

Act No. 288
Public Acts of 1998
Approved by the Governor
July 27, 1998
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July 27, 1998
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Senators Bennett, Dunaskiss, Gast, North, Gougeon, Koivisto, Stille, McManus, DeBeaussaert, Rogers, Steil, Schuette, Bullard, Conroy, Miller, Young, Hart, Byrum, Cherry, V. Smith, Emmons, A. Smith, Hoffman, Vaughn and Schwarz

ENROLLED SENATE BILL No. 904

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 196.

The People of the State of Michigan enact:

PART 196 CLEAN MICHIGAN INITIATIVE IMPLEMENTATION

Sec. 19601. As used in this part:

- (a) "Bonds" means the bonds authorized under the clean Michigan initiative act.
- (b) "Corrective action" means that term as it is defined in part 213.
- (c) "Department" means the department of environmental quality.
- (d) "Facility" means that term as it is defined in part 201.
- (e) "Fund" means the clean Michigan initiative bond fund created in section 19606.
- (f) "Gaming facility" means a gaming facility regulated under the Michigan gaming control and revenue act, the Initiated Law of 1996, MCL 432.201 to 432.226.
- (g) "Local unit of government" means a county, city, village, or township, or an agency of a county, city, village, or township; or an authority or other public body created by or pursuant to state law.
- (h) "Response activity" means that term as it is defined in part 201.

Sec. 19602. The legislature finds and declares that the environmental and natural resources protection programs implemented under this part are a public purpose and of paramount public concern in the interest of the health, safety, and general welfare of the citizens of this state.

Sec. 19603. (1) The bonds shall be issued in 1 or more series, each series to be in a principal amount, to be dated, to have the maturities which may be either serial, term, or both, to bear interest at a rate or rates, to be subject or not subject to prior redemption, and if subject to prior redemption with or without call premiums, to be payable at a place or places, to have or not have provisions for registration as to principal only or as to both principal and interest, to be in a form and to be executed in a manner as shall be determined by resolution to be adopted by the state administrative

board and subject to or granting those covenants, directions, restrictions, or rights specified by resolution to be adopted by the state administrative board as necessary to ensure the marketability, insurability, or tax exempt status of the bonds. The state administrative board shall rotate the services of legal counsel when issuing bonds.

(2) The state administrative board may refund bonds issued under this part by the issuance of new bonds, whether or not the bonds to be refunded have matured or are subject to prior redemption. The state administrative board may issue bonds partly to refund bonds issued under this part and partly for any other purpose provided by this part. The principal amount of any refunding bonds issued pursuant to this section shall not be counted against the limitation on principal amount provided in the clean Michigan initiative act. Further, refunding bonds issued pursuant to this section are not subject to the restrictions of section 19607.

(3) The state administrative board may approve insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds, and any other transaction to provide security to assure timely payment or purchase of any bond issued under this part.

(4) The state administrative board may authorize the state treasurer, but only within limitations contained in the authorizing resolution of the board, to do 1 or more of the following:

- (a) Sell and deliver and receive payment for the bonds.
- (b) Deliver bonds partly to refund bonds and partly for other authorized purposes.
- (c) Select which outstanding bonds will be refunded, if any, by the new issue of bonds.
- (d) Buy issued bonds at not more than their face value.

(e) Approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, purchase prices, purchase dates, remarketing dates, denominations, dates of issuance, interest payment dates, redemption rights at the option of the state or the owner, the place and time of delivery and payment, and other matters and procedures necessary to complete the authorized transactions.

(f) Execute, deliver, and pay the cost of remarketing agreements, insurance contracts, agreements for lines of credit, letters of credit, commitments to purchase bonds or notes, and any other transaction to provide security to assure timely payments or purchase of any bond issued under this part.

(5) The bonds shall be approved by the department of treasury before their issuance but are not otherwise subject to the municipal finance act, 1943 PA 202, MCL 131.1 to 139.3.

(6) The bonds or any series of the bonds shall be sold at such price and at a publicly advertised sale as determined by the state administrative board.

(7) The bonds shall be sold in accordance with a schedule established by the state administrative board.

Sec. 19604. The bonds shall be fully negotiable under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102. The bonds and the interest on the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

Sec. 19605. The bonds are securities in which banks, savings and loan associations, investment companies, credit unions, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all administrators, executors, guardians, trustees, and other fiduciaries may properly and legally invest funds, including capital, belonging to them or within their control.

Sec. 19606. (1) The clean Michigan initiative bond fund is created in the state treasury.

(2) The fund shall consist of all of the following:

- (a) The proceeds of sales of the bonds and any premium and accrued interest received on the delivery of the bonds.
- (b) Any interest or earnings generated by the proceeds described in subdivision (a).
- (c) Any repayment of principal and interest made under a loan program authorized in this part.
- (d) Any federal or other funds received.

(3) The department of treasury may establish restricted subaccounts within the fund as necessary to administer the fund.

Sec. 19607. (1) The total proceeds of all bonds shall be deposited into the fund and allocated as follows:

- (a) Not more than \$335,000,000.00 shall be used for response activities at facilities.
- (b) Not more than \$50,000,000.00 shall be used for waterfront improvements.
- (c) Not more than \$25,000,000.00 shall be used for remediation of contaminated lake and river sediments.
- (d) Not more than \$50,000,000.00 shall be used for nonpoint source pollution prevention and control projects or wellhead protection projects.
- (e) Not more than \$90,000,000.00 shall be used for water quality monitoring and water resources protection and pollution control activities.

- (f) Not more than \$20,000,000.00 shall be used for pollution prevention programs.
- (g) Not more than \$5,000,000.00 shall be used to abate lead hazards.
- (h) Not more than \$50,000,000.00 shall be used for state park infrastructure improvements.
- (i) Not more than \$50,000,000.00 shall be used for local recreation projects.

(2) The state treasurer shall direct the investment of the fund. Except as may be required to maintain the exclusion from gross income of the interest paid on the bonds or to comply otherwise with state or federal law, interest and earnings from investment of the proceeds of any bond issue shall be allocated in the same proportion as earned on the investment of the proceeds of the bond issue.

(3) Except as may be required to maintain the exclusion from gross income of the interest paid on the bonds or to comply otherwise with state or federal law, all repayments of principal and interest earned under a loan program authorized by this part shall be credited to the appropriate restricted subaccount of the fund and used for the purposes authorized for that subaccount or to pay debt service on any obligation issued which pledges the loan repayments and the proceeds of which are deposited in that subaccount.

(4) The bond proceeds shall be expended in an appropriate manner that maintains the tax exempt status of the bonds.

(5) The unencumbered balance in the fund at the close of the fiscal year shall remain in the fund and shall not revert to the general fund.

(6) The department shall provide an annual accounting of bond proceeds spending on a cash basis to the department of treasury in order for the state to comply with requirements set forth for issuing tax exempt bonds, including arbitrage rebate calculations. This accounting shall be submitted to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate.

Sec. 19608. (1) Money in the fund that is allocated under section 19607 shall be used for the following purposes:

(a) Money allocated under section 19607(1)(a) shall be used by the department to fund all of the following:

(i) Corrective actions undertaken by the department to address releases from leaking underground storage tanks pursuant to part 213.

(ii) Response activities undertaken by the department at facilities pursuant to part 201 to address public health and environmental problems or to promote redevelopment.

(iii) Assessment activities undertaken by the department to determine whether a property is a facility.

(iv) Not more than \$20,000,000.00 shall be used to provide grants and loans to local units of government and brownfield redevelopment authorities created under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672, for response activities at known or suspected facilities with redevelopment potential.

(v) Not more than \$12,000,000.00 shall be used for grants pursuant to the municipal landfill grant program under section 20109a.

(b) Money allocated under section 19607(1)(b) shall be used for waterfront redevelopment grants pursuant to part 795.

(c) Money allocated under section 19607(1)(c) shall be used for response activities for the remediation of contaminated lake and river sediments pursuant to part 201.

(d) Money allocated under section 19607(1)(d) shall be used for nonpoint source pollution prevention and control grants or wellhead protection grants pursuant to part 88.

(e) Money allocated under section 19607(1)(e) shall be deposited into the clean water fund created in part 88.

(f) Money allocated under section 19607(1)(f) shall be expended as follows:

(i) \$10,000,000.00 shall be deposited into the retired engineers technical assistance program fund created in section 14512.

(ii) \$5,000,000.00 shall be deposited into the small business pollution prevention assistance revolving loan fund created in section 14513.

(iii) \$5,000,000.00 shall be used by the department to implement pollution prevention activities other than those funded under subparagraphs (i) and (ii).

(g) Money that is allocated under section 19607(1)(g) shall be used by the department of community health for remediation and physical improvements to structures to abate or minimize exposure of persons to lead hazards.

(h) Money allocated under section 19607(1)(h) shall be used for infrastructure improvements at Michigan state parks as determined by the department of natural resources. The installation or upgrade of drinking water systems or rest room facilities shall be the first priority.

(i) Money allocated under section 19607(1)(i) shall be used to provide grants to local units of government for local recreation projects pursuant to part 716.

(2) Of the money allocated under section 19607(1)(a), not less than \$40,000,000.00 or more than \$60,000,000.00 shall be used for facilities that pose an imminent or substantial endangerment to the public health, safety, or welfare, or to the environment. For purposes of this subsection, facilities that pose an imminent or substantial endangerment shall include, but are not limited to, those where public access poses hazards because of potential exposure to chemicals or safety risks and where drinking water supplies are threatened by contamination.

(3) Before expending any funds allocated under subsection (1)(c) at a site that is an area of concern as designated by the parties to the Great Lakes water quality agreement, the department shall notify the public advisory council established to oversee that area of concern regarding the development, implementation, and evaluation of response activities to be conducted with money in the fund at that area of concern.

(4) Money in the fund shall not be used to develop a municipal or commercial marina.

(5) Money provided in the fund may be used by the department of treasury to pay for the cost of issuing bonds and by the department and the department of natural resources to pay department costs as provided in this subsection. Not more than 3% of the total amount specified in section 19607(1)(a) to (f) shall be available for appropriation to the department to pay its costs directly associated with the completion of a project authorized by section 19607(1)(a) to (f). Not more than 3% of the total amount specified in section 19607(1)(h) and (i) shall be available for appropriation to the department of natural resources to pay its costs directly associated with the completion of a project authorized by section 19607(1)(h) and (i). It is the intent of the legislature that general fund appropriations to the department and to the department of natural resources shall not be reduced as a result of costs funded pursuant to this subsection.

(6) A grant shall not be provided under this part for a project that is located at any of the following:

(a) Land sited for use as a gaming facility or as a stadium or arena for use by a professional sports team.

(b) Land or other facilities owned or operated by a gaming facility or by a stadium or arena for use by a professional sports team.

(c) Land within a project area described in a project plan pursuant to the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636, for a gaming facility.

(7) The department, the department of natural resources, and the department of community health shall each submit annually a list of all projects that will be undertaken by that department that are recommended to be funded under this part. The list shall be submitted to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the appropriations committees in the house of representatives and the senate. The list shall be submitted to the legislative committees not later than February 15 of each year. This list shall also be submitted before any request for supplemental appropriation of bond funds. For each eligible project, the list shall include the nature of the eligible project; the county in which the eligible project is located; an estimate of the total cost of the eligible project; and other information considered pertinent by the administering state department. A project that is funded by a grant or loan with money from the fund does not need to be included on the list submitted under this subsection. However, money in the fund that is appropriated for grants and loans shall not be encumbered or expended until the administering state department has reported those projects that have been approved for a grant or a loan to the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment and to the appropriations subcommittees in the house of representatives and the senate on natural resources and environmental quality. Before submitting the first cycle of recommended projects under section 19608(1)(a) pursuant to this subsection, the department shall publish and disseminate the criteria it will use in evaluating and recommending these projects for funding.

(8) The legislature shall appropriate prospective or actual bond proceeds for projects proposed to be funded. Appropriations shall be carried over to succeeding fiscal years until the project for which the funds are appropriated is completed.

(9) Not later than December 31 of each year, the department, the department of natural resources, and the department of community health shall each submit a list of the projects financed under this part by that department to the governor, the standing committees of the house of representatives and the senate that primarily address issues pertaining to the protection of natural resources and the environment, and the subcommittees of the house of representatives and the senate on appropriations on natural resources and environmental quality. Each list shall include the name, address, and telephone number of the recipient or participant, if appropriate; the name and location of the project; the nature of the project; the amount of money allocated to the project; the county in which the project is located; a brief summary of what has been accomplished by the project; and other information considered pertinent by the administering state department.

Sec. 19609. An application for a grant or a loan from the fund shall be made on a form or in a format prescribed by the administering state department. The administering state department may require the applicant to provide any information reasonably necessary to allow the administering state department to make a determination required by this part.

Sec. 19610. The administering state department shall not make a grant or a loan with money from the fund unless all of the following conditions are met:

(a) The applicant demonstrates that the proposed project is in compliance with all applicable state laws and rules or will result in compliance with state laws and rules.

(b) The applicant demonstrates to the administering state department the capability to carry out the proposed project.

(c) The applicant demonstrates to the administering state department that there is an identifiable source of funds for the future maintenance and operation of the proposed project, if appropriate.

(d) Within the last 24 months, the applicant has successfully undergone an audit conducted in accordance with generally accepted auditing standards.

(e) Within the last 24 months, the applicant has not had a grant from the administering state department revoked or terminated or had the administering state department determine that the applicant demonstrated an inability to manage a grant.

Sec. 19611. Prior to making a grant or loan with money from the fund, the administering state department shall consider the extent to which the making of the grant or loan contributes to the achievement of a balanced distribution of grants and loans throughout the state.

Sec. 19612. (1) A recipient of a grant or a loan made with money from the fund shall do both of the following:

(a) Keep an accounting of the money spent on the project or facility in a generally accepted manner. The accounting shall be subject to a postaudit.

(b) Obtain authorization from the administering state department before implementing a change that significantly alters the proposed project.

(2) The administering state department may revoke a grant or a loan made with money from the fund or withhold payment if the recipient fails to comply with the terms and conditions of the grant or loan agreement or with the requirements of this part or the rules promulgated under this part, or with other applicable law or rules. If a grant or loan is revoked, the administering state department may recover all funds awarded.

(3) The administering state department may withhold a grant or a loan until the administering state department determines that the recipient is able to proceed with the proposed project.

(4) To assure timely completion of a project, the administering state department may withhold 10% of the grant or loan amount until the project is complete.

(5) If an approved applicant fails to sign a grant or loan agreement within 90 days after receipt of a written grant or loan offer by the administering state department, the administering state department may cancel the grant or loan offer. The applicant may not appeal or contest a cancellation pursuant to this subsection.

(6) The administering state department may terminate a grant or loan agreement and require immediate repayment of the grant or loan if the recipient uses grant or loan funds for any purpose other than for the approved activities specified in the grant or loan agreement. The administering state department shall provide the recipient written notice of the termination 30 days prior to the termination.

(7) A loan made with money in the fund shall have the following terms:

(a) A loan interest rate of not more than 50% of the prime rate as determined by the administering state department as of the date of approval of the loan.

(b) Loan recipients shall repay loans in equal annual installments of principal and interest beginning not later than 5 years after execution of a loan agreement and concluding not later than 15 years after execution of a loan agreement.

(c) A loan recipient shall enter into a loan agreement with the administering state department. At a minimum, the loan agreement shall contain a commitment that the loan is secured by a full faith and credit pledge of the applicant, or if the applicant is an authority established pursuant to the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672, the commitment shall be from the municipality that created the authority pursuant to that act.

(d) Upon default of a loan, as determined by the administering state department, or upon the request of the loan recipient as a method to repay the loan, the department of treasury shall withhold state payments from the loan recipient in amounts consistent with the repayment schedule in the loan agreement until the loan is repaid. The department of treasury shall deposit these withheld funds into the fund until the loan is repaid.

(8) Loan payments and interest shall be deposited in the fund.

(9) Upon default of a loan, as determined by the administering state department, or upon the request of the loan recipient as a method to repay the loan, the department of treasury shall withhold from the loan recipient state payments in amounts consistent with the repayment schedule in the loan agreement until the loan is repaid. The department of treasury shall deposit these withheld funds into the fund until the loan is repaid.

Sec. 19613. Of the funds to be used to provide grants and loans under section 19608(1)(a)(iv), all of the following conditions apply:

(a) A recipient of a grant shall receive not more than 1 grant per year not to exceed \$1,000,000.00 per grant.

(b) A recipient of a loan shall receive a maximum of 1 loan per year not to exceed \$1,000,000.00 per loan.

(c) A grant shall be awarded only if the department determines that both of the following apply:

(i) The property is a facility as defined in section 20101.

(ii) The proposed development of the property will result in measurable economic benefit in excess of the grant amount requested by the applicant.

(d) A loan shall be awarded only if the department determines that both of the following apply:

(i) The property is a facility as defined in section 20101 or is suspected of being a facility.

(ii) The property has economic development potential based on the applicant's planned use of the property.

Sec. 19614. The department and the department of the attorney general may recover costs expended pursuant to section 19608(1)(a)(i) to (iv) for corrective actions, response activities, site assessments, and all other recoverable costs under part 201 from persons who are liable under part 201. Actions to recover costs shall be undertaken in the manner provided in part 201.

Sec. 19615. Every 2 years that state programs funded with money from the fund continue to be administered, the auditor general shall conduct a performance audit of these programs. Upon completion of a performance audit under this section, the auditor general shall submit a copy of the performance audit to the audited department and to the legislature.

Sec. 19616. The department may promulgate rules as are necessary to implement this part.

Enacting section 1. This amendatory act takes effect December 1, 1998.

Enacting section 2. This amendatory act does not take effect unless the question provided for in the clean Michigan initiative act is approved by a majority of the registered electors voting on the question at the November 1998 general election.

Enacting section 3. This amendatory act does not take effect unless all of the following bills of the 89th Legislature are enacted into law:

(a) Senate Bill No. 902.

(b) House Bill No. 5620.

(c) House Bill No. 5622.

(d) House Bill No. 5719.

This act is ordered to take immediate effect.



Secretary of the Senate.



Clerk of the House of Representatives.

Approved _____

Governor.