

HOUSE BILL No. 4901

September 7, 2011, Introduced by Reps. Tlaib, Darany, Irwin, Hovey-Wright, Nathan, Hobbs, Stapleton and Brown and referred to the Committee on Government Operations.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
(MCL 324.101 to 324.90106) by adding part 12.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 12 ENVIRONMENTAL JUSTICE

SEC. 1201. AS USED IN THIS PART:

- (A) "DEPARTMENT" MEANS THE DEPARTMENT OF ENVIRONMENTAL QUALITY.
- (B) "DIRECTOR" MEANS THE DIRECTOR OF THE DEPARTMENT.
- (C) "DISPARATE IMPACT" MEANS DISPROPORTIONATELY ADVERSE PUBLIC HEALTH OR ENVIRONMENTAL EFFECTS ON MINORITY OR LOW-INCOME POPULATIONS.
- (D) "ENVIRONMENTAL ACTION PLAN" MEANS A PLAN AS DESCRIBED IN

1 SECTION 1211.

2 (E) "ENVIRONMENTAL JUSTICE ADVOCATE" MEANS THE INDIVIDUAL
3 APPOINTED UNDER SECTION 1207(2) .

4 (F) "ENVIRONMENTAL JUSTICE COORDINATOR" MEANS THE OFFICIAL
5 PROVIDED FOR IN SECTION 1205.

6 (G) "MICHIGAN ECONOMIC DEVELOPMENT CORPORATION" MEANS THE
7 PUBLIC BODY CORPORATE CREATED UNDER SECTION 28 OF ARTICLE VII OF
8 THE STATE CONSTITUTION OF 1963 AND THE URBAN COOPERATION ACT OF
9 1967, 1967 (EX SESS) PA 7, MCL 124.501 TO 124.512, BY A CONTRACTUAL
10 INTERLOCAL AGREEMENT EFFECTIVE APRIL 5, 1999, AS AMENDED, BETWEEN
11 LOCAL PARTICIPATING ECONOMIC DEVELOPMENT CORPORATIONS FORMED UNDER
12 THE ECONOMIC DEVELOPMENT CORPORATIONS ACT, 1974 PA 338, MCL
13 125.1601 TO 125.1636, AND THE MICHIGAN STRATEGIC FUND.

14 (H) "PETITION" MEANS A PETITION FILED UNDER SECTION 1207(1) .

15 (I) "WORK GROUP" MEANS THE INTERDEPARTMENTAL ENVIRONMENTAL
16 JUSTICE WORK GROUP CREATED IN SECTION 1203.

17 SEC. 1203. (1) THE INTERDEPARTMENTAL ENVIRONMENTAL JUSTICE
18 WORK GROUP IS CREATED WITHIN THE DEPARTMENT.

19 (2) THE WORK GROUP SHALL CONSIST OF THE FOLLOWING MEMBERS:

20 (A) THE DIRECTOR OR A DEPUTY DIRECTOR DESIGNATED BY THE
21 DIRECTOR.

22 (B) THE DIRECTOR OF THE DEPARTMENT OF CIVIL RIGHTS OR A DEPUTY
23 DIRECTOR DESIGNATED BY THE DIRECTOR OF THE DEPARTMENT OF CIVIL
24 RIGHTS.

25 (C) THE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES OR A
26 DEPUTY DIRECTOR DESIGNATED BY THE DIRECTOR OF THE DEPARTMENT OF
27 NATURAL RESOURCES.

1 (D) THE DIRECTOR OF THE DEPARTMENT OF COMMUNITY HEALTH OR A
2 DEPUTY DIRECTOR DESIGNATED BY THE DIRECTOR OF THE DEPARTMENT OF
3 COMMUNITY HEALTH.

4 (E) THE DIRECTOR OF THE STATE TRANSPORTATION DEPARTMENT OR A
5 DEPUTY DIRECTOR DESIGNATED BY THE DIRECTOR OF THE STATE
6 TRANSPORTATION DEPARTMENT.

7 (F) THE DIRECTOR OF THE DEPARTMENT OF AGRICULTURE AND RURAL
8 DEVELOPMENT OR A DEPUTY DIRECTOR DESIGNATED BY THE DIRECTOR OF THE
9 DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT.

10 (G) THE DIRECTOR OF THE DEPARTMENT OF LICENSING AND REGULATORY
11 AFFAIRS OR A DEPUTY DIRECTOR DESIGNATED BY THE DIRECTOR OF THE
12 DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS.

13 (H) THE EXECUTIVE DIRECTOR OF THE MICHIGAN STATE HOUSING
14 DEVELOPMENT AUTHORITY OR HIS OR HER DESIGNEE.

15 (I) THE CHIEF EXECUTIVE OFFICER OF THE MICHIGAN ECONOMIC
16 DEVELOPMENT CORPORATION OR HIS OR HER DESIGNEE.

17 (J) FIVE MEMBERS APPOINTED BY THE GOVERNOR REPRESENTING
18 COMMUNITIES THAT THE GOVERNOR CONSIDERS TO BE LIKELY TO BE SUBJECT
19 TO DISPARATE IMPACTS.

20 (3) THE MEMBERS OF THE WORK GROUP FIRST APPOINTED UNDER
21 SUBSECTION (2) (J) SHALL BE APPOINTED WITHIN 60 DAYS AFTER THE
22 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.
23 MEMBERS APPOINTED UNDER SUBSECTION (2) (J) SHALL SERVE FOR TERMS OF
24 4 YEARS OR UNTIL A SUCCESSOR IS APPOINTED, WHICHEVER IS LATER,
25 EXCEPT THAT OF THE MEMBERS FIRST APPOINTED 1 SHALL SERVE FOR 1
26 YEAR, 1 SHALL SERVE FOR 2 YEARS, 1 SHALL SERVE FOR 3 YEARS, AND 2
27 SHALL SERVE FOR 4 YEARS.

1 (4) IF A VACANCY OCCURS ON THE WORK GROUP IN A POSITION
2 PROVIDED FOR UNDER SUBSECTION (2) (J), THE GOVERNOR SHALL MAKE AN
3 APPOINTMENT FOR THE UNEXPIRED TERM IN THE SAME MANNER AS THE
4 ORIGINAL APPOINTMENT. THE GOVERNOR MAY REMOVE A MEMBER OF THE WORK
5 GROUP APPOINTED UNDER SUBSECTION (2) (J) FOR INCOMPETENCE,
6 DERELICTION OF DUTY, MALFEASANCE, MISFEASANCE, OR NONFEASANCE IN
7 OFFICE, OR ANY OTHER GOOD CAUSE.

8 (5) THE FIRST MEETING OF THE WORK GROUP SHALL BE CALLED BY THE
9 DIRECTOR OR HIS OR HER DESIGNEE NOT MORE THAN 90 DAYS AFTER THE
10 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION. THE
11 DIRECTOR OR HIS OR HER DESIGNEE SHALL SERVE AS CHAIR OF THE WORK
12 GROUP. AT THE FIRST MEETING, THE WORK GROUP SHALL ELECT FROM AMONG
13 ITS MEMBERS SUCH OTHER OFFICERS AS IT CONSIDERS NECESSARY OR
14 APPROPRIATE. AFTER THE FIRST MEETING, THE WORK GROUP SHALL MEET AT
15 LEAST QUARTERLY, OR MORE FREQUENTLY AT THE CALL OF THE CHAIRPERSON
16 OR IF REQUESTED BY 2 OR MORE MEMBERS.

17 (6) A MAJORITY OF THE MEMBERS OF THE WORK GROUP CONSTITUTE A
18 QUORUM FOR THE TRANSACTION OF BUSINESS AT A MEETING OF THE WORK
19 GROUP. A MAJORITY OF THE MEMBERS PRESENT AND SERVING ARE REQUIRED
20 FOR OFFICIAL ACTION OF THE WORK GROUP.

21 (7) THE BUSINESS THAT THE WORK GROUP MAY PERFORM SHALL BE
22 CONDUCTED AT A PUBLIC MEETING OF THE WORK GROUP HELD IN COMPLIANCE
23 WITH THE OPEN MEETINGS ACT, 1976 PA 267, MCL 15.261 TO 15.275.

24 (8) A WRITING PREPARED, OWNED, USED, IN THE POSSESSION OF, OR
25 RETAINED BY THE WORK GROUP IN THE PERFORMANCE OF AN OFFICIAL
26 FUNCTION IS SUBJECT TO THE FREEDOM OF INFORMATION ACT, 1976 PA 442,
27 MCL 15.231 TO 15.246.

1 (9) MEMBERS OF THE WORK GROUP SHALL SERVE WITHOUT ADDITIONAL
2 COMPENSATION. HOWEVER, MEMBERS OF THE WORK GROUP MAY BE REIMBURSED
3 FOR THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE
4 OF THEIR OFFICIAL DUTIES AS MEMBERS OF THE WORK GROUP.

5 (10) THE WORK GROUP SHALL DO ALL OF THE FOLLOWING:

6 (A) REVIEW ENVIRONMENTAL JUSTICE PETITIONS AS PROVIDED UNDER
7 SECTION 1209.

8 (B) ESTABLISH AN ENVIRONMENTAL JUSTICE ADVISORY COUNCIL TO
9 ADVISE THE WORK GROUP ON THE EXERCISE AND FULFILLMENT OF ITS
10 RESPONSIBILITIES AND DUTIES UNDER THIS PART. THIS COUNCIL SHALL
11 INCLUDE REPRESENTATION FROM ENVIRONMENTAL JUSTICE GROUPS, LOCAL AND
12 TRIBAL GOVERNMENTS, BUSINESS, AND OTHER INTERESTED ORGANIZATIONS
13 AND ASSOCIATIONS.

14 SEC. 1205. (1) THE GOVERNOR'S ENVIRONMENTAL POLICY ADVISOR
15 SHALL SERVE AS ENVIRONMENTAL JUSTICE COORDINATOR FOR THE PURPOSES
16 OF THIS PART. IF THE GOVERNOR DOES NOT HAVE A DESIGNATED
17 ENVIRONMENTAL POLICY ADVISOR, THE GOVERNOR SHALL APPOINT AN
18 ENVIRONMENTAL JUSTICE COORDINATOR. THE ENVIRONMENTAL JUSTICE
19 COORDINATOR SHALL SERVE AT THE PLEASURE OF THE GOVERNOR.

20 (2) THE ENVIRONMENTAL JUSTICE COORDINATOR AND THE WORK GROUP
21 SHALL MEET AT LEAST QUARTERLY TO DISCUSS ENVIRONMENTAL JUSTICE
22 PETITIONS RECEIVED, REVIEWED, OR ACTED ON IN THE PREVIOUS QUARTER.

23 SEC. 1207. (1) A PERSON MAY FILE A PETITION WITH THE DIRECTOR
24 REQUESTING THE DEVELOPMENT OF AN ENVIRONMENTAL ACTION PLAN FOR A
25 COMMUNITY. A PETITION IS NOT REQUIRED TO HAVE A SPECIFIC FORM OR
26 FORMAT. HOWEVER, THE PETITION SHALL MEET ALL OF THE FOLLOWING
27 REQUIREMENTS:

1 (A) EXPLAIN WHY THE WORK GROUP SHOULD DETERMINE THAT THE
2 COMMUNITY IS SUBJECT TO DISPARATE IMPACTS OR THAT AN ISSUE
3 CONCERNING A COMMUNITY IS AN ENVIRONMENTAL JUSTICE ISSUE, OR BOTH.
4 ANY SCREENING PROCESS DEVELOPED OR ADOPTED BY THIS STATE TO
5 IDENTIFY ENVIRONMENTAL JUSTICE COMMUNITIES MAY BE USED TO SUPPORT
6 THE PETITION BUT SHALL NOT BE USED TO EXCLUDE COMMUNITIES FROM THE
7 PETITION PROCESS.

8 (B) BE SIGNED BY AT LEAST 50 RESIDENTS OF THIS STATE, AGE 18
9 YEARS OR OLDER, INCLUDING AT LEAST 25 RESIDENTS OF THE AFFECTED
10 COMMUNITY AS DESCRIBED IN THE PETITION.

11 (2) THE DIRECTOR SHALL APPOINT AN ENVIRONMENTAL JUSTICE
12 ADVOCATE. THE ENVIRONMENTAL JUSTICE ADVOCATE SHALL ASSIST
13 PROSPECTIVE PETITIONERS TO DEVELOP A PETITION AND GATHER
14 INFORMATION TO SUPPORT THE PETITION. THE ENVIRONMENTAL JUSTICE
15 ADVOCATE MAY RECOMMEND ALTERNATIVES TO THE PETITION THAT OFFER A
16 SPEEDIER OR MORE EFFECTIVE RESOLUTION OF A CONDITION OR ISSUE.

17 SEC. 1209. (1) THE WORK GROUP SHALL HOLD A PUBLIC MEETING ON
18 THE PETITION IN THE AFFECTED COMMUNITY AND OTHERWISE SOLICIT PUBLIC
19 COMMENT. THE DEPARTMENT SHALL PROVIDE NOTICE OF THE MEETING AND
20 OTHER OPPORTUNITIES FOR COMMENT ON ITS WEBSITE AND BY OTHER MEANS
21 APPROPRIATE FOR COMMUNICATING WITH POTENTIALLY AFFECTED MEMBERS OF
22 THE COMMUNITY. BEFORE ACTING ON THE PETITION, THE WORK GROUP SHALL
23 PREPARE A SUMMARY OF THE PUBLIC COMMENTS RECEIVED AND ITS RESPONSES
24 TO THOSE COMMENTS. THE DEPARTMENT SHALL PROMPTLY POST THE SUMMARY
25 ON ITS WEBSITE.

26 (2) THE WORK GROUP SHALL DETERMINE WHETHER TO GRANT A
27 PETITION. IN MAKING ITS DETERMINATION, THE WORK GROUP SHALL

1 CONSIDER ALL OF THE FOLLOWING:

2 (A) THE PETITION AND SUPPORTING INFORMATION.

3 (B) PUBLIC COMMENT RECEIVED UNDER SUBSECTION (1).

4 (C) WHETHER THERE IS A LIKELY DISPARATE IMPACT. THE WORK GROUP
5 SHALL CONSIDER, AMONG OTHER THINGS, WHETHER THE GEOGRAPHIC AREA
6 AFFECTED IS LOCATED IN OR WITHIN 1 MILE OF A LEVEL 1, 2, OR 3 AREA
7 OF CONCERN AS IDENTIFIED BY THE UNITED STATES ENVIRONMENTAL
8 PROTECTION AGENCY'S ENVIRONMENTAL JUSTICE STRATEGIC ENFORCEMENT
9 ASSESSMENT TOOL.

10 (D) THE SEVERITY OF THE ENVIRONMENTAL AND PUBLIC HEALTH
11 CONDITIONS OR ISSUES IDENTIFIED IN THE PETITION.

12 (E) THE SEVERITY OF THE OTHER ENVIRONMENTAL, PUBLIC HEALTH,
13 ECONOMIC, OR SOCIAL ISSUES FACING THE COMMUNITY AND CUMULATIVE
14 EFFECTS.

15 (F) THE LEGAL AUTHORITY OF THIS STATE TO ADDRESS THE PROBLEM.

16 (G) THE ABILITY OF COORDINATED STATE ACTION TO RESOLVE THE
17 PROBLEM SUCCESSFULLY.

18 (H) WHETHER THE CONDITIONS OR ISSUES IDENTIFIED IN THE
19 PETITION ARE THE SUBJECT OF A PENDING LAWSUIT OR ADMINISTRATIVE
20 PROCEEDING.

21 (I) WHETHER THE PETITIONERS HAVE TAKEN ADVANTAGE OF EXISTING
22 PUBLIC COMMENT AND PARTICIPATION PROCEDURES ASSOCIATED WITH PERMITS
23 OR PROJECTS CONTRIBUTING TO THE CONDITIONS OR ISSUES IDENTIFIED IN
24 THE PETITION.

25 (J) OTHER RESOURCES AVAILABLE TO THE COMMUNITY TO ADDRESS THE
26 CONDITIONS OR ISSUES IDENTIFIED IN THE PETITION.

27 (3) IF FEDERAL ENVIRONMENTAL JUSTICE REQUIREMENTS OR GUIDANCE

1 EQUIVALENT TO THIS PART APPLY TO THE CONDITIONS OR ISSUES
2 IDENTIFIED IN A PETITION AND THE PETITION IS SUBMITTED FOR PURPOSES
3 OF DETERMINING WHETHER THE ACTIVITIES OF A STATE DEPARTMENT COMPLY
4 WITH THE FEDERAL REQUIREMENTS OR GUIDANCE, THE WORK GROUP SHALL
5 DENY THE PETITION. HOWEVER, THE WORK GROUP MAY GRANT THE PETITION
6 FOR PURPOSES OF DETERMINING IF OTHER ACTIONS OR STEPS COULD BE
7 TAKEN BY THIS STATE TO MITIGATE OR MINIMIZE ADVERSE PUBLIC HEALTH
8 OR ENVIRONMENTAL IMPACTS.

9 (4) IF THE WORK GROUP DENIES A PETITION, IT SHALL EXPLAIN WHAT
10 OTHER SPECIFIC STEPS THE COMMUNITY CAN TAKE TO RESOLVE THE PROBLEM.
11 THIS INFORMATION SHALL INCLUDE NAMES AND CONTACT INFORMATION OF
12 PEOPLE WHO ARE ABLE TO ASSIST IN RESOLVING THE PROBLEM.

13 (5) DENIAL OF A PETITION IS NOT SUBJECT TO APPEAL.

14 (6) THE PETITION PROCESS UNDER THIS PART DOES NOT AFFECT
15 PERMIT PROCESSING DEADLINES PROVIDED BY LAW.

16 (7) THE WORK GROUP SHOULD TAKE INTO ACCOUNT THE WORK OF OTHER
17 STATE AND FEDERAL GROUPS THAT CONSIDER ENVIRONMENTAL ISSUES AND
18 SHALL COORDINATE WITH THESE GROUPS TO THE EXTENT POSSIBLE.

19 SEC. 1211. (1) IF THE WORK GROUP GRANTS A PETITION, THE WORK
20 GROUP, THE ENVIRONMENTAL JUSTICE ADVOCATE, AND THE RELEVANT STATE
21 DEPARTMENT OR DEPARTMENTS SHALL DEVELOP AN ENVIRONMENTAL ACTION
22 PLAN. IN DEVELOPING THE PLAN, THESE ENTITIES AND OFFICIALS SHALL
23 CONSULT WITH LOCAL AND FEDERAL GOVERNMENTAL AGENCIES AS RELEVANT
24 AND WORK CLOSELY WITH THE COMMUNITY.

25 (2) AN ENVIRONMENTAL ACTION PLAN SHALL MEET ALL OF THE
26 FOLLOWING REQUIREMENTS:

27 (A) SET FORTH CLEAR AND SPECIFIC ACTIONS REQUIRED TO BE TAKEN

1 BY STATE AGENCIES ON BEHALF OF THE COMMUNITY, A TIME FRAME FOR
2 IMPLEMENTATION, AND A DESCRIPTION OF THE RESOURCES AVAILABLE.
3 ACTIONS SHALL BE BASED ON EACH STATE AGENCY'S EXISTING LEGAL
4 AUTHORITY AND CONDUCTED WITHIN THE AGENCY'S EXISTING LEGAL DUTIES.

5 (B) UTILIZE THE EXPERTISE AND RESOURCES OF THE STATE
6 DEPARTMENTS AND OTHER AGENCIES REPRESENTED ON THE WORK GROUP, AND
7 ANY OTHER RELEVANT STATE AGENCIES, TO ADDRESS THE PROBLEM IN A
8 COORDINATED FASHION.

9 (3) THE ENVIRONMENTAL JUSTICE COORDINATOR SHALL ENSURE THAT
10 EACH STATE AGENCY IS CARRYING OUT ITS RESPONSIBILITIES UNDER THE
11 ENVIRONMENTAL ACTION PLAN.

12 SEC. 1213. (1) THE DEPARTMENT SHALL POST ON ITS WEBSITE AND
13 PROVIDE IN WRITING UPON REQUEST AN EXPLANATION OF THE PETITION
14 PROCESS UNDER THIS PART. OTHER STATE AGENCIES REPRESENTED ON THE
15 WORK GROUP SHALL POST ON THEIR WEBSITES AN EXPLANATION OF THE
16 PETITION PROCESS UNDER THIS PART OR A LINK TO THE DEPARTMENT'S
17 EXPLANATION AND SHALL PROVIDE A WRITTEN EXPLANATION OF THE PETITION
18 PROCESS UPON REQUEST.

19 (2) THE WORK GROUP SHALL PREPARE AN ANNUAL PROGRESS REPORT ON
20 THE PETITION PROCESS, INCLUDING A DESCRIPTION OF THE PETITIONS
21 SUBMITTED AND THE OUTCOMES. THE REPORT SHOULD BE SUBMITTED TO THE
22 GOVERNOR AND THE STATE ENVIRONMENTAL JUSTICE COORDINATOR AND MADE
23 AVAILABLE TO THE PUBLIC.