

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4123**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 5301, 5403, and 5405 (MCL 324.5301, 324.5403,
and 324.5405), section 5301 as amended by 2012 PA 560 and sections
5403 and 5405 as added by 1997 PA 26.

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~~-**1388**.

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~~
21 **Environmental Protection Agency** for the purpose of establishing a
22 state water pollution control revolving fund, as provided in title
23 VI of the federal water pollution control act, 33 USC 1381 to
24 ~~1387~~-**1388**.

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

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

27 (A) More than 50% of the area served by a proposed sewage
28 treatment works project or stormwater treatment project is

1 identified as a poverty area by the United States ~~bureau of~~
2 ~~census.~~ **Census Bureau.**

3 (B) The median annual household income of the area served by a
4 proposed sewage treatment works project or stormwater treatment
5 project is less than the ~~most recently published~~ federal poverty
6 guidelines for a family of 4 in the 48 contiguous United States. In
7 determining the median annual household income of the area served
8 by the proposed sewage treatment works project or stormwater
9 treatment project under this sub-subparagraph, the municipality
10 shall utilize the most recently published statistics from the
11 United States ~~bureau of the census,~~ **Census Bureau**, updated to
12 reflect current dollars, for the community ~~which~~ **that** most closely
13 approximates the area being served by the project. **As used in this**
14 **sub-subparagraph, "federal poverty guidelines" means the poverty**
15 **guidelines published annually in the Federal Register by the United**
16 **States Department of Health and Human Services under its authority**
17 **to revise the poverty line under 42 USC 9902.**

18 (C) The median annual household income of the area served by a
19 proposed sewage treatment works project or stormwater treatment
20 project is less than the most recently published statewide median
21 annual household income for this state, and annual user costs for
22 sewage treatment or stormwater treatment exceed 1% of the median
23 annual household income of the area served by the proposed sewage
24 treatment works project or stormwater treatment project.

25 (D) The median annual household income of the area served by a
26 proposed sewage treatment works project or stormwater treatment
27 project is not greater than 120% of the statewide median annual
28 household income for this state, and annual user costs for sewage
29 treatment or stormwater treatment exceed 3% of the median annual

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

2 (f) "Federal water pollution control act" means 33 USC 1251 to
3 ~~1387-1388~~.

4 (g) "Fund" means the state water pollution control revolving
5 fund established under **section 16a of** the shared credit rating act,
6 1985 PA 227, MCL ~~141.1051 to 141.1076, 141.1066a~~, established
7 ~~pursuant to~~ **under** title VI of the federal water pollution control
8 act, **33 USC 1381 to 1388**.

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

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

20 (j) "Nonpoint source project" means construction activities
21 designed to reduce nonpoint source pollution consistent with the
22 state nonpoint source management plan ~~pursuant to~~ **under** section 319
23 ~~of title III~~ of the federal water pollution control act, 33 USC
24 1329.

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

28 (l) "Project" means a sewage treatment works project, a
29 stormwater treatment project, or a nonpoint source project, or a

1 combination of these and may include utilization of more efficient
2 energy and resources as described in any of the following:

3 (i) The cost-effective governmental energy use act, 2012 PA
4 625, MCL 18.1711 to 18.1725.

5 (ii) Section 11c of 1851 PA 156, MCL 46.11c.

6 (iii) Section 75b of 1846 RS 16, MCL 41.75b.

7 (iv) Section 5f of the home rule city act, 1909 PA 279, MCL
8 117.5f.

9 (v) Section 24b of the home rule village act, 1909 PA 278, MCL
10 78.24b.

11 (vi) Section 36 of the general law village act, 1895 PA 3, MCL
12 68.36.

13 (m) "Project refinancing assistance" means buying or
14 refinancing the debt obligations of municipalities within ~~the~~**this**
15 state if construction activities commenced after March 7, 1985 and
16 the debt obligation was incurred after March 7, 1985.

17 (n) "Sewage treatment works project" means construction
18 activities on any device or system for the treatment, storage,
19 collection, conveyance, recycling, or reclamation of the sewage of
20 a municipality, including combined sewer overflow correction and
21 major rehabilitation of sewers.

22 (o) "Stormwater treatment project" means construction
23 activities of a municipality on any device or system for the
24 treatment, storage, recycling, or reclamation of storm water that
25 is conveyed by a storm sewer that is separate from a sanitary
26 sewer.

27 (p) "Tier I project" means a project for which assistance is
28 sought or provided from funds made directly available from the
29 federal capitalization grant or from the Great Lakes water quality

1 bond fund ~~pursuant to~~**under** section 19708(1) (a) .

2 (q) "Tier II project" means a project for which assistance is
3 sought or provided from funds other than those made directly
4 available from the federal capitalization grant or from the Great
5 Lakes water quality bond fund ~~pursuant to~~**under** section
6 19708(1) (a) .

7 Sec. 5403. As used in this part:

8 (a) "Priority list" means the annual ranked listing of
9 projects developed by the department in section 5406.

10 (b) "Project" means a project related to the planning, design,
11 and construction or alteration of a waterworks system **and may**
12 **include utilization of more efficient energy and resources as**
13 **described in any of the following:**

14 (i) **The cost-effective governmental energy use act, 2012 PA**
15 **625, MCL 18.1711 to 18.1725.**

16 (ii) **Section 11c of 1851 PA 156, MCL 46.11c.**

17 (iii) **Section 75b of 1846 RS 16, MCL 41.75b.**

18 (iv) **Section 5f of the home rule city act, 1909 PA 279, MCL**
19 **117.5f.**

20 (v) **Section 24b of the home rule village act, 1909 PA 278, MCL**
21 **78.24b.**

22 (vi) **Section 36 of the general law village act, 1895 PA 3, MCL**
23 **68.36.**

24 (c) "Project refinancing assistance" means buying or
25 refinancing the debt obligations of water suppliers if construction
26 activities commenced, and the debt obligation was incurred, after
27 ~~the effective date of this part.~~**June 17, 1997.**

28 (d) "Public water supply" means a waterworks system that
29 provides water for drinking or household purposes to persons other

1 than the supplier of the water, except for those waterworks systems
2 that supply water to only 1 house, apartment, or other domicile
3 occupied or intended to be occupied on a day-to-day basis by an
4 individual, family group, or equivalent.

5 (e) "State drinking water standards" means rules promulgated
6 under **section 5 of** Act 399, **MCL 325.1005**, that establish water
7 quality standards necessary to protect public health or that
8 establish treatment techniques to meet these water quality
9 standards.

10 (f) "Water supplier" or "supplier" means a municipality or its
11 designated representative accepted by the director, a legal
12 business entity, or any other person ~~who~~**that** owns a public water
13 supply. However, water supplier does not include a water hauler.

14 (g) "Waterworks system" or "system" means a system of pipes
15 and structures through which water is obtained or distributed and
16 includes any of the following that are actually used or intended to
17 be used for the purpose of furnishing water for drinking or
18 household purposes:

19 (i) Wells and well structures.

20 (ii) Intakes and cribs.

21 (iii) Pumping stations.

22 (iv) Treatment plants.

23 (v) Storage tanks.

24 (vi) Pipelines and appurtenances.

25 (vii) A combination of any of the items specified in ~~this~~
26 ~~subdivision~~**subparagraphs (i) to (vi)**.

27 Sec. 5405. (1) A water supplier ~~who~~**that** is interested in
28 applying for assistance under this part shall prepare and submit to
29 the department a project plan as provided in this section. The

1 department shall use **a project plans-plan** submitted under this
2 section to develop a priority list for assistance as provided under
3 this part.

4 (2) During the development of a project plan, a water supplier
5 that is a municipality shall consider and utilize, where
6 practicable, cooperative regional or intermunicipal projects, and a
7 water supplier that is not a municipality shall consider and
8 utilize, where practicable, connection to, or ownership by, a water
9 supplier that is a municipality.

10 (3) The project plan for a project ~~shall~~**must** include
11 documentation that demonstrates that the project is needed to
12 assure maintenance of, or progress toward, compliance with the
13 federal safe drinking water act. A complete project plan ~~shall~~**must**
14 include all of the following as background:

15 (a) Identification of planning area boundaries and
16 characteristics.

17 (b) A description of the existing waterworks systems.

18 (c) A description of the existing waterworks problems and
19 needs, including the severity and extent of water supply problems
20 or public health problems.

21 (d) An examination of projected needs for the next 20 years.

22 (e) Population projections and the source and basis for the
23 population projections.

24 (4) A project plan ~~shall~~**must** include an analysis of
25 alternatives, which ~~shall~~**must** consist of a systematic
26 identification, screening, study, evaluation, and cost-
27 effectiveness comparison of feasible technologies, processes, and
28 techniques. The alternatives ~~shall~~**must** be capable of meeting the
29 applicable state drinking water standards over the design life of

1 the facility, while recognizing environmental and other nonmonetary
 2 considerations. The analysis ~~shall~~**must** include, but ~~not be~~**is not**
 3 limited to, all of the following:

4 (a) A planning period for the cost-effectiveness analysis of
 5 20 years or other such planning period as is justified by the
 6 unique characteristics of the project.

7 (b) Monetary costs that consider the present worth or
 8 equivalent annual value of all capital costs and operation and
 9 maintenance costs.

10 (c) Provisions for the ultimate disposal of residuals and
 11 sludge resulting from drinking water treatment processes.

12 (d) A synopsis of the environmental setting of the project and
 13 an analysis of the potential environmental and public health
 14 impacts of the various alternatives, as well as the identification
 15 of any significant environmental or public health benefits
 16 precluded by rejection of an alternative.

17 (e) Consideration of opportunities to ~~make~~**utilize** more
 18 efficient ~~use of~~ energy and resources **as described in any of the**
 19 **following:**

20 (i) **The cost-effective governmental energy use act, 2012 PA**
 21 **625, MCL 18.1711 to 18.1725.**

22 (ii) **Section 11c of 1851 PA 156, MCL 46.11c.**

23 (iii) **Section 75b of 1846 RS 16, MCL 41.75b.**

24 (iv) **Section 5f of the home rule city act, 1909 PA 279, MCL**
 25 **117.5f.**

26 (v) **Section 24b of the home rule village act, 1909 PA 278, MCL**
 27 **78.24b.**

28 (vi) **Section 36 of the general law village act, 1895 PA 3, MCL**
 29 **68.36.**

1 (f) A description of the relationship between the service
2 capacity of each waterworks systems alternative and the estimated
3 future needs using population projections under subsection (3)(e).

4 (5) A project plan ~~shall~~**must** include a description of the
5 selected alternative, including all of the following:

6 (a) Relevant design parameters.

7 (b) Estimated capital construction costs, operation and
8 maintenance costs, and a description of the manner in which project
9 costs will be financed.

10 (c) A demonstration of the water supplier's ability to repay
11 the incurred debt, including an analysis of the impacts of the
12 annual user costs for water supply on its users.

13 (d) A demonstration that the selected alternative ~~is~~
14 ~~implementable~~**can be implemented** considering the legal,
15 institutional, technical, financial, and managerial resources of
16 the water supplier.

17 (e) Assurance that there is sufficient waterworks system
18 service capacity for the service area based on projected needs
19 identified in subdivision (d) while avoiding the use of funds
20 available under this part to finance the expansion of any public
21 water system if a primary purpose of the expansion is to
22 accommodate future development.

23 (f) Documentation of the project's consistency with the
24 approved general plan prepared ~~pursuant to~~**under** section 4 of Act
25 399, MCL 325.1004.

26 (g) An analysis of the environmental and public health impacts
27 of the selected alternative.

28 (h) Consideration of structural and nonstructural measures
29 that could be taken to mitigate or eliminate adverse effects on the

1 environment.

2 (6) A project plan ~~shall~~**must** describe the public
3 participation activities conducted during planning and ~~shall~~**must**
4 include all of the following:

5 (a) Significant issues raised by the public and any changes to
6 the project that were made as a result of the public participation
7 process.

8 (b) A demonstration that there were adequate opportunities for
9 public consultation, participation, and input in the decision-
10 making process during alternative selection.

11 (c) A demonstration that before the adoption of the project
12 plan, the water supplier held a public hearing on the proposed
13 project not less than 30 days after advertising in local media of
14 general circulation and at a time and place conducive to maximizing
15 public input.

16 (d) A demonstration that, concurrent with advertisement of the
17 hearing, a notice of public hearing was sent to all affected local,
18 state, and federal agencies and to any public or private parties
19 that have expressed an interest in the proposed project.

20 (e) A transcript or recording of the hearing, a list of all
21 attendees, any written testimony received, and the water supplier's
22 responses to the issues raised.

23 (7) A project plan ~~shall~~**must** include either of the following,
24 as appropriate:

25 (a) For a water supplier that is a municipality, a resolution
26 adopted by the governing board of the municipality approving the
27 project plan.

28 (b) For a water supplier that is not a municipality, a
29 statement of intent to implement the project plan.

1 (8) A project plan ~~shall~~**must** not have as a primary purpose
2 the construction of or expansion of a waterworks system to
3 accommodate future development.