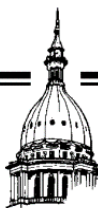




Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
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Senate Bills 1155 through 1158 (as enacted)
House Bill 5673 (as enacted)
Sponsor: Senator Mike Kowall (S.B. 1155)
Senator John Proos (S.B. 1156)
Senator Phil Pavlov (S.B. 1157)
Senator Dave Hildenbrand (S.B. 1158)
Representative Al Pscholka (H.B. 5673)

Senate Committee: Natural Resources, Environment and Great Lakes
House Committee: Natural Resources, Tourism, and Outdoor Recreation

Date Completed: 6-11-13

PUBLIC ACTS 559-662 of 2012
PUBLIC ACT 511 of 2012

CONTENT

Senate Bill 1158 amended Part 197 (Great Lakes Water Quality Bond Implementation) of the Natural Resources and Environmental Protection Act to revise the allocation of money from the Great Lakes Water Quality Bond Fund, increasing the amount deposited in the Strategic Water Quality Initiatives Fund (SWQIF) and decreasing the allocation to the State Water Pollution Control Revolving Fund (SRF).

House Bill 5673 amended Part 52 (Strategic Water Quality Initiatives) of the Act to 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.

The bill also authorizes the use of money from the SWQIF for grants to municipalities for sewage collection and treatment systems, and grants and loans for wetland mitigation banks; and requires the Department of Environmental Quality (DEQ) to report annually to the Legislature on the

related use of funds received from the Great Lakes Water Quality Bond Fund.

Senate Bill 1155 amended Part 52 to require the DEQ to do the following:

- Establish a wetland mitigation bank funding program to provide grants and loans to municipalities using SWQIF money (as authorized by House Bill 5673).
- Report annually to the Legislature on the related use of funds received from the Great Lakes Water Quality Bond Fund.

Senate Bill 1156 amended Part 53 (Clean Water Assistance) to 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.

Senate Bill 1157 amended Part 54 (Safe Drinking Water Assistance) to do the following:

- 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 are in addition to the

- maximum points otherwise allowed.**
- **Revise the criteria used to break a tie between projects with even scores.**
- **Prohibit the DEQ from precluding a water supplier from using assistance from the Safe Drinking Water Revolving Fund to meet Federal match requirements for a project.**

All of the bills were tie-barred to each other. They took effect on January 1, 2013.

Senate Bill 1158

Parts 52 and 197 were enacted in 2002 to implement the voter-approved Great Lakes Water Quality Bond proposal, which authorized the State to borrow up to \$1.0 billion and issue general obligation bonds to finance sewage treatment projects, storm water projects, and nonpoint source projects that improve the State's water quality.

The Great Lakes Water Quality Bond Fund, created in Part 197, 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.

Previously, Part 197 required the State Treasurer to transfer money in the Great Lakes Water Quality Bond Fund as follows:

- In aggregate, a maximum of \$710.0 million had to be deposited into the SRF.
- In aggregate, a maximum of \$290.0 million had to be deposited into the SWQIF.

The bill decreased the maximum amount transferred to the SRF to \$290.0 million, and increased the maximum amount transferred to the SWQIF to \$710.0 million.

House Bill 5673

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 may 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.

In addition, the bill authorizes the loan program to provide loans for assistance for construction activities as defined in Section 5301(d) designed to protect water quality, including improvements that are 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; a project designed to control nonpoint source pollution; and a stormwater treatment project.
- Municipal supervision of these activities.)

The bill requires the DEQ to develop criteria specifying the content of an asset management program. The bill defines "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.

Strategic Water Quality Initiatives Fund

Authorized Uses. Under Part 52, the Bond Authority, in consultation with the DEQ, may

spend SWQIF money, upon appropriation, 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 allows 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 requires the SWQIF grant program to provide grants to municipalities for sewage collection and treatment systems or stormwater or nonpoint source pollution control.

The grant program must 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 may cover not 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 may receive a 100% grant if any of the following conditions are met:

- The municipality is a disadvantaged community as defined in Part 53 (which Senate Bill 1156 amended as described below).
- The municipality is in receivership.
- The municipality is operating under an emergency manager or an emergency financial manager appointed under State law.
- The municipality is operating under a consent agreement as provided under the Local Government Fiscal Responsibility Act.

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

A grant may 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 for the treatment of stormwater.
- Planning and design of a sewage treatment works project or stormwater treatment project as defined in Part 53 or planning and design of 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 bill requires the program to include the development of a funding structure and implementation schedule that provides sufficient resources to implement the program. The municipality must coordinate, as feasible, with other infrastructure activities in the same geographic area. In addition, a disadvantaged community may spend a maximum of \$500,000 in grant funds to implement projects identified in the asset management program.

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

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

The bill requires the DEQ to establish an application and review process for considering grant applications. The application must contain the information required by the DEQ and the Authority. Within 60 days after receiving an application, the DEQ must publish notice on its calendar. Within 120 days after receiving an administratively complete application, the DEQ must notify the applicant in writing whether the application is approved or rejected. If the DEQ approves a grant, the Department and the Authority must enter into a grant agreement with the recipient before transferring the funds. The agreement must contain terms established by the DEQ and the Authority, and require the recipient to proceed with the project within three years after the Department approves the grant. The agreement also must 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 cannot or decides not to proceed with a construction project or begin implementation of an asset management program for which grant funding is provided.

For asset management programs related to sewage collection and treatment systems, the requirement that the recipient proceed with the project within three years includes significant progress, as determined by the DEQ, toward achieving the funding structure necessary to implement the program.

For each year in which the DEQ receives grant applications, the Department must 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 must 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.

Senate Bill 1155

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

(As defined in House Bill 5673, "wetland mitigation bank" means a site where wetlands are restored, created, or preserved for the purpose of doing both of the following:

- Providing compensatory mitigation in accordance with Part 303 (Wetland Protection), in advance of authorized, unavoidable impact on wetlands.
- Providing stormwater control, nonpoint source pollution control, or pollution treatment that improves the quality of the waters of the State.)

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

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

Grant funding may 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 is not eligible for loan assistance from the wetland mitigation bank funding program.

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

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

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

The agreement must contain terms established by the DEQ and the Authority. The agreement also must 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 occurs:

- The applicant fails 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 expires.
- The applicant declines the loan assistance for two consecutive years, unless the applicant proceeds 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's expiration date.
- The applicant is unable or decides not to proceed with constructing the project.

Loans under the wetland mitigation bank funding program must provide assistance to municipalities to establish a wetland

mitigation bank. The loans must 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 are or will be met.

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

Applications must be made on a form provided by the DEQ, and contain the information required by the Department and the Authority. Loan applications may be made at any time.

The DEQ must establish a review process for considering loan applications, and must notify the applicant in writing whether the loan is approved or rejected. In consultation with the DEQ, the Authority must enter into a loan agreement with the recipient before releasing a loan.

For each year in which the DEQ receives grant or loan applications for the wetland mitigation bank funding program, the Department must 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 must 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.

Senate Bill 1156

Part 53 provides for clean water assistance, including the provision of loans to municipalities for construction of sewage treatment works projects, stormwater treatment projects, or nonpoint source projects. The DEQ annually must develop separate priority lists for each type of project, and for projects funded by the SWQIF. The lists must be based upon project plans submitted by municipalities, as well as criteria prescribed in Part 53.

Under the bill, a project within a disadvantaged community must be awarded up to 50 points in the manner that points are awarded in rules promulgated under Part 53.

The bill defines "disadvantaged community" as a municipality in which all 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.
- The municipality demonstrates at least one additional criteria regarding the area served by a proposed project.

The additional criteria are as follows:

- More than 50% of the area is identified as a poverty area by the U.S. Bureau of Census.
- The median annual household income of the area is less than the most recently published Federal poverty guidelines for a family of four in the 48 contiguous United States.
- The median annual household income of the area is less than the most recently published statewide median annual household income for Michigan, and annual user costs for sewage or stormwater treatment exceed 1% of the median household income of the area.
- The median annual household income of the area is not greater than 120% of the statewide median annual household income, and annual user costs for

sewage or stormwater treatment exceed 3% of the median annual household income of the area.

Senate Bill 1157

Part 54 pertains to assistance for public water supply projects. The DEQ annually must develop a priority list of projects eligible for assistance. Each project must be assigned points up to a maximum of 1,000. Part 54 identifies different categories of projects and prescribes a formula for awarding points in each category.

With regard to several of the categories, to satisfy the conditions of a formal enforcement action, 25 points must be awarded. The bill provides that these points are in addition to the maximum points allowable in any category.

Under Part 54, after scoring, if two or more projects have the same score, a system that has fewer than two violations of specified monitoring, record-keeping, and reporting requirements in the previous two-year reporting period, or no violations if ownership of the system has changed in the previous two years, ranks above systems having more violations. After that tie-breaker is applied, if two or more projects still have the same score, a calculation of the cost per population served by the water system must be made. Previously, the affected projects had to be ranked with the lowest ratio of cost to population ranked higher. Under the bill, the affected projects must be ranked with the highest ratio of cost to population ranked higher.

Part 54 requires the DEQ to review a complete application for assistance for a proposed project from the Safe Drinking Water Revolving Fund, and issue an order of approval for an approved application to establish the specific terms of the assistance. Under the bill, the DEQ may not prohibit a water supplier from using the assistance to meet match requirements for Federal loans or grants for that project.

The bill also revised the definition of "disadvantaged community" in Part 54. The revised definition is similar to the one Senate Bill 1156 added to Part 53, except the term in Part 54 refers to a public water supply project rather than a sewage

treatment works or stormwater treatment project.

MCL 324.5204f (S.B. 1155)
324.5301 & 324.5303 (S.B. 1156)
324.5402 et al. (S.B. 1157)
324.19708 (S.B. 1158)
324.5201 et al. (H.B. 5673)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 1158

The bill will have a significant but neutral fiscal impact on State and local governments. Previously, the State Water Pollution Control Revolving Fund, more commonly known as the State Revolving Fund (SRF), was allocated up to \$710.0 million in proceeds from the sale of Great Lakes Water Quality Bonds (GLWQB), and the Strategic Water Quality Initiatives Fund was allocated up to \$290.0 million in proceeds from the same bonds. The bill decreased the SRF allocation by \$420.0 million to \$290.0 million. The bill also increased the portion of GLWQB proceeds dedicated to the SWQIF by \$420.0 million, bringing total support of the SWQIF to \$710.0 million. This bonding authority will allow the DEQ to issue grants and loans for improvements to infrastructure that reduce or eliminate the amount of groundwater or stormwater entering sanitary sewer leads or combined sewer leads, and certain other purposes. According to a 2011 report from the State Water Pollution Control Revolving Fund Advisory Committee, approximately \$34.4 million of the \$290.0 million limit on the SWQIF's support by the GLWQB remained. The bill increased the available bonding authorization of the SWQIF from \$34.4 million to \$454.4 million.

Additional bonding from GLWQB authority will have a negative fiscal impact on the State budget, as the GLWQB is a general obligation bond authorization, so additional debt service will likely come from the General Fund. However, as this bill does not require any additional issues from the GLWQB, the fiscal impact of the bill will be neutral.

House Bill 5673

The bill will have a small but negative fiscal impact on the Department of Environmental Quality, and a significant negative, albeit budgeted-for, fiscal impact on the Department of Treasury. The bill essentially expands the allowable uses of the Strategic Water Quality Initiatives Fund, which receives revenue from general obligation bond issues. Bonding authority for the SWQIF comes from Great Lakes Water Quality Bonds, which were approved by voters via Proposal 2 of 2002. Debt service for any additional bond issuances comes from the General Fund, and is paid for in the Department of Treasury budget. For fiscal year 2012-13, an additional debt service appropriation of \$2.3 million was included in the Treasury budget for Great Lakes Water Quality Bonds. It is likely that this additional appropriation will cover increases in debt service due to the expanded use of the SWQIF under the bill.

The DEQ may experience some new costs associated with developing, processing, and reviewing grant application forms under the new uses of the SWQIF. These costs will be borne by existing DEQ resources.

Senate Bill 1155

The bill will have a negative, albeit budgeted-for, fiscal impact on State government. The bill will allow up to \$10.0 million in grants and loans from the Strategic Water Quality Initiatives Fund (SWQIF) to be made to municipalities for wetland mitigation banks. Up to \$500,000 will be distributed as grants, and the remainder will be loans. Revenue for the grants and loans will come from bond issues under Proposal 2 of 2002. Associated debt service is paid by the Department of Treasury from General Fund/General Purpose revenue; additional debt service appropriations were included in the fiscal year 2012-13 Department of Treasury budget to account for new bond issues under Proposal 2.

Any new administrative costs introduced by the bill will 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.

Senate Bill 1156

The bill will have no fiscal impact on State government.

The bill will have an indeterminate but positive fiscal impact on local governments that meet the criteria for being considered a disadvantaged community. Under the bill, disadvantaged communities will have an easier time applying for grants and loans from the State Revolving Fund. The SRF provides low-interest loans to communities for the construction of water pollution control facilities. The State receives SRF revenue primarily from three sources: SRF loan repayments from municipalities, grants from the Federal government, and the Great Lakes Water Quality Bond.

Senate Bill 1157

The bill will have no fiscal impact on State or local government.

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.