

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

PART 53
CLEAN WATER ASSISTANCE

324.5301 Definitions.

Sec. 5301. As used in this part:

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

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

(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 similar revolving funds established by municipalities.

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

(vii) Provision for reasonable costs of administering and conducting activities under title VI of the federal water pollution control act, 33 USC 1381 to 1389.

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

(c) "Capitalization grant" means the federal grant made to this state by the United States Environmental Protection Agency for the purpose of establishing a state water pollution control revolving fund, as provided in title VI of the federal water pollution control act, 33 USC 1381 to 1389.

(d) "Construction activities" means an action undertaken to plan, design, or build sewage treatment works projects, stormwater management projects, or nonpoint source projects. Construction activities include, but are not limited to, all of the following:

(i) Project planning services.

(ii) Engineering services.

(iii) Legal services.

(iv) Financial services.

(v) Design of plans and specifications.

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

(vii) Building, erection, alteration, remodeling, or extension of any of the following:

(A) A sewage treatment works.

(B) Projects designed to control nonpoint source pollution, consistent with section 319 of the federal water pollution control act, 33 USC 1329.

(C) A stormwater management project.

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

(e) "Federal water pollution control act" means 33 USC 1251 to 1389.

(f) "Fund" means the state water pollution control revolving fund established under section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a.

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

(h) "Municipality" means a city, village, county, township, authority, or other public body, including either of the following:

(i) An intermunicipal agency of 2 or more municipalities, authorized or created under state law.

(ii) An Indian tribe that has jurisdiction over construction and operation of sewage treatment works or other projects qualifying under section 319 of the federal water pollution control act, 33 USC 1329.

(i) "Nonpoint source project" means construction activities designed to reduce nonpoint source pollution consistent with the state nonpoint source management plan under section 319 of the federal water pollution control act, 33 USC 1329.

(j) "Priority list" means the annual ranked listing of projects developed by the department in section 5303.

(k) "Project" means a sewage treatment works project, stormwater management project, or nonpoint source

project, or a combination of these and may include utilization of more efficient energy and resources as described in any of the following:

(i) The cost-effective governmental energy use act, 2012 PA 625, MCL 18.1711 to 18.1725.

(ii) Section 11c of 1851 PA 156, MCL 46.11c.

(iii) Section 75b of 1846 RS 16, MCL 41.75b.

(iv) Section 5f of the home rule city act, 1909 PA 279, MCL 117.5f.

(v) Section 24b of the home rule village act, 1909 PA 278, MCL 78.24b.

(vi) Section 36 of the general law village act, 1895 PA 3, MCL 68.36.

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

(m) "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.

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

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2005, Act 255, Imd. Eff. Dec. 1, 2005;—Am. 2012, Act 560, Imd. Eff. Jan. 2, 2013;—Am. 2021, Act 45, Imd. Eff. July 1, 2021;—Am. Act 132, Imd. Eff. June 30, 2022.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed \$1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.5302 Construction of part; broad interpretation of powers; prohibited grants or loans; liability for costs.

Sec. 5302. (1) This part must be construed liberally to effectuate the legislative intent. All powers granted under this part must be broadly interpreted to effectuate the intent and purposes of this part and must not be interpreted as a limitation of powers.

(2) Except as may be authorized by the federal water pollution control act, the fund must not provide grant assistance to a municipality or provide loans for the local share of projects constructed with grants provided under title II of the federal water pollution control act, 33 USC 1281, 1282 to 1293, and 1294 to 1302f.

(3) This state is not liable to a municipality, or any other person performing services for the municipality, for costs incurred in developing or submitting an application for assistance under this part.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. Act 132, Imd. Eff. June 30, 2022.

Compiler's note: For transfer of authority, powers, duties, functions, and responsibilities of the Environmental Assistance Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 324.99901 of the Michigan Compiled Laws.

Popular name: Act 451

Popular name: NREPA

324.5303 Cooperative regional or intermunicipal projects; planning document; public participation activities; notice; public comment; development of priority list; submission of priority list to legislature; effective date of priority list; other actions not limited.

Sec. 5303. (1) During the development of a planning document, a municipality shall consider and utilize, where possible, cooperative regional or intermunicipal projects in satisfying sewerage needs.

(2) A municipality may submit a planning document for use by the department in developing a priority list. A municipality may submit as part of the planning document for a project either of the following:

(a) Any preexisting documents or plans that were prepared for another project for other purposes.

(b) Any preexisting documents that were developed under another local, state, or federal program, as applicable.

(3) A planning document must include documentation that demonstrates all of the following:

(a) The project is needed to enable maintenance of, or to progress toward, compliance with the federal water pollution control act, part 31, or part 41, and to meet the minimum requirements of the national environmental policy act of 1969, Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to 4347.

(b) An analysis of alternatives that meet the requirements of part 31 or 41, including the cost of each alternative and a resolution adopted by the municipality to implement a selected alternative.

(c) A description of project costs and how the project will be paid for including, but not limited to, an explanation of how the debt will be repaid.

(d) A list of the environmental and public health implications and mitigation plans.

(e) The need for the project.

(f) That feasible alternatives to the project were evaluated, considering volume reduction opportunities and the demographic, topographic, hydrologic, and institutional characteristics of the area.

(g) That the project is implementable from a legal, institutional, financial, and management standpoint.

(h) Any other information required by the department.

(4) A planning document must describe the public participation activities conducted during planning and must 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 making public consultation, participation, and input in the decision-making process during alternatives selection.

(c) A demonstration that before the adoption of the planning document, the municipality held a public meeting on the proposed project not less than 15 days after advertising the public meeting in local media of general circulation including, but not limited to, the municipality's website, and at a time and place conducive to maximizing public input.

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

(e) A summary of the public meeting including a list of all attendees, and any specific concerns that were raised.

(5) After notice and an opportunity for public comment, the department shall annually develop separate priority lists for sewage treatment works projects and stormwater management projects, nonpoint source projects, and projects funded under the strategic water quality initiatives fund created in section 5204. Projects not funded during the time that a priority list developed under this section is in effect must be automatically prioritized on the next annual list using the same criteria, unless the municipality submits an amendment to its planning document that introduces new information to be used as the basis for prioritization. The priority lists must be based on the planning documents and the scoring criteria developed under section 5303a.

(6) If a municipality is an overburdened community or a significantly overburdened community, the department shall automatically award the municipality at least 20% of the total allowable points.

(7) The priority list must be submitted annually to the chair of the senate and house of representatives standing committees that primarily consider legislation pertaining to the protection of natural resources and the environment.

(8) For purposes of providing assistance, the priority list takes effect on the first day of each fiscal year.

(9) This section does not limit other actions undertaken to enforce part 31, part 41, the federal water pollution control act, or any other act.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2001, Act 221, Imd. Eff. Jan. 2, 2002;—Am. 2002, Act 398, Eff. Nov. 5, 2002;—Am. 2012, Act 560, Imd. Eff. Jan. 2, 2013;—Am. Act 132, Imd. Eff. June 30, 2022.

Compiler's note: Enacting section 2 of Act 398 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed \$1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.5303a Scoring criteria for the prioritization of projects; departmental duties.

Sec. 5303a. (1) The department shall develop scoring criteria that assign points to and prioritize projects

under section 5303 and definitions of overburdened community and significantly overburdened community. In developing scoring criteria and the definitions under this subsection, the department shall do all of the following:

(a) Consult with members of statewide local government associations and drinking water, wastewater, stormwater, and environmental organizations regarding the content of the scoring criteria and definitions.

(b) Publish, hold at least 1 public hearing, and allow for public comment.

(c) Review the scoring criteria and definitions not more than once every 3 years, unless otherwise directed by the United States Environmental Protection Agency.

(d) Publish, hold at least 1 public hearing, and allow for public comment on any changes made after a review under subdivision (c).

(2) The scoring criteria developed under subsection (1) must address the following:

(a) Wastewater regulatory compliance.

(b) Public health.

(c) Achieving water quality standards.

(d) Improving infrastructure.

(e) Impacts on overburdened communities and significantly overburdened communities.

(3) The definitions of overburdened community and significantly overburdened community developed under subsection (1) must address the following:

(a) Income and unemployment data.

(b) Population trends.

(c) Housing costs and values.

(d) Annual user costs, allocation of costs across customer classes, and historical and projected trends in user costs.

(e) Existing public health, environmental, and affordability impacts.

(f) Other data considered relevant by the department.

History: Add. 2022, Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5304 Assistance; requirements.

Sec. 5304. Subject to sections 5309 and 5310, 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:

(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 5303, and to other projects that may become fundable pursuant to section 5310.

(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 5303. The director shall annually allocate at least 2% of the available funds to the extent needed to provide assistance to projects on the nonpoint source priority list. If these funds are not awarded, the allocation shall revert to provide assistance to projects on the sewage treatment works priority list.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 397, Eff. Nov. 5, 2002.

Compiler's note: Enacting section 2 of Act 397 of 2002 provides:

"Enacting section 2. This amendatory act does not take effect unless the question provided for in the Great Lakes water quality bond authorization act is approved by a majority of the registered electors voting on the question at the November 2002 general election."

Act 396 of 2002, the Great Lakes water quality bond authorization act, which was approved by the Governor on May 29, 2002, and filed with the Secretary of State on May 30, 2002, provided that bonds "shall not be issued under this act unless the question set forth in section 5 [MCL 324.95205] is approved by a majority vote of the registered electors voting on the question." In accordance with Const 1963, art 9, sec 15, the question of borrowing a sum of not to exceed \$1,000,000,000.00 and the issuance of general obligation bonds of the state for the purposes set forth in the act was submitted to, and approved by, the qualified electors of the state as Proposal 02-2 at the November 5, 2002, general election.

Popular name: Act 451

Popular name: NREPA

324.5305 Descriptions and timetables for actions.

Sec. 5305. The department shall provide written descriptions and timetables for actions required under this part, including the intended use plan developed under section 5306, and may provide to municipalities that request assistance in writing other information that the department considers appropriate.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5306 Intended use plan; preparation and submission; purpose; public participation; contents of plan; notice of approval; notification of municipality; information to be provided; schedule.

Sec. 5306. (1) The department 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 department may conduct with the United States Environmental Protection Agency for the capitalization grant agreement and schedule of payments to be made to this state under the federal water pollution control act.

(2) The department must allow for a public participation process that requires not less than 1 public hearing for the intended use plan by publishing a draft of the intended use plan on the department's website at least 14 days before a final intended use plan is submitted under subsection (1). The intended use plan must describe and identify all of the following:

(a) Additional subsidization that will be allocated to projects.

(b) The projects that will receive additional subsidization identified under subdivision (a).

(c) The reasons why a project will receive additional subsidization.

(3) Upon notice from the United States Environmental Protection Agency that the intended use plan is approved, the department shall notify each municipality of its inclusion on the intended use plan and shall provide copies of the sewage treatment works projects and stormwater management projects priority list, the nonpoint source project priority list, and the intended use plan to any person that requests that information. Following notification under this subsection, the department shall establish, with the concurrence of the municipality, a schedule for planning document approval, submittal of a completed application for assistance, and approval of plans and specifications.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5307 Project planning documents; review; approval or disapproval; extension of review period; notice of deficiencies; review of subsequent submittals.

Sec. 5307. (1) The department shall review, generally in priority order, any planning documents for projects in the fundable range and either approve or disapprove a planning document within 120 days after notifying the municipality of its inclusion in the intended use plan submitted under section 5306. Upon determination by the department that a project is complex and warrants additional review, the department shall notify the municipality and may extend the review period described in this subsection for not more than 60 days.

(2) If a planning document is disapproved, the department shall notify the municipality of any deficiencies that need to be corrected. The municipality shall correct any deficiencies and submit an amended planning document to the department within 45 days after receiving notice under this subsection.

(3) The department shall review subsequent submittals and either approve or disapprove an amended planning document within 90 days after the amended planning document is submitted.

(4) If an amended planning document is not approved, the department shall notify the municipality of the deficiencies.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5307a Environmental review of planning documents; necessity of environmental assessment; issuance of findings; environmental impact statement; compliance with national environmental policy act; reevaluation; action limitation.

Sec. 5307a. (1) The department shall conduct an environmental review of the planning document for 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 the environmental review, the department may require a municipality to submit additional information or meet additional public participation and coordination requirements to justify the environmental determination.

(2) Based on the environmental review completed under subsection (1), the department may determine that an environmental assessment is necessary and the department may describe any of the following in its

determination:

- (a) The purpose and need for the project.
- (b) The project 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.

(3) Based on an environmental assessment completed under subsection (2), the department may issue a finding of no significant impact. The finding of no significant impact must document that the potential environmental impacts will not be significant or that the environmental impacts may be mitigated without extraordinary measures.

(4) Based on an environmental assessment completed under subsection (2), the department may require a municipality to complete an environmental impact statement if the department determines any of the following:

- (a) 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.
- (b) The project will cause significant displacement of population.
- (c) The project will directly or indirectly, such as through induced development, have a significant adverse effect upon any of the following:
 - (i) Local ambient air quality.
 - (ii) Public health.
 - (iii) Local noise levels.
 - (iv) Surface water and groundwater quantity or quality.
 - (v) Shellfish.
 - (vi) Fish.
 - (vii) Wildlife.
 - (viii) Wildlife natural habitats.
- (d) The project will generate significant public controversy.

(5) Based on the environmental impact statement, the department shall issue a record of decision summarizing the findings of the environmental impact statement that identifies the conditions under which the project can proceed and maintain compliance with the national environmental policy act of 1969, Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to 4347.

(6) If 5 or more years have elapsed since a determination of compliance with the national environmental policy act of 1969, Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to 4347, or if significant changes in the project have occurred, the department shall reevaluate the project for compliance with the national environmental policy act of 1969, Public Law 91-190, 42 USC 4321, 4331 to 4335, and 4341 to 4347, and 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.

(7) Action regarding approval of a planning document or provision of financial assistance must not be taken during a 30-day public comment period after the issuance of a finding of no significant impact or record of decision.

History: Add. 2022, Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5308 Application for assistance; requirements; revenue source; acceptance; notice of additional information required; approval or disapproval of application.

Sec. 5308. (1) To apply for assistance from the fund, a municipality shall submit 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 municipal bond obligations existing at the time assistance is requested, and pledged to both of the following purposes:

(i) If assistance is in the form of a loan, the timely repayment of the loan.

(ii) Adequate revenues from a user-based source to fund the operation and maintenance of the project.

(b) A planning document approved under section 5307.

(c) A certification by an authorized representative of a municipality affirming that the municipality has the legal, managerial, institutional, and financial capability to build, operate, and maintain the project.

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

(e) A set of plans and specifications suitable for bidding.

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

(g) A certified resolution from the municipality designating an authorized representative for the project.

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

(i) All executed intermunicipal service agreements, if applicable.

(j) An agreement that the municipality will operate the project in compliance with applicable state and federal laws.

(k) An agreement that the municipality will not sell, lease, abandon, or otherwise dispose of the project without an effective assignment of obligations and the written approval of the department and the authority.

(l) An agreement that all municipal project accounts will be maintained in accordance with generally accepted government accounting standards as defined and required under the federal water pollution control act.

(m) An agreement that the municipality 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 municipality will require similar authorizations from all contractors, consultants, or agents with which it negotiates an agreement.

(n) An agreement that all municipal contracts with contractors will provide that the contractor and any subcontractor may be subject to a financial audit and that contractors and subcontractors shall comply with generally accepted governmental accounting standards.

(o) An agreement that all pertinent records must 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 must 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 municipality 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 5309, 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) The requirement under subsection (1)(a) for a dedicated source of revenue may include a revenue source pledged to repay the debt to the fund from sources including, but not limited to, 1 or more of the following:

(a) Ad valorem taxes.

(b) Special assessments.

(c) User-based revenue collections.

(d) General funds of the municipality.

(e) Benefit charges.

(f) Tap-in fees, or other 1-time assessments.

(3) The department shall accept applications for assistance from municipalities in the fundable range of the priority list that have approved planning documents. The department shall determine whether an application for assistance is administratively complete and notify the applicant within 30 days after receipt of the application specifying any additional information necessary to complete the application.

(4) The department shall approve or disapprove an application within 30 days of the determination that the application is complete.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5309 Segmentation of a project.

Sec. 5309. When the department prepares the priority list under section 5303, to ensure that a disproportionate share of available funds for a given fiscal year is not committed to a single project, the department may segment a project if the cost of the proposed project is more than 30% of the amount available in the fund.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5310 Project subject to bypass; notice to municipality; extension of schedule; effect of bypass.

Sec. 5310. (1) The department may bypass a project that fails to meet the schedule established under section 5306, or that does not have an approved planning document and application 90 days before the last day of the fiscal year, whichever comes first. The department must provide a municipality with written notice of the department's intent to bypass not less than 30 days before a project is bypassed under this section.

(2) If demand exceeds funding availability, a municipality may submit a written request to the department to extend the schedule established under section 5306 for not more than 60 days. A municipality must include in its written request the reason or reasons for its noncompliance with the schedule. A municipality may submit 1 additional written request to the department to extend the schedule established under section 5306 for not more than 30 days.

(3) A project bypassed under this section must not be considered for an order of approval until all other projects in the fundable range have 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) A bypass action under this section does not modify any compliance dates established in a permit, order, or other document issued by the department or entered as part of an action brought by this state or a federal agency.

(5) After a project is bypassed under this section, the department may award assistance to projects outside the fundable range. The department shall make assistance available to projects outside the fundable range in priority order contingent on the municipality's satisfaction of all applicable requirements for assistance under section 5308 within the time period established by the department, but not to exceed 60 days from the date of notice of bypass. The department shall notify a municipality with a project outside the fundable range of bypass action, of the amount of the bypassed funds available for obligation, and of the deadline for submitting a complete, approvable application.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5311 Order of approval; certification of eligibility; establishment of interest rates.

Sec. 5311. (1) The department shall review a complete application for assistance for a project in the fundable range. If the department approves the application for assistance, the department shall issue, subject to section 5310, an order of approval to establish the specific terms of the assistance. The order of approval must include, but is not 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 must 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, the department shall certify to the authority that the municipality is eligible to receive assistance.

(4) The department shall annually establish the interest rates to be assessed for projects receiving assistance under this part. In establishing interest rates under this section, the department may provide for a different level of subsidy. The interest rates must be in effect for loans made during the next state fiscal year.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5312 Termination of assistance; determination; causes; notice; repayment of outstanding loan balance; requirements under state or federal law.

Sec. 5312. (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.

(3) The department shall give written notice to the municipality by certified letter of the intent to issue an order recommending that assistance be terminated. This notification must 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 municipality's requirement for repayment of the outstanding loan balance to the fund.

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

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5313 Petition; orders; repayment of outstanding loan balance; requirements under state or federal law.

Sec. 5313. (1) A municipality may petition the department to make a determination and issue an order under section 5312(1) for cause.

(2) The department may issue an order to terminate the project for cause that 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 to the authority recommending appropriate action.

(4) The termination of assistance by the authority shall not excuse or otherwise affect the municipality's requirement for repayment of the outstanding loan balance to the fund.

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

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5313b Project responsibilities of municipality; departmental guidance.

Sec. 5313b. (1) A municipality is responsible for obtaining any federal, state, or local permits necessary for the project and shall perform any surveys or studies that are required under the permits.

(2) A municipality shall incorporate all appropriate provisions, conditions, and mitigative measures included in the studies, surveys, permits, and licenses into the construction documents. The construction 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 must be enforced by the municipality or its designated representative and apply to all construction and post-construction activities, including disposal of all liquid or solid spoils, waste material, and residuals from construction.

(4) A municipality may seek guidance from the department regarding the requirements under this part or the rules promulgated under this part.

History: Add. 2022, Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5313c State revolving administration fund.

Sec. 5313c. (1) The state revolving administration fund is created within the state treasury. The state treasurer may receive money or other assets for any source for deposit into the state revolving administration fund. The state treasurer shall direct the investment of the state revolving administration fund and credit to the fund interest and earnings from fund investments. Money in the state revolving administration fund at the end of the fiscal year remains in the fund and does not lapse to the general fund. The department is the administrator of the state revolving administration fund for auditing purposes.

(2) Not more than 0.25% of the interest charged on a loan issued under this part or part 54 may be deposited into the state revolving administration fund.

(3) The department shall expend money from the fund only for the reasonable costs of administering and conducting activities under this part and part 54.

History: Add. 2022, Act 132, Imd. Eff. June 30, 2022.

Popular name: Act 451

Popular name: NREPA

324.5314 Costs of administering and implementing part; payment.

Sec. 5314. 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 water pollution control act.

(b) Loan fees, not to exceed the ratio that the annual appropriation for administration of this part bears to the total value of loans awarded for the fiscal year in which the appropriation was made, as estimated in the intended use plan.

(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.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5315 Repealed. 2012, Act 560, Imd. Eff. Jan. 2, 2013.

Compiler's note: The repealed section pertained to duration of current priority list.

Popular name: Act 451

Popular name: NREPA

324.5316 Powers of department.

Sec. 5316. The department has the powers necessary or convenient to carry out and effectuate the purpose, objectives, and provisions of this part, and the powers delegated by other laws or executive orders, including, but not limited to, the power to:

(a) Make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient to the exercise of his or her powers.

(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, to enter into agreements with any person or the federal, state, or a local government, or to participate in any other way in any federal, state, or local government program consistent with this part and the purposes of this part.

(c) 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.

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

(e) 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.

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

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

(h) 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.

(i) Make application requesting a capitalization grant and prepare, submit, and certify any required or appropriate information with that application.

(j) 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 to select projects to be funded.

(k) Prepare and submit an annual report required by the federal water pollution control act.

History: 1994, Act 451, Eff. Mar. 30, 1995.

Popular name: Act 451

Popular name: NREPA

324.5317 Repealed. 2022, Act 132, Imd. Eff. June 30, 2022

Compiler's note: The repealed section pertained to the creation of the state water pollution control revolving fund advisory committee.

Popular name: Act 451

Popular name: NREPA