

HOUSE BILL NO. 5762

May 05, 2020, Introduced by Rep. Griffin and referred to the Committee on Natural Resources and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 5301, 5403, 5405, and 5406 (MCL 324.5301, 324.5403, 324.5405, and 324.5406), section 5301 as amended by 2012 PA 560, sections 5403 and 5405 as added by 1997 PA 26, and section 5406 as amended by 2012 PA 561.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5301. As used in this part:



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

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

7 (ii) Project refinancing assistance.

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

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

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

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

19 (vii) Provision for reasonable costs of administering and
20 conducting activities under title VI of the federal water pollution
21 control act, 33 USC 1381 to ~~1387~~-1388.

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

25 (c) "Capitalization grant" means the federal grant made to
26 this state by the United States ~~environmental protection agency~~
27 **Environmental Protection Agency** for the purpose of establishing a
28 state water pollution control revolving fund, as provided in title
29 VI of the federal water pollution control act, 33 USC 1381 to



1 ~~1387.~~**1388.**

2 (d) "Construction activities" means any actions undertaken in
3 the planning, designing, or building of sewage treatment works
4 projects, stormwater treatment projects, or nonpoint source
5 projects. Construction activities include, but are not limited to,
6 all of the following:

7 (i) Project planning services.

8 (ii) Engineering services.

9 (iii) Legal services.

10 (iv) Financial services.

11 (v) Design of plans and specifications.

12 (vi) Acquisition of land or structural components, or both.

13 (vii) Building, erection, alteration, remodeling, or extension
14 of a sewage treatment works.

15 (viii) Building, erection, alteration, remodeling, or extension
16 of projects designed to control nonpoint source pollution,
17 consistent with section 319 of title III of the federal water
18 pollution control act, 33 USC 1329.

19 (ix) Building, erection, alteration, or remodeling of a
20 stormwater treatment project.

21 (x) Municipal supervision of the project activities described
22 in subparagraphs (i) to (ix).

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

25 (i) Users within the area served by a proposed sewage treatment
26 works project or stormwater treatment project are directly assessed
27 for the costs of construction.

28 (ii) The median household income of the area served by a



1 proposed sewage treatment works project or stormwater treatment
 2 project does not exceed 120% of the statewide median annual
 3 household income for ~~Michigan~~**this state**.

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

5 (A) More than 50% of the area served by a proposed sewage
 6 treatment works project or stormwater treatment project is
 7 identified as a poverty area by the United States ~~bureau of~~
 8 ~~census~~**Census Bureau**.

9 (B) The median annual household income of the area served by a
 10 proposed sewage treatment works project or stormwater treatment
 11 project is less than the ~~most recently published~~ federal poverty
 12 guidelines for a family of 4 in the 48 contiguous United States. In
 13 determining the median annual household income of the area served
 14 by the proposed sewage treatment works project or stormwater
 15 treatment project under this sub-subparagraph, the municipality
 16 shall utilize the most recently published statistics from the
 17 United States ~~bureau of the census~~**Census Bureau**, updated to
 18 reflect current dollars, for the community which most closely
 19 approximates the area being served by the project. **As used in this**
 20 **sub-subparagraph, "federal poverty guidelines" means the poverty**
 21 **guidelines published annually in the federal register by the United**
 22 **States Department of Health and Human Services under its authority**
 23 **to revise the poverty line under 42 USC 9902.**

24 (C) The median annual household income of the area served by a
 25 proposed sewage treatment works project or stormwater treatment
 26 project is less than the most recently published statewide median
 27 annual household income for this state, and annual user costs for
 28 sewage treatment or stormwater treatment exceed 1% of the median
 29 annual household income of the area served by the proposed sewage



1 treatment works project or stormwater treatment project.

2 (D) The median annual household income of the area served by a
3 proposed sewage treatment works project or stormwater treatment
4 project is not greater than 120% of the statewide median annual
5 household income for this state, and annual user costs for sewage
6 treatment or stormwater treatment exceed 3% of the median annual
7 household income of the area served by the proposed project.

8 (f) "Federal water pollution control act" means 33 USC 1251 to
9 ~~1387.1388.~~

10 (g) "Fund" means the state water pollution control revolving
11 fund established under **section 16a** the shared credit rating act,
12 1985 PA 227, MCL ~~141.1051 to 141.1076,~~ **141.1066a**, established
13 ~~pursuant to~~ **under** title VI of the federal water pollution control
14 act, **33 USC 1381 to 1388.**

15 (h) "Fundable range" means those projects, taken in descending
16 order on the priority lists, for which sufficient funds are
17 estimated by the department to exist to provide assistance at the
18 beginning of each annual funding cycle.

19 (i) "Municipality" means a city, village, county, township,
20 authority, or other public body, including an intermunicipal agency
21 of 2 or more municipalities, authorized or created under state law;
22 or an Indian tribe that has jurisdiction over construction and
23 operation of sewage treatment works or other projects qualifying
24 under section 319 of title III of the federal water pollution
25 control act, 33 USC 1329.

26 (j) "Nonpoint source project" means construction activities
27 designed to reduce nonpoint source pollution consistent with the
28 state nonpoint source management plan ~~pursuant to~~ **under** section 319
29 of title III of the federal water pollution control act, 33 USC



1 1329.

2 (k) "Priority list" means the annual ranked listing of
3 projects developed by the department in section 5303. ~~or used by~~
4 ~~the department pursuant to section 5315.~~

5 (l) "Project" means a sewage treatment works project, a
6 stormwater treatment project, or a nonpoint source project, or a
7 combination of these **that may include utilization of more efficient**
8 **energy and resources as described in the cost-effective**
9 **governmental energy use act, 2012 PA 625, MCL 18.1711 to 18.1725.**

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

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

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

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

28 (q) "Tier II project" means a project for which assistance is
29 sought or provided from funds other than those made directly



1 available from the federal capitalization grant or from the Great
2 Lakes water quality bond fund ~~pursuant to~~**under** section
3 19708(1) (a).

4 Sec. 5403. As used in this part:

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

7 (b) "Project" means a project related to the planning, design,
8 and construction or alteration of a waterworks system **that may**
9 **include utilization of more efficient energy and resources as**
10 **described in the cost-effective governmental energy use act, 2012**
11 **PA 625, MCL 18.1711 to 18.1725.**

12 (c) "Project refinancing assistance" means buying or
13 refinancing the debt obligations of water suppliers if construction
14 activities commenced, and the debt obligation was incurred, after
15 the effective date of this part.

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

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

27 (f) "Water supplier" or "supplier" means a municipality or its
28 designated representative accepted by the director, a legal
29 business entity, or any other person ~~who~~**that** owns a public water



1 supply. However, water supplier does not include a water hauler.

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

7 (i) Wells and well structures.

8 (ii) Intakes and cribs.

9 (iii) Pumping stations.

10 (iv) Treatment plants.

11 (v) Storage tanks.

12 (vi) Pipelines and appurtenances.

13 (vii) A combination of any of the items specified in ~~this~~
14 ~~subdivision.~~ **subparagraphs (i) through (vi).**

15 Sec. 5405. (1) A water supplier ~~who~~ **that** is interested in
16 applying for assistance under this part shall prepare and submit to
17 the department a project plan as provided in this section. The
18 department shall use **a** project ~~plans~~ **plan** submitted under this
19 section to develop a priority list for assistance as provided under
20 this part.

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

27 (3) The project plan for a project ~~shall~~ **must** include
28 documentation that demonstrates that the project is needed to
29 assure maintenance of, or progress toward, compliance with the



1 federal safe drinking water act. A complete project plan ~~shall~~**must**
2 include all of the following as background:

3 (a) Identification of planning area boundaries and
4 characteristics.

5 (b) A description of the existing waterworks systems.

6 (c) A description of the existing waterworks problems and
7 needs, including the severity and extent of water supply problems
8 or public health problems.

9 (d) An examination of projected needs for the next 20 years.

10 (e) Population projections and the source and basis for the
11 population projections.

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

21 (a) A planning period for the cost-effectiveness analysis of
22 20 years or other such planning period as is justified by the
23 unique characteristics of the project.

24 (b) Monetary costs that consider the present worth or
25 equivalent annual value of all capital costs and operation and
26 maintenance costs.

27 (c) Provisions for the ultimate disposal of residuals and
28 sludge resulting from drinking water treatment processes.

29 (d) A synopsis of the environmental setting of the project and



1 an analysis of the potential environmental and public health
 2 impacts of the various alternatives, as well as the identification
 3 of any significant environmental or public health benefits
 4 precluded by rejection of an alternative.

5 (e) Consideration of opportunities to ~~make~~**utilize** more
 6 efficient ~~use of~~ energy and resources **as described in the cost-**
 7 **effective governmental energy use act, 2012 PA 625, MCL 18.1711 to**
 8 **18.1725.**

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

12 (5) A project plan ~~shall~~**must** include a description of the
 13 selected alternative, including all of the following:

14 (a) Relevant design parameters.

15 (b) Estimated capital construction costs, operation and
 16 maintenance costs, and a description of the manner in which project
 17 costs will be financed.

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

21 (d) A demonstration that the selected alternative ~~is~~
 22 ~~implementable~~**can be implemented** considering the legal,
 23 institutional, technical, financial, and managerial resources of
 24 the water supplier.

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



1 accommodate future development.

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

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

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

10 (6) A project plan ~~shall~~**must** describe the public
11 participation activities conducted during planning and ~~shall~~**must**
12 include all of the following:

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

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

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

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

28 (e) A transcript or recording of the hearing, a list of all
29 attendees, any written testimony received, and the water supplier's



1 responses to the issues raised.

2 (7) A project plan ~~shall~~**must** include either of the following,
3 as appropriate:

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

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

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

12 Sec. 5406. (1) The department shall annually develop a
13 priority list of projects eligible for assistance under this part.
14 Projects that are not funded during the year that a priority list
15 developed under this section is in effect ~~shall~~**must** be
16 automatically prioritized on the next annual list using the same
17 criteria, unless the water supplier submits an amendment to its
18 project plan that introduces new information to be used as the
19 basis for prioritization. The priority list ~~shall~~**must** be based on
20 project plans submitted by water suppliers under section 5405 and
21 the criteria listed in subdivisions (a) through (f). Each project
22 ~~shall~~**must** be assigned points up to a maximum of 1,000. The point
23 values are maximum values available for each category or
24 subcategory listed in this section and ~~shall~~**must** only be awarded
25 if the project substantially addresses the problem for which the
26 point award is given. If a project is primarily designed to replace
27 individual wells at private homes, 50% or more of the homes in the
28 affected area ~~shall~~**must** meet equivalent water quality or
29 infrastructure deficiency criteria listed in subdivisions (a)

1 through (f) in order to receive the maximum available points. If
 2 less than 50% of the homes in the affected area can demonstrate
 3 deficiencies, 1/2 of the total points available ~~shall~~**must** be
 4 awarded. Points shall be awarded as follows:

5 (a) A maximum of ~~450~~**500** points may be awarded to a project
 6 that addresses drinking water quality as outlined in Act 399, if
 7 the project:

8 (i) Is designed to eliminate an acute violation of a drinking
 9 water standard as described in R 325.10401 to R 325.10420 of the
 10 Michigan ~~administrative code.~~**Administrative Code.** A violation of a
 11 surface water treatment technique, or if a waterborne disease
 12 outbreak has been documented, 250 points ~~shall~~**must** be awarded for
 13 each violation.

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

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

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

23 (v) **Is designed to increase the utilization of more efficient**
 24 **energy and resources, as described in the cost-effective**
 25 **governmental energy use act, 2012 PA 625, MCL 18.1711 to 18.1725,**
 26 **50 points must be awarded.**

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

29 (i) If source or treatment facilities are upgraded, including



1 the watermains to connect to the distribution system, a maximum of
2 125 points ~~shall~~**must** be awarded, if the improvement is:

3 (A) To meet minimum capacity requirements, 100 points ~~shall~~
4 **must** be awarded.

5 (B) For reliability, 75 points ~~shall~~**must** be awarded.

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

9 (D) To satisfy the conditions of a formal enforcement action,
10 25 points ~~shall~~**must** be awarded. Points awarded for formal
11 enforcement actions are in addition to the maximum points allowable
12 in any category.

13 (E) For source water protection, 50 points ~~shall~~**must** be
14 awarded.

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

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

19 (B) For reliability, including looping or redundant feeds, 75
20 points ~~shall~~**must** be awarded.

21 (C) Other transmission or distribution system upgrades not
22 included in subparagraph (ii) (A) or (B), 25 points ~~shall~~**must** be
23 awarded.

24 (D) To satisfy the conditions of a formal enforcement action,
25 25 points ~~shall~~**must** be awarded. Points awarded for formal
26 enforcement actions are in addition to the maximum points allowable
27 in any category.

28 (iii) If water storage facilities or pumping stations are
29 upgraded, a maximum of 125 points ~~shall~~**must** be awarded, if the



1 improvement is:

2 (A) To meet minimum capacity where storage or pumping capacity
3 is less than minimum requirements, 100 points ~~shall~~**must** be
4 awarded.

5 (B) For reliability, 75 points ~~shall~~**must** be awarded.

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

9 (D) To satisfy the conditions of a formal enforcement action,
10 25 points ~~shall~~**must** be awarded. Points awarded for formal
11 enforcement actions are in addition to the maximum points allowable
12 in any category.

13 (c) A maximum of 50 points ~~shall~~**must** be awarded based on the
14 population served by the water system according to the following
15 table. However, a transient noncommunity water supply as defined in
16 section 2 of Act 399, MCL 325.1002, is eligible for 1/2 of the
17 point value listed in the following table:

18	Population	Points
19	>50,000	50
20	10,001 - 50,000	40
21	3,301 - 10,000	30
22	501 - 3,300	20
23	0 - 500	10

24 (d) A maximum of 50 points ~~shall~~**must** be awarded to a
25 community water supply that serves a disadvantaged community.

26 (e) A maximum of 100 points ~~shall~~**must** be awarded for projects
27 that include consolidation as follows:

28 (i) If 1 or more public water supplies are brought into
29 compliance with state drinking water standards as a result of

1 consolidation, 100 points ~~shall~~**must** be awarded.

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

5 (iii) Other consolidations, not included under subparagraph (i)
6 or (ii), ~~shall~~**must** be awarded 40 points.

7 (f) For communities that have completed an approved source
8 water protection program, 100 points ~~shall~~**must** be awarded.

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

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

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

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

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



1 present:

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

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

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

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

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

