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BILL



ANALYSIS

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Senate Bills 1155 through 1158 (as introduced 5-31-12)

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)

Committee: Natural Resources, Environment and Great Lakes

Date Completed: 9-19-12

CONTENT

Senate Bill 1158 would amend 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).

Senate Bill 1155 would amend Part 52 (Strategic Water Quality Initiatives) 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 storm water project plan designed to protect water quality.
- Authorize the use of SWQIF money 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.

Senate Bill 1156 would amend 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 projects in a disadvantaged community, when developing its priority list for project funding.

Senate Bill 1157 would amend 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 would be in addition to the maximum points otherwise allowed.
- Revise the criteria used to break a tie between projects with even scores.

All of the bills are tie-barred to each other.

Senate Bill 1158

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, storm water projects, and nonpoint source projects that improve the State's water quality. Public Act 397 of 2002 added Parts 52 and 197 to the Act to implement the bond proposal.

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.

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

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

The bill would decrease the maximum amount transferred to the SRF to \$90.0 million, and increase the maximum amount transferred to the SWQIF to \$910.0 million.

Senate Bill 1155

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 improvements to a sewage system for one or more of the following:

- Improvements to reduce or eliminate the amount of groundwater or storm water 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) when identified through an asset management program or storm water project plan designed to protect water quality, including improvements that were water and energy efficient, where feasible. (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 system 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, 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 assistance to municipalities to increase the level of investment in sewage collection and treatment systems and to improve water quality and result in pollution prevention.

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 75% of the municipality's costs. A municipality could receive a 100% grant if it were a disadvantaged community as defined in Part 53 (which Senate Bill 1156 would amend) or a municipality under emergency financial management under the Local Government and School District Fiscal Accountability Act, a consent agreement entered into under that Act, or a successor statute that the DEQ determined was substantially similar to that Act.

Funding could be used for the following purposes:

- Development of an asset management program for a sewage collection and treatment system or a storm water system.
- Development of management plans for the treatment of storm water.
- Development of storm water utilities if the municipality had an asset management program.
- 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.

(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 storm water 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, as well as a requirement that the recipient 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 initiated from a grant under the bill.

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 Michigan Municipal Bond Authority, in conjunction with the DEQ, 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 the 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.

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 would have to be awarded up to 50 points in the manner that points are awarded in rules promulgated under Part 53.

"Disadvantaged community" would mean 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.

Additionally, the municipality would have to demonstrate at least one of the following:

- More than 50% of the area served by a proposed project is identified as a poverty area by the U.S. Bureau of Census or is an environmental justice area of concern as defined by the U.S. Environmental Protection Agency.
- The median annual household income of the area served by a proposed project 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 served by a proposed project 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 served.
- The median annual household income of the area served by a proposed project 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 served.

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 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 would be 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. The affected projects must be ranked with the lowest ratio of cost to population ranked higher. Under the bill, the affected projects would have to be ranked with the highest ratio of cost to population ranked higher.

The bill also would revise the definition of "disadvantaged community" in Part 54. The revised definition would be similar to the one Senate Bill 1156 would add to Part 53, except the term would refer to a public water supply project rather than a sewage treatment works or stormwater treatment project.

MCL 324.5201 et al. (S.B. 1155)
324.5301 et al. (S.B. 1156)
324.5402 & 324.5406 (S.B. 1157)
324.19708 (S.B. 1158)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bill 1158

The bill would have a significant but neutral fiscal impact on State and local

governments. Currently, the State Water Pollution Control Revolving Fund, more commonly known as the State Revolving Fund (SRF), is 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 is allocated up to \$290.0 million in proceeds from the same bonds. The bill would decrease the SRF allocation by \$620.0 million to \$90.0 million. This would effectively end the support of the SRF from GLWQB proceeds as \$90.0 million in bond proceeds have already gone to fund low-interest loans to municipalities through the SRF. Under the bill, the portion of GLWQB proceeds dedicated to the SWQIF would increase by \$620.0 million, bringing total support of the SWQIF to \$910.0 million. This bonding authority would allow the DEQ to issue grants and loans for improvements to infrastructure that reduce or eliminate the amount of groundwater or storm water 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 remains. The bill would increase the available bonding authorization of the SWQIF from \$34.4 million to \$654.4 million.

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

Senate Bill 1155

The bill would 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 would essentially expand 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. 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 Great Lakes Water Quality Bond remains. Debt service for any additional bond issuances would come from the General Fund, and be 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 increases in debt service due to the expansion of the usage of the SWQIF under the bill would be covered by this additional appropriation.

The DEQ could experience some new costs associated with developing, processing, and reviewing grant application forms under the new proposed uses for the SWQIF. These costs would be borne by existing DEQ resources.

Senate Bill 1156

The bill would have no fiscal impact on State government.

The bill would have an indeterminate but positive fiscal impact on local governments that met the criteria for being considered a disadvantaged community. Under the bill, disadvantaged communities would have an easier time applying for grants and loans under 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 would 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.