

Act No. 98  
Public Acts of 1993  
Approved by the Governor  
July 13, 1993  
Filed with the Secretary of State  
July 13, 1993

**STATE OF MICHIGAN**  
**87TH LEGISLATURE**  
**REGULAR SESSION OF 1993**

Introduced by Reps. Brown, Alley, Byrum, Yokich, Munsell, Bodem, Hill, McNutt, Middaugh, Shepich,  
Freeman and Wetters

# **ENROLLED HOUSE BILL No. 4500**

AN ACT to amend sections 3, 4, 6, 7, 9, and 12 of Act No. 317 of the Public Acts of 1988, entitled "An act to provide for the administration of the state water pollution control revolving fund for water pollution control activities; to prescribe the powers and duties of certain state departments and offices and municipalities; and to provide for an appropriation," being sections 323.453, 323.454, 323.456, 323.457, 323.459, and 323.462 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 3, 4, 6, 7, 9, and 12 of Act No. 317 of the Public Acts of 1988, being sections 323.453, 323.454, 323.456, 323.457, 323.459, and 323.462 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 3. (1) "Act 245" means Act No. 245 of the Public Acts of 1929, being sections 323.1 to 323.12a of the Michigan Compiled Laws.

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

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

(b) Project refinancing assistance.

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

(d) 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.

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

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

(g) Provision for reasonable costs of administering and conducting activities under title VI of the federal water pollution control act.

(3) "Authority" means the Michigan municipal bond authority created in the shared credit rating act, Act No. 227 of the Public Acts of 1985, being sections 141.1051 to 141.1078 of the Michigan Compiled Laws.

(4) "Capitalization grant" means the federal grant made to this state by the EPA for the purpose of establishing a state water pollution control revolving fund, as provided in title VI of the federal water pollution control act, chapter 758, 101 Stat. 22, 33 U.S.C. 1381 to 1387.

(5) "Construction activities" means any actions undertaken in the designing or building of sewage treatment works projects, stormwater treatment projects, or nonpoint source projects. The term includes, but is not limited to, all of the following:

- (a) Engineering services.
- (b) Legal services.
- (c) Financial services.
- (d) Design of plans and specifications.
- (e) Acquisition of land or structural components, or both.
- (f) Building, erection, alteration, remodeling, or extensions of a sewage treatment works.
- (g) Building, erection, alteration, remodeling, or extensions of projects designed to control nonpoint source pollution, consistent with section 319 of title III of the federal water pollution control act, chapter 758, 101 Stat. 52, 33 U.S.C. 1329.
- (h) Building, erection, alteration, or remodeling of a stormwater treatment project.
- (i) Municipal supervision of the project activities described in subdivisions (a) to (h).
- (6) "Department" means the department of natural resources.
- (7) "Director" means the director of the department or his or her designated representative.
- (8) "EPA" means the federal environmental protection agency.
- (9) "Federal water pollution control act" means chapter 758, 86 Stat. 816, 33 U.S.C. 1251 to 1252, 1253 to 1254, 1255 to 1257, 1258 to 1263, 1265 to 1270, 1281, 1282 to 1293, 1294 to 1299, 1311 to 1313, 1314 to 1326, 1328 to 1330, 1341 to 1345, 1361 to 1377, and 1381 to 1387.
- (10) "Fund" means the state water pollution control revolving fund created in the shared credit rating act, Act No. 227 of the Public Acts of 1985, being sections 141.1051 to 141.1078 of the Michigan Compiled Laws, established pursuant to title VI of the federal water pollution control act, chapter 758, 101 Stat. 22, 33 U.S.C. 1381 to 1387.

Sec. 4. (1) "Fundable range" means those projects, taken in descending order on the priority lists, for which sufficient funds are estimated by the director to exist to provide assistance at the beginning of each annual funding cycle.

(2) "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 title III of the federal water pollution control act, chapter 758, 101 Stat. 52, 33 U.S.C. 1329.

(3) "Nonpoint source project" means construction activities designed to reduce nonpoint source pollution consistent with the state nonpoint source management plan pursuant to section 319 of title III of the federal water pollution control act, chapter 758, 101 Stat. 52, 33 U.S.C. 1329.

(4) "Project" means a sewage treatment works project, a stormwater treatment project, or a nonpoint source project, or a combination of these.

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

(6) "Priority list" means the annual ranked listing of projects developed by the director in section 6 or used by the director pursuant to section 18.

(7) "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.

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

(9) "Tier I project" means a project for which assistance is sought or provided from funds made directly available from the federal capitalization grant.

(10) "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.

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

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

(3) The project plan for a tier I project shall include documentation that demonstrates that the project is needed to assure maintenance of, or to progress toward, compliance with the federal water pollution control act or Act 245, and

to meet the minimum requirements of the national environmental policy act of 1969, Public Law 91-190, 42 U.S.C. 4321, 4331 to 4335, and 4341 to 4347. The documentation shall demonstrate all of the following:

- (a) The need for the project.
- (b) That feasible alternatives to the project were evaluated taking into consideration the demographic, topographic, hydrologic, and institutional characteristics of the area.
- (c) That the project is cost effective and implementable from legal, institutional, financial, and management standpoints.
- (d) Other information as required by the director.

(4) The project plan for a tier II project shall include documentation that demonstrates that the project is or was needed to assure maintenance of or progress towards compliance with the federal water pollution control act or Act 245, and is consistent with all applicable state environmental laws. The documentation shall include all of the following information:

- (a) Information to demonstrate the need for the project.
- (b) A showing that the cost of the project is or was justified, taking into account available alternatives. Those costs determined by the director to be in excess of those costs justified will not be eligible for assistance under this act.
- (5) After notice and an opportunity for public comment, the director shall annually develop a priority list for sewage treatment works projects and stormwater treatment projects, and a separate priority list for nonpoint source projects. Projects not funded during the time 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 municipality submits an amendment to its plan that introduces new information to be used as the basis for prioritization. These priority lists shall be based upon project plans submitted by municipalities and the following criteria:

- (a) That a project complies with all applicable standards in Act 245 and the federal water pollution control act.
- (b) An application for a segment of a project that received funds under the title II construction grant program or title VI state revolving loan funds of the federal water pollution control act shall be first priority for funding for a period of not more than 3 years after funds were first committed under those programs.
- (c) If the project is a sewage treatment works project or a stormwater treatment project, all of the following criteria:
  - (i) The severity of the water pollution problem to be addressed, maximizing progress towards restoring beneficial uses and meeting water quality standards.
  - (ii) A determination of whether a project is or was necessary to comply with an order, permit, or other document issued by the director or the department or entered as part of an action brought by the state against the municipality or any component of the municipality.
  - (iii) The population to be served by the project.
  - (iv) The dilution ratio existing between the discharge volume and the receiving stream.
- (d) Rankings for nonpoint source projects shall be consistent with the state nonpoint source management plan developed pursuant to section 319 of title III of the federal water pollution control act, chapter 758, 101 Stat. 52, 33 U.S.C. 1329.
- (e) Any other criteria established by the director by rule.
- (6) The priority list shall be submitted annually to the chair of the senate and house of representatives standing committees that consider legislation pertaining to the environment and natural resources.
- (7) For purposes of providing assistance, the priority list shall take effect at the beginning of each fiscal year.
- (8) This section shall not limit other actions undertaken to enforce provisions of Act 245, the federal water pollution control act, or any other act.

Sec. 7. Subject to sections 12 and 13, assistance provided to municipalities to construct sewage treatment works projects, stormwater projects, and nonpoint source projects shall be in accordance with all of the following requirements:

- (a) Assistance for approved sewage treatment works projects and stormwater treatment projects shall be provided for projects in the fundable range of the priority list developed pursuant to section 6(3) or (4), and to other projects that may become fundable pursuant to section 13.
- (b) Assistance for approved qualified nonpoint source projects shall be provided for projects in the fundable range of the priority list developed pursuant to section 6(3) or (4).

Sec. 9. (1) The director shall prepare and submit an intended use plan annually to identify proposed annual intended uses of the fund, and to facilitate the negotiation process that the director may conduct with the EPA for the capitalization grant agreement and schedule of payments to be made to this state under the federal water pollution control act.

(2) The director shall provide for a public participation process that shall require not less than 1 public hearing for the intended use plan. The director may make changes in the intended use plan without holding additional hearings in response to the comments received from the EPA and through the public participation process.

(3) The intended use plan shall include all of the following:

(a) A copy of the state's priority lists.

(b) A description of the long- and short-term goals of the fund.

(c) The proposed fundable range and an allocation of the funds available for projects on the nonpoint source priority list and for the sewage treatment works projects and stormwater treatment projects priority list.

(d) A description of the projects that are on the priority lists, including project categories and types, applicable discharge or enforceable requirements, proposed terms of the assistance, including a schedule of estimated disbursements of funds, and the names of the municipalities proposed to receive assistance.

(e) Any necessary assurances or proposals indicating how the state intends to meet applicable federal requirements.

(f) A description of the criteria and method for distribution of the fund.

(g) A description of the public participation process followed in the development of the intended use plan and the results of that process.

(h) Any other information needed to comply with the federal water pollution control act.

(i) Any other information considered appropriate by the director.

(4) Upon notice from the EPA that the intended use plan is approved, the director shall notify each municipality of its inclusion on the intended use plan and shall further provide copies of the sewage treatment works projects and stormwater treatment projects priority list, the nonpoint source project priority list, and the intended use plan to all persons requesting such information. Following notification, the director shall establish, with the concurrence of the municipality, a schedule for project plan approval, submittal of a complete application for assistance, and approval of plans and specifications.

Sec. 12. To ensure that a disproportionate share of available funds for a given fiscal year is not committed to a single sewage treatment work project or stormwater project, the director may segment a sewage treatment work project if either of the following criteria is present:

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

(b) Upon application of a municipality, the director has approved a municipality's application for segmenting a project.

This act is ordered to take immediate effect.

-----  
Co-Clerk of the House of Representatives.

-----  
Secretary of the Senate.

Approved \_\_\_\_\_

-----  
Governor.