

Act No. 45
Public Acts of 2021
Approved by the Governor
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**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2021**

Introduced by Rep. Griffin

ENROLLED HOUSE BILL No. 4123

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to protect the people’s right to hunt and fish; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts,” 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:

Sec. 5301. As used in this part:

(a) “Assistance” means 1 or more of the following activities to the extent authorized by the federal water pollution control act:

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

(ii) Project refinancing assistance.

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

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

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

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

(vii) Provision for reasonable costs of administering and conducting activities under title VI of the federal water pollution control act, 33 USC 1381 to 1388.

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

(c) “Capitalization grant” means the federal grant made to this state by the United States Environmental Protection Agency for the purpose of establishing a state water pollution control revolving fund, as provided in title VI of the federal water pollution control act, 33 USC 1381 to 1388.

(d) “Construction activities” means any actions undertaken in the planning, designing, or building of sewage

treatment works projects, stormwater treatment projects, or nonpoint source projects. Construction activities include, but are not limited to, all of the following:

- (i) Project planning services.
 - (ii) Engineering services.
 - (iii) Legal services.
 - (iv) Financial services.
 - (v) Design of plans and specifications.
 - (vi) Acquisition of land or structural components, or both.
 - (vii) Building, erection, alteration, remodeling, or extension of a sewage treatment works.
 - (viii) Building, erection, alteration, remodeling, or extension of projects designed to control nonpoint source pollution, consistent with section 319 of title III of the federal water pollution control act, 33 USC 1329.
 - (ix) Building, erection, alteration, or remodeling of a stormwater treatment project.
 - (x) Municipal supervision of the project activities described in subparagraphs (i) to (ix).
- (e) “Disadvantaged community” means a municipality in which all of the following conditions are met:
- (i) Users within the area served by a proposed sewage treatment works project or stormwater treatment project are directly assessed for the costs of construction.
 - (ii) The median household income of the area served by a proposed sewage treatment works project or stormwater treatment project does not exceed 120% of the statewide median annual household income for this state.
 - (iii) The municipality demonstrates at least 1 of the following:
 - (A) More than 50% of the area served by a proposed sewage treatment works project or stormwater treatment project is identified as a poverty area by the United States Census Bureau.
 - (B) The median annual household income of the area served by a proposed sewage treatment works project or stormwater treatment project is less than the federal poverty guidelines for a family of 4 in the 48 contiguous United States. In determining the median annual household income of the area served by the proposed sewage treatment works project or stormwater treatment project under this sub-subparagraph, the municipality shall utilize the most recently published statistics from the United States Census Bureau, updated to reflect current dollars, for the community that most closely approximates the area being served by the project. As used in this sub-subparagraph, “federal poverty guidelines” means the poverty guidelines published annually in the Federal Register by the United States Department of Health and Human Services under its authority to revise the poverty line under 42 USC 9902.
 - (C) The median annual household income of the area served by a proposed sewage treatment works project or stormwater treatment project is less than the most recently published statewide median annual household income for this state, and annual user costs for sewage treatment or stormwater treatment exceed 1% of the median annual household income of the area served by the proposed sewage treatment works project or stormwater treatment project.
 - (D) The median annual household income of the area served by a proposed sewage treatment works project or stormwater treatment project is not greater than 120% of the statewide median annual household income for this state, and annual user costs for sewage treatment or stormwater treatment exceed 3% of the median annual household income of the area served by the proposed project.
- (f) “Federal water pollution control act” means 33 USC 1251 to 1388.
- (g) “Fund” means the state water pollution control revolving fund established under section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a, established under title VI of the federal water pollution control act, 33 USC 1381 to 1388.
- (h) “Fundable range” means those projects, taken in descending order on the priority lists, for which sufficient funds are estimated by the department to exist to provide assistance at the beginning of each annual funding cycle.
- (i) “Municipality” means a city, village, county, township, authority, or other public body, including an intermunicipal agency of 2 or more municipalities, authorized or created under state law; or an Indian tribe that has jurisdiction over construction and operation of sewage treatment works or other projects qualifying under section 319 of the federal water pollution control act, 33 USC 1329.
- (j) “Nonpoint source project” means construction activities designed to reduce nonpoint source pollution consistent with the state nonpoint source management plan under section 319 of the federal water pollution control act, 33 USC 1329.

(k) "Priority list" means the annual ranked listing of projects developed by the department in section 5303.

(l) "Project" means a sewage treatment works project, a stormwater treatment project, or a nonpoint source project, or a combination of these and may include utilization of more efficient energy and resources as described in any of the following:

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

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

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

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

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

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

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

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

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

(p) "Tier I project" means a project for which assistance is sought or provided from funds made directly available from the federal capitalization grant or from the Great Lakes water quality bond fund under section 19708(1)(a).

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

Sec. 5403. As used in this part:

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

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

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

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

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

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

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

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

(c) "Project refinancing assistance" means buying or refinancing the debt obligations of water suppliers if construction activities commenced, and the debt obligation was incurred, after June 17, 1997.

(d) "Public water supply" means a waterworks system that provides water for drinking or household purposes to persons other than the supplier of the water, except for those waterworks systems that supply water to only 1 house, apartment, or other domicile occupied or intended to be occupied on a day-to-day basis by an individual, family group, or equivalent.

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

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

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

(i) Wells and well structures.

(ii) Intakes and cribs.

(iii) Pumping stations.

- (iv) Treatment plants.
- (v) Storage tanks.
- (vi) Pipelines and appurtenances.
- (vii) A combination of any of the items specified in subparagraphs (i) to (vi).

Sec. 5405. (1) A water supplier that is interested in applying for assistance under this part shall prepare and submit to the department a project plan as provided in this section. The department shall use a project plan submitted under this section to develop a priority list for assistance as provided under this part.

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

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

- (a) Identification of planning area boundaries and characteristics.
- (b) A description of the existing waterworks systems.
- (c) A description of the existing waterworks problems and needs, including the severity and extent of water supply problems or public health problems.
- (d) An examination of projected needs for the next 20 years.
- (e) Population projections and the source and basis for the population projections.

(4) A project plan must include an analysis of alternatives, which must consist of a systematic identification, screening, study, evaluation, and cost-effectiveness comparison of feasible technologies, processes, and techniques. The alternatives must be capable of meeting the applicable state drinking water standards over the design life of the facility, while recognizing environmental and other nonmonetary considerations. The analysis must include, but is not limited to, all of the following:

- (a) A planning period for the cost-effectiveness analysis of 20 years or other such planning period as is justified by the unique characteristics of the project.
- (b) Monetary costs that consider the present worth or equivalent annual value of all capital costs and operation and maintenance costs.
- (c) Provisions for the ultimate disposal of residuals and sludge resulting from drinking water treatment processes.
- (d) A synopsis of the environmental setting of the project and an analysis of the potential environmental and public health impacts of the various alternatives, as well as the identification of any significant environmental or public health benefits precluded by rejection of an alternative.

(e) Consideration of opportunities to utilize more efficient energy and resources as described in any of the following:

- (i) The cost-effective governmental energy use act, 2012 PA 625, MCL 18.1711 to 18.1725.
- (ii) Section 11c of 1851 PA 156, MCL 46.11c.
- (iii) Section 75b of 1846 RS 16, MCL 41.75b.
- (iv) Section 5f of the home rule city act, 1909 PA 279, MCL 117.5f.
- (v) Section 24b of the home rule village act, 1909 PA 278, MCL 78.24b.
- (vi) Section 36 of the general law village act, 1895 PA 3, MCL 68.36.

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

- (5) A project plan must include a description of the selected alternative, including all of the following:
 - (a) Relevant design parameters.
 - (b) Estimated capital construction costs, operation and maintenance costs, and a description of the manner in which project costs will be financed.

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

(d) A demonstration that the selected alternative can be implemented considering the legal, institutional, technical, financial, and managerial resources of the water supplier.

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

(f) Documentation of the project's consistency with the approved general plan prepared under section 4 of Act 399, MCL 325.1004.

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

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

(6) A project plan must describe the public participation activities conducted during planning and must include all of the following:

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

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

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

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

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

(7) A project plan must include either of the following, as appropriate:

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

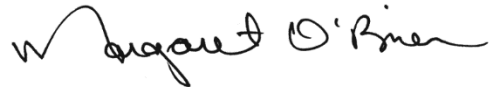
(b) For a water supplier that is not a municipality, a statement of intent to implement the project plan.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor