

Act No. 26
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1997

Introduced by Reps. Jellema, Middaugh, Middleton, DeVuyst, LaForge, Anthony, Hammerstrom, Martinez, Brater, Byl, McBryde, Voorhees, Ciaramitaro, Baade, Bodem, Raczkowski, Birkholz, Sikkema, Walberg, Jansen, Dalman, Wetters, McNutt, London, Fitzgerald, Kelly, McManus and Perricone

ENROLLED HOUSE BILL No. 4465

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 prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," (MCL 324.101 to 324.90106) by adding part 54.

The People of the State of Michigan enact:

Part 54 (Safe Drinking Water Assistance)

Sec. 5401. As used in this part:

- (a) "Act 399" means the safe drinking water act, 1976 PA 399, MCL 325.101 to 325.1023.
- (b) "Annual user costs" means an annual charge levied by a water supplier on users of the waterworks system to pay for each user's share of the cost for operation, maintenance, and replacement of the waterworks system. These costs may also include a charge to pay for the debt obligation.
- (c) "Assistance" means 1 or more of the following activities to the extent authorized by the federal safe drinking water act:
 - (i) Provision of loans for the planning, design, and construction or alteration of waterworks systems.
 - (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 sub-state revolving funds established by water suppliers that are municipalities.
 - (vi) The use of deposited funds to earn interest on fund accounts.
 - (vii) Provision for reasonable costs of administering and conducting activities under this part.

(viii) Provision of technical assistance under this part.

(ix) Provision of loan forgiveness for certain planning costs incurred by disadvantaged communities.

(d) "Authority" means the Michigan municipal bond authority created in the shared credit rating act, 1985 PA 227, MCL 141.1051 to 141.1077.

(e) "Capitalization grant" means the federal grant made to this state by the United States environmental protection agency, as provided in the federal safe drinking water act.

(f) "Community water supply" means a public water supply that provides year-round service to not less than 15 living units or which regularly provides year-round service to not less than 25 residents.

(g) "Construction activities" means any actions undertaken in the planning, designing, or building of a waterworks system. Construction activities include, but are not limited to, all of the following:

(i) Engineering services.

(ii) Legal services.

(iii) Financial services.

(iv) Preparation of plans and specifications.

(v) Acquisition of land or structural components, or both, if the acquisition is integral to a project authorized by this part and the purchase is from a willing seller at fair market value.

(vi) Building, erection, alteration, remodeling, or extension of waterworks systems, providing the extension is not primarily for the anticipation of future population growth.

(vii) Reasonable expenses of supervision of the project activities described in subparagraphs (i) to (vi).

Sec. 5402. As used in this part:

(a) "Department" means the department of environmental quality or its authorized agent or representative.

(b) "Director" means the director of the department of environmental quality or his or her designated representative.

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

(i) Users within the area served by a proposed public water supply project are directly assessed for the costs of construction.

(ii) The area served by a proposed public water supply project does not exceed 120% of the statewide median annual household income for Michigan.

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

(A) More than 50% of the area served by a proposed public water supply project is identified as a poverty area by the United States bureau of the census.

(B) The median annual household income of the area served by a proposed public water supply project is less than the most recently published 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 public water supply project under this subparagraph, the municipality shall utilize the most recently published statistics from the United States bureau of the census, updated to reflect current dollars, for the community which most closely approximates the area being served. If these figures are not available for the area served by the proposed public water supply project, the municipality may have a survey conducted to document the median annual household income of the area served by the project.

(C) The median annual household income of the area served by a proposed public water supply project is less than the most recently published statewide median annual household income for Michigan, and annual user costs for water supply exceed 1.5% of the median annual household income of the area served by the proposed public water supply project.

(D) The median annual household income of the area served by a proposed public water supply project is not greater than 120% of the statewide median annual household income for Michigan, and annual user costs for water supply exceed 3% of the median annual household income of the area served by the proposed project.

(d) "Federal safe drinking water act" means title XIV of the public health service act, chapter 373, 88 Stat. 1660, and the rules promulgated under that act.

(e) "Fund" means the safe drinking water revolving fund created in section 16b of the shared credit rating act, 1985 PA 227, MCL 141.1066b.

(f) "Fundable range" means those projects, taken in descending order on the priority list, for which the department estimates sufficient funds exist to provide assistance during each annual funding cycle.

(g) "Municipality" means a city, village, county, township, authority, public school district, or other public body with taxing authority, including an intermunicipal agency of 2 or more municipalities, authorized or created under state law.

(h) "Noncommunity water supply" means a public water supply that is not a community water supply, but that has not less than 15 service connections or that serves not less than 25 individuals on an average daily basis for not less than 60 days per year.

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.

(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 the effective date of this part.

(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 Act 399 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 who 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 this subdivision.

Sec. 5404. (1) Water suppliers owning the following types of public water supplies qualify to receive assistance under this part:

(a) A community water supply.

(b) A noncommunity water supply that operates as a nonprofit entity.

(2) Water suppliers identified in subsection (1) that serve 10,000 people or less may qualify for assistance from funds prescribed in section 1452(a)(2) of part 6 of the federal safe drinking water act, 42 U.S.C. 300j-12.

(3) Project planning costs are eligible for funding under this part and will be reimbursed by the department as follows:

(a) For a municipality serving greater than 10,000 people, incurred planning costs related to the proposed project may be reimbursed as part of the construction loan approved by the Michigan municipal bond authority. These costs shall be repaid as part of the outstanding construction loan proceeds according to a schedule established by the authority.

(b) For a municipality serving less than 10,000 people, incurred planning costs related to the proposed project will be directly reimbursed by the department upon completion and submittal of an approvable project plan by the municipality to the department. These costs shall be repaid as part of the outstanding planning loan proceeds according to a schedule established by the authority.

(c) For disadvantaged communities, incurred planning costs related to the proposed project shall be directly reimbursed to the extent funds are available by the department upon completion and submittal of an approvable project plan by the municipality to the department. Technical assistance funds identified in section 1452(g)(2)(D) or section 1452(d)(1) of part E of the federal safe drinking water act, 42 U.S.C. 300j-12, shall be used to the extent available, to forgive repayment of the planning loan.

(4) Only water suppliers that have no outstanding prior year fees as prescribed in Act 399 may receive assistance under this part.

(5) A federal, state, or other water supplier that is not regulated by the department shall not receive assistance under this part.

Sec. 5405. (1) A water supplier who 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 project plans 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 shall 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 shall 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 shall include an analysis of alternatives, which shall consist of a systematic identification, screening, study, evaluation, and cost-effectiveness comparison of feasible technologies, processes, and techniques. The alternatives shall 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 shall include, but not be 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 make more efficient use of energy and resources.

(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 shall 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 is implementable 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 pursuant to 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 shall describe the public participation activities conducted during planning and shall 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 shall 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 shall not have as a primary purpose the construction of or expansion of a waterworks system to accommodate future development.

Sec. 5406. (1) The department shall annually develop a priority list of projects eligible for assistance under this part. Projects that are not funded during the year that a priority list developed under this section is in effect shall be automatically prioritized on the next annual list using the same criteria, unless the water supplier submits an amendment to its project plan that introduces new information to be used as the basis for prioritization. The priority list shall be based on project plans submitted by water suppliers under section 5405 and the criteria listed in subdivisions (a) through (f). Each project shall be assigned points up to a maximum of 1,000. The point values are maximum values available for each category or subcategory listed in this section and shall only be awarded if the project substantially addresses the problem for which the point award is given. If a project is primarily designed to replace individual wells at private homes, 50% or more of the homes in the affected area shall meet equivalent water quality or infrastructure deficiency criteria listed in subdivisions (a) through (f) in order to receive the maximum available points. If less than 50% of the homes in the affected area can demonstrate deficiencies, 1/2 of the total points available shall be awarded. Points shall be awarded as follows:

(a) A maximum of 450 points may be awarded to a project that addresses drinking water quality as outlined in Act 399, if the project:

(i) Is designed to eliminate an acute violation of a drinking water standard as defined in part 4 of the administrative rules for Act 399. A violation of a surface water treatment technique, or if a waterborne disease outbreak has been documented, 250 points shall be awarded for each violation.

(ii) Is designed to eliminate a violation of a drinking water standard other than those outlined in subparagraph (i), 200 points shall be awarded for each violation.

(iii) Is designed to upgrade a facility to maintain compliance with drinking water standards or system capacity requirements, 150 points shall be awarded.

(iv) Is designed to eliminate an exceedance of a secondary maximum contaminant level for aesthetic water quality, 25 points shall be awarded.

(b) A maximum of 350 points may be awarded to a project that addresses infrastructure improvements, as follows:

(i) If source or treatment facilities are upgraded, including the watermains to connect to the distribution system, a maximum of 125 points shall be awarded, if the improvement is:

(A) To meet minimum capacity requirements, 100 points shall be awarded.

(B) For reliability, 75 points shall be awarded.

(C) For other source or treatment facility upgrades not included in subparagraph (i)(A) or (B), 25 points shall be awarded.

(D) To satisfy the conditions of a formal enforcement action, 25 points shall be awarded.

(E) For source water protection, 50 points shall be awarded.

(ii) If transmission or distribution watermains are upgraded, a maximum of 125 points shall be awarded, if the improvement is:

(A) To meet minimum capacity where flow or residual pressure is less than acceptable, 100 points shall be awarded.

(B) For reliability, including looping or redundant feeds, 75 points shall be awarded.

(C) Other transmission or distribution system upgrades not included in subparagraph (ii)(A) or (B), 25 points shall be awarded.

(D) To satisfy the conditions of a formal enforcement action, 25 points shall be awarded.

(iii) If water storage facilities or pumping stations are upgraded, a maximum of 125 points shall be awarded, if the improvement is:

(A) To meet minimum capacity where storage or pumping capacity is less than minimum requirements, 100 points shall be awarded.

(B) For reliability, 75 points shall be awarded.

(C) Other storage facility or pumping station upgrades not included in subparagraph (iii)(A) or (B), 25 points shall be awarded.

(D) To satisfy the conditions of a formal enforcement action, 25 points shall be awarded.

(c) A maximum of 50 points shall be awarded based on the population served by the water system according to the following table. However, a transient noncommunity water supply as defined in section 2 of Act 399 is eligible for 1/2 of the point value listed in the following table:

Population	Points
>50,000	50
10,001 - 50,000	40
3,301 - 10,000	30
501 - 3,300	20
0 - 500	10

(d) A maximum of 50 points shall be awarded to a community water supply that is a disadvantaged community.

(e) A maximum of 100 points shall be awarded for projects that include consolidation as follows:

(i) If 1 or more public water supplies are brought into compliance with state drinking water standards as a result of consolidation, 100 points shall be awarded.

(ii) If deficiencies, which are documented in writing by the department, at 1 or more public water supplies are corrected as a result of consolidation, 60 points shall be awarded.

(iii) Other consolidations, not included under subparagraph (i) or (ii), shall be awarded 40 points.

(f) For communities that have completed a wellhead protection plan or a source water protection plan, 100 points shall be awarded.

(g) After scoring, using the criteria in subdivisions (a) through (f), if 2 or more projects have the same score, the following tie-breaker shall be applied:

(i) If the system has fewer than 2 violations of the monitoring, record-keeping, and reporting requirements of Act 399 in the previous 2-year reporting period, or no violations if ownership of the system has changed in the previous 2 years, it shall rank above systems having more violations.

(ii) After applying the tie-breaker in subparagraph (i), if 2 or more projects score exactly the same, a calculation of the cost per population served by the water system shall be made. The affected projects shall be ranked with the lowest ratio of cost to population ranked higher.

(2) The priority list shall be submitted annually to the chairpersons of the senate and house of representatives standing committees that primarily consider legislation pertaining to the protection of public health and the environment.

(3) In preparing the priority list, to ensure that a disproportionate share of available funds for a given fiscal year is not committed to a single water supply project, the department may segment a project if either of the following criteria is present:

(a) The cost of the proposed project is more than 30% of the total amount available in the fund during the fiscal year.

(b) The department has approved a water supplier's application for segmenting a project.

(4) Segments of a project that have been segmented under subsection (3) shall be assigned priority points based on the project as identified in the project plan. After funding assistance for the first segment is accepted, the remaining segments will retain first priority for funding assistance on the next 3 fiscal year priority lists. All projects with previously funded segments will be designated with first priority. Ranking order for these projects to receive funding assistance will be subject to the relative ranking of all first segment projects.

(5) In preparing the intended use plan, the department shall make every effort to assure that funding for assistance is equitably distributed among public water supplies of varying sizes.

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

Sec. 5407. The department shall annually identify those projects in the fundable range of the priority list. Following the identification of projects in the fundable range, the department shall review, generally in priority order, the project

plans for these projects and, following completion of the environmental review process described in section 5408, either approve or disapprove the project plans.

Sec. 5408. (1) The department shall conduct an environmental review of the project plan of each project in the fundable range of the priority list to determine whether any significant impacts are anticipated and whether any changes can be made in the project to eliminate significant adverse impacts. As part of this review, the department may require the submittal of additional information or additional public participation and coordination to justify the environmental determination.

(2) Based on the environmental review under subsection (1), the department may issue a categorical exclusion for categories of actions that do not individually, cumulatively over time or in conjunction with other federal, state, local, or private actions have a significant adverse effect on the quality of the human environment or public health. Additional environmental information documentation, environmental assessments, and environmental impact statements will not be required for excluded actions.

(3) Following receipt of the project plan, the director shall determine if the proposed public water supply project qualifies for a categorical exclusion and document the decision.

(4) The director may revoke a categorical exclusion and require a complete environmental review if, subsequent to the determination, the director finds any of the following:

(a) The proposed public water supply project no longer qualifies for a categorical exclusion due to changes in the proposed plan.

(b) New evidence exists documenting a serious health or environmental issue.

(c) Federal, state, local, or tribal laws will be violated by the proposed public water supply project.

(5) The proposed project shall not qualify for a categorical exclusion if the director determines any of the following criteria are applicable:

(a) The proposed facilities result in an increase in residuals and sludge generated by drinking water processes, either volume or type, which would negatively impact the performance of the waterworks system or the disposal methods, or would threaten an aquifer recharge zone.

(b) The proposed facilities would provide service to a population greater than 30% of the existing population, unless population projections required in section 5405(3)(e) support projected needs.

(c) The proposed public water supply project is known, or expected, to directly or indirectly affect cultural areas, fauna or flora habitats, endangered or threatened species, or environmentally important natural resource areas.

(d) The proposed public water supply project directly or indirectly involves the extension of transmission systems to new service areas.

(e) The proposed public water supply project has been shown not to be the cost-effective alternative.

(f) The proposed public water supply project will cause significant public controversy.

(6) If, based on the environmental review under subsection (1), the department determines that an environmental assessment is necessary, the department may describe the following:

(a) The purpose and need for the project.

(b) The project, including its costs.

(c) The alternatives considered and the reasons for their acceptance or rejection.

(d) The existing environment.

(e) Any potential adverse impacts and mitigative measures.

(f) How mitigative measures will be incorporated into the project, as well as any proposed conditions of financial assistance and the means for monitoring compliance with the conditions.

(7) The department may issue a finding of no significant impact, based upon an environmental assessment which documents that potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(8) An environmental impact statement may be required when the department determines any of the following:

(a) The project will have a significant impact on the pattern and type of land use or the growth and distribution of the population.

(b) The effects of the project's construction or operation will conflict with local or state laws or policies.

(c) The project will have significant adverse impacts on any of the following:

(i) Wetlands.

(ii) Flood plains.

(iii) Threatened or endangered species or habitats.

(iv) Cultural resources, including any of the following:

(A) Park lands.

(B) Preserves.

(C) Other public lands.

(D) Areas of recognized scenic, recreational, agricultural, archeological, or historical value.

(d) The project will cause significant displacement of population.

(e) The project will directly or indirectly, such as through induced development, have significant adverse effect upon any of the following:

(i) Local ambient air quality.

(ii) Local noise levels.

(iii) Surface water and groundwater quantity or quality.

(iv) Shellfish.

(v) Fish.

(vi) Wildlife.

(vii) Wildlife natural habitats.

(f) The project will generate significant public controversy.

(9) Based on the environmental impact statement, a record of decision summarizing the findings of the environmental impact statement shall be issued identifying those conditions under which the project can proceed and maintain compliance with the national environmental policy act of 1969, Public Law 91-190, 42 U.S.C. 4321, 4331 to 4335, and 4341 to 4347.

(10) If 5 or more years have elapsed since a determination of compliance with national environmental policy act, or if significant changes in the project have taken place, the department shall reevaluate the project for compliance with the national environmental policy act requirements. The department may do any of the following:

(a) Reaffirm the original finding of no significant impact or the record of decision through the issuance of a public notice or statement of finding.

(b) Issue an amendment to a finding of no significant impact or revoke a finding of no significant impact and issue a public notice that the preparation of an environmental impact statement is required.

(c) Issue a supplement to a record of decision or revoke a record of decision and issue a public notice that financial assistance will not be provided.

(11) Action regarding approval of a project plan or provision of financial assistance shall not be taken during a 30-day public comment period after the issuance of a finding of no significant impact or record of decision.

Sec. 5409. (1) A water supplier whose project plan is approved or under review by the department under section 5407 may apply for assistance from the fund by submitting an application to the department. A complete application shall include all of the following, if applicable, as determined by the department:

(a) If assistance is in the form of a loan, financial documentation that a dedicated source of revenue is established, consistent with obligations of debt instruments existing at the time assistance is requested, and pledged to both of the following purposes:

(i) The timely repayment of principal and interest.

(ii) Adequate revenues to fund the operation and maintenance of the project.

(b) Evidence of an approved project plan.

(c) A certified resolution from a water supplier that is a municipality, or a letter of appointment from a water supplier that is not a municipality, designating an authorized representative for the project.

(d) A certification by an authorized representative of the water supplier affirming that the supplier has the legal, institutional, technical, financial, and managerial capability to build, operate, and maintain the project.

(e) A letter of credit, insurance, or other credit enhancement to support the credit position of the water supplier, as required by the department.

(f) A set of plans and specifications, developed in accordance with Act 399, which is suitable for bidding.

(g) A certification from an authorized representative of the water supplier that it has, or will have before the start of construction, all applicable state and federal permits required for construction of the project.

(h) A certification from an authorized representative of the water supplier that an undisclosed fact or event, or pending litigation, will not materially or adversely affect the project, the prospects for its completion, or the water supplier's ability to make timely loan repayments, if applicable.

- (i) If applicable, all executed service contracts or agreements.
- (j) An agreement that the water supplier will operate the waterworks system in compliance with applicable state and federal laws.
- (k) An agreement that the water supplier will not sell, lease, abandon, or otherwise dispose of the waterworks system without an effective assignment of obligations and the prior written approval of the department and the authority.
- (l) An agreement that:
 - (i) For water suppliers that are municipalities, all accounts will be maintained in accordance with generally accepted accounting practices, generally accepted government auditing standards, and chapter 75 of title 31 of the United States Code, 31 U.S.C. 7501 to 7507, as required by the federal safe drinking water act.
 - (ii) For water suppliers that are not municipalities, all accounts will be maintained in accordance with generally accepted accounting practices and generally accepted auditing standards.
- (m) An agreement that all water supplier contracts with contractors will require them to maintain project accounts in accordance with the requirements of this subsection and provide notice that any subcontractor may be subject to a financial audit as part of an overall project audit.
- (n) An agreement that the water supplier will provide written authorizations to the department for the purpose of examining the physical plant and for examining, reviewing, or auditing the operational or financial records of the project, and that the water supplier will require similar authorizations from all contractors, consultants, or agents with which it negotiates an agreement.
- (o) An agreement that all pertinent records shall be retained and available to the department for a minimum of 3 years after initiation of the operation and that if litigation, a claim, an appeal, or an audit is begun before the end of the 3-year period, records shall be retained and available until the 3 years have passed or until the action is completed and resolved, whichever is longer. As used in this subdivision, "initiation of the operation" means the date certain set by the water supplier and accepted by the department, on which use of the project begins for the purposes for which it was constructed.
- (p) If the project is segmented, as provided in section 5406(3), a schedule for completion of the project and adequate assurance that the project will be completed with or without assistance from the fund or that the segmented project will be operational without completion of the entire project.
- (q) An agreement that the project will proceed in a timely fashion if the application for assistance is approved.
- (r) An application fee, if required by the department.
- (2) A demonstration that a dedicated source of revenue will be available for operating and maintaining the waterworks system and repaying the incurred debt.
- (3) The department shall accept applications for assistance from water suppliers in the fundable range of the priority list and shall determine whether an application for assistance is complete.
- (4) The state is not liable to a water supplier, or any other person performing services for the water supplier, for costs incurred in developing or submitting an application for assistance under this part.

Sec. 5410. (1) A water supplier who receives assistance under this part is responsible for obtaining any federal, state, or local permits or clearances required for the project and shall perform any surveys or studies that are required in conjunction with the permits or clearances.

(2) A water supplier who receives assistance under this part shall incorporate all appropriate provisions, conditions, and mitigative measures included in the applicable studies, surveys, permits, clearances, and licenses into the construction documents. These documents are subject to review by the department for conformity with environmental determinations and coordination requirements.

(3) All applicable and appropriate conditions and mitigative measures shall be enforced by the water supplier or its designated representative and shall apply to all construction and post-construction activities, including disposal of all liquid or solid spoils, waste material, and residuals from construction.

Sec. 5411. (1) The department shall review a complete application for assistance for a proposed project submitted under section 5409. If the department approves the application for assistance, the department shall issue an order of approval to establish the specific terms of the assistance. The order of approval shall include, but need not be limited to, all of the following:

- (a) The term of the assistance.
- (b) The maximum principal amount of the assistance.
- (c) The maximum rate of interest or method of calculation of the rate of interest that will be used, or the premium charged.

(2) The order of approval under subsection (1) shall incorporate all requirements, provisions, or information included in the application and other documents submitted to the department during the application process.

(3) After issuance of the order of approval under subsection (1), the department shall certify to the authority that the water supplier is eligible to receive assistance.

Sec. 5412. (1) The department may bypass projects that fail to meet the schedule negotiated and agreed upon between the water supplier and the department, or that do not have approved project plans and specifications and an approvable application 90 days prior to the last day of the state fiscal year, whichever comes first.

(2) A water supplier may submit a written request to the department to extend a project schedule for not more than 60 days. The request shall provide the reason for the noncompliance with the schedule. A water supplier may file 1 additional 30-day extension request to its schedule.

(3) A project bypassed under this section shall not be considered for an order of approval until all other projects have either been funded or rejected. This section does not prohibit the inclusion of the project in the priority list of the next annual funding cycle or the resubmission of an application for assistance in the next annual funding cycle.

(4) The department shall provide affected water suppliers with a written notice of intent to bypass not less than 30 days before the bypass action.

(5) For projects bypassed under this section, the department shall transmit to the water supplier an official notice of bypass for the fundable project.

(6) A bypass action under this section does not modify any compliance dates established pursuant to a permit, order, or other document issued by the department or entered as part of an action brought by the state or a federal agency.

(7) After a project is bypassed, the department may award assistance to projects outside the fundable range. Assistance shall be made available to projects outside the fundable range in priority order contingent upon the supplier's satisfaction of all applicable requirements for assistance within the time period established by the department, but not to exceed 60 days from the date of notification. The department shall notify water suppliers with projects outside the fundable range of bypass action, of the amount of bypassed funds available for obligation, and of the deadline for submittal of a complete, approvable application.

Sec. 5413. (1) The department may make a determination that assistance should be terminated and may issue an order recommending that the authority take appropriate action to terminate assistance.

(2) Cause for making a determination under subsection (1) includes, but is not limited to, 1 or more of the following:

(a) Substantial failure to comply with the terms and conditions of the agreement providing assistance.

(b) A legal finding or determination that the assistance was obtained by fraud.

(c) Practices in the administration of the project that are illegal or that may impair the successful completion or organization of the project.

(d) Misappropriation of assistance for uses other than those set forth in the agreement providing assistance.

(e) Failure to accept an offer of assistance from the fund within a period of 30 days after receipt of a proposed loan agreement from the authority.

(3) The department shall give written notice to the water supplier by certified letter of the intent to issue an order of termination. This notification shall be issued not less than 30 days before the department forwards the order recommending that the authority take appropriate action to terminate assistance.

(4) The termination of assistance by the authority shall not excuse or otherwise affect the water supplier's requirement for repayment of the outstanding loan balance to the fund. The water supplier shall repay the outstanding loan proceeds according to a schedule established by the authority.

(5) Termination of assistance under this section does not relieve the water supplier of any requirements that may exist under state or federal law to construct the project.

(6) Any settlement costs incurred in the termination of project assistance are the responsibility of the water supplier.

Sec. 5414. (1) A water supplier may petition the department to make a determination that assistance to that water supplier should be terminated.

(2) Upon receipt of a petition under subsection (1), the department may issue an order recommending the authority to take appropriate action to terminate the assistance for a project for cause. The order is effective on the date the project ceases activities.

(3) Subject to the termination of assistance by the authority and payment of any appropriate termination settlement costs, the department shall issue an order of termination to the authority recommending appropriate action.

(4) The termination of assistance by the authority does not excuse or otherwise affect the water supplier's requirement for repayment of the outstanding loan balance to the fund. The water supplier shall repay the outstanding loan proceeds according to a schedule established by the authority.

(5) Termination of assistance under this section does not relieve the water supplier of any requirements that may exist under state or federal law to construct the project.

(6) Any settlement costs incurred in the termination of project assistance are the responsibility of the water supplier.

Sec. 5415. (1) The department shall annually establish the interest rates to be assessed for projects receiving assistance under this part. These rates of interest shall be in effect for loans made during the next state fiscal year.

(2) In establishing the interest rates under subsection (1), all of the following criteria shall be considered:

- (a) Future demands.
- (b) Present demands.
- (c) Market conditions.
- (d) Cost of compliance with program elements.

Sec. 5416. The costs of administering and implementing this part by the department, the designated agents of the department, and the authority may be paid from funds annually appropriated by the legislature from 1 or more of the following sources:

(a) An amount taken from the federal capitalization grant, subject to the limitations prescribed in the federal safe drinking water act.

(b) A local match provided by the water supplier receiving assistance not to exceed the department's administrative costs associated with providing the assistance.

(c) Interest or earnings realized on loan repayments to the fund, unless the earnings are pledged to secure or repay any indebtedness of the authority.

(d) Proceeds of bonds or notes issued pursuant to the fund and sold by the authority.

(e) Any other money appropriated by the legislature.

Sec. 5417. In implementing this part, the department may do 1 or more of the following:

(a) Make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient for the implementation of this part.

(b) Solicit and accept gifts, grants, loans, allocations, appropriations, and other aid, including capitalization grant awards, from any person or the federal, state, or a local government or any agency of the federal, state, or local government, enter into agreements with any person or the federal, state, or a local government, or participate in any other way in any federal, state, or local government program consistent with this part and the purposes of this part.

(c) Expend federal and state money allocated under the federal safe drinking water act for any of the following purposes, in accordance with that act:

(i) Fund activities authorized under section 1452(g)(2) of the federal safe drinking water act, which may include fund administration and the provision of set-asides annually identified as part of an intended use plan.

(ii) Fund implementation of a technical assistance program created in Act 399 and used by the state to provide technical assistance to public water systems serving not more than 10,000 persons.

(iii) Fund activities authorized under section 1452(k) of the federal safe drinking water act, which may include the lending of money for certain source water protection efforts, assisting in the implementation of capacity development strategies, conducting source water assessments, and implementing wellhead protection programs.

(d) Negotiate and enter into agreements and amendments to agreements with the federal government to implement establishment and operation of the fund, including capitalization grant agreements and schedules of payments.

(e) Employ personnel as is necessary, and contract for the services of private consultants, managers, counsel, auditors, engineers, and scientists for rendering professional management and technical assistance and advice.

(f) Charge, impose, and collect fees and charges in connection with any transaction authorized under this part and provide for reasonable penalties for delinquent payment of fees or charges.

(g) Review and approve all necessary documents in a water supplier's application for assistance and issue an order authorizing assistance to the authority.

(h) Promulgate rules necessary to carry out the purposes of this part and to exercise the powers expressly granted in this part.

(i) Administer, manage, and do all other things necessary or convenient to achieve the objectives and purposes of the fund, the authority, this part, or other state and federal laws that relate to the purposes and responsibilities of the fund.

(j) Apply for a capitalization grant and prepare, submit, and certify any required or appropriate information with that application.

(k) Establish priority lists and fundable ranges for projects and the criteria and methods used to determine the distribution of the funds available to the fund among the various types of assistance to be offered and select projects to be funded.

(l) Prepare and submit an annual intended use plan and an annual report as required under the federal safe drinking water act. The department shall annually invite stakeholders including, but not limited to, representatives of water utilities, local units of government, agricultural interests, industry, public health organizations, medical organizations, environmental organizations, consumer organizations, and drinking water consumers who are not affiliated with any of the other represented interests, to 1 or more public meetings to provide recommendations for the development of the annual intended use plan as it relates to the set-asides allowed under the federal safe drinking water act.

(m) Perform other functions necessary or convenient for the implementation of this part.

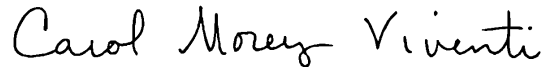
Sec. 5418. Determinations made by the department may be appealed in writing to the director. Determinations made by the director are final. Judicial review may be sought under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4466 of the 89th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.