

SENATE BILL No. 912

April 21, 2016, Introduced by Senator KNEZEK and referred to the Committee on Commerce.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 19609, 19610, 19611, and 19612 (MCL 324.19609,
324.19610, 324.19611, and 324.19612), sections 19609, 19610, and
19611 as added by 1998 PA 288 and section 19612 as amended by 2014
PA 115, and by adding section 19610a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 19609. (1) An application for a grant or a loan from the
2 fund shall be made on a form or in a format prescribed by the
3 administering state department. The administering state department
4 may require the applicant to provide any information reasonably
5 necessary to allow the administering state department to make a
6 determination required by this part.

1 (2) OF THE FUNDS TO BE USED TO PROVIDE GRANTS AND LOANS UNDER
2 SECTION 19608(1) (A) (iv) , THE FOLLOWING APPLY:

3 (A) THE DEPARTMENT SHALL ACCEPT, AND CONSIDER FOR APPROVAL,
4 APPLICATIONS FOR GRANTS AND LOANS THROUGHOUT THE YEAR.

5 (B) THE DEPARTMENT SHALL MAKE FINAL APPLICATION DECISIONS
6 WITHIN 90 DAYS AFTER RECEIPT OF A COMPLETE GRANT OR LOAN
7 APPLICATION.

8 (C) A COMPLETE APPLICATION INCLUDES ALL OF THE FOLLOWING:

9 (i) A DESCRIPTION OF THE PROPOSED ELIGIBLE ACTIVITIES AND THE
10 REASONS THEY SHOULD BE FUNDED.

11 (ii) AN ITEMIZED BUDGET FOR THE PROPOSED ELIGIBLE ACTIVITIES.

12 (iii) A SCHEDULE FOR THE COMPLETION OF THE PROPOSED ELIGIBLE
13 ACTIVITIES.

14 (iv) THE LOCATION OF THE PROPERTY.

15 (v) THE CURRENT OWNERSHIP AND OWNERSHIP HISTORY OF THE
16 PROPERTY.

17 (vi) THE RELEVANT HISTORY OF THE USE OF THE PROPERTY.

18 (vii) THE CURRENT USE OF THE PROPERTY.

19 (viii) THE EXISTING AND PROPOSED FUTURE ZONING OF THE
20 PROPERTY.

21 (ix) IF THE PROPERTY IS NOT OWNED BY THE APPLICANT, A DRAFT OF
22 AN ENFORCEABLE AGREEMENT BETWEEN THE PROPERTY OWNER AND THE
23 APPLICANT THAT COMMITS THE PROPERTY OWNER TO COOPERATE WITH THE
24 APPLICANT, INCLUDING A COMMITMENT TO ALLOW ACCESS TO THE PROPERTY
25 TO COMPLETE, AT A MINIMUM, THE PROPOSED ELIGIBLE ACTIVITIES.

26 (x) A DESCRIPTION OF THE PROPERTY'S ECONOMIC REDEVELOPMENT
27 POTENTIAL.

1 (xi) FOR LOANS, A RESOLUTION FROM THE GOVERNING BODY OF THE
2 APPLICANT COMMITTING TO REPAYMENT OF THE LOAN.

3 (xii) A LETTER FROM THE CHIEF EXECUTIVE OFFICER OR HIGHEST
4 RANKING APPOINTED OFFICIAL INDICATING THAT THE LOCAL UNIT OF
5 GOVERNMENT SUPPORTS THE BROWNFIELD PROJECT AND THAT THE BROWNFIELD
6 PROJECT COMPLIES WITH ALL LOCAL ZONING AND PLANNING ORDINANCES.

7 (xiii) ANY OTHER RELEVANT INFORMATION THE DEPARTMENT REQUIRES.

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

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

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

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

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

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

27 (1) UPON RECEIPT OF A GRANT OR LOAN APPLICATION, FOR FUNDING

1 PROVIDED UNDER SECTION 19608(1)(A)(iv), THE DEPARTMENT SHALL REVIEW
2 THE APPLICATION BASED ON THE FOLLOWING CONSIDERATIONS:

3 (A) WHETHER THE BROWNFIELD PROJECT PROPOSED TO BE FUNDED IS
4 AUTHORIZED BY THIS PART.

5 (B) WHETHER THE BROWNFIELD PROJECT IS CONSISTENT WITH THE
6 LOCAL PLANNING AND ZONING FOR THE AREA IN WHICH THE PROJECT IS
7 LOCATED.

8 (C) WHETHER THE BROWNFIELD PROJECT PROVIDES MEASURABLE
9 ENVIRONMENTAL BENEFIT.

10 (D) WHETHER THE BROWNFIELD PROJECT PROVIDES MEASURABLE
11 ECONOMIC BENEFIT OR WILL SIGNIFICANTLY CONTRIBUTE TO THE LOCAL UNIT
12 OF GOVERNMENT'S ECONOMIC AND COMMUNITY REDEVELOPMENT OR THE
13 REVITALIZATION OF ADJACENT NEIGHBORHOODS.

14 (E) THE VIABILITY OF THE REDEVELOPMENT PLAN.

15 (F) THE LEVEL OF PUBLIC AND PRIVATE COMMITMENT AND OTHER
16 RESOURCES AVAILABLE FOR THE PROJECT.

17 (G) HOW THE BROWNFIELD PROJECT RELATES TO A BROADER ECONOMIC
18 AND COMMUNITY DEVELOPMENT PLAN FOR THE LOCAL UNIT OF GOVERNMENT AS
19 A WHOLE.

20 (H) OTHER CRITERIA THAT THE DEPARTMENT CONSIDERS RELEVANT.

21 (2) THE DEPARTMENT SHALL ISSUE GRANTS UNDER SECTION
22 19608(1)(A)(iv) FOR BROWNFIELD PROJECTS THAT THE DEPARTMENT
23 DETERMINES MEET THE REQUIREMENTS OF THIS PART AND WILL CONTRIBUTE
24 TO THE REVITALIZATION OF UNDERUTILIZED PROPERTIES.

25 SEC. 19610A. FOR THE FUNDS TO BE USED TO PROVIDE GRANTS AND
26 LOANS UNDER SECTION 19608(1)(A)(iv), ALL OF THE FOLLOWING APPLY:

27 (A) TO RECEIVE GRANT OR LOAN FUNDS, APPROVED APPLICANTS MUST

1 ENTER INTO A GRANT OR LOAN AGREEMENT WITH THE DEPARTMENT. AT A
2 MINIMUM, THE GRANT OR LOAN AGREEMENT SHALL CONTAIN ALL OF THE
3 FOLLOWING:

4 (i) THE APPROVED ELIGIBLE ACTIVITIES TO BE UNDERTAKEN WITH
5 GRANT OR LOAN FUNDS.

6 (ii) AN IMPLEMENTATION SCHEDULE FOR THE APPROVED ELIGIBLE
7 ACTIVITIES.

8 (iii) REPORTING REQUIREMENTS, INCLUDING, AT A MINIMUM, THE
9 FOLLOWING:

10 (A) THE GRANT OR LOAN RECIPIENT SHALL SUBMIT PROGRESS STATUS
11 REPORTS TO THE DEPARTMENT DURING THE IMPLEMENTATION OF THE
12 BROWNFIELD PROJECT THAT INCLUDE DOCUMENTATION OF PROJECT COSTS AND
13 EXPENDITURES, AT A FREQUENCY DETERMINED BY THE DEPARTMENT.

14 (B) THE GRANT OR LOAN RECIPIENT SHALL PROVIDE A FINAL REPORT
15 UPON COMPLETION OF THE GRANT- OR LOAN-FUNDED ACTIVITIES WITHIN A
16 TIME FRAME DETERMINED BY THE DEPARTMENT.

17 (iv) IF THE PROPERTY IS NOT OWNED BY THE GRANT OR LOAN
18 RECIPIENT, AN EXECUTED AGREEMENT THAT MEETS THE REQUIREMENTS OF
19 SECTION 19609(2)(C)(ix).

20 (v) WHEN ENTERING INTO A LOAN AGREEMENT, THE LOAN RECIPIENT
21 SHALL PROVIDE FINANCIAL ASSURANCE OF REPAYMENT OF THE LOAN
22 INCLUDING PLEDGES OF REVENUE SHARING, ESCROW ACCOUNT, LETTER OF
23 CREDIT, OR OTHER ACCEPTABLE MECHANISM NEGOTIATED WITH THE
24 DEPARTMENT. USE OF REAL PROPERTY AS A MEANS TO SECURE A LOAN IS NOT
25 CONSIDERED AN ACCEPTABLE MECHANISM. THE DEPARTMENT IS AUTHORIZED TO
26 INCLUDE IN THE LOAN AGREEMENT A PROVISION THAT PERMITS THE RELEASE
27 OF THE FINANCIAL ASSURANCE IN FAVOR OF A PLEDGE OF THE RIGHT OF

1 FIRST REFUSAL OF THE TAX INCREMENT REVENUE TO THE DEPARTMENT UNDER
2 THE BROWNFIELD REDEVELOPMENT FINANCING ACT, 1996 PA 381, MCL
3 125.2651 TO 125.2672, IF THE BROWNFIELD PROJECT HAS BEEN
4 SUBSTANTIALLY COMPLETED AND THE ANNUAL TAX INCREMENT BEING CAPTURED
5 RELATIVE TO THE BROWNFIELD PROJECT IS EQUAL TO OR GREATER THAN 125%
6 OF THE ANNUAL LOAN REIMBURSEMENT PAYMENT.

7 (vi) OTHER PROVISIONS AS CONSIDERED APPROPRIATE BY THE
8 DEPARTMENT.

9 (B) ALL ELIGIBLE ACTIVITIES MUST BE CONSISTENT WITH AN
10 APPROVED GRANT OR LOAN WORK PLAN.

11 (C) UNLESS OTHERWISE APPROVED BY THE DIRECTOR OF THE
12 DEPARTMENT, ONLY ACTIVITIES CARRIED OUT AND COSTS INCURRED AFTER
13 EXECUTION OF A GRANT OR LOAN AGREEMENT ARE ELIGIBLE.

14 (D) GRANT FUNDS SHALL BE DISBURSED ON A REIMBURSEMENT BASIS
15 UPON RECEIPT OF APPROPRIATE DOCUMENTATION.

16 (E) LOAN FUNDS SHALL BE DISBURSED IN DRAWS BASED ON AN
17 APPROVED WORK PLAN, AND SUPPORTING DOCUMENTATION MUST BE SUBMITTED
18 AFTER EXPENSES ARE INCURRED.

19 (F) THE DEPARTMENT SHALL SPECIFY DOCUMENTATION REQUIREMENTS
20 FOR GRANTS AND LOANS ON A FORM PRESCRIBED FOR REQUESTING
21 REIMBURSEMENT OR DRAWS.

22 Sec. 19611. (1) Prior to making a grant or loan with money
23 from the fund, the administering state department shall consider
24 the extent to which the making of the grant or loan contributes to
25 the achievement of a balanced distribution of grants and loans
26 throughout the state.

27 (2) IN DETERMINING WHETHER A GRANT OR A LOAN IS APPROPRIATE

1 UNDER SECTION 19608(1)(A) (iv), THE DEPARTMENT SHALL CONSIDER
2 WHETHER THE PROJECT IS LIKELY TO BE UNDERTAKEN WITHOUT STATE
3 ASSISTANCE, THE AVAILABILITY OF STATE FUNDS FROM OTHER SOURCES, THE
4 DEGREE OF PRIVATE SECTOR PARTICIPATION IN THE TYPE OF PROJECT UNDER
5 CONSIDERATION, AND OTHER FACTORS CONSIDERED IMPORTANT BY THE
6 DEPARTMENT.

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

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

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

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

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

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

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

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

14 (7) A loan made with money in the fund ~~shall have~~ **MUST BE MADE**
15 **ON** the following terms:

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

19 (b) Loan recipients shall repay loans in equal annual
20 installments of principal and interest beginning not later than 5
21 years after ~~execution of a loan agreement~~ **THE FIRST DRAW OF THE**
22 **LOAN** and concluding not later than 15 years after ~~execution of a~~
23 ~~loan agreement~~ **THE FIRST DRAW OF THE LOAN.**

24 (c) A loan recipient shall enter into a loan agreement with
25 the administering state department.

26 (d) Upon default of a loan, as determined by the administering
27 state department, or upon the request of the loan recipient as a

1 method to repay the loan, the department of treasury shall withhold
2 **FROM** state payments ~~from~~ **PAYABLE TO** the loan recipient ~~in~~ amounts
3 consistent with the repayment schedule in the loan agreement until
4 the loan is repaid. The department of treasury shall deposit ~~these~~
5 **THE** withheld ~~funds~~ **OR COLLECTED MONEY** into the fund until the loan
6 is repaid.

7 (8) Upon request of a loan recipient and a showing of
8 financial hardship related to the project that was financed in
9 whole or in part by the loan, the administering state department
10 may renegotiate the terms of any outstanding loan, including the
11 length of the loan, the interest rate, and the repayment terms.
12 However, the administering state department shall not reduce or
13 eliminate the amount of the outstanding loan principal. The
14 department shall report to the legislature the number of loans
15 refinanced under this subsection, the local unit of government or
16 authority responsible for each loan refinanced, and the change in
17 the terms of the loan, as appropriate. This information may be
18 included in the report prepared by the department under section 16
19 of the brownfield redevelopment financing act, 1996 PA 381, MCL
20 125.2666.

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

22 ~~—— (10) Upon default of a loan, as determined by the~~
23 ~~administering state department, or upon the request of the loan~~
24 ~~recipient as a method to repay the loan, the department of treasury~~
25 ~~shall withhold from the loan recipient state payments in amounts~~
26 ~~consistent with the repayment schedule in the loan agreement until~~
27 ~~the loan is repaid. The department of treasury shall deposit these~~

1 ~~withheld funds into the fund until the loan is repaid.~~

2 Enacting section 1. This amendatory act takes effect 90 days
3 after the date it is enacted into law.

4 Enacting section 2. This amendatory act does not take effect
5 unless all of the following bills of the 98th Legislature are
6 enacted into law:

7 (a) Senate Bill No. 911.

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9 (b) Senate Bill No. 908.

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11 (c) Senate Bill No. 910.

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13 (d) Senate Bill No. 913.

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15 (e) Senate Bill No. 909.

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