

HOUSE BILL No. 5674

May 24, 2012, Introduced by Reps. Opsommer, Pscholka, MacGregor and Kowall and referred to the Committee on Natural Resources, Tourism, and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 5301 and 5303 (MCL 324.5301 and 324.5303),
section 5301 as amended by 2005 PA 255 and section 5303 as amended
by 2002 PA 398; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5301. As used in this part:

2 (a) "Assistance" means 1 or more of the following activities
3 to the extent authorized by the federal water pollution control
4 act:

5 (i) Provision of loans to municipalities for construction of
6 sewage treatment works projects, stormwater treatment projects, or
7 nonpoint source projects.

8 (ii) Project refinancing assistance.

1 (iii) The guarantee or purchase of insurance for local
2 obligations, if the guarantee or purchase action would improve
3 credit market access or reduce interest rates.

4 (iv) Use of the proceeds of the fund as a source of revenue or
5 security for the payment of principal and interest on revenue or
6 general obligation bonds issued by this state, if the proceeds of
7 the sale of the bonds will be deposited into the fund.

8 (v) Provision of loan guarantees for similar revolving funds
9 established by municipalities.

10 (vi) The use of deposited funds to earn interest on fund
11 accounts.

12 (vii) Provision for reasonable costs of administering and
13 conducting activities under title VI of the federal water pollution
14 control act, 33 USC 1381 to 1387.

15 (b) "Authority" means the Michigan municipal bond authority
16 created in the shared credit rating act, 1985 PA 227, MCL 141.1051
17 to 141.1076.

18 (c) "Capitalization grant" means the federal grant made to
19 this state by the United States environmental protection agency for
20 the purpose of establishing a state water pollution control
21 revolving fund, as provided in title VI of the federal water
22 pollution control act, 33 USC 1381 to 1387.

23 (d) "Construction activities" means any actions undertaken in
24 the planning, designing, or building of sewage treatment works
25 projects, stormwater treatment projects, or nonpoint source
26 projects. Construction activities include, but are not limited to,
27 all of the following:

1 (i) Project planning services.

2 (ii) Engineering services.

3 (iii) Legal services.

4 (iv) Financial services.

5 (v) Design of plans and specifications.

6 (vi) Acquisition of land or structural components, or both.

7 (vii) Building, erection, alteration, remodeling, or extension
8 of a sewage treatment works.

9 (viii) Building, erection, alteration, remodeling, or extension
10 of projects designed to control nonpoint source pollution,
11 consistent with section 319 of title III of the federal water
12 pollution control act, 33 USC 1329.

13 (ix) Building, erection, alteration, or remodeling of a
14 stormwater treatment project.

15 (x) Municipal supervision of the project activities described
16 in subparagraphs (i) to (ix).

17 (E) "DISADVANTAGED COMMUNITY" MEANS A MUNICIPALITY IN WHICH
18 ALL OF THE FOLLOWING CONDITIONS ARE MET:

19 (i) USERS WITHIN THE AREA SERVED BY A PROPOSED SEWAGE TREATMENT
20 WORKS PROJECT OR STORMWATER TREATMENT PROJECT ARE DIRECTLY ASSESSED
21 FOR THE COSTS OF CONSTRUCTION.

22 (ii) THE MEDIAN HOUSEHOLD INCOME OF THE AREA SERVED BY A
23 PROPOSED SEWAGE TREATMENT WORKS PROJECT OR STORMWATER TREATMENT
24 PROJECT DOES NOT EXCEED 120% OF THE STATEWIDE MEDIAN ANNUAL
25 HOUSEHOLD INCOME FOR MICHIGAN.

26 (iii) THE MUNICIPALITY DEMONSTRATES AT LEAST 1 OF THE FOLLOWING:

27 (A) MORE THAN 50% OF THE AREA SERVED BY A PROPOSED SEWAGE

1 TREATMENT WORKS PROJECT OR STORMWATER TREATMENT PROJECT IS
2 IDENTIFIED AS A POVERTY AREA BY THE UNITED STATES BUREAU OF CENSUS
3 OR IS AN ENVIRONMENTAL JUSTICE AREA OF CONCERN AS DEFINED BY THE
4 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

5 (B) THE MEDIAN ANNUAL HOUSEHOLD INCOME OF THE AREA SERVED BY A
6 PROPOSED SEWAGE TREATMENT WORKS PROJECT OR STORMWATER TREATMENT
7 PROJECT IS LESS THAN THE MOST RECENTLY PUBLISHED FEDERAL POVERTY
8 GUIDELINES FOR A FAMILY OF 4 IN THE 48 CONTIGUOUS UNITED STATES. IN
9 DETERMINING THE MEDIAN ANNUAL HOUSEHOLD INCOME OF THE AREA SERVED
10 BY THE PROPOSED SEWAGE TREATMENT WORKS PROJECT OR STORMWATER
11 TREATMENT PROJECT UNDER THIS SUB-SUBPARAGRAPH, THE MUNICIPALITY
12 SHALL UTILIZE THE MOST RECENTLY PUBLISHED STATISTICS FROM THE
13 UNITED STATES BUREAU OF THE CENSUS, UPDATED TO REFLECT CURRENT
14 DOLLARS, FOR THE COMMUNITY WHICH MOST CLOSELY APPROXIMATES THE AREA
15 BEING SERVED BY THE PROJECT.

16 (C) THE MEDIAN ANNUAL HOUSEHOLD INCOME OF THE AREA SERVED BY A
17 PROPOSED SEWAGE TREATMENT WORKS PROJECT OR STORMWATER TREATMENT
18 PROJECT IS LESS THAN THE MOST RECENTLY PUBLISHED STATEWIDE MEDIAN
19 ANNUAL HOUSEHOLD INCOME FOR THIS STATE, AND ANNUAL USER COSTS FOR
20 SEWAGE TREATMENT OR STORMWATER TREATMENT EXCEED 1% OF THE MEDIAN
21 ANNUAL HOUSEHOLD INCOME OF THE AREA SERVED BY THE PROPOSED SEWAGE
22 TREATMENT WORKS PROJECT OR STORMWATER TREATMENT PROJECT.

23 (D) THE MEDIAN ANNUAL HOUSEHOLD INCOME OF THE AREA SERVED BY A
24 PROPOSED SEWAGE TREATMENT WORKS PROJECT OR STORMWATER TREATMENT
25 PROJECT IS NOT GREATER THAN 120% OF THE STATEWIDE MEDIAN ANNUAL
26 HOUSEHOLD INCOME FOR THIS STATE, AND ANNUAL USER COSTS FOR SEWAGE
27 TREATMENT OR STORMWATER TREATMENT EXCEED 3% OF THE MEDIAN ANNUAL

1 **HOUSEHOLD INCOME OF THE AREA SERVED BY THE PROPOSED PROJECT.**

2 (F) ~~(e)~~—"Federal water pollution control act" means 33 USC
3 1251 to 1387.

4 (G) ~~(f)~~—"Fund" means the state water pollution control
5 revolving fund established under the shared credit rating act, 1985
6 PA 227, MCL 141.1051 to 141.1076, established pursuant to title VI
7 of the federal water pollution control act.

8 (H) ~~(g)~~—"Fundable range" means those projects, taken in
9 descending order on the priority lists, for which sufficient funds
10 are estimated by the department to exist to provide assistance at
11 the beginning of each annual funding cycle.

12 (I) ~~(h)~~—"Municipality" means a city, village, county,
13 township, authority, or other public body, including an
14 intermunicipal agency of 2 or more municipalities, authorized or
15 created under state law; or an Indian tribe that has jurisdiction
16 over construction and operation of sewage treatment works or other
17 projects qualifying under section 319 of title III of the federal
18 water pollution control act, 33 USC 1329.

19 (J) ~~(i)~~—"Nonpoint source project" means construction
20 activities designed to reduce nonpoint source pollution consistent
21 with the state nonpoint source management plan pursuant to section
22 319 of title III of the federal water pollution control act, 33 USC
23 1329.

24 (K) ~~(j)~~—"Priority list" means the annual ranked listing of
25 projects developed by the department in section 5303 or used by the
26 department pursuant to section 5315.

27 (L) ~~(k)~~—"Project" means a sewage treatment works project, a

1 stormwater treatment project, or a nonpoint source project, or a
2 combination of these.

3 (M) ~~(H)~~—"Project refinancing assistance" means buying or
4 refinancing the debt obligations of municipalities within the state
5 if construction activities commenced after March 7, 1985 and the
6 debt obligation was incurred after March 7, 1985.

7 (N) ~~(m)~~—"Sewage treatment works project" means construction
8 activities on any device or system for the treatment, storage,
9 collection, conveyance, recycling, or reclamation of the sewage of
10 a municipality, including combined sewer overflow correction and
11 major rehabilitation of sewers.

12 (O) ~~(n)~~—"Stormwater treatment project" means construction
13 activities of a municipality on any device or system for the
14 treatment, storage, recycling, or reclamation of storm water that
15 is conveyed by a storm sewer that is separate from a sanitary
16 sewer.

17 (P) ~~(o)~~—"Tier I project" means a project for which assistance
18 is sought or provided from funds made directly available from the
19 federal capitalization grant or from the Great Lakes water quality
20 bond fund pursuant to section 19708(1)(a).

21 (Q) ~~(p)~~—"Tier II project" means a project for which assistance
22 is sought or provided from funds other than those made directly
23 available from the federal capitalization grant or from the Great
24 Lakes water quality bond fund pursuant to section 19708(1)(a).

25 Sec. 5303. (1) Municipalities shall consider and utilize,
26 where possible, cooperative regional or intermunicipal projects in
27 satisfying sewerage needs in the development of project plans.

1 (2) A municipality may submit a project plan for use by the
2 department in developing a priority list.

3 (3) The project plan for a tier I project shall include
4 documentation that demonstrates that the project is needed to
5 assure maintenance of, or to progress toward, compliance with the
6 federal water pollution control act or part 31, and to meet the
7 minimum requirements of the national environmental policy act of
8 1969, Public Law 91-190, 42 ~~U.S.C.~~ **USC** 4321, 4331 to 4335, and 4341
9 to 4347. The documentation shall demonstrate all of the following:

10 (a) The need for the project.

11 (b) That feasible alternatives to the project were evaluated
12 taking into consideration volume reduction opportunities and the
13 demographic, topographic, hydrologic, and institutional
14 characteristics of the area.

15 (c) That the project is cost effective and implementable from
16 a legal, institutional, financial, and management standpoint.

17 (d) Other information as required by the department.

18 (4) The project plan for a tier II project shall include
19 documentation that demonstrates that the project is or was needed
20 to assure maintenance of or progress towards compliance with the
21 federal water pollution control act or part 31, and is consistent
22 with all applicable state environmental laws. The documentation
23 shall include all of the following information:

24 (a) Information to demonstrate the need for the project.

25 (b) A showing that the cost of the project is or was
26 justified, taking into account available alternatives. Those costs
27 determined by the department to be in excess of those costs

1 justified ~~will~~**ARE** not be eligible for assistance under this part.

2 (5) After notice and an opportunity for public comment, the
3 department shall annually develop separate priority lists for
4 sewage treatment works projects and stormwater treatment projects,
5 for nonpoint source projects, and for projects funded under the
6 strategic water quality initiatives fund created in section 5204.
7 Projects not funded during the time that a priority list developed
8 under this section is in effect shall be automatically prioritized
9 on the next annual list using the same criteria, unless the
10 municipality submits an amendment to its plan that introduces new
11 information to be used as the basis for prioritization. These
12 priority lists shall be based upon project plans submitted by
13 municipalities, and the following criteria:

14 (a) That a project complies with all applicable standards in
15 part 31 and the federal water pollution control act.

16 (b) An application for a segment of a project that received
17 funds under the title II construction grant program or title VI
18 state revolving loan funds of the federal water pollution control
19 act or the strategic water quality initiatives fund created in
20 section 5204 shall be first priority on its respective priority
21 list for funding for a period of not more than 3 years after funds
22 were first committed under those programs.

23 (c) If the project is a sewage treatment works project or a
24 stormwater treatment project, all of the following criteria:

25 (i) The severity of the water pollution problem to be
26 addressed, maximizing progress towards restoring beneficial uses
27 and meeting water quality standards.

1 (ii) A determination of whether a project is or was necessary
2 to comply with an order, permit, or other document with an
3 enforceable schedule for addressing a municipality's sewage-related
4 water pollution problems that was issued by the department or
5 entered as part of an action brought by the state against the
6 municipality or any component of the municipality. A municipality
7 may voluntarily agree to an order, permit, or other document with
8 an enforceable schedule as described in this subparagraph.

9 (iii) The population to be served by the project. However, the
10 criterion provided in this subparagraph shall not be applied to
11 projects funded by the strategic water quality initiatives fund
12 created in section 5204.

13 (iv) The dilution ratio existing between the discharge volume
14 and the receiving stream.

15 (v) **IF THE PROJECT IS WITHIN A DISADVANTAGED COMMUNITY, A**
16 **MAXIMUM OF 50 POINTS SHALL BE AWARDED TO THE PROJECT IN THE MANNER**
17 **THAT POINTS ARE AWARDED IN RULES PROMULGATED UNDER THIS PART.**

18 (d) If the project is a sewage treatment works project, 100
19 priority points shall be awarded pursuant to R 323.958 of the
20 Michigan administrative code for each of the following that apply
21 to the project:

22 (i) The project addresses on-site septic systems that are
23 adversely affecting the water quality of a water body or represent
24 a threat to public health, provided that soil and hydrologic
25 conditions are not suitable for the replacement of those on-site
26 septic systems.

27 (ii) The project includes the construction of facilities for

1 the acceptance or treatment of septage collected from on-site
2 septic systems.

3 (e) Rankings for nonpoint source projects shall be consistent
4 with the state nonpoint source management plan developed pursuant
5 to section 319 of title III of the federal water pollution control
6 act, chapter 758, 101 Stat. 52, 33 ~~U.S.C.~~ **USC** 1329.

7 (f) Any other criteria established by the department by rule.

8 (6) The priority list shall be submitted annually to the chair
9 of the senate and house of representatives standing committees that
10 primarily consider legislation pertaining to the protection of
11 natural resources and the environment.

12 (7) For purposes of providing assistance, the priority list
13 shall take effect on the first day of each fiscal year.

14 (8) This section does not limit other actions undertaken to
15 enforce part 31, the federal water pollution control act, or any
16 other act.

17 (9) As used in this section, "on-site septic system" means
18 that term as defined in section 5201.

19 Enacting section 1. Section 5315 of the natural resources and
20 environmental protection act, 1994 PA 451, MCL 324.5315, is
21 repealed.

22 Enacting section 2. This amendatory act does not take effect
23 unless all of the following bills of the 96th Legislature are
24 enacted into law:

25 (a) Senate Bill No. ____ or House Bill No. 5673(request no.
26 05373'12 *).

27 (b) Senate Bill No. ____ or House Bill No. 5675(request no.

1 05375'12 *).

2 (c) Senate Bill No. _____ or House Bill No. 5676 (request no.

3 05376'12 *).