

HOUSE BILL No. 5902

November 6, 2014, Introduced by Reps. Townsend, Durhal and Switalski and referred to the Committee on Natural Resources.

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), as amended by 2012 PA 560.

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.

1 (ii) Project refinancing assistance.

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

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

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

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

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

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

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

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

1 all of the following:

2 (i) Project planning services.

3 (ii) ~~Engineering~~ **DESIGN AND ENGINEERING** services.

4 (iii) Legal services.

5 (iv) Financial services.

6 (v) Design of plans and specifications.

7 (vi) Acquisition of land, ~~or~~ **PLANTS, LANDSCAPING MATERIALS, AND**
8 structural components. ~~, or both.~~

9 (vii) Building, erection, alteration, ~~remodeling,~~ **RENOVATION,**
10 or extension of a sewage treatment works.

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

15 (ix) Building, erection, alteration, or ~~remodeling~~ **RENOVATION**
16 of a stormwater treatment project.

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

19 (e) "Disadvantaged community" means a municipality in which
20 all of the following conditions are met:

21 (i) Users within the area served by a proposed sewage treatment
22 works project or stormwater treatment project are directly assessed
23 for the costs of construction.

24 (ii) The median household income of the area served by a
25 proposed sewage treatment works project or stormwater treatment
26 project does not exceed 120% of the statewide median annual
27 household income for Michigan.

1 (iii) The municipality demonstrates at least 1 of the following:

2 (A) More than 50% of the area served by a proposed sewage
3 treatment works project or stormwater treatment project is
4 identified as a poverty area by the United States bureau of census.

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 **ANNUAL** user costs for~~
27 sewage treatment or stormwater treatment exceed 3% of the median

1 annual household income of the area served by the proposed project.

2 (f) "Federal water pollution control act" means 33 USC 1251 to
3 1387.

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

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

12 (I) **"LOW-IMPACT DEVELOPMENT" MEANS LAND DEVELOPMENT DESIGNED**
13 **TO MIMIC A SITE'S PRESETTLEMENT HYDROLOGY WITHOUT EXACERBATING**
14 **DOWNSTREAM FLOODING OR STREAM CHANNEL INSTABILITY BY USING**
15 **SPATIALLY DISTRIBUTED, DECENTRALIZED, SMALL SCALE CONTROLS THAT**
16 **INFILTRATE, FILTER, STORE, EVAPORATE, AND DETAIN STORM WATER CLOSE**
17 **TO ITS SOURCE.**

18 (J) ~~(i)~~—"Municipality" means a city, village, county,
19 township, authority, or other public body, including an
20 intermunicipal agency of 2 or more municipalities, authorized or
21 created under state law; or an Indian tribe that has jurisdiction
22 over construction and operation of sewage treatment works or other
23 projects qualifying under ~~section 319 of title III of the federal~~
24 ~~water pollution control act,~~ 33 USC 1329.

25 (K) ~~(j)~~—"Nonpoint source project" means construction
26 activities designed to reduce nonpoint source pollution consistent
27 with the state nonpoint source management plan pursuant to ~~section~~

1 ~~319 of title III of the federal water pollution control act, 33 USC~~
2 1329.

3 (I) ~~(k)~~-"Priority list" means the annual ranked listing of
4 projects developed by the department in section 5303. ~~or used by~~
5 ~~the department pursuant to section 5315.~~

6 (M) ~~(l)~~-"Project" means a sewage treatment works project, a
7 stormwater treatment project, or a nonpoint source project, or a
8 combination of these.

9 (N) ~~(m)~~-"Project refinancing assistance" means buying or
10 refinancing the debt obligations of municipalities within the state
11 if construction activities commenced after March 7, 1985 and the
12 debt obligation was incurred after March 7, 1985.

13 (O) ~~(n)~~-"Sewage treatment works project" means construction
14 activities on any device or system for the treatment, storage,
15 collection, conveyance, recycling, or reclamation of the sewage of
16 a municipality, including combined sewer overflow correction and
17 major rehabilitation of sewers.

18 (P) ~~(o)~~-"Stormwater treatment project" means construction
19 activities of a municipality on any device or system for the
20 treatment, storage, recycling, or reclamation of storm water that
21 is conveyed by a storm sewer that is separate from a sanitary
22 sewer.

23 (Q) ~~(p)~~-"Tier I project" means a project for which assistance
24 is sought or provided from funds made directly available from the
25 federal capitalization grant or from the Great Lakes water quality
26 bond fund pursuant to section 19708(1)(a).

27 (R) ~~(q)~~-"Tier II project" means a project for which assistance

1 is sought or provided from funds other than those made directly
2 available from the federal capitalization grant or from the Great
3 Lakes water quality bond fund pursuant to section 19708(1)(a).

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

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

9 (3) The project plan for a tier I project shall include
10 documentation that demonstrates that the project is needed to
11 assure maintenance of, or to progress toward, compliance with the
12 federal water pollution control act or part 31, and to meet the
13 minimum requirements of the national environmental policy act of
14 1969, ~~Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to~~
15 4347. The documentation shall demonstrate all of the following:

16 (a) The need for the project.

17 (b) That feasible alternatives to the project were evaluated
18 taking into consideration volume reduction opportunities and the
19 demographic, topographic, hydrologic, and institutional
20 characteristics of the area.

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

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

24 (4) The project plan for a tier II project shall include
25 documentation that demonstrates that the project is or was needed
26 to assure maintenance of or progress towards compliance with the
27 federal water pollution control act or part 31, and is consistent

1 with all applicable state environmental laws. The documentation
2 shall include all of the following information:

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

4 (b) A showing that the cost of the project is or was
5 justified, taking into account available alternatives. Those costs
6 determined by the department to be in excess of those costs
7 justified are not eligible for assistance under this part.

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

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

22 (b) An application for a segment of a project that received
23 funds under the ~~title II~~ construction grant program **UNDER TITLE II**
24 **OF THE FEDERAL WATER POLLUTION CONTROL ACT** or ~~title VI~~ state
25 revolving loan funds **UNDER TITLE VI** of the federal water pollution
26 control act or **REVENUE FROM** the strategic water quality initiatives
27 fund created in section 5204 shall be first priority on its

1 respective priority list for funding for a period of not more than
2 3 years after funds were first committed under those programs.

3 (C) AFTER SEWAGE TREATMENT WORKS PROJECTS AND STORMWATER
4 TREATMENT PROJECTS HAVE BEEN RANKED, FOR STORMWATER TREATMENT
5 PROJECTS THAT HAVE EQUAL RANKING, THE FIRST PRIORITY ON THE
6 PRIORITY LIST SHALL BE THOSE PROJECTS THAT DO 1 OR MORE OF THE
7 FOLLOWING:

8 (i) SUBSTANTIALLY RELY ON THE UTILIZATION OF LOW-IMPACT
9 DEVELOPMENT.

10 (ii) SUBSTANTIALLY RELY ON THE RESTORATION OR CREATION OF
11 NATIVE HABITAT.

12 (iii) ASSIST IN MAKING PROGRESS IN TOTAL MAXIMUM DAILY LOAD
13 COMPLIANCE OR REMOVAL OF WATERS FROM THE IMPAIRED WATERS LIST UNDER
14 33 USC 1313 (D) .

15 (D) ~~(e)~~—If the project is a sewage treatment works project or
16 a stormwater treatment project, all of the following criteria:

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

20 (ii) A determination of whether a project is or was necessary
21 to comply with an order, permit, or other document with an
22 enforceable schedule for addressing a municipality's sewage-related
23 water pollution problems that was issued by the department or
24 entered as part of an action brought by the state against the
25 municipality or any component of the municipality. A municipality
26 may voluntarily agree to an order, permit, or other document with
27 an enforceable schedule as described in this subparagraph.

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

5 (iv) The dilution ratio existing between the discharge volume
6 and the receiving stream.

7 (v) If the project is within a disadvantaged community, a
8 maximum of 50 points shall be awarded to the project in the manner
9 that points are awarded in rules promulgated under this part.

10 **(E)** ~~(d)~~—If the project is a sewage treatment works project,
11 100 priority points shall be awarded pursuant to R 323.958 of the
12 Michigan administrative code for each of the following that apply
13 to the project:

14 (i) The project addresses on-site septic systems that are
15 adversely affecting the water quality of a water body or represent
16 a threat to public health, ~~provided that~~ **AND** soil and hydrologic
17 conditions are not suitable for the replacement of those on-site
18 septic systems.

19 (ii) The project includes the construction of facilities for
20 the acceptance or treatment of septage collected from on-site
21 septic systems.

22 **(F)** ~~(e)~~—Rankings for nonpoint source projects shall be
23 consistent with the state nonpoint source management plan developed
24 pursuant to ~~section 319 of title III of the federal water pollution~~
25 ~~control act, chapter 758, 101 Stat. 52, 33 USC 1329.~~

26 **(G)** ~~(f)~~—Any other criteria established by the department by
27 rule.

1 (6) The priority list shall be submitted annually to the chair
2 of the senate and house of representatives standing committees that
3 primarily consider legislation pertaining to the protection of
4 natural resources and the environment.

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

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

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