would do the following things:

- Authorize the Department of Natural Resources and Environment to spend, upon appropriation, up to \$140 million of the money from the Fund for response activities to address nonpoint source water pollution, as follows: (1) not more than \$50 million for the 2010-2011 Fiscal Year; (2) not more than \$50 million for the 2011-2012 Fiscal Year; (3) the remainder could be spent after October 1, 2012, but only if certain performance objectives had been achieved.
- Require the department, in order to be able to use the remainder of funds, to document that it had achieved the following performance objectives: (1) increasing the level of investment in sewage collection and treatment systems; (2) providing incentives for actions that not only improve water quality but result in pollution prevention; (3) optimizing the cost benefit ratio of alternative designs of sewage collection and treatment systems; and (4) demonstrating progress toward maximizing risk reduction and economic development objectives identified for projects funded under this section.
- Require the DNRE to comply with the following in its expenditures:
 - Expenditures must be used to improve the quality of the waters of the state.
 - Expenditures can be used only for facilities in which the department does not know the identity of the person or persons who are liable for the release resulting in water pollution or in cases where the person or persons who are liable do not have sufficient resources to fund the required response activities.
 - Facilities must include property located within the identified planning area boundaries of a publicly owned sanitary sewer system eligible for funding under the Water Pollution Control Revolving Fund.
 - Expenditures must be used for response activities necessary to address existing or imminent unacceptable risks arising from conditions that contribute to nonpoint source water pollution, including expenses for project management activities within the department.
- Require the department, in using funds to address nonpoint source water pollution projects, to select projects that, to the extent practicable, provide maximum benefit to the state in protecting public health and the environment and contributing to economic development.
- Require the department to follow generally accepted accounting principles when expending money to manage response activities at facilities.
- Require the department to submit a report annually to the standing committees of the Senate and House of Representatives with primary jurisdiction over natural resources and environment issues and to the appropriate subcommittees of the

Senate and House Appropriations committees. The report would have to describe the funded projects and include an evaluation of how the expenditures provide maximum benefit to the state in protecting public health and the environment and contributing to economic development.

For each project, the report must include: how the project met required 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 benefit from the project; the extent to which the project preserved infrastructure investments that protect public health or prevent risks to water quality, as measured by the risk posed or the public health protected; the extent to which the project enhanced economic development, as measured by such factors as net increase to property values, the creation of jobs, and the amount of private investment leveraged; and a breakdown of the money used to support the project management, if any.

- Include a Legislative Finding that use of the Fund for response activities to address nonpoint water pollution at facilities is appropriate and necessary at this time. The bill says, "It is the intent of this Legislature that money from the Fund shall not be utilized for response activities to address nonpoint source water pollution at facilities when the \$150 million has been expended...."
- Authorize the department to spend an additional \$10 million from the Fund to provide brownfield redevelopment grants and loans to municipalities and brownfield redevelopment authorities for response activities to address nonpoint source water pollution. Of this amount, \$5 million would be for grants and \$5 million for loans. If this amount of money for brownfield redevelopment grants and loans is not appropriated by September 30, 2014, then the \$10 million could be used for response activities addressing nonpoint source water pollution.
- Authorize the state to establish a grant program within the Strategic Water Quality Initiatives Fund to fund specific wastewater treatment facility infrastructure improvement projects. The projects must be designed to prevent chronic discharges and be projected to significantly benefit a region's Great Lakes water quality and recreational opportunities. The state could consider the recommendations of the State Water Pollution Control Revolving Fund Advisory Committee (to be created in House Bill 6417) in establishing this program.
- Alter provisions that determine transfers from the Great Lakes Water Quality Bond Fund. Currently, the act requires the State Treasurer to transfer not more than \$900 million of money in the Great Lakes Water Quality Bond Fund into the State Water Pollution Control Revolving Fund and not more than \$100 million into the Strategic Water Quality Initiatives Fund. The H-1 Substitute would instead allow not more than \$710 million to be deposited in the State Water Pollution Control Revolving Fund and not more than \$290 million to be deposited in the Strategic Water Quality Initiatives Fund.

- Prohibit bonds from being issued or expended under Part 197 (Great Lakes Water Quality Bond Implementation) unless the department has established a specified minimum fundable range for funding projects under the State Revolving Fund in the amount of \$210 million for the 2010-2011 Fiscal Year, and \$259 million for the 2011-2012 Fiscal Year, to the extent administratively possible and provided that sufficient applications were submitted. (If the department doesn't set a fundable range of at least \$259 million for the 2011-2012 Fiscal Year, it would have to detail the reasons why it failed to do so in a report to the standing committees of the Senate and House of Representatives with jurisdiction pertaining to natural resources and the environment.)
- Require the department, together with the Department of Treasury, beginning in the 2012-2013 Fiscal Year, to seek to fully fund all eligible projects applying for assistance under Part 53 (Clean Water Assistance), to the extent administratively possible, using Part 197 bond proceeds as necessary to achieve this goal, and considering the recommendations of the State Water Pollution Control Revolving Fund Advisory Committee.
- Delete an existing provision that restricts using money from the Great Lakes Water Quality Bond Fund as the state match for receiving federal funds for purposes of the State Water Pollution Control Revolving Fund.
- Require the Auditor General, not later than two years after the bill takes effect, to conduct an audit of the Fund to assure that the money has been spent in compliance with law. Within two years after that, the initial audit must be updated.

Tie-bars. The bill is tie-barred to each of the following bills, meaning that it will not take effect unless each bill is enacted into law:

- Senate Bill 1267 (extend sunset on fee to Refined Petroleum Fund)
- Senate Bill 1345 (revise Part 201, expand use of self-implemented cleanups, etc.)
- Senate Bill 1346 (revise Part 201 definitions; prohibit enforcement of certain Part 201 memos and interpretations)
- Senate Bill 1348 (revise Part 201 penalties)
- Senate Bill 1443 (revise municipal water quality grant program; create State Water Pollution Control Revolving Fund Advisory Committee)
- House Bill 6359 (create Response Activity Review Panel)
- House Bill 6360 (revise Part 201 due care provisions)
- House Bill 6363 (require certain inventory lists; revise reporting obligations as to releases, migrating releases, and oil and gas releases)

MCL 324.5204 and 324.19708

FISCAL IMPACT:

House Bill 6416 would allow the Legislature to appropriate up to \$140 million from the Strategic Water Quality Initiative Fund (SWQIF) for response activities to address nonpoint source water pollution in the coming years. The bill allows up to \$50 million to be appropriated in FY 2010-11, up to \$50 million in FY 2011-12, and the remaining funding to be appropriated after October 1, 2012, under certain conditions.

Under current law, only \$100.0 million may be appropriated from the SWQIF, and this funding must be expended to provide low-interest loans to help municipalities fund wastewater treatment facility improvements and pay for administration costs. Under the provisions of the bill, however, the additional \$140.0 million funding may be used for cleanup activities related to nonpoint source water pollution. The bill also allows the DNRE to expend \$10 million of the SWQIF for brownfield redevelopment grant and loans to municipalities and Brownfield Redevelopment Authorities.

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 within Treasury.

Under current law, up to \$900 million of the bond revenues within the fund shall be deposited into the State Water Pollution Control Revolving Fund, commonly known as the State Revolving Fund (SRF). This fund is used for loans to local governmental units to finance the construction of sewage and storm water treatment facilities. Because the SRF receives federal funding, it is limited to funding public facilities and properties.

Of the remaining \$1 billion potential bond revenues, up to \$100 million shall be deposited into the SWQIF. Because the SWQIF is funded entirely by state restricted funding, it does not have the limitations of use that the SRF has; the SWQIF can fund projects that concern both public and private sewer issues.

In December of 2003, the Michigan Municipal Bond Authority issued the first series of Great Lakes Water Quality Bonds totaling \$100 million. \$90 million of the revenues were deposited into the SRF and that funding has not been expended. The SRF currently has \$810 million bonding authorization available. The program is using other revenue sources, mainly federal, for program expenditures. In FY 2010, the SRF received 78 project requests which totaled an estimated \$500 million.

In FY 2010, the SWQIF received 6 applications for projects that totaled \$11.8 million. Since 2003, the SWQIF has had three bond issues totaling \$55.6 million. The program has \$44.4 million bonding authority remaining.

The bill would reduce the allocation of the Great Lakes Water Quality Bond program to the State Revolving Fund from up to \$900 million to \$710 million. The allocation to the SWQIF would be increased from \$100 million to \$290 million.

State Spending Implications

House Bill 6416 could increase the costs to the State by an indeterminate amount, depending upon the amount of any new bond issues that might take place. While the bill does not require additional state spending, it does authorize additional spending of SWQIF for cleanup activities. If the Legislature appropriates additional program spending, the State 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 2010, \$15.1 million was appropriated for the annual debt service to the Great Lakes Water Quality Bond Program. In addition, the bill would allow the Department to establish a grant program for specific wastewater treatment facility improvement projects within the SWQIF. If this program were established, the funding of the program would not only be used to fund low-interest loans, as under current law, but also could be used for grants which would not require repayment to the State.

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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.