



**House
Legislative
Analysis
Section**

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FUNDING FOR CSO ABATEMENT

House Bills 4302 and 4420 as enrolled
Sponsor: Rep. Thomas C. Mathieu

Senate Bill 43 as enrolled
Sponsor: Sen. Jon Cisky

Senate Bill 72 as enrolled
Sponsor: Sen. William Van Regenmorter

Second Analysis (11-15-93)
House Committee: Conservation,
Environment, and Great Lakes Affairs
Senate Committee: Natural Resources
and Environmental Affairs

House Bills 4302, 4420 & Senate Bills 43 & 72 (11-15-93)

THE APPARENT PROBLEM:

The problem of combined sewer overflows (CSOs) poses perhaps the greatest threat to the state's many bodies of fresh water, including the Great Lakes. CSOs are those that carry both municipal waste and stormwater in a single conduit, or pipe, to a wastewater treatment facility. The pollution problem occurs frequently in areas of the state -- primarily large urban centers -- that lack sewer systems able to handle both storm water and wastewater safely. When heavy rain or melted snow fills these systems to capacity, the CSO is carried away and discharged into lakes and streams. It has been reported that, as a result of CSOs, up to 20 billion gallons of contaminated waste water are discharged into state waterways annually. Along with raw sewage, CSOs dump pesticides, fertilizers, oil and grease, and untreated toxic substances into Michigan waters. Although financial assistance is available through the State Water Pollution Control Revolving Fund to the 65 or 70 communities that need to upgrade their combined sewer systems, many people believe that more funds are needed to address the problem. In addition, to protect the public health, many feel that the municipalities in which CSOs occur should take steps to inform the state, the public, and affected communities of a discharge, and should be responsible for necessary testing.

THE CONTENT OF THE BILLS:

The bills would amend laws that govern the control of water pollution, as well as laws that govern two environmental funds, to do the following:

- Require municipalities responsible for discharging untreated sewage from a combined sewer system to notify the Department of Natural Resources, newspapers, and affected (downstream) municipalities, and either to pay for testing or to give test results to the local health department.
- Require that unobligated proceeds of, and interest on, Water Pollution Control Fund bonds, and interest on environmental protection bonds, be deposited into the State Water Pollution Control Revolving Fund.
- Enable villages to issue bonds for CSO abatement facilities in excess of their statutory debt limit.

A more detailed description of the bills follows:

Senate Bill 43 would amend Public Act 245 of 1929 (MCL 323.7a), which regulates the discharge of sewage and waste into waters of the state.

Notice of Discharge. The bill would provide that a municipality responsible for discharging untreated sewage from a combined sewer system into the water would have to give notice to the Department of Natural Resources (DNR), local health departments, and municipalities whose waters could be affected if the municipalities wished to be notified, and to a local daily newspaper in the counties of the notified municipalities and in the responsible municipality's county. Notice that the discharge was occurring would have to be given promptly after it started. At the conclusion of the discharge, the notice would have to include all of the following: the amount of the discharge as measured pursuant to DNR-approved procedures, the reason for it, the time the discharge began and ended as measured pursuant to DNR-approved procedures, and verification that the municipality was in full compliance with the requirements of its National Pollutant Discharge Elimination System (NPDES) permit.

A municipality that operated a "combined sewer system" or CSO, (defined under the bill to mean a sewer designed and used to convey both storm water runoff and sanitary sewage, and that contained lawfully installed regulators and control devices that allowed for delivery of sanitary flow to treatment during dry weather periods and diverted storm water and sanitary sewage to surface waters during storm flow periods), that could discharge untreated sewage into the waters of the state would be required annually to contact municipalities whose waters could be affected by the discharges, and if the contacted municipalities wished to be notified in the same manner as provided above, the municipality operating the combined sewer system would have to provide that notification.

Municipalities' Responsibilities. Upon the request of a local health department responsible for testing the affected waters, the responsible municipality would be required either 1) to pay the actual reasonable cost of the testing that was necessary to protect public health as a result of the discharge; or 2) if the municipality had conducted testing necessary to assess the risk to public health as a result of the discharge, to give the test results to the local health department.

A responsible municipality would have to meet the requirements of its NPDES permit.

Penalties. The following penalties and fines which are provided in the act are would apply to a violation of the bill:

-- A civil fine of at least \$2,500, but not more than \$25,000 per day of violation, for a violation of the act.

-- A criminal fine of at least \$2,500 but not more than \$25,000 per violation if a person unlawfully discharged a substance contrary to the act, intentionally made a false statement on a permit application, or in a notice or report required by a permit, or intentionally rendered inaccurate a monitoring device or report.

In addition, a court also may order an additional criminal fine of \$25,000 per day, as well as imprisonment for up to two years. Further, additional fines and imprisonment must be imposed for actions that endanger the public health, safety, or welfare.

The bill specifies that nothing in its provisions would authorize the discharge of untreated sewage into the waters of the state or limit the state from bringing legal action as otherwise authorized by the act.

Senate Bill 72 would amend Public Act 329 of 1966 (MCL 323.112), which established the State Water Pollution Control Fund, to require that the proceeds from certain bonds be used to provide assistance for sewage treatment works projects, including the refinancing of sewage treatment works projects.

Water Pollution Abatement and Prevention Bonds. Under the bill, the unobligated proceeds of the sale of \$285 million of the general obligation bonds for water pollution prevention and abatement facilities that were authorized by Public Act 76 of 1968, any premiums and accrued interest on the bonds, and any transfers from other accounts, would be deposited with the state treasurer in the State Water Pollution Control Revolving Fund established under the Shared Credit Rating Act. This would replace the current requirement that those proceeds, premiums, and interest be deposited in the Water Pollution Control Fund. The bill also would require that the income from temporary investments of the proceeds be deposited in the State Water Pollution Control Revolving Fund. Currently, the income from temporary investments must be deposited in the general fund.

House Bill 4420 would amend Public Act 329 of 1966 (MCL 299.677), which established the Environmental Protection Bond Implementation Act. The act allowed the state to borrow up to \$660 million to finance environmental protection programs, and to issue general obligation bonds to repay the loan. Up to \$425 million was to be used to clean up toxic and other environmentally contaminated sites; up to \$25 million was to be used to fund state participation in a Regional Great Lakes Protection Fund; up to \$150 million was to be used for solid waste projects; and up to \$60 million was to be used to capitalize a State Water Pollution Control Revolving Fund. Except as may be required by the resolution that authorizes the bonds, or as required by state or federal law, interest and earnings from a bond issue's investment proceeds must be allocated in the same proportion as provided for the use of the proceeds of the bond issue. Under House Bill 4420, the interest and earnings accrued in fiscal years 1992-93 and 1993-94 -- or in prior fiscal years -- would, instead, be deposited in the State Water Pollution Control Revolving Fund.

House Bill 4302 would amend Public Act 278 of 1909 (MCL 78.24c et al.), the act governing the incorporation of villages, to exempt bonds issued for CSO projects from the calculation used to determine whether debt ceiling limitations are complied with. Currently, the act prohibits a village from incurring indebtedness "by the issue of bonds or otherwise, in a sum that, including existing indebtedness, exceeds 10 percent of the assessed valuation of the real and personal property with the village subject to taxation." However, the act provides certain exceptions to the general rule. The bill would amend the act to include combined sewer overflow abatement facility bonds under the list of exceptions.

House Bill 4302 would also amend the act to specify that a village could acquire, by purchase, land by outside its corporate limits to dispose of sewage or to obtain or protect a village water supply. The acquisition may be made by condemnation proceedings if its proposed use would not materially injure the health or safety of those living adjacent to the land.

BACKGROUND INFORMATION:

The package of bills represents one of several attempts to commit funds to combat the state's

environmental problems. Public Act 329 of 1966 created the Water Pollution Control Fund to assist local units in financing their construction of sewage treatment works. Public Act 76 of 1968 authorized the state to borrow \$335 million, and issue bonds to repay the loan, for the construction of water pollution abatement and prevention facilities. The Shared Credit Rating Act requires the Michigan Municipal Bond Authority to establish the State Water Pollution Control Revolving Fund, and permits the authority to use fund proceeds to assist governmental units with sewage treatment or non-point source projects.

The Quality of Life Bond Proposal was approved by the voters in the 1988 general election to finance up to \$660 million in environmental protection programs and up to \$140 million in public recreation projects. From the \$660 million deposited in the Environmental Protection Bond Fund to finance environmental programs, up to \$425 million was to be used to clean up toxic and other environmentally contaminated sites; up to \$25 million was to be used to fund state participation in a Regional Great Lakes Protection Fund; up to \$150 million was to be used for solid waste projects; and up to \$60 million was to be used to capitalize a State Water Pollution Control Revolving Fund. Not more than 34 percent of the bonds were to be sold during the first year; not more than 33 percent would be sold during each of the second and third years; and after the third year any remaining bonds could be sold at the discretion of the state administrative board.

In 1991, legislation was introduced that would have diverted \$20 million from the Natural Resources Trust Fund as seed money to help local governments raise additional funds to repair or replace existing sewers. Of this package of bills, only one, which exempts bonds issued by cities for CSO abatement work from debt ceiling limitations, was enacted. Other legislation that would have granted the same debt limitation exemption to villages, but which also included a provision that would have allowed villages to purchase property for sewage disposal, was vetoed by the governor on the grounds that the latter provision duplicated similar public protection provisions in other laws, and therefore invited litigation. House Bill 4302 attempts to reintroduce this legislation without the offensive language.

FISCAL IMPLICATIONS:

The House Fiscal Agency estimates the following fiscal implications for the state:

Senate Bill 43 would have a minimal indeterminate fiscal impact on local governments, depending upon the frequency and severity of the discharge involved.

Senate Bill 72 would permit the transfer of \$2.6 million in unobligated proceeds from the Water Pollution Control Fund to the State Water Pollution Control Revolving Fund. These funds could be used to provide a 20 percent match for approximately \$13 million in federal funds.

House Bill 4420 would permit the transfer of \$11.1 million in additional interest revenue to the State Water Pollution Control Revolving Fund. According to the Department of Natural Resources, approximately \$8.7 million has been earned in interest to date on bond proceeds. The 1992-93 fiscal year estimate of interest earnings is \$2.4 million. Current law allocates approximately \$1.08 million in total interest to date, to the State Water Pollution Control Revolving Fund. At present, \$3.78 million in environmental bond funds remains available for appropriation to the State Water Pollution Control Revolving Fund. These additional funds could be used to provide a 20 percent match for approximately \$51 million in federal funds.

House Bill 4302 would have no fiscal impact on the state and an indeterminate fiscal impact on those villages choosing to issue bonds for a combined sewer overflow abatement facility pursuant to the bill. (11-15-93)

ARGUMENTS:***For:***

The contamination that results from CSOs threatens the health of every Michigan resident and jeopardizes the state's already fragile environment. CSOs also slow the growth of tourism by forcing beach closings and public health advisories. In addition, CSOs stifle economic development by making it hard for communities with combined sewer systems to attract new business. Despite the expenditure of hundreds of millions of dollars on waste water treatment over the past two decades, the CSO problem remains. This package of bills would make a tremendous contribution toward correcting combined sewer systems and eliminating the problems that result from CSOs.

First, Senate Bill 72 and House Bill 4420 would provide financial assistance to communities with combined sewer systems by increasing the funds available for sewage treatment projects under the State Water Pollution Control Revolving Fund. By dedicating unobligated proceeds, interest, and earnings on bond issues to the fund, the bills not only would directly increase the amount of money in the fund but also would generate additional federal matching dollars. These increased funds would enable communities to take such measures as separating combined storm water and sewer pipes, and installing treatment devices at points of overflow. In addition, under House Bill 4302, villages could issue bonds for CSO abatement work in excess of their debt limit. (Similar authority was given to cities by Public Act 256 of 1992.)

Finally, Senate Bill 43 would ensure that municipalities that experienced CSOs reported to the state and to downstream communities that an overflow had occurred, and alerted the public in affected communities through the newspaper. The bill also would require that a responsible municipality either pay to test the affected waters or share test results with the local health department. These measures would give governmental agencies an opportunity to determine the size and scope of a problem and to take the necessary precautions to protect the public health, and would enable individuals to protect their own health.

Against:

Senate Bill 43 raises several concerns. First, the bill's notification requirements are not necessary, since notification requirements already are contained in NPDES permits, which every community that discharges sewage must have. Second, some of the bill's terms are ambiguous. In particular, responsible municipalities would have to contact "municipalities whose waters may be affected." Potentially, this would be extremely far-reaching, as well as extremely difficult to accomplish. A discharging municipality first would need to determine what pollutants were being discharged, then would have to find them, and finally would have to determine whether those pollutants existed in the downstream water before the discharge. These problems are not present, however, under the NPDES permits' site-specific notification requirements. Finally, the bill would create some serious technical difficulties by requiring a municipality to measure the amount of discharge, as well as the time the discharge began

and ended. This could result in municipalities' having to retrofit measuring devices into each and every conduit. Most communities currently use a computerized mathematical model to measure discharges, or extrapolate based on rainfall records. Measuring every actual discharge, on the other hand, could be exorbitantly expensive. Reportedly, Detroit already is spending about \$150 million to retrofit just a portion of its pipes.

Response:

The bill actually would require municipalities to give notice of the amount and timing of a discharge "as measured pursuant to procedures approved by the Department of Natural Resources." This does not necessarily suggest that a measuring device would have to be installed on every pipe.

Against:

House Bill 4302 is a reintroduction of legislation introduced during the 1991-92 legislative session that would have permitted villages to issue bonds for CSO abatement work in excess of their debt limit. That legislation, however, also included a provision that would have allowed villages to purchase property for sewage disposal. The legislation was vetoed by the governor on the grounds it invited litigation, since this latter provision went beyond the concept provided in the act of acquiring land through condemnation proceedings, and duplicated similar public protection provisions in other laws. As written, House Bill 4302 also contains a provision that would permit villages to purchase property for sewage disposal, and would therefore appear to run a similar risk of being vetoed.

Response:

The bill simply clarifies a current provision of the act which permits villages to acquire, "by purchase or condemnation proceedings, land without its corporate limits necessary for the disposal of sewage or the obtaining or protection of a water supply."