

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

**SEWAGE DISPOSAL AND WATERWORKS SYSTEMS**

**PART 41**  
**SEWERAGE SYSTEMS**

**324.4101 Definitions.**

Sec. 4101. As used in this part:

(a) "Conventional gravity sewer extension" means the installation of a new gravity sewer and connection to an existing collection system to provide sewer service to new areas previously not served by the public sewer system.

(b) "Expedited review" means an expedited review of an application for a construction permit under section 4112.

(c) "Fund" means the infrastructure construction fund created in section 4113.

(d) "Governmental agencies" means local units of government, metropolitan districts, or other units of government or the officers of the units of government authorized to own, construct, or operate sewerage systems to serve the public.

(e) "Licensed professional engineer" means a professional engineer licensed under article 20 of the occupational code, 1980 PA 299, MCL 339.2001 to 339.2014.

(f) "Plans and specifications" means a true description or representation of the entire sewerage system and parts of a system as the sewerage system exists or is to be constructed, and also a full and fair statement of how the system is to be operated.

(g) "Project" means a proposal to install within 1 general area a new wastewater collection system. Systems proposed for construction on separate land parcels shall be considered separate projects.

(h) "Sewerage system" means a system of pipes and structures including pipes, channels, conduits, manholes, pumping stations, sewage or waste treatment works, diversion and regulatory devices, outfall structures, and appurtenances, collectively or severally, actually used or intended for use by the public for the purpose of collecting, conveying, transporting, treating, or otherwise handling sanitary sewage or other industrial liquid wastes that are capable of adversely affecting the public health.

(i) "Simple pumping station and force main" means the installation of a duplex pumping station and a force main with only 1 high point and of length of no more than 2,000 feet that is to be connected to an existing gravity collection system to provide sewer service to new areas previously not served by the public sewer system.

(j) "Small diameter pressure sewer and grinder pumping station" means a single project that includes the installation of new pressure sewers totaling not more than 5,000 feet and not more than 25 grinder pumping stations with each grinder pumping station serving not more than 5 separate owners and that is to be connected to an existing gravity collection system to provide sewer service to new areas previously not served by the public sewer system.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2006, Act 602, Imd. Eff. Jan. 3, 2007.

**Popular name:** Act 451

**Popular name:** NREPA

**324.4102 Department of natural resources; powers.**

Sec. 4102. The department is given power and control as limited in this part over persons engaged in furnishing sewerage or sewage treatment service, or both, and over sewerage systems.

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

**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 MCL 324.99901 of the Michigan Compiled Laws.

For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality Division to the Director of the Michigan Department of Environmental Quality, see E.R.O. No. 1995-16, compiled at MCL 342.99901 of the Michigan Compiled Laws.

**Popular name:** Act 451

**Popular name:** NREPA

**324.4103 Sewerage systems; inspection by department.**

Sec. 4103. The department may enter at reasonable times the sewerage systems and other property of a person for the purpose of inspecting a sewerage system and carrying out the authority vested in the

department by this part.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4104 Sewerage systems; rules; classification of sewage treatment works; examinations; issuance and revocation of certificates; supervision by certified operator; training program for certified operator; fees.**

Sec. 4104. (1) The department may promulgate and enforce rules that the department considers necessary governing and providing a method of conducting and operating all or a part of sewerage systems including sewage treatment works. The department shall classify sewage treatment works with regard to size, type, location, and other physical conditions affecting those works and according to the skill, knowledge, experience, and character that the individual who is in charge of the active operation of the sewage treatment works must possess to successfully operate the works and prevent the discharge of deleterious matter capable of being injurious to the public health or other public interests. The department shall examine or provide for the examination of individuals as to their qualifications to operate sewage treatment works. The department shall promulgate rules regarding the classification of sewage treatment works, the examinations for certification of operators for those works, and the issuance and revocation of certificates, and shall issue and revoke certificates as provided in those rules. Every sewage treatment works subject to this part must be under the supervision of a properly certified operator, except that this section does not require the employment of a certified operator in a waste treatment works that receives only wastes that are not potentially prejudicial to the public health.

(2) As provided in section 3110, the department may conduct a program for training individuals seeking to be certified as operators under subsection (1) and shall administer operator certification programs for individuals seeking to be certified as operators under subsection (1). Until October 1, 2025, the department may charge fees for these programs as provided in section 3110. The department shall transmit fees collected under this section to the state treasurer for deposit into the operator training and certification fund created in section 3134.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2011, Act 148, Imd. Eff. Sept. 21, 2011;—Am. 2017, Act 90, Imd. Eff. July 12, 2017;—Am. 2021, Act 91, Imd. Eff. Oct. 20, 2021.

**Popular name:** Act 451

**Popular name:** NREPA

**Administrative rules:** R 299.2901 et seq. and R 299.2903 et seq. of the Michigan Administrative Code.

#### **324.4105 Sewerage systems; plans and specifications; rules; permit for construction; minor modifications; misdemeanor.**

Sec. 4105. (1) The mayor of each city, the president of each village, the township supervisor of each township, the responsible executive officer of a governmental agency, and all other persons operating sewerage systems in this state shall file with the department a true copy of the plans and specifications of the entire sewerage system owned or operated by that person, including any filtration or other purification plant or treatment works as may be operated in connection with the sewerage system, and also plans and specifications of all alterations, additions, or improvements to the systems that may be made. The plans and specifications shall, in addition to all other requirements, show all the sources through or from which water is or may be at any time pumped or otherwise permitted to enter into the sewerage system, and the drain, watercourse, river, or lake into which sewage is to be discharged. The plans and specifications shall be certified by the mayor of a city, the president of a village, a responsible member of a partnership, an individual owner, or the proper officer of any other person that operates the sewerage system, as well as by the engineer, if any are employed by any such operator. The department may promulgate and enforce rules regarding the preparation and submission of plans and specifications and for the issuance and period of validity of construction permits for the work.

(2) A person shall not construct a sewerage system or any filtration or other purification plant or treatment works in connection with a sewerage system except as authorized by a construction permit issued by the department pursuant to part 13. An application for a permit shall be submitted by the mayor of a city, the president of a village, a responsible member of a partnership, an individual owner, or the proper officer of any other person proposing the construction. If eligible, a person may request an expedited review of an application for a construction permit under section 4112. An application for a permit shall include plans and specifications as described in subsection (1). If considered appropriate by the department, the department may

issue a permit with conditions to correct minor design problems.

(3) The department may verbally approve minor modifications of a construction permit issued by the department as a result of unforeseen site conditions that become apparent during construction. Minor modifications include, but are not limited to, a minor change of location of the sewer or location of manholes. The person making the request for a modification shall provide to the department all relevant information pursuant to R 299.2931 to R 299.2945 of the Michigan administrative code and the application form provided by the department related to the requested modification. Written approval from the department shall be obtained for all modifications except when the department provides verbal approval for a minor modification as provided for in this subsection. The person receiving a written or verbal approval from the department shall submit revised plans or specifications to the department within 10 days from the date of approval.

(4) If a person seeks confirmation of the department's verbal approval of a minor modification under subsection (3), the person shall notify the department electronically, at an address specified by the department, with a detailed description of the request for the modification. The department shall make reasonable efforts to respond within 2 business days, confirming whether the request has been approved or not approved. If the department has not responded within 2 business days after the department receives the detailed description, the verbal approval shall be considered confirmed.

(5) A municipal officer or an officer or agent of a person who permits or allows construction to proceed on a sewerage works without a valid permit, or in a manner not in accordance with the plans and specifications approved by the department, is guilty of a misdemeanor punishable by a fine of not more than \$500.00 or imprisonment for not more than 90 days, or both.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2004, Act 325, Imd. Eff. Sept. 10, 2004;—Am. 2006, Act 602, Imd. Eff. Jan. 3, 2007.

**Popular name:** Act 451

**Popular name:** NREPA

**Administrative rules:** R 299.2901 et seq. of the Michigan Administrative Code.

#### **324.4106 Sewage treatment works; reports; false statement; penalty.**

Sec. 4106. (1) A person who operates a sewage treatment works shall file with the department reports under oath as required by the department. The reports shall be sworn to by a responsible officer or person acquainted with the facts and employed by the person required to report under this part.

(2) A person making a false statement in a report under subsection (1) is guilty of perjury and subject to the penalty for that offense.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4107 Inspection of plans and specifications; inspection of sewerage systems; recommendations or orders; compliance.**

Sec. 4107. (1) The department on receipt of plans and specifications for a sewerage system shall inspect them with reference to their adequacy to protect the public health, and if the public water supply of the city or village is impure and dangerous to individuals or to the public generally, he or she shall inspect the sewerage systems or any parts of the sewerage system and the manner of its operation. If upon inspection the department finds the plans and specifications or the sewerage systems are inadequate or operated in a manner that does not adequately protect the public health, he or she may order the person owning or operating the sewerage system to make alterations in the plans and specifications or in the sewerage systems or the method of operation of the sewerage system as may be required or advisable in his or her opinion, in order that the sewage is not potentially prejudicial to the public health.

(2) The recommendations or orders of the department shall be served in writing upon the owner or operator of the sewerage system and the owner and operator shall comply with the recommendations or orders.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4108 Sewerage system; planning, construction and operation; cooperation; compliance; "private, investor-owned wastewater utility" defined.**

Sec. 4108. (1) The department shall exercise due care to see that sewerage systems are properly planned, constructed, and operated to prevent unlawful pollution of the streams, lakes, and other water resources of the

state. The department shall cooperate with appropriate federal or state agencies in the determination of grants of assistance for the preparation of plans or for the construction of waterworks systems, sewerage systems, or waste treatment projects, or both.

(2) The activities of a private, investor-owned wastewater utility shall comply with all applicable provisions of this act, local zoning and other ordinances, and the construction and operation requirements of the federal water pollution control act and the national environmental policy act of 1969, 42 USC 4321, 4331 to 4335, and 4341 to 4347.

(3) As used in this section, "private, investor-owned wastewater utility" means a utility that delivers wastewater treatment services through a sewerage system and the physical assets of which are wholly owned by an individual or group of individual shareholders.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—2005, Act 191, Imd. Eff. Nov. 7, 2005.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4109 Engineers and other assistants; employment.**

Sec. 4109. The department may employ engineers and other assistants as may be necessary to administer this part.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4110 Commencement of civil action by attorney general; jurisdiction; additional relief; violation as misdemeanor; penalty; appearance ticket; enforcement; "minor offense" defined.**

Sec. 4110. (1) The department may request that the attorney general commence a civil action for appropriate relief, including a permanent or temporary injunction, for a violation of this part or a provision of a permit or order issued under this part or a rule promulgated under this part. An action under this subsection may be brought in the circuit court for the county of Ingham or for the county in which the defendant is located, resides, or is doing business. The court has jurisdiction to restrain the violation and to require compliance.

(2) In addition to any other relief granted under subsection (1), a person who violates this part is subject to the following:

(a) If the person fails to obtain a permit required under this part, the court shall impose a civil fine of not less than \$1,500.00 or greater than \$2,500.00 for the first violation, not less than \$2,500.00 or greater than \$10,000.00 for the second violation, and not less than \$10,000.00 or greater than \$25,000.00 for each subsequent violation.

(b) If the person violates this part or a provision of a permit or order issued under this part or rule promulgated under this part other than by failure to obtain a permit, the court shall impose a civil fine of not less than \$500.00 or greater than \$2,500.00 for the first violation, not less than \$1,000.00 or greater than \$5,000.00 for the second violation, and not less than \$2,500.00 or greater than \$10,000.00 for each subsequent violation. For the purposes of this subdivision, all violations of a specific construction permit are treated as a single violation.

(3) Subject to section 4105(5), a person who violates this part or a written order of the department is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both, and payment of the costs of prosecution.

(4) A law enforcement officer may issue and serve an appearance ticket upon a person for a minor offense pursuant to sections 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g.

(5) The attorney general shall enforce this part.

(6) As used in this section, "minor offense" means a violation of a permit issued under this part that does not functionally impair the operation or capacity of a sewerage system.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2006, Act 602, Imd. Eff. Jan. 3, 2007.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4111 Actions brought by department.**

Sec. 4111. The department may bring an appropriate action in the name of the people of this state as may

be necessary to carry out this part and to enforce any and all laws, rules, and regulations relating to this part.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4112 Expedited review process for certain projects.**

Sec. 4112. (1) Subject to subsection (2), the following projects are eligible for expedited review:

- (a) A conventional gravity sewer extension of 10,000 feet or less of sewer line.
- (b) A simple pumping station and force main.
- (c) A small diameter pressure sewer and grinder pumping station.

(2) An expedited review must not be conducted for a project that is being funded by the state water pollution control revolving fund created in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a.

(3) To obtain an expedited review, a person shall do all of the following before October 1, 2027:

(a) At least 10 business days before submitting an application under subdivision (b), notify the department electronically, in accordance with instructions provided on the department's website, of the person's intent to request expedited review. The department may waive this 10-day notification requirement.

(b) Submit electronically a complete application for a construction permit including a request for expedited review and credit card payment of the appropriate fee under subsection (4).

(c) Provide a written copy of the construction plans and specifications for the project that is prepared, signed, and sealed by a licensed professional engineer to the department postmarked not later than the date that the application is submitted electronically.

(d) For nongovernmental entities, provide certification to the department that all necessary contractual service agreements and financial plans are in place.

(4) Except as provided in subsection (6), the fee for an expedited review is as follows:

(a) For a conventional gravity sewer extension less than 2,000 feet, \$1,000.00.

(b) For a conventional gravity sewer extension equal to or greater than 2,000 feet but less than 4,000 feet of sewer line, \$1,500.00, and for each incremental increase of up to 2,000 feet of sewer line, an additional \$500.00.

(c) For a simple pumping station and force main, \$2,000.00.

(d) For a small diameter pressure sewer and grinder pumping station consisting of not more than 2,000 feet of sewer line and not more than 10 grinder pumping stations, \$2,000.00.

(e) For small diameter pressure sewer and grinder pumping station projects not covered by subdivision (d) and consisting of not more than 5,000 feet of sewer line and not more than 25 grinder pumping stations, \$4,000.00.

(5) Except as provided in subsection (7), if an applicant does not comply with subsection (3), the department shall not conduct an expedited review and any submitted fee shall not be refunded. Within 10 business days after receipt of the application, the department shall notify the applicant of the reasons why the department's review of the application will not be expedited. On receipt of this notification, a person may correct the deficiencies and resubmit an application and request for an expedited review with the appropriate fee specified under subsection (6). The department shall not reject a resubmitted application and request for expedited review solely because of deficiencies that the department failed to fully identify in the original application.

(6) For a second submission of an application that originally failed to meet the requirements specified in subsection (3), the applicant shall instead include a fee equal to 10% of the fee specified in subsection (4). However, if the deficiency included failure to pay the appropriate fee, the second submission must include the balance of the appropriate fee plus either 10% of the appropriate fee or, if the applicant makes additional changes other than those items identified by the department as being deficient, an additional fee equal to the fee specified in subsection (4). For the third and each subsequent submittal of an application that failed to meet the requirements specified in subsection (3), the applicant shall include an additional fee equal to the fee specified in subsection (4).

(7) If an applicant fails to sign the application, submits construction plans and specifications that have not been prepared, signed, and sealed by a licensed professional engineer, or does not submit the required fee, the department shall notify the applicant of the deficiency within 5 business days after receiving the application. The application must not be processed until the deficient items are addressed. If the applicant does not provide the deficient items within 5 business days after notification by the department, the application must be handled as provided in subsection (5).

(8) The department shall review and make a decision on complete applications submitted with a request for



expedited review within 10 business days after receipt by the department of a complete application. However, if the department waives the notification requirement of subsection (3)(a), the department shall review and make a decision on the application within 20 business days after receipt of a complete application.

(9) If the department fails to meet the deadline specified in subsection (8), both of the following apply:

(a) The department shall continue to expedite the application review process for the application.

(b) The fee required under this section for an expedited review must be refunded.

(10) The department shall transmit fees collected under this section to the state treasurer for deposit into the fund.

(11) As used in this section, "complete application" means a department-provided application form that is completed, for which all requested information has been provided, and that can be processed without additional information.

**History:** Add. 2006, Act 602, Imd. Eff. Jan. 3, 2007;—Am. 2010, Act 302, Imd. Eff. Dec. 16, 2010;—Am. 2015, Act 82, Eff. Oct. 1, 2015;—Am. 2019, Act 79, Imd. Eff. Sept. 30, 2019;—Am. 2023, Act 140, Imd. Eff. Sept. 29, 2023.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4113 Infrastructure construction fund.**

Sec. 4113. (1) The infrastructure construction fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund. The department shall be the administrator of the fund for auditing purposes.

(4) The department shall expend money from the fund, upon appropriation, only to administer this part and the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023, including all of the following:

(a) Maintenance of program data.

(b) Development of program-related databases and software.

(c) Compliance assistance, education, and training directly related to this part and the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(d) Program administration activities.

**History:** Add. 2006, Act 602, Imd. Eff. Jan. 3, 2007;—Am. 2010, Act 302, Imd. Eff. Dec. 16, 2010;—Am. 2018, Act 237, Eff. Sept. 25, 2018.

**Popular name:** Act 451

**Popular name:** NREPA

## **PART 43**

### **WATERWORKS SYSTEMS, SEWERS, AND DISPOSAL PLANTS**

#### **324.4301 Waterworks systems, sewers, and disposal plants; acquisition, construction, equipping, operation, and maintenance; acquisition of land; powers of local units of government.**

Sec. 4301. A local unit of government in this state, either individually or jointly by agreement with another local unit of government, may own, acquire, construct, equip, operate, and maintain, either within or outside of the statutory or corporate limits of the local unit or units of government, intercepting sewers, other sanitary and storm sewers, pumping stations, and a plant or plants for the treatment, processing, purification, and disposal in a sanitary manner approved by the department, of the liquid and solid wastes, refuse, sewage and night soil, storm water, and garbage of the local unit or units of government. A local unit of government, either individually or jointly by agreement with another local unit of government, may own, acquire, construct, equip, operate, and maintain either within or outside of the statutory or corporate limits of the local unit or units of government waterworks systems approved by the department of public health, including such facilities as water mains, treatment works, source facilities, pumping stations, reservoirs, storage tanks, and other appurtenances for the purpose of obtaining, treating, and delivering pure and wholesome water in adequate quantity to the local unit or units of government. They may acquire by gift, grant, purchase, or condemnation necessary lands either within or outside of the statutory or corporate limits of the local unit or units of government. However, a township shall not condemn land outside its corporate limits. For the purpose of acquiring property for the uses described in this part, the local unit of government has all the rights, powers, and privileges granted to public corporations under Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws. These powers are in addition to any powers

granted to the local unit of government by statute or charter.

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

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality 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

### **324.4302 Waterworks systems, sewers, and disposal plants; mortgage bonds.**

Sec. 4302. (1) The waterworks system, intercepting sewers, pumping stations, sewage disposal plant and system, transfer station, and garbage and refuse processing or disposal plant and system, are public utilities within the meaning of any constitutional or statutory provisions for the purpose of acquiring, purchasing, owning, operating, constructing, equipping, and maintaining the waterworks system, intercepting sewers, pumping stations, sewage disposal plant and system, transfer station, and garbage and refuse processing or disposal plant and system. A local unit of government may issue full faith and credit bonds or mortgage bonds for the purposes described in this part beyond the general limits of the bonded indebtedness prescribed by law except as provided in this section. The mortgage bonds as provided in this section shall not impose any general liability upon the local unit of government but shall be secured only on the property and revenues of the utility as provided in this section, including a franchise, stating the terms upon which the purchaser may operate the utility in case of foreclosure. The franchise shall not extend for a longer period than 20 years from the date of the sale on foreclosure. The total amount of mortgage bonds shall not exceed 60% of the original cost of the utility except as provided in this section. Bonds shall not be issued as general obligations of the local unit of government except upon a 3/5 affirmative vote of the qualified electors of the local unit of government and except as provided in this section, not in excess of 3% of the assessed valuation of the real and personal property of the local unit of government as shown by the last preceding tax roll. Bonds shall not be issued as full faith and credit bonds or mortgage bonds of the utility except upon a 3/5 affirmative vote of the legislative body of the local unit of government.

(2) Revenue bonds issued under this section are subject to the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

(3) Except for revenue bonds described in subsection (2), all other bonds and notes issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 327, Imd. Eff. May 23, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4303 Waterworks systems, sewers, and disposal plants; supervision and control by local units of government; rules; establishment, certification, and assessment of rates or charges.**

Sec. 4303. The legislative body of a local unit of government or the respective legislative bodies of the local units of government who have agreed to jointly own and operate waterworks systems, intercepting sewers, or sewage treatment plants, may create a separate board or may designate certain officials of the local unit or units of government to have the supervision and control of the waterworks systems, intercepting sewers, transfer stations, or sewage and refuse and garbage processing or disposal plants. The legislative body, respective legislative bodies, or the board may make all necessary rules governing the use, operation, and control of the facilities and systems. The legislative body or respective legislative bodies may establish just and equitable rates or charges to be paid to them for the use of the waterworks system or disposal or processing plant and system by each person whose premises are served, and the rates or charges may be certified to the tax assessor and assessed against the premises served and collected or returned in the same manner as other county or municipal taxes are certified, assessed, collected, and returned.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4304 Mortgage bonds; manner of payment; sinking fund.**

Sec. 4304. Bonds that are issued and secured by a mortgage on the utility as provided in this part shall not be a general obligation of the local unit of government, but shall be paid only out of revenues received from the service charges as provided in section 4303 or from a sale of the property and franchises under a foreclosure of the mortgage. If a service rate is charged, a sufficient portion shall be set aside as a sinking

fund for the payment of the interest on the bonds and the principal of the bonds at maturity.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4305 Sewers and disposal plants; granting franchise to private corporation.**

Sec. 4305. Instead of owning and operating a sewer system and sewage disposal plant, transfer station, garbage or refuse collection, processing, and disposal plant or system as provided in section 4301, a local unit of government may grant a franchise for a period not to exceed 30 years to a private corporation organized under, or authorized by, the laws of this state to engage in such business, to build, construct, own, and operate a sewage or garbage and refuse processing or disposal system for the purpose of receiving and treating sewage and night soil, refuse, and garbage from the local unit or units of government. The franchise may authorize the corporation to charge each person owning property, from which the sewage, refuse, or garbage is received, a fee determined to be reasonable by the public service commission of this state, upon proper application made either by the corporation or local unit or units of government, and after holding a public hearing. The franchise may also grant to the corporation the right and privilege to provide collection services and to lay all intercepting and other sewers and connecting pipes in the streets and public alleys of the local unit or units of government as are necessary to receive, transfer, and conduct the sewage, garbage, or refuse to the processing or disposal plant and under reasonable rules, regulations, and supervision as are established by the local unit or units of government. The franchise is void unless approved by 3/5 of the electors of the local unit or units of government voting at a general or special election. This franchise shall not duplicate existing private solid waste management services or facilities that have been developed under part 115.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4306 Contract to receive, treat, transfer, and process sewage, night soil, garbage, and refuse; charges.**

Sec. 4306. The local unit or units of government may enter into a contract with a person to receive, treat, transfer, and process in the manner provided in this part, the sewage, night soil, garbage, and refuse of the local unit or units of government. The contract may authorize the person to charge the owners of the premises served a service rate determined by the local unit or units of government to be just and reasonable, or the local unit or units of government may contract to pay a flat rate for the service, paid out of their general fund or funds, or assess the owners of the property served a reasonable charge to be collected as provided in this part and paid into a fund to be used to defray the contract charges.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4307 Sewage system, solid waste facility, or waterworks system; bonds generally.**

Sec. 4307. (1) In accordance with and to the extent authorized by law, when the department, the department of public health, or a court of competent jurisdiction in this state has ordered, or when the department has issued a permit for, the installation, construction, alteration, improvement, or operation of a sewage system, solid waste facility, or waterworks system in a local unit of government, and the plans for the facility or system have been prepared and approved by the state department or commission having the authority by law to grant the approval, the legislative body or the respective legislative bodies of the local unit or units of government may issue and sell the necessary bonds for the construction, installation, alteration, operation, or improvement, including the treatment works, and other facilities as may be ordered or set forth in the permit as being necessary to provide for the effective operation of the system. This provision shall be construed to allow a local unit of government the option of selling bonds under a department order or permit, or of taking or permitting the matter to go into court and selling bonds under a court order. The legislative body or the respective legislative bodies shall determine the denomination of the bonds and the date, time, and manner of payment. The amount of the bonds either issued or outstanding shall not be included in the amount of bonds that the local unit or units of government are authorized to issue under any statutes of this state or charters. Local units of government issuing bonds under this section may raise a sum annually by taxation as the legislative body or respective legislative bodies consider necessary to pay interest on the bonds, and to pay the principal as it falls due. The annual amount may be in excess of the authorized annual tax rate fixed by statute or charter.



(2) Except as otherwise provided in this part, all bonds issued under this section are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. Court ordered bonds do not require approval of the electors and are not subject to section 5(g) of the home rule city act, 1909 PA 279, MCL 117.5, as to publication of notice, petition, and referendum. Bonds other than court ordered bonds issued under this part require approval of the electors at a general or special election only if an appropriate petition is filed as provided by law.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 213, Imd. Eff. Apr. 29, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4308 Waterworks systems, sewers, or disposal systems; court order; plans and specifications; authorization and issuance of bonds.**

Sec. 4308. If an order is made by a court of competent jurisdiction pursuant to this part, the fact that the order was issued shall be recited in the official minutes of the legislative body or the respective legislative bodies. The body or bodies shall require that plans and specifications be prepared for a waterworks, sewage, garbage, or refuse transfer, processing, or disposal system, including the necessary other facilities. After the plans are approved by the legislative body or respective legislative bodies, they shall be submitted to the department of public health or the department for approval. If the plans are approved, the legislative body or respective legislative bodies shall authorize the issuance and sale of the necessary bonds to construct the proposed system or facilities in accordance with the approved plans.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4309 Construction of part.**

Sec. 4309. The authority given by this part is in addition to and not in derogation of any power existing in any of the local units of government under any statutory or charter provisions which they may now have or may adopt.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4310 Waterworks systems, sewers, or disposal plants; court proceedings.**

Sec. 4310. Proceedings under this part shall be taken only in a court of competent jurisdiction in the county in which the proposed waterworks system, interceptors, sewage, garbage, or refuse transfer, processing, or disposal plants are to be constructed.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4311 Waterworks systems, sewers, or disposal plants; agreements between local units of government and municipalities as to bonds.**

Sec. 4311. If considered expedient for the safety and health of the people, local units of government may enter into agreement with each other to raise money and issue bonds to erect and maintain waterworks systems, intercepting sewers, sewage treatment plants, or garbage or refuse transfer, processing, or disposal systems.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4312 Local units of government; contract power; approval.**

Sec. 4312. If local units of government desire to act under this part, the relationship established between such local units of government shall be fixed by contract and such contracts may be made by local units of government under this part in a manner and to the extent that natural persons might make contracts for like purposes. Such contracts before becoming operative shall be approved by a vote of the majority of the members elect of each of the respective legislative bodies of the local units of government operating under this part.

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

**Popular name:** Act 451

**Popular name:** NREPA

## PART 45

### BONDS FOR PREVENTION AND ABATEMENT OF WATER POLLUTION

#### **324.4501 "Municipality" defined.**

Sec. 4501. The term "municipality" or "municipalities" as used in this part means and includes a county, city, village, township, school district, metropolitan district, port district, drainage district, authority, or other governmental authority, agency, or department within or of the state with power to acquire, construct, improve, or operate facilities for the prevention or abatement of water pollution, or any combination of such governmental agencies.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4502 Legislative determinations.**

Sec. 4502. The legislature hereby determines all of the following:

(a) That it is essential for the public health, safety, and welfare of the state and the residents of the state to undertake a complete program of construction of facilities to abate and prevent pollution of the water in and adjoining the state, the program to be undertaken by the state in cooperation with any municipalities and with such aid from the United States government or its agencies as is available.

(b) That abating and preventing pollution of the water in and adjoining the state is essential to the encouragement of business, industrial, agricultural, and recreational activities within the state.

(c) That the encouragement of business, industrial, agricultural, and recreational activities in the state by abating and preventing pollution of the water in and adjoining the state will benefit the economy of the state by encouraging businesses and industries to locate or expand within the state in order to provide more employment within the state.

(d) That abating and preventing pollution of the water in and adjoining the state is in furtherance of the purpose and the public policy of the state as expressed in sections 51 and 52 of article IV of the state constitution of 1963 and to carry out the remaining unfunded portions of the program for which electors of the state authorized the issuance of general obligation bonds.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4503 Bond issuance; authorization; amount; purpose.**

Sec. 4503. The state shall borrow the sum of \$335,000,000.00 and issue the general obligation bonds of the state, pledging the faith and credit of the state for the payment of the principal and interest on the bonds, for the purpose of providing money for the planning, acquisition, and construction of facilities for the prevention and abatement of water pollution, consisting of trunk and interceptor sewers, sewage treatment plants and facilities, improvements and additions to existing sewage treatment plants and facilities, and such other structures, devices, or facilities as will prevent or abate water pollution, and for the making of grants, loans, and advances to municipalities, in accordance with conditions, methods, and procedures established by law.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4504 Bonds; issuance in series; resolution of administrative board; sale of bonds.**

Sec. 4504. (1) The bonds shall be issued in 1 or more series, each series to be in the principal amount, to be dated, to have the maturities that may be either serial, term, or term and serial, to bear interest at a rate or rates not to exceed 6% per annum if issued before September 19, 1982 and not to exceed 18% per annum if issued on or after September 19, 1982, to be subject or not subject to prior redemption and, if subject to prior redemption with call premiums, to be payable at a place or places, to have or not have the provisions for registration as to principal only or as to both principal and interest, and to be in the form and to be executed in the manner as determined by resolution to be adopted by the administrative board. The administrative board may in the resolution provide for the investment and reinvestment of bond sales proceeds and any other

details for the bonds and the security of the bonds considered necessary and advisable. The bonds or any series of the bonds shall be sold for not less than the par value of the bonds and may be sold, as authorized by the state administrative board, either at a public sale or at a publicly negotiated sale.

(2) Bonds issued under this part are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

(3) The issuance of bonds under this part is subject to the agency financing reporting act.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995;—Am. 2002, Act 248, Imd. Eff. Apr. 30, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4505 Revenues; disposition.**

Sec. 4505. The proceeds of sale of the bonds or any series of the bonds and any premium and accrued interest received on the delivery of the bonds shall be deposited in the treasury in a separate account and shall be disbursed from the separate account only for the purposes for which the bonds have been authorized and for the expense of issuing the bonds. Proceeds of sale of the bonds or any series of the bonds shall be expended for the purposes set forth in this part in the manner provided by law.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4506 Bonds; negotiability; tax exempt.**

Sec. 4506. Bonds issued under this part are fully negotiable under the uniform commercial code, Act No. 174 of the Public Acts of 1962, being sections 440.1101 to 440.11102 of the Michigan Compiled Laws, and the bonds and the interest on the bonds are exempt from all taxation by the state or any of its political subdivisions.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4507 Legal investments.**

Sec. 4507. Bonds issued under former Act No. 76 of the Public Acts of 1968 or this part are securities in which all banks, bankers, savings banks, trust companies, savings and loan associations, investment companies, 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 any funds, including capital, belonging to them or within their control.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4508 Bonds; question; submission to electors; ballot; form.**

Sec. 4508. The question of borrowing the sum of \$335,000,000.00 and issuing bonds of the state for the purpose set forth in this part shall be submitted to a vote of the electors of the state qualified to vote on the question in accordance with section 15 of article IX of the state constitution of 1963, at the general November election to be held on November 5, 1968. The question submitted shall be substantially as follows:

"Shall the state of Michigan borrow the sum of \$335,000,000.00 and issue general obligation bonds of the state therefor pledging the full faith and credit of the state for the payment of principal and interest thereon for the purpose of planning, acquiring and constructing facilities for the prevention and abatement of water pollution and for the making of grants, loans and advances to municipalities, political subdivisions and agencies of the state for such purposes, the method of repayment of said bonds to be from the general fund of the state?

Yes [ ]

No [ ]".

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4509 Submission to electors.**

Rendered Monday, July 7, 2025

Page 11

Michigan Compiled Laws Complete Through PA 5 of 2025

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Sec. 4509. The secretary of state shall take such steps and perform all acts as are necessary to properly submit the question to the electors of the state qualified to vote on the question at the general November election to be held on November 5, 1968.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4510 Bonds; appropriation to make prompt payment.**

Sec. 4510. After the issuance of the bonds authorized by former Act No. 76 of the Public Acts of 1968 or this part, or any series of the bonds, the legislature shall each year make appropriations fully sufficient to pay promptly when due the principal of and interest on all outstanding bonds authorized by former Act No. 76 of the Public Acts of 1968 or this part and all costs incidental to the payment of that principal and interest.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4511 Approval of electors.**

Sec. 4511. Bonds shall not be issued under this part unless the question set forth in section 4508 is approved by a majority vote of the qualified electors voting on the question at the general November election to be held on November 5, 1968.

**History:** Add. 1995, Act 60, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

## **PART 47**

## **SEWAGE DISPOSAL AND WATER SUPPLY DISTRICTS**

### **324.4701 Definitions.**

Sec. 4701. As used in this part:

(a) "Due notice" means notice published at least twice, with an interval of at least 7 days between the 2 publication dates, in a newspaper or other publication of general circulation within the appropriate area or, if a publication of general circulation is not available, by posting at a reasonable number of conspicuous places within the appropriate area. Posting shall include, if possible, posting at public places where it may be customary to post notices concerning county or municipal affairs. At any hearing held pursuant to the notice and at the time and place designated in the notice, adjournment may be made without renewing the notice for an adjournment date.

(b) "Municipality" includes a metropolitan district, a water or sewer authority created by law, or a county, township, charter township, incorporated city, or incorporated village. An incorporated village, for the purposes of this part, is a governmental unit separate and distinct from the township or townships in which it is located.

(c) "Sewage disposal systems" includes all interceptor sewers, storm sewers, sanitary sewers, combined sanitary and storm sewers, sewage treatment plants, and all other plants, works, instrumentalities, and properties used or useful in connection with the collection, treatment, and disposal of sewage and industrial wastes.

(d) "United States or agencies of the United States" includes the United States of America or any bureau, department, agency, or instrumentality of the United States or otherwise created by the congress of the United States.

(e) "Water supply and sewage disposal district" means a governmental subdivision of this state and a public body corporate and politic organized in accordance with this part for the purpose, with the powers, and subject to the restrictions in this part.

(f) "Water supply system" includes all plants, work, instrumentalities, and properties used or useful in connection with obtaining a water supply, the treatment of water, and the distribution of water.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4702 Department of natural resources; powers and duties.**

Sec. 4702. The department under this part has all of the following powers and duties:

(a) To foster and encourage the organization of sewage disposal and water supply districts, to act as the administrative agency in the proceedings incident to the formation of districts, and to offer and lend appropriate assistance to the directors of districts organized as provided in this part in the carrying out of any of their powers, functions, and programs.

(b) To cooperate, negotiate, and enter into contracts with the other governments, governmental units and agencies in matters concerning water supply systems and sewage disposal systems; to take steps and perform acts and execute documents as may be necessary to take advantage of any act enacted by the congress of the United States that may make available funds for any of the purposes enumerated in this part or be otherwise of assistance in carrying out the purposes of this part; to disburse money that may be appropriated by the legislature for the use and benefit of the districts created under this part or municipalities or local units of government of this state in accordance with the formula prescribed in this part or in the acts of appropriation; and to disburse money that may be received by this state from the United States government for the purposes provided for in this part in accordance with the formula set forth by applicable acts of congress.

(c) To act as the fiscal agent for this state for the purpose of making available to local units of government and the districts as may be organized under this part money or instruments of indebtedness that may be approved by the legislature or the people of this state for the construction and operation of sewage disposal systems by local units of government or districts.

(d) To coordinate its duties and functions with similar or related duties and functions that are performed by other state agencies or governmental units to coordinate and cooperate efforts to accomplish the purposes of this part.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4703 Sewage disposal and water supply districts; joint municipal action to form district; filing, contents, and consolidation of petition.**

Sec. 4703. (1) Two or more municipalities, by resolution of their legislative bodies, may file a petition with the department requesting that a sewage disposal district or a water supply district or a combination of both be organized to function in the area described in the petition. The petition shall set forth all of the following:

(a) The proposed name of the district.

(b) That there is need in the interests of public health and welfare for the district to function in the area described in the petition.

(c) A description of the area proposed to be organized as a district. The description is not required to be given by metes and bounds or by legal subdivision, but is sufficient if the description is generally accurate and designates the local units of governments comprised within the proposed district. The territory shall include only area within the boundaries of the petitioning municipality.

(d) A request that a referendum be held within the defined territory on the question of creation of the district in the territory, and that the agency create the requested district.

(2) When more than 1 petition is filed covering a portion of the same territory, the agency may consolidate all or any of the petitions.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4704 Sewage disposal and water supply districts; petition; hearing; notice; adjournment; determination as to territory affected.**

Sec. 4704. Within 30 days after a petition is filed with the department, or later if authorized by the department, but not to exceed 90 days, the department shall cause due notice to be given of a hearing upon the question of the desirability and necessity in the interests of public health and welfare of the creation of the district, upon the question of appropriate boundaries to be assigned to the district, upon the propriety of the petition and of the proceedings taken under this part, and upon all other questions relative to this matter. All interested parties have the right to attend the hearings and be heard. Due notice of the time and place of holding the hearing shall be given to all of the executive officials of the municipalities included within the involved territory. If it appears upon the hearing that it is desirable to include within the proposed district territory outside of the area within which due notice has been given, or if it is made to appear that more data or information is needed, the hearing shall be publicly adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district and a further hearing held. The



department shall cooperate to the fullest extent possible with the local units of government included within the territorial limits of the proposed district in the making of the necessary investigations and engineering and financial studies that may be required for the proper decisions to be made by the department upon the conclusion of the hearing. After the hearing, if the department determines upon the facts presented and upon other relevant facts and information as may be available to it that there is need in the interests of public health and welfare for a sewage disposal or water supply district, or both, to be created and to function in the territory considered at the hearing, it shall make and record this determination and shall define the boundaries of the districts by the territorial limits of municipalities included within the district or by metes and bounds. In making the determination and in defining the boundaries, the department may give due weight and consideration to the physical and topographical conditions of the area considered, availability or nonavailability of water resources, engineering and economic feasibility of the construction and management of the works required, and all other relevant and pertinent facts that may be brought to its attention or of which it may have knowledge. Such additional territory shall not be included without the approval by resolution of the legislative body of any municipality affected, including the original petitioners.

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

**Popular name:** Act 451

**Popular name:** NREPA

**324.4705 Sewage disposal and water supply districts; hearing; determination of no necessity; record; determination of necessity; referendum; rules; creation of authority; application; petitions to include additional territory; legal status of district; certificate.**

Sec. 4705. (1) If the department determines after the hearing that there is no need for a district to be formed in the territory considered at the hearing and that the operation of the district within the defined boundaries is not practicable and feasible from the standpoint of engineering, administration, and financing, the department shall make and record the determination and shall deny any petition filed with it.

(2) If the department has made and recorded a determination that in the interests of public health and welfare there is a need for the formation, organization, and functioning of a district in a particular territory and has defined the boundaries of the district, it shall consider the question of whether the operation of that district within the boundaries with the powers conferred upon districts in this part is desired by a majority of the electors within the boundaries of the district. To assist the department in the determination of this question, it is the duty of the department, within a reasonable time of entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries of the district, to order a referendum within the proposed district upon the proposition of the creation of the district and to order the municipalities affected to cause due notice of the referendum to be given. The department shall direct the officials in charge of the holding of elections in the local units of government included within the district to call a special election or to place the referendum on the ballot at the next general election to be held in all of the territory comprising the district. The question shall be submitted by ballots prepared by the department that shall succinctly describe the district proposed to be formed, the area in which it shall function, and in appropriate language require those voting on the proposition to vote for or against the creation of the district, in accordance with the requirements of law for the holding of referendums on state questions. Municipalities affected are responsible for the costs of the preparation of the ballots. Only electors who have property assessed for taxes within the boundaries of the district are eligible to vote in the referendum. Upon the completion of the referendum, the department shall publish the result of the referendum.

(3) The department shall pay all expenses for the issuance of the notice and the conduct of the hearings described in this section and shall supervise the conduct of the hearings. The referendum shall be held by the regular established election officials and any costs shall be borne by the affected municipalities. The department shall promulgate rules governing the conduct of the hearings.

(4) If the results of the referendum described in subsection (3) call for the formation of the proposed district, the department shall call a conference of all the officials of all of the municipalities within the boundaries of the proposed district and the department shall make every effort to encourage the municipalities to incorporate an authority for the purpose of constructing and operating a sewage disposal system or water supply system under the terms and authority vested in the municipalities pursuant to law. If after the expiration of 180 days from the holding of the conference or within an additional period as the department may consider necessary, the municipalities have not created an authority as provided in this part, the department shall make, file, and publish as provided in this part a determination creating the district as contained in the application and as approved by the referendum.

(5) Upon the making and filing of the determination as described in subsection (4), due notice shall be

served and published and the department shall appoint 5 directors who, for the purpose of this part, are electors within the territory comprising the district and who shall comprise a temporary governing body of the district. The members of the temporary governing body shall hold office until the officers of the first permanent governing body have been elected and qualified.

(6) The district shall be a governmental subdivision of this state and a public body corporate when the appointed directors present to the secretary of state an application signed by them that sets forth all of the following:

(a) That a petition for the creation of the district was filed with the department pursuant to this part, that the proceedings specified in this part were taken, that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body corporate under this part, and that the applicants are the temporary directors of the district.

(b) The name and official residence of each of the directors together with a certification of their appointment.

(c) The name which is proposed for the district.

(d) The location of the present office that has been selected for the district by the directors.

(7) The application shall be subscribed and sworn to by at least a majority of the directors before an officer authorized by the laws of the state to administer oaths. The officer shall certify upon the application that he or she personally knows the directors and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a certified statement made by the department that a petition was filed, notice issued, and hearing held as required in this part; that the department determined that there is need in the interests of the public health and welfare for a district to function in the proposed territory; that the boundaries are defined; that notice was given and referendum held in the question of creation of the district; that the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of such a district; and that the department did determine that the operation of the proposed district is administratively practicable and feasible. In addition, the statement shall set forth the boundaries of the district.

(8) The secretary of state shall examine the application and statement and, if he or she finds that the name proposed for the district is not identical with any similar district of this state or so nearly identical as to lead to confusion or uncertainty, the secretary of state shall receive and file the application and statement and shall record them in an appropriate book of record in the office of the secretary of state. When the application and statement have been made, filed, and recorded as provided in this section, the district shall constitute a governmental subdivision of this state and a public body corporate. The secretary of state shall make and issue to the directors a certificate under the seal of the state of the due organization of the district and shall record such certificate with the application and statement.

(9) Petitions for including additional territory within a district may be filed with the department and the proceedings provided for in this part or petitions to organize a district shall be observed in the case of petitions for inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as possible to the form prescribed in this part for petitions to organize a district. The petition shall be filed with the department and upon its receipt it shall be referred to the governing body of the district to be affected by the petition and if, after due consideration, the governing body determines against the inclusion of the additional territory, the petition shall be denied.

(10) In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract, proceeding, or action of the district, the district shall be considered to be legally established in accordance with this part upon proof of the issuance of the certificate by the secretary of state. The certificate of the secretary of state shall be admissible in evidence in any suit, action, or proceeding described in this subsection and shall be proof of the filing and contents of the certificate.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4706 Permanent governing body; nomination, election, and terms of directors; certification of election; vacancy; conducting business at public meeting; notice of meeting; quorum; concurrence of majority for determination; expenses.**

Sec. 4706. (1) The first permanent governing body of the district after the district has been organized and has received the secretary of state certificate described in section 4705 shall consist of 5 directors. The directors shall be nominated and elected at the next general state election in the same manner and pursuant to the election laws applicable to members of the house of representatives.

(2) Except for the first directors, the directors shall hold office for a term of 6 years. Among the first directors to be elected, the 2 receiving the highest number of votes shall hold office for the full term of 6 years and the 3 receiving the next highest number of votes shall hold office for 4 years. The secretary of state shall be responsible for the certification of the election of the directors. A vacancy shall be filled by appointment made by the remaining directors for the unexpired term.

(3) The business which the directors may perform shall be conducted at a public meeting of the directors held in compliance with the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Public notice of the time, date, and place of the meeting shall be given in the manner required by Act No. 267 of the Public Acts of 1976. A majority of the directors constitutes a quorum for the transaction of business and the concurrence of a majority of the total number of directors in a matter shall be required for the matter's determination. A director shall not receive compensation for services, but shall be reimbursed for expenses necessarily incurred in the discharge of his or her duties.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4707 Employment of executive secretary, technical experts, officers, agents, and employees; qualifications, duties, and compensation; delegation of powers and duties; furnishing copies of documents and other information; availability of writings to public; execution of surety bonds; records; annual audit; designation of representatives to advise and consult on questions of program and policy.**

Sec. 4707. (1) The directors may employ an executive secretary, technical experts, and other officers, agents, and employees, permanent or temporary, as required, and shall determine their qualifications, duties, and compensation. The directors may delegate to the chairperson, to 1 or more directors, or to 1 or more agents or employees, powers and duties as they consider proper.

(2) The directors shall furnish to the department upon request copies of all rules, orders, contracts, forms, minutes, proceedings, and other documents that they adopt or employ and other information concerning their activities as required by the department in the performance of the department's duties under this part. A writing prepared, owned, used, in the possession of, or retained by the directors in the performance of an official function shall be made available to the public in compliance with the freedom of information act, Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

(3) The directors shall provide for the execution of surety bonds for employees and officers entrusted with funds or property; shall provide for the keeping of a full and accurate record of their proceedings and of rules and orders promulgated or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. The directors shall request that the legislative body and executive officers of a municipality located within the territory comprised within the district designate a representative to advise and consult with the directors of the district on questions of program and policy that may affect the property, water supply, or sewage disposal problems, or other interests of the municipality.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4708 Sewage disposal and water supply districts; powers.**

Sec. 4708. A district organized under this part constitutes a governmental subdivision of this state and a body corporate, exercising public powers, with power to sue and to be sued in any court of this state. A district shall possess all the powers necessary to organize itself and also shall possess powers incident to the powers enumerated in this part. The district is authorized and empowered to do all of the following:

(a) Pursuant to the terms of any contract entered into under section 4709 of this part, to construct and operate sewage disposal systems and water supply systems within the area comprising its territorial limits and to acquire, extend, and improve the systems.

(b) To make and cause to be made surveys, studies, and investigations of water resources of the area within its territorial limits for the purpose of determining the feasibility and practicability of developing new sources of water supply to municipalities, industrial and commercial establishments, and agricultural and residential lands and areas so that water is available to agricultural and residential lands in a quantity and quality necessary for the protection of the public health and the promotion of the general welfare within the areas.

(c) To make and cause to be made surveys, studies, and investigations for the purpose of ascertaining the requirements of municipalities, industrial and commercial establishments, individual and collective groups, or

occupants of lands for sewage disposal systems so that sewers and sewage disposal facilities are available to the entities described in this subdivision that are situated within the territorial limits of the district and that may need or require the facilities for the protection of public health and the promotion of the general welfare.

(d) To cooperate with and enter into agreements with any person as may be necessary for the full performance of its functions and duties and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests in property, either within or outside of its territorial limits; to maintain, administer, and improve any acquired properties; to receive income from same and to expend the income in implementing this part and its purposes; and to sell, lease, or otherwise dispose of any of its property or interests in property to implement this part and its purposes. The district is invested with the power of eminent domain in acquiring private property for public use. For the purposes of exercising the power, the district may proceed under Act No. 149 of the Public Acts of 1911, being sections 213.21 to 213.25 of the Michigan Compiled Laws, or any other statute that grants to any municipality or public body the authority to acquire private property for public use.

(e) To accept and receive money as may be appropriated to the district by the legislature of this state.

(f) To accept and receive any funds or money which may be appropriated by any act of congress either directly from any federal governmental agency responsible for the disbursement and allocation of the funds or through the department and for that purpose the districts are authorized to execute contracts, documents, or agreements as may be required by the congressional act as a prerequisite to the securing of the funds.

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

**Popular name:** Act 451

**Popular name:** NREPA

**324.4709 Sewage disposal and water supply districts; contracts with municipalities; construction, improvement, enlargement, extension, operation, and financing; pledge of payment; resolution; approval by electors; issuance of bonds.**

Sec. 4709. (1) The district may enter into contracts with any municipality located within its territorial limits providing for the acquisition, construction, improvement, enlargement, extension, operation, and financing of a sewage disposal system or water supply system. A contract shall provide for the allocation and payment of the share of the total cost to be borne by the municipality in annual installments for a period not exceeding 40 years. Each contracting municipality may pledge its full faith and credit for the payment of the obligation in the manner and times specified in the contract. The district shall make a reasonable charge for its services that it renders to the users in order to cover the retirement of outstanding indebtedness, costs of operation, maintenance, and replacement of its plants and reserves for capital improvements. If there is excess money in the treasury of the district after all of the contingencies have been met, the excess shall be rebated to the contracting municipalities in proportion to the total amount that the municipality paid for services it has received from the district. No limitation in any statute or charter shall prevent the levy and collection by each of the contracting municipalities of the full amount of taxes necessary for the payment of the contractual obligation. These funds may be raised by each contracting municipality by the use of 1 or more of the following methods:

(a) The levy of special assessments on property benefited by the sewage disposal system or water supply system. The procedures relative to the levying and collection of the special assessments shall conform as near as may be to applicable charter or statutory provisions.

(b) The levy and collection of rates or charges to users and beneficiaries of the service or services furnished by the sewage disposal system or water supply system.

(c) From money received, or to be received, derived from the imposition of taxes by this state, unless the money for this purpose is expressly prohibited by the state constitution of 1963.

(d) From any other fund or funds that may be validly used for the purpose. The contract may provide for any and all matters relating to the acquisition, construction, operation, and financing of the sewage disposal system or water supply system as are considered necessary, including authorization to the district to issue bonds secured by the full faith and credit pledges of the contracting municipalities, as authorized in this part. The contract may provide for appropriate remedies in case of default, including, but not limited to, the right of the municipalities to authorize the county treasurer or other official charged with the disbursement of funds derived from the state sales tax levy under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, to withhold sufficient funds to make up any default or deficiency in funds.

(2) A municipality desiring to enter into a contract with the district under this section shall authorize, by resolution of its governing body, the execution of the contract. The resolution shall be published in 1 or more newspapers of general circulation within the municipality, and the contract may be executed without a vote of

the electors upon the expiration of 30 days after the date of the publication unless, within the 30-day period, a petition signed by not less than 10% of the registered electors residing within the limits of the municipality is filed with the clerk of the municipality requesting a referendum upon the execution of the contract. If this occurs, the contract shall not be executed until approval by the vote of a majority of the electors of the municipality qualified to vote and voting at a general or special election to be held not more than 90 days after the filing of the petition. A special election called for this purpose shall not be included in any statutory or charter limitation as to the number of special elections to be called within any period of time. Signatures on any petition shall be verified by some person under oath, as the actual signatures of the persons whose names are signed on the petition, and the clerk of the municipality has the same power to reject signatures as city clerks under section 25 of the home rule city act, 1909 PA 279, MCL 117.25. The number of registered electors in a municipality is determined by the registration books as of the date of the filing of the petition.

(3) To obtain funds to acquire, construct, improve, enlarge, or extend the sewage disposal system or water supply system authorized by this part, the district, after the execution of the contract or contracts authorized by this part, upon ordinance or resolution adopted by the district, may issue its negotiable bonds secured by the full faith and credit pledges made by each contracting municipality pursuant to authorization contained in this part and the contracts entered into pursuant to this part. Except as otherwise provided in this part, bonds are subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The ordinance or resolution authorizing the issuance of the bonds shall include the terms of the contracts.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 2002, Act 214, Imd. Eff. Apr. 29, 2002.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4710 Sewage disposal and water supply districts; contract sewage treatment; income; application.**

Sec. 4710. The district may enter into a contract for the furnishing of sewage treatment services by any sewage treatment plant owned or operated by the district as a part of its sewage disposal system or the furnishing of water service from any water facilities owned or operated by the district. This contract shall provide for reasonable charges or rates for the service furnished. Any income derived from a contract described in this section shall be applied by the district to the costs of operation and maintenance of its sewage disposal system or its water supply system, and any balances remaining after payment of its cost shall be applied in reduction of its outstanding bonded indebtedness incurred for the acquisition or improvement of its sewage disposal system or water supply system. A contract shall not exceed a period of 40 years.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4711 Detachment of territory from participating municipality; contractual obligations; bonds; redemption.**

Sec. 4711. If territory that is part of a district created under this part is detached from a municipality and transferred to a municipality that is not part of the district, the territory shall remain a part of the municipality from which detached only for the purpose of carrying out any contractual obligations or for the purpose of levying a tax to retire any bonded indebtedness incurred by such district for which the territory is liable until the contractual obligations are fulfilled or the bonds are redeemed or sufficient funds are available in the district's debt retirement fund for this purpose. A territory described in this section is a part of the municipality to which transferred for all other purposes and subsequent to the redemption of the bonds or the time when sufficient funds are available to redeem the bonds, the territory is no longer a part of the district.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4712 Existing systems; self-liquidating revenue bonds.**

Sec. 4712. If the governing body of a district formed under this part acquires, extends, improves, or operates a sewage disposal system or water supply system or provides for the sale and purchase of sewage disposal service or water supply service from an existing system or systems and executes contracts that may be necessary, the authority may, pursuant to any contract entered into under section 4709, issue self-liquidating revenue bonds in accordance with the revenue bond act of 1933, Act No. 94 of the Public Acts of 1933, being sections 141.101 to 141.140 of the Michigan Compiled Laws, or any other act providing



for the issuance of revenue bonds. However, these bonds are payable solely from the revenues of the sewage disposal system or the water supply system. The charges specified in any contract are subject to increase by the district at any time if necessary to provide funds to meet its obligations and any contract authorized by this part is for a period of not more than 40 years. The legislative body of any municipality that enters into a contract with the district may raise by taxes or pay from its general funds any money required to be paid under the terms of the contract to obtain maps, plans, designs, specifications, and cost estimates of the proposed sewage disposal system or water supply system.

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

**Popular name:** Act 451

**Popular name:** NREPA

## PART 49 CONSTRUCTION OF COLLECTING SEWERS

### **324.4901 Definitions.**

Sec. 4901. As used in this part:

(a) "Collecting sewers" means lateral, branch, submain, and trunk sewers consisting of pipes or conduits including pumps, lift stations, force mains, and other appurtenances necessary for a system to prevent or eliminate discharges of raw or inadequately treated sewage of human origin into any waters of the state. Collecting sewers do not include pipes or conduits that carry storm water, surface water, and street wash, or that convey sewage from a building to a common public sewer except that part lying within a public right-of-way; and sewers eligible for grants under Act No. 329 of the Public Acts of 1966, being sections 323.111 to 323.128 of the Michigan Compiled Laws.

(b) "Construction" means the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other similar actions necessary to the construction of collecting sewers; the installation, erection, and building of collecting sewers; and the inspection and supervision of the construction of such sewers. Construction does not include acquisition of lands and rights-of-way.

(c) "Local agencies" means local units of government or other public bodies created by or pursuant to state law and having jurisdiction over collecting sewers.

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

**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

### **324.4902 State sewer construction fund; grants; funding.**

Sec. 4902. Grants to local agencies shall be funded from the state sewer construction fund for collecting sewer projects in the descending order of their priority as established by the department under sections 4909 to 4912.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4903 State sewer construction fund; establishment; eligibility.**

Sec. 4903. A fund to be known as the state sewer construction fund is established to be used for state grants to local agencies for their construction of collecting sewers. Grants shall be made only for collecting sewers on which contracts for construction were awarded prior to the exhaustion of the fund.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4904 State sewer construction fund; disposition.**

Sec. 4904. The proceeds of the sale of \$50,000,000.00 of the bonds authorized by former Act No. 76 of the Public Acts of 1968 or part 45, or any series of the bonds, and any premiums and accrued interest received on the delivery of the bonds, shall be deposited with the state treasurer in the state sewer construction fund. Disbursements from the fund shall be made only for specific eligible collecting sewer projects approved, as

provided in section 4912, by the appropriations committees and by the legislature by concurrent resolution adopted by a roll call vote of a majority of the members elected to and serving in each house. A concurrent resolution shall include all or part of the projects on the priority list of eligible projects reported to the legislature by the department as provided in section 4912, but in case of a part only it shall be the entire part containing all projects on the list having priorities higher than those of projects not included in the resolution and shall not include projects lower in the order of priority. The income from temporary investments of the proceeds shall be deposited in the general fund.

**History:** 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4905 Grants; application; amount; limitations.**

Sec. 4905. (1) A local agency may apply to the department for a grant under this part.

(2) A grant shall be made in an amount equal to 1/2 that portion of the cost of construction of collecting sewers, computed upon the cost of the current year's project only, in excess of 10% of the state equalized value of all taxable property within the political boundaries of the unit of government served by the collecting sewers certified under subsection (2) of section 4906 or \$1,000,000.00, whichever is less.

(3) Grants are subject to the following limitations:

(a) A grant shall not be made for collecting sewers required under the subdivision control act of 1967, Act No. 288 of the Public Acts of 1967, being sections 560.101 to 560.293 of the Michigan Compiled Laws.

(b) A grant shall not be made for collecting sewers for which a federal grant has been made if the amount of the federal grant equals or exceeds the amount of the state grant that the collecting sewers would have received if there had been no federal grant. If the amount of the federal grant made for the collecting sewers is less than the amount of the state grant that the collecting sewers would have received if there had not been a federal grant, the amount of the state grant made for the collecting sewers shall not exceed the difference between the state grant that the collecting sewers would have received if there had not been a federal grant, and the federal grant.

(c) A grant shall not be made for collecting sewers, the construction of which would result in the discharge of untreated or inadequately treated sewage to the waters of the state.

(d) A grant shall not be made unless the local agency has received approval by the department of an official pollution control plan as required by sections 7 and 8 of Act No. 329 of the Public Acts of 1966, being sections 323.117 and 323.118 of the Michigan Compiled Laws, and the collecting sewers are in conformity with the official plan.

(e) A grant shall not be made for collecting sewers which the department determines would not meet an existing or imminent need or would constitute a noneconomic or speculative project.

(f) A local agency shall not be allotted more than 2% of the fund.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4906 State sewer construction fund; disbursements.**

Sec. 4906. (1) Disbursements from the state sewer construction fund shall be made by the director of the department of management and budget and the state treasurer in accordance with the accounting laws of the state only for the following purposes for which the bonds have been authorized:

(a) Expense of issuing the bonds.

(b) Grants to local agencies as provided in section 4905(2) and (3).

(2) Before any disbursement from the fund, as provided in subsection (3), is made to a local agency for a grant for the construction of collecting sewers, the department shall certify to the director of the department of management and budget and the state treasurer the amount of the grant which the agency is eligible to receive under this part. The certificate shall include or have attached to it a certificate by the department, or by the department of public health when so requested by the department, of the necessity and sufficiency of the collecting sewers.

(3) A disbursement from the fund to a local agency shall be made for projects on the priority list established under sections 4904 and 4912 upon certification to the director of the department of management and budget and the state treasurer by the department that the disbursement is due. A local agency may request and receive disbursement of the state grant in not more than 5 installments:

(a) An installment of 50% of the reasonable cost for preparing completed final construction plans and

specifications, but not to exceed the amount of the grant, for the collecting sewers which have been certified as eligible for a state grant, on issuance of a construction permit by the department of public health for the collecting sewers for which the construction plans and specifications have been prepared and on receipt of evidence satisfactory to the department of the local agency's ability and intent to finance the local share of the project cost. A disbursement shall not be made under this subsection to a local agency which has received federal or other state grants for the preparation of final plans and specifications.

(b) An installment when not less than 25% of the cost of construction of the collecting sewers is completed.

(c) An installment when not less than 50% of the cost of construction of the collecting sewers is completed.

(d) An installment when not less than 75% of the cost of construction of the collecting sewers is completed.

(e) A final installment of the unpaid balance of the grant based upon the actual cost of the collecting sewers when construction is completed.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4907 Rules.**

Sec. 4907. The department may promulgate rules to implement this part.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4908 State agencies; officers and employees; use; purpose; grant recipients; records.**

Sec. 4908. (1) The department, with consent of the head of any other agency of this state, shall use the officers and employees of such agency as may be found necessary to assist in carrying out the purposes of this part.

(2) A recipient of a grant under this part shall keep records as the department prescribes, including records that fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of construction of the collecting sewers in connection with the grant given or used, and the amount of that portion of the cost of construction of the collecting sewers supplied by other sources, and other records as will facilitate an effective audit. The department, the auditor general, and the state treasurer or any of their duly authorized representatives shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipient that are pertinent to grants received under this part.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4909 Priority establishment and project certification procedures; compliance prerequisite to grant.**

Sec. 4909. Notwithstanding any other provision of this part or of any rule of the department, compliance with sections 4909 to 4912 is a prerequisite to the making of a grant under this part. Sections 4909 to 4912 provide procedures for establishing the priority of eligible projects and for certifying projects for grants for construction of collecting sewers.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.4910 Collecting sewer projects; pollution control needs; assignment of points.**

Sec. 4910. (1) Points assigned to a collecting sewer project as a complete measure of pollution control needs shall not exceed 15.

(2) Two points shall be assigned for each of the following interests subject to pollution-caused injuries, which injuries will be corrected or substantially lessened by the proposed project:

(a) Public health, safety, or welfare, but not including bathing.

(b) Public water supply for domestic use.

(c) Water supply for commercial or industrial use.

(d) Irrigation or livestock water supply for agricultural use.

- (e) Organized public recreational use including bathing.
- (f) Aesthetic value or utility of riparian lands.
- (g) Water supply for wild animals, birds, and fish and adverse effects on aquatic life or plants.
- (h) Usefulness of fish or game for human consumption.

(3) Collecting sewers required to be constructed in compliance with a judgment rendered by a court of competent jurisdiction, a stipulation or an order of the department, or an agreement with the department of public health shall be assigned from 1 to 4 points in accordance with the following schedule, if the stipulation, order, or agreement specifically recites the existence of unlawful pollution and was in effect not less than 30 days before the deadline for filing applications and if the pollution abatement date is such that compliance would make it necessary to start construction during the year ending:

- (a) June 30 of the fiscal year for which the application is filed, 4 points.
- (b) June 30 of the first succeeding fiscal year, 3 points.
- (c) June 30 of the second succeeding fiscal year, 2 points.
- (d) June 30 of the third succeeding fiscal year, 1 point.

(4) An applicant in default of a performance date specified by an order, stipulation, or agreement may be assigned points under the preceding schedule only at the discretion of the department.

(5) A collecting sewer project for which construction contracts were awarded before the deadline date for filing applications shall be assigned 4 points. The combined total points assigned pursuant to subsections (3) to (5) shall not exceed 4 points.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4911 Total priority points; computation; tied projects; assignment of priority.**

Sec. 4911. (1) Total priority points for a collecting sewer project shall be the sum of the points assigned for water pollution control needs.

(2) If 2 or more projects receive the same priority point totals, the department shall assign priorities to the tied projects after considering factors such as waters affected, extent of public interests involved, relative magnitude of pollution injury, and other factors as the department considers appropriate.

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

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.4912 Fiscal year; filing application for grant; assignment of point total; certification of projects; condition of certification; time extensions; validity of application; report to legislature; approval or rejection of projects.**

Sec. 4912. (1) For the purposes of sections 4909 to 4912, the fiscal year is July 1 to June 30.

(2) Applications for collecting sewer construction grants and official pollution control plans required by sections 7 and 8 of Act No. 329 of the Public Acts of 1966, being sections 323.117 and 323.118 of the Michigan Compiled Laws, shall be filed with the department not later than September 15 preceding the period or fiscal year for which the application is filed. Applications postmarked not later than midnight of September 15 meet this requirement.

(3) A point total shall be assigned by the department to each application that has been timely filed and conforms to the requirements of this part no later than the following January 1.

(4) Projects entitled to construction grants shall be certified to the director of the department of management and budget and the state treasurer from the eligibility list established by the department and as approved by the legislature. Certification shall be made following approval by the legislature.

(5) Certification of a project for a grant is subject to the condition that construction contracts for the project be awarded not later than March 1 of the fiscal year for which application for a state grant has been filed. Failure to comply with this condition of certification is cause for the department to take any action necessary to withdraw any grant offer that may have been obligated to such project. However, on a showing satisfactory to the department that the project will proceed within an extended period, the department may allow 30-day extensions totaling not more than 90 days.

(6) Except as otherwise provided in this part, an application for a collecting sewer construction grant filed with the department is valid only for the fiscal year for which the application is filed.

(7) The department shall report to the legislature by January 15 of each year a list of collecting sewer projects eligible for grants, the points and priorities assigned to them pursuant to this part, a list of projects

that are recommended to be funded, and a list of projects which failed to comply with the conditions of certifications set forth in subsection (5) and on which the department has taken action to withdraw offers of state grants. If legislative approval or rejection of eligible projects is not given each year within 45 days after receipt of the department's list of eligible projects, the department list shall be considered approved.

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

**Popular name:** Act 451

**Popular name:** NREPA

## PART 50 WATER ASSET MANAGEMENT COUNCIL

### **324.5001 Definitions.**

Sec. 5001. As used in this section:

(a) "Asset management" means an ongoing process of maintaining, upgrading, and operating physical assets cost-effectively, based on a continuous physical inventory and condition assessment and investment to achieve performance goals.

(b) "Asset management plan" means a set of procedures to manage assets through their life cycles, based on principles of life cycle costing.

(c) "Asset owner" means a person or agency that owns or operates an asset that meets either of the following requirements:

(i) Serves 1,000 or more individuals and is required by a national pollutant discharge elimination system permit to have an asset management plan.

(ii) Serves 1,000 or more individuals and is required by the safe drinking water act, 1976 PA 399, MCL 324.1001 to 324.1003, to have an asset management plan.

(d) "Department" means the department of environmental quality.

(e) "Drinking water assets" means a system, owned by an asset owner, of pipes and structures through which drinking water is obtained and distributed, including, but not limited to, wells and well structures, wellhead protection areas, groundwater protection areas, intakes and cribs, pumping stations, treatment plants, storage tanks, pipelines, and appurtenances, or a combination of these pipes and structures that are used or intended for use for the purpose of furnishing drinking water for drinking or household purposes.

(f) "Michigan infrastructure council" means the Michigan infrastructure council created in the Michigan infrastructure council act.

(g) "Performance goals" means standards of system performance that reflect asset management principles for asset preservation and sustainability, operations, capacity consistent with local needs, and identified levels of service.

(h) "Region" means the geographic jurisdiction of any of the following:

(i) A regional planning commission created pursuant to 1945 PA 281, MCL 125.11 to 125.25.

(ii) A regional economic development commission created pursuant to 1966 PA 46, MCL 125.1231 to 125.1237.

(iii) A metropolitan area council formed pursuant to the metropolitan councils act, 1989 PA 292, MCL 124.651 to 124.729.

(iv) A metropolitan planning organization established pursuant to federal law.

(v) An agency directed and funded by section 822f of article VIII of 2016 PA 268 to engage in joint decision-making practices related but not limited to community development, economic development, talent, and infrastructure opportunities.

(i) "Stormwater assets" means green or gray features, owned by an asset owner, that are located within the geographic limits of an asset service area and are designed or actively managed by an asset owner for collecting, storing, treating, conveying, or attenuating stormwater, such as catch basins, curbs, gutters, ditches and channels solely conveying stormwater, pipes, conduits, swales, bioswales, storm drains, gulches, gullies, flumes, culverts, bridges, siphons, retention, detention, or infiltration areas, floodwalls, levees, pumping stations, and other similar facilities.

(j) "Transportation asset management council" means the transportation asset management council created in section 9a of 1951 PA 51, MCL 247.659a.

(k) "Wastewater assets" means a system, owned by an asset owner, of pipes and structures, including pipes, channels, conduits, manholes, pumping stations, wastewater or wastewater treatment fixed assets, diversion and regulatory devices, outfall structures, and appurtenances, used to collect, convey, transport, treat, or otherwise handle wastewater.

**History:** Add. 2018, Act 324, Imd. Eff. July 2, 2018.



### **324.5002 Water asset management council; membership; term; removal; advisory committees.**

Sec. 5002. (1) The water asset management council is created within the Michigan infrastructure council.

(2) Subject to subsection (3), the water asset management council consists of the following members:

(a) Nine voting members appointed by the Michigan infrastructure council as follows:

(i) One member from the department.

(ii) One member from the Michigan Municipal League.

(iii) One member from the Michigan Townships Association.

(iv) One member from the Michigan Association of Counties.

(v) One member from the Michigan Association of Drain Commissioners.

(vi) One member representing a regional drinking water, wastewater, or stormwater authority.

(vii) One member representing a water infrastructure association.

(viii) One member with drinking water, wastewater, or stormwater asset management experience.

(ix) One member representing a region.

(b) One ex officio, nonvoting member who has responsibilities related to the department of technology, management, and budget's role as the central data storage agency under section 5008, appointed by the director of the department of technology, management, and budget.

(3) The Michigan Municipal League, Michigan Townships Association, Michigan Association of Counties, and Michigan Association of Drain Commissioners shall each submit a list of 2 nominees to the Michigan infrastructure council from which the respective appointments under subsection (2) shall be made. Names shall be submitted within 60 days after the effective date of the amendatory act that added this section. The Michigan infrastructure council shall make the appointments within 30 days after the receipt of the lists.

(4) Voting members of the water asset management council serve for terms of 3 years. However, of the initial appointments to the water asset management council, 3 shall serve for 1 year, 3 shall serve for 2 years, and 3 shall serve for 3 years. A vacancy on the water asset management council shall be filled in the same manner as the original appointment.

(5) A member of the water asset management council may be removed for incompetence, dereliction of duty, malfeasance during his or her tenure in office, or any other cause considered appropriate by the Michigan infrastructure council.

(6) At the first meeting of the water asset management council, the water asset management council shall select a chairperson from among its members.

(7) The water asset management council may appoint advisory committees whose members shall serve as needed to provide research on issues and projects as determined by the water asset management council. An advisory committee member who is not a member of the water asset management council does not have voting rights on the advisory committee. A recommendation from the advisory committee appointed under this subsection is advisory only and is not binding.

(8) The department shall provide qualified administrative staff and qualified technical assistance to the water asset management council.

**History:** Add. 2018, Act 324, Imd. Eff. July 2, 2018.

### **324.5003 Duties.**

Sec. 5003. The water asset management council shall do all of the following:

(a) Advise the Michigan infrastructure council on a statewide water asset management strategy and the processes and tools needed to implement a strategy for all asset owners.

(b) Promote and oversee the implementation of the recommendations from the regional infrastructure asset management pilot program created under Executive Directive 2017-1 at a state level related to drinking water, wastewater, and stormwater infrastructure.

(c) By October 1, 2019, develop a template or templates that contain requirements for information to be included in an asset management plan submitted under section 5004. The template or templates shall allow for local asset management plan components, including, but not limited to, all of the following, but shall not require components beyond those required in an asset management plan associated with a permit:

(i) An asset inventory. This inventory may include the location, material, size, and condition of the assets in a format that allows for digital mapping. All quality control standards and protocols shall, at a minimum, be consistent with existing federal requirements and regulations and existing government accounting standards.

(ii) A level of service analysis. This analysis may include desired levels of service and performance goals of the assets to help the system achieve reliability, responsiveness, safety, capacity, environmental impacts, cost and affordability, and compliance with law. Levels of service may vary among assets under the asset

owner's jurisdiction.

(iii) A risk of failure analysis. This analysis may identify the probability and criticality of failure of the most critical assets and any contingency plans.

(iv) Anticipated revenues and expenses. This component may include a description of all revenue sources and anticipated receipts for the period of the asset management plan, and expected infrastructure repair and replacement expenditures, including planned improvements or capital reconstruction.

(v) A performance outcomes analysis. This analysis may determine how the investment strategy achieves the desired levels of service and performance goals. The asset management plan may include steps necessary to ensure asset conditions meet or achieve stated goals, including a description and explanation for any gap between achievable condition and performance through the investment strategy and desired goals.

(vi) A description of any plans of the asset owner to coordinate with other entities, such as neighboring jurisdictions and utilities, to minimize duplication of effort with regard to infrastructure preservation and maintenance.

(vii) Proof of acceptance, certification, or adoption by the jurisdiction's governing body.

**History:** Add. 2018, Act 324, Imd. Eff. July 2, 2018.

### **324.5004 Asset management plans.**

Sec. 5004. (1) By October 1, 2019, the water asset management council shall establish a schedule for submission of asset management plans that ensures that 1/3 of asset owners submit an asset management plan each year. The asset management plans are subject to all of the following:

(a) The asset management plans shall cover and be valid for a minimum of 3 years and shall be consistent with the template provided by the water asset management council.

(b) The asset management plans shall be reviewed by the water asset management council within 6 months of receipt. The water asset management council shall compare submitted asset management plans to the minimum components required by this act and the template provided by the water asset management council and shall determine if the asset management plans are in compliance with those standards. If the water asset management council determines that an asset management plan does not meet established standards, the water asset management council shall seek concurrence from the department. If the department concurs, the water asset management council shall notify the entity submitting the asset management plan of the deficiency in meeting the standards and shall require the entity to revise the asset management plan to meet the standards and resubmit the plan within 6 months of receiving the notice.

(c) An asset owner that is required under this part to have an approved asset management plan must implement the approved asset management plan by October 1, 2024.

(2) An asset owner may seek and use federal grants or loans to achieve the goals and manage the asset inventory described in its asset management plan.

**History:** Add. 2018, Act 324, Imd. Eff. July 2, 2018.

### **324.5005 Annual report.**

Sec. 5005. The water asset management council shall annually submit to the Michigan infrastructure council a report on asset condition and investment that includes a summary analysis of the asset management plans received from drinking water, wastewater, and stormwater entities. The report shall also include recommendations on drinking water, wastewater, and stormwater condition goals and analysis of how the utilities are meeting those goals. The water infrastructure asset management analyses contained in the report shall be consistent with the Michigan infrastructure council's asset management process and shall be reported consistent with categories established by the Michigan infrastructure council.

**History:** Add. 2018, Act 324, Imd. Eff. July 2, 2018.

### **324.5006 State funding; capital improvement program; report.**

Sec. 5006. (1) State funding may be provided to asset owners to implement this part as determined by the water asset management council. Funding necessary for the department to support the activities described in this section shall be provided by an annual appropriation.

(2) Each asset owner shall annually report to the water asset management council, consistent with current accounting procedures, how its capital improvement program for assets included in any asset management plans required under section 5004 are meeting its investment goals in a form established by the water asset management council.

(3) The department and each asset owner shall keep accurate and uniform records on all work performed and funds expended for the purposes of this section, according to the procedures developed by the Michigan infrastructure council.

(4) The water asset management council shall annually prepare a report on the activities conducted during the preceding year and the expenditure of funds related to the processes and activities identified by the water asset management council. The report shall also include an overview of the activities identified for the succeeding year. The water asset management council shall submit this report to the Michigan infrastructure council and the legislature by May 2 of each year.

**History:** Add. 2018, Act 324, Imd. Eff. July 2, 2018.

#### **324.5007 Training needs; multi-asset management system.**

Sec. 5007. (1) The water asset management council shall identify training needs to develop proficiency in using a multi-asset management system for asset owners, and training to identify asset system conditions based on a statewide asset condition measure.

(2) The water asset management council shall coordinate and collaborate with the transportation asset management council on planning, reporting, and training. The water asset management council shall collaborate with the transportation asset management council created in section 9a of 1951 PA 51, MCL 247.659a, on potential coordination in the submission of asset management plans.

**History:** Add. 2018, Act 324, Imd. Eff. July 2, 2018.

#### **324.5008 Central data storing agency.**

Sec. 5008. The department of technology, management, and budget shall serve as the central data storage agency for purposes of collecting, storing, and maintaining data under this part.

**History:** Add. 2018, Act 324, Imd. Eff. July 2, 2018.

### **PART 51**

### **WASTEWATER DISPOSAL**

#### **324.5101 "Land disposal wastewater management program" defined.**

Sec. 5101. As used in this part, "land disposal wastewater management program" means the program developed in the United States army corps of engineers southeastern Michigan survey scope wastewater management study, as authorized by section 102 of title I of the federal water pollution control act, chapter 758, 86 Stat. 817, 33 U.S.C. 1252, and the resolution of the United States house of representatives public works committee and the United States senate public works committee or any other study by the corps of engineers proposing disposal of municipal wastewater on land.

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

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Surface Water Quality 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.

For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management 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

#### **324.5102 Submission of views as to environmental consequences, cost effectiveness, and social acceptability of program.**

Sec. 5102. Upon receipt of a proposal to implement a land disposal wastewater management program as defined in this part by a federal, state, or local unit of government, the department shall submit to the governor, the legislature, and local units of government its views as to the environmental consequences, cost effectiveness, and social acceptability of the program. The department of agriculture shall present its views to the governor, the legislature, and local units of government regarding the impact of the program on agriculture.

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

**Compiler's note:** For transfer of authority, powers, duties, functions, and responsibilities of the Waste Management 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

#### **324.5103 Implementation of program; approval or disapproval.**

Sec. 5103. Upon receipt of the views of the department and the department of agriculture, the local units of government shall either approve or disapprove by resolution, and the legislature shall either approve or

disapprove by concurrent resolution, the implementation of the program.

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

**Popular name:** Act 451

**Popular name:** NREPA

## PART 52 STRATEGIC WATER QUALITY INITIATIVES

### **324.5201 Definitions.**

Sec. 5201. As used in this part:

(a) "Asset management program" means the program that identifies the desired level of service at the lowest life cycle cost for rehabilitating, repairing, or replacing the assets associated with a municipality's wastewater or storm water system.

(b) "Authority" means the Michigan municipal bond authority created in section 4 of the shared credit rating act, 1985 PA 227, MCL 141.1054.

(c) "Department" means the department of environmental quality.

(d) "Fund" means the strategic water quality initiatives fund created in section 5204.

(e) "Grant" means a grant from the grant program.

(f) "Grant program" means the strategic water quality initiatives grant program established under this part.

(g) "Loan" means a loan from the loan program.

(h) "Loan program" means the strategic water quality initiatives loan program established under section 5202.

(i) "Municipality" means that term as it is defined in section 5301.

(j) "On-site septic system" means a natural system or mechanical device used to store, treat, and dispose of sewage from 1 or more dwelling units that utilize a subsurface trench or bed that allows the effluent to be absorbed and treated by the surrounding soil, including a septic tank and tile field system.

(k) "State water pollution control revolving 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.

(l) "Wetland mitigation bank" means a site where wetlands are restored, created, or preserved for the purpose of doing both of the following:

(i) To provide compensatory mitigation in accordance with the provisions of part 303, in advance of authorized, unavoidable impacts to wetlands.

(ii) To provide storm water control, nonpoint source pollution control, or pollution treatment that improves the quality of the waters of the state.

**History:** Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2005, Act 257, Imd. Eff. Dec. 1, 2005;—Am. 2012, Act 511, Eff. Jan. 2, 2013.

**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

### **324.5202 Strategic water quality initiatives loan program; establishment; purpose; asset management program; content; criteria; interest rate.**

Sec. 5202. (1) The authority in consultation with the department shall establish a strategic water quality initiatives loan program. This loan program shall provide low interest loans to municipalities to provide assistance for 1 or more of the following:

(a) Improvements to reduce or eliminate the amount of groundwater or storm water entering a sanitary sewer lead or a combined sewer lead.

(b) Upgrades or replacements of failing on-site septic systems that are adversely affecting public health or the environment, or both.

(c) Project costs of the municipality related to testing, demonstration, and construction activities as defined in section 5301(d) for innovative wastewater and storm water technologies approved by the department.

(d) Assistance for construction activities as defined in section 5301(d) designed to protect water quality, including improvements that are water or energy efficient, where feasible, when identified through an asset management program or a project identified in an approved storm water management plan.

(2) The department shall develop criteria specifying the content of an asset management program.

(3) In implementing the loan program, the department shall annually establish the interest rate that will be charged for loans.

**History:** Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2012, Act 511, Eff. Jan. 2, 2013.

**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

### **324.5203 Loan application by municipality; process; agreement; disposition of money received as repayment.**

Sec. 5203. (1) A municipality that wishes to apply for a loan shall submit a loan application to the department as follows:

(a) In compliance with the application requirements provided in part 53, for activities described in section 5202(1)(a) or (b).

(b) On a form approved by the department, for activities described in section 5202(1)(c) or (d).

(2) The department shall process the loan applications submitted under this part.

(3) Prior to releasing a loan, the authority in consultation with the department shall enter into a loan agreement with the loan recipient.

(4) All money that is received for the repayment of a loan shall be forwarded to the state treasurer for deposit into the fund.

**History:** Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2012, Act 511, Eff. Jan. 2, 2013.

**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

### **324.5204 Strategic water quality initiatives fund; creation; disposition of money or assets; investment; funds remaining at close of fiscal year; expenditures; fund as security.**

Sec. 5204. (1) The strategic water quality initiatives fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. The authority shall act as fiscal agent for the fund in accordance with the shared credit rating act, 1985 PA 227, MCL 141.1051 to 141.1076.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The authority in consultation with the department shall expend money from the fund, upon appropriation, only for the following:

(a) Loans under section 5202.

(b) Grants under sections 5204a, 5204d, and 5204e.

(c) Response activities to address nonpoint source water pollution under section 5204b.

(d) Grants and loans for brownfield sites under section 5204c.

(e) Grants and loans for wetland mitigation banks under section 5204f.



(f) The costs of the authority and the department in administering the fund.

(5) The fund may be pledged as security for bonds to be issued by the authority for the purpose of funding loans if authorized by the state administrative board.

**History:** Add. 2002, Act 397, Eff. Nov. 5, 2002;—Am. 2005, Act 253, Imd. Eff. Dec. 1, 2005;—Am. 2010, Act 232, Imd. Eff. Dec. 14, 2010;—Am. 2012, Act 511, Eff. Jan. 2, 2013.

**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

### **324.5204a Strategic water quality initiatives grant program.**

Sec. 5204a. (1) The authority, in conjunction with the department, shall establish a strategic water quality initiatives grant program that provides grants totaling not more than \$80,000,000.00 to eligible municipalities. The grant program shall provide assistance to municipalities to complete the loan application requirements of section 5308 or to complete the loan application requirements for other sources of financing for sewage treatment works projects, storm water treatment projects, or nonpoint source projects.

(2) The grant program is subject to all of the following:

(a) The grant program shall provide grants to cover not more than 90% of the costs incurred by a municipality to complete an application for loan assistance from the state water pollution control revolving fund or the fund or to complete an application for loan assistance from another source of financing for a sewage treatment works project, a storm water treatment project, or a nonpoint source project.

(b) The 10% local match is not eligible for loan assistance from the state water pollution control revolving fund or the fund or other source of financing for the project.

(c) Grant funds shall not be used for general local government administrative activities or activities performed by municipal employees.

(d) A municipality shall not receive more than \$1,000,000.00 in total grant assistance under this section.

(e) Grants under this section shall be available for projects seeking or intending to seek loan assistance after September 30, 2006.

(3) The department shall establish an application and review process for considering grant applications under this section. The application shall contain the information required by the department and the authority. Within 60 days after receipt of an application, the department shall publish notice of the application on the department's calendar. Within 60 days after receipt of an administratively complete grant application, the department shall, in writing, notify the applicant whether the application is approved or rejected. If the department approves a grant under this section, the department and the authority shall enter into a grant agreement with the recipient prior to transferring funds. The grant agreement shall contain terms established by the department and the authority and a requirement that the grant recipient repay the grant, within 90 days of being informed to do so, with interest at a rate not to exceed 8% per year, to the authority for deposit into the fund if any of the following occur:

(a) The applicant fails to submit an administratively complete loan application for assistance from the state water pollution control revolving fund or the fund or other source of financing for the project within 3 years of the grant award.

(b) The project has been identified as being in the fundable range or is approved for funding from another source and the applicant declines the loan assistance for 2 consecutive fiscal years unless the applicant proceeds with funding from another source.

(c) The applicant is unable to, or decides not to, proceed with constructing the project.

(4) For each year in which the department receives grant applications under this section, the department shall report by July 1 of each year to the standing committees of the senate and the house of representatives with primary jurisdiction over issues pertaining to natural resources and the environment and to the senate and house of representatives appropriations committees on the utilization of funds under this part that were received from the Great Lakes water quality bond fund created in section 19706. The report shall include, at a minimum, all of the following:

(a) The number of grant applications received under this section.

- (b) The name of each municipality applying for a grant.
- (c) The individual and annual cumulative amount of grant funds awarded, including an identification of whether each award was for the purpose of applying for assistance from the state water pollution control revolving fund or the fund.
- (d) A summary of loan assistance, by year, tendered from the state water pollution control revolving fund and the fund.
- (5) The senate and house appropriations committees shall annually review whether there is sufficient money in the fund to implement this section and section 5202.

**History:** Add. 2005, Act 254, Imd. Eff. Dec. 1, 2005;—Am. 2010, Act 231, Imd. Eff. Dec. 14, 2010.

**Popular name:** Act 451

**Popular name:** NREPA

**324.5204b Nonpoint source water pollution; expenditures; limitation; requirements; selection of projects; expenditures subject to generally accepted accounting principles; annual report; use of fund; "facility", "release", and "response activity" defined.**

Sec. 5204b. (1) Subject to section 5204c, the department may expend, upon appropriation, not more than \$140,000,000.00 of the money from the fund for response activities to address nonpoint source water pollution at facilities as follows:

- (a) For the state fiscal year ending September 30, 2011, not more than \$50,000,000.00 may be authorized for expenditure under this section.
- (b) For the state fiscal year ending September 30, 2012, not more than \$50,000,000.00 may be authorized for expenditure under this section.
- (c) Beginning October 1, 2012, any money not previously authorized for expenditure under this section may be expended under this section only if the department documents that it has achieved the following performance objectives:
  - (i) Increasing the level of investment in sewage collection and treatment systems.
  - (ii) Providing incentives for actions that not only improve water quality but result in pollution prevention.
  - (iii) Optimizing the cost benefit ratio of alternative designs of sewage collection and treatment systems.
  - (iv) Demonstrating progress toward maximizing risk reduction and economic development objectives identified for projects funded under this section.

(2) The department shall expend money under this section in compliance with all of the following:

- (a) The expenditure is used to improve the quality of the waters of the state.
- (b) The expenditure is used only for facilities in which the department does not know the identity of the person or persons who are liable under part 201 for the release resulting in the water pollution or the person or persons who are liable do not have sufficient resources to fund the required response activities.
- (c) The facilities include property that is located within the identified planning area boundaries of a publicly owned sanitary sewer system eligible for funding under the state water pollution control revolving fund established in section 16a of the shared credit rating act, 1985 PA 227, MCL 141.1066a.
- (d) The expenditure is used for response activities necessary to address existing or imminent unacceptable risks arising from conditions that contribute to nonpoint source water pollution, including expenses for project management activities within the department.

(3) In using funds to address nonpoint source water pollution projects under this section, the department shall select projects that, to the extent practicable, provide maximum benefit to the state in protecting public health and the environment and contributing to economic development.

(4) Money expended to support project management within the department to manage response activities at the facility shall be expended pursuant to generally accepted accounting principles.

(5) The department shall annually submit a report to the standing committees of the senate and house of representatives with jurisdiction over issues primarily pertaining to natural resources and the environment and to the senate and house of representatives appropriations subcommittees on natural resources and the environment that describes the projects funded under this section and includes an evaluation of how the expenditures, to the extent practicable, provide maximum benefit to the state in protecting public health and the environment and contributing to economic development. For each project funded under this section, the report shall include all of the following:

- (a) How the project met the criteria described in this section.
- (b) The extent to which the project improved water quality or prevented a risk to water quality as measured by the number of individuals who benefit from the project.
- (c) The extent to which the project preserved infrastructure investments that protect public health or

prevented risks to water quality as measured by the risk posed or the public health protected.

(d) The extent to which the project enhanced economic development as measured by such factors including, but not limited to, all of the following:

(i) A net increase to the value of the properties in the vicinity of the project.

(ii) The creation of jobs.

(iii) The extent to which the project contributed to leveraging private investment in the vicinity of the project.

(e) If the project included funding for project management within the department, a breakdown of the amount of money used to support the project management as justified using generally accepted accounting principles.

(6) The legislature finds that use of the fund for response activities to address nonpoint source water pollution at facilities is appropriate and necessary at this time. It is the intent of this legislature that money from the fund shall not be utilized for response activities to address nonpoint source water pollution at facilities when the \$150,000,000.00 has been expended under this section and section 5204c.

(7) As used in this section, "facility", "release", and "response activity" mean those terms as they are defined in part 201.

**History:** Add. 2010, Act 232, Imd. Eff. Dec. 14, 2010.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.5204c Nonpoint source water pollution; brownfield redevelopment grants and loans to municipalities and brownfield redevelopment authorities; development of materials; applications.**

Sec. 5204c. (1) The department may expend \$10,000,000.00 of money from the fund to provide brownfield redevelopment grants and loans to municipalities and brownfield redevelopment authorities created under the brownfield redevelopment financing act, 1996 PA 381, MCL 125.2651 to 125.2672, for response activities to address nonpoint source water pollution at facilities. Of the money expended under this section, \$5,000,000.00 shall be used for grants and \$5,000,000.00 shall be used for loans. However, on September 30, 2014, if any money described in this section has not been appropriated for the purposes of this section, that money may be used for the purposes of section 5204b.

(2) The department shall develop grant and loan application materials to implement this section and shall accept applications at any time throughout the year.

**History:** Add. 2010, Act 232, Imd. Eff. Dec. 14, 2010.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.5204d Grant program within strategic water quality initiatives fund; establishment; purpose.**

Sec. 5204d. The state may establish a grant program within the strategic water quality initiatives fund for the purpose of funding specific wastewater treatment facility infrastructure improvement projects designed to prevent chronic discharges and projected to have significant regional benefits to Great Lakes water quality and recreational opportunities.

**History:** Add. 2010, Act 232, Imd. Eff. Dec. 14, 2010;—Am. Act 132, Imd. Eff. June 30, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

#### **324.5204e Grant program; purpose; conditions; application and review process; contents; approval; agreement; terms; report.**

Sec. 5204e. (1) In addition to other requirements of this part, the grant program shall provide grants to municipalities for sewage collection and treatment systems or stormwater or nonpoint source pollution control as provided for in this section.

(2) The grant program is subject to all of the following:

(a) The grant program shall provide grants to a municipality in accordance with the following:

(i) Subject to subparagraph (iii), for total grants of up to \$1,000,000.00, not more than 90% of the costs incurred by the municipality.

(ii) Subject to subparagraph (iii), for total grants of more than \$1,000,000.00, not more than 90% of the costs incurred by the municipality for up to \$1,000,000.00 of the grant amount and not more than 75% of the

remaining costs incurred by the municipality for the balance of the grant amount.

(iii) If any of the following conditions are met, a grant may be issued to cover 100% of the costs incurred by the municipality:

(A) The municipality is a disadvantaged community as defined in section 5301.

(B) The municipality is in receivership.

(C) The municipality is operating under an emergency manager or an emergency financial manager appointed under state law.

(D) The municipality is operating under a consent agreement as provided under the local financial stability and choice act, 2012 PA 436, MCL 141.1541 to 141.1575.

(b) A grant may be used for 1 or more of the following purposes:

(i) Development of an asset management program for a sewage collection and treatment system or a stormwater system. For sewage collection and treatment systems, the program shall include the development of a funding structure and implementation schedule that provides sufficient resources to implement the program. The municipality shall coordinate, as feasible, with other infrastructure activities in the same geographic area. In addition, a disadvantaged community may expend not more than \$500,000.00 in grant funds to implement projects identified in the asset management program.

(ii) Development of management plans for the treatment of stormwater.

(iii) Planning and design of a sewage treatment works project or stormwater treatment project as defined in section 5301(n) or (o) or planning and design of construction activities designed to reduce nonpoint source pollution.

(iv) Project costs of a municipality related to the testing and demonstration of innovative wastewater and stormwater technologies approved by the department.

(v) For projects to address a substantial public health risk from treatment system failure, up to 50% of the project costs related to the planning, design, and construction of a sewage collection and treatment system. To be eligible for a grant under this subparagraph, a municipality shall apply on or after June 1, 2016, meet criteria developed by the department, and provide a demonstration of financial need, including an economic feasibility study with which the department of treasury concurs. Construction funding under this subparagraph shall not exceed \$10,000,000.00 and shall be allocated from wetland mitigation bank funding authorized in section 5204f(1).

(c) The local match is not eligible for loan assistance from the state water pollution control revolving fund or the fund.

(d) Grant funds shall not be used for general local government administrative activities or activities performed by municipal employees that are unrelated to the project.

(e) A municipality shall not receive more than \$2,000,000.00 in grant assistance for purposes described in subsection (2)(b)(i) to (iv) and not receive more than \$2,000,000.00 in grant assistance for the purposes described in subsection (2)(b)(v).

(3) The department shall establish an application and review process for considering grant applications under this section. The application shall contain the information required by the department and the authority. Within 60 days after receipt of an application, the department shall publish notice of the application on the department's calendar. Within 120 days after receipt of an administratively complete grant application, the department shall, in writing, notify the applicant whether the application is approved or rejected. If the department approves a grant under this section, the department and the authority shall enter into a grant agreement with the recipient prior to transferring funds. The grant agreement shall contain terms established by the department and the authority, including both of the following:

(a) A requirement that a grant recipient proceed with a project for which grant funding is provided within 3 years after the department approves the grant. For asset management programs related to sewage collection and treatment systems, this includes significant progress, as determined by the department, toward achieving the funding structure necessary to implement the program.

(b) A requirement that the grant recipient repay the grant, within 90 days of being informed to do so, with interest at a rate not to exceed 8% per year, to the authority for deposit into the fund if the applicant is unable to, or decides not to, proceed with a construction project or begin implementation of an asset management program for which grant funding is provided.

(4) For each year in which the department receives grant applications under this section, the department shall report by October 1 of that year to the standing committees of the senate and the house of representatives with primary jurisdiction over issues pertaining to natural resources and the environment and to the senate and house of representatives appropriations committees on the utilization of funds under this part that were received from the Great Lakes water quality bond fund created in section 19706. The report shall include, at a minimum, all of the following:

- (a) The number of grant applications received under this section.
- (b) The name of each municipality applying for a grant.
- (c) The type of project being funded for each grant awarded.
- (d) The number of users potentially affected by each grant awarded.
- (e) The amount of the local match for each grant awarded.
- (f) The individual and annual cumulative amount of grant funds awarded, including an identification of whether each award was for the purpose of applying for assistance from the state water pollution control revolving fund or the fund.

**History:** Add. 2012, Act 511, Eff. Jan. 2, 2013;—Am. 2016, Act 164, Imd. Eff. June 9, 2016;—Am. 2017, Act 147, Imd. Eff. Nov. 2, 2017.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5204f Wetland mitigation bank funding program.**

Sec. 5204f. (1) The department, in conjunction with the authority, shall establish a wetland mitigation bank funding program that provides grants and loans totaling not more than \$10,000,000.00 to eligible municipalities. Of the money expended under this subsection, up to \$500,000.00 may be used for grants. Funding may be used for the purpose of this subsection as long as funds remain available.

(2) Grants awarded under the wetland mitigation bank funding program shall provide assistance to municipalities to complete loan application requirements for funding from the wetland mitigation bank funding program or to complete loan application requirements for other sources of financing. Grants for wetland mitigation banks are subject to the following:

(a) Grants shall not cover more than 90% of the costs incurred by a municipality to complete an application for loan assistance.

(b) Grant funding may be used for the following purposes:

(i) Developing an approvable wetland mitigation banking proposal.

(ii) Notifying affected local units of government and adjacent property owners of the proposed wetland mitigation bank, and working to resolve objections to the project.

(iii) Planning and designing the wetland mitigation bank.

(iv) Completing the wetland mitigation bank funding program loan application or loan application requirements for other sources of financing.

(c) The 10% local match is not eligible for loan assistance from the wetland mitigation funding bank program.

(d) Grant funds shall not be used for general local government administrative activities or activities performed by municipal employees that are unrelated to development of the wetland mitigation bank loan application.

(e) Applications for grants from the wetland mitigation funding bank program shall be made on a form provided by the department and shall contain the information required by the department and the authority. Grant applications may be made at any time.

(f) The department shall establish a review process for considering grant applications under this subsection. The department shall notify the applicant in writing whether the application is approved or rejected. If the department approves a grant under this section, the department and the authority shall enter into a grant agreement with the recipient prior to transferring funds.

(g) The grant agreement shall contain terms established by the department and the authority and a requirement that the grant recipient repay the grant, within 90 days of being informed to do so, with interest at a rate not to exceed 8% per year, to the authority for deposit into the fund if any of the following occur:

(i) The applicant fails to submit an administratively complete loan application for assistance from the wetland mitigation bank funding program or other source of financing for the project within 1 year of the date on which the grant expires.

(ii) The applicant declines the loan assistance for 2 consecutive years unless the applicant proceeds with funding from another source.

(iii) The applicant is unable to enter into a signed wetland mitigation banking agreement with the department within 2 years of the date on which the grant expires.

(iv) The applicant is unable to or decides not to proceed with constructing the project.

(3) Loans under the wetland mitigation bank funding program shall provide assistance to municipalities to establish a wetland mitigation bank. Loans shall be subject to the following:

(a) Loans under the wetland mitigation bank funding program shall be for 1 or more of the following:

(i) Complete and execute the wetland mitigation banking agreement with the department.



(ii) Complete engineering and design for the wetland mitigation bank.  
(iii) Purchase land for the wetland mitigation bank.  
(iv) Construct the wetland mitigation bank.  
(v) Conduct monitoring and maintenance necessary to ensure that the performance standards are or will be met.

(vi) In addition, the department may approve the use of loan funds for other activities needed to establish a wetland mitigation bank upon a demonstrated need by the municipality.

(b) Applications for loans from the wetland mitigation bank funding program shall be made on a form provided by the department and shall contain the information required by the department and the authority. Loan applications may be made at any time.

(4) The department shall establish a review process for considering loan applications under this subsection. The department shall notify the applicant in writing whether the loan is approved or rejected. Prior to releasing a loan, the authority in consultation with the department shall enter into a loan agreement with the loan recipient.

(5) For each year in which the department receives grant or loan applications under this section, the department shall report by October 1 to the standing committees of the senate and the house of representatives with primary jurisdiction over issues pertaining to natural resources and the environment and to the senate and house appropriations committees on the utilization of funds under this part that were received from the Great Lakes water quality bond fund created in section 19706. The report shall include, at a minimum, all of the following:

- (a) The number of grant and loan applications received under this section.
- (b) The name of each municipality applying for a grant or loan, or both.
- (c) The amount of local match for each grant awarded.
- (d) The individual and annual cumulative amount of grant and loan funds awarded, including an identification of the purpose of each grant and loan awarded.

**History:** Add. 2012, Act 559, Imd. Eff. Jan. 2, 2013.

### **324.5205 Rules.**

Sec. 5205. The department may promulgate rules to implement this part.

**History:** Add. 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

### **324.5206 Legislative findings.**

Sec. 5206. The legislature finds and declares that the environmental, natural resources, and water quality 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.

**History:** Add. 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

## **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

## **PART 54**

### **(Safe Drinking Water Assistance)**

### **324.5401 Definitions; A to C.**

Sec. 5401. As used in this part:

(a) "Act 399" means the safe drinking water act, 1976 PA 399, MCL 325.1001 to 325.1023.

(b) "Annual user costs" means an annual charge levied by a water supplier on users of the waterworks system to pay for each user's share of the cost for operation, maintenance, and replacement of the waterworks system. These costs may also include a charge to pay for the debt obligation.

(c) "Assistance" means 1 or more of the following activities to the extent authorized by the federal safe drinking water act:

(i) Provision of loans for the planning, design, and construction or alteration of waterworks systems.

(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 sub-state revolving funds established by water suppliers that are municipalities.

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

(vii) Provision for reasonable costs of administering and conducting activities under this part.

(viii) Provision of technical assistance under this part.

(ix) Provision of loan forgiveness for certain planning costs incurred by overburdened communities.

(d) "Authority" means the Michigan municipal bond authority created in the shared credit rating act, 1985 PA 227, MCL 141.1051 to 141.1077.

(e) "Capitalization grant" means the federal grant made to this state by the United States Environmental Protection Agency, as provided in the federal safe drinking water act.

(f) "Community water supply" means a public water supply that provides year-round service to not less than 15 living units or that regularly provides year-round service to not less than 25 residents.

(g) "Construction activities" means any actions undertaken in the planning, designing, or building of a waterworks system. Construction activities include, but are not limited to, all of the following:

(i) Engineering services.

(ii) Legal services.

- (iii) Financial services.
- (iv) Preparation of plans and specifications.
- (v) Acquisition of land or structural components, or both, if the acquisition is integral to a project authorized by this part and the purchase is from a willing seller at fair market value.
- (vi) Building, erection, alteration, remodeling, or extension of waterworks systems, providing the extension is not primarily for the anticipation of future population growth.
- (vii) Reasonable expenses of supervision of the project activities described in subparagraphs (i) to (vi).

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5402 Definitions; D to N.**

Sec. 5402. As used in this part:

- (a) "Department" means the department of environment, Great Lakes, and energy or its authorized agent or representative.
- (b) "Director" means the director of the department or his or her designated representative.
- (c) "Federal safe drinking water act" means the safe drinking water act, 42 USC 300f to 300j-25, and the rules promulgated under that act.
- (d) "Fund" means the state drinking water revolving fund established under section 16b of the shared credit rating act, 1985 PA 227, MCL 141.1066b.
- (e) "Fundable range" means those projects, taken in descending order on the priority list, for which the department estimates sufficient funds exist to provide assistance during each annual funding cycle.
- (f) "Municipality" means a city, village, county, township, authority, public school district, or other public body with taxing authority, including an intermunicipal agency of 2 or more municipalities, authorized or created under state law.
- (g) "Noncommunity water supply" means a public water supply that is not a community water supply, but that has not less than 15 service connections or that serves not less than 25 individuals on an average daily basis for not less than 60 days per year.

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. 2012, Act 561, Imd. Eff. Jan. 2, 2013;—Am. Act 132, Imd. Eff. June 30, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5403 Definitions; P to W.**

Sec. 5403. As used in this part:

- (a) "Priority list" means the annual ranked listing of projects developed by the department in section 5406.
- (b) "Project" means a project related to the planning, design, and construction or alteration of a waterworks system 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.
- (c) "Project refinancing assistance" means buying or refinancing the debt obligations of water suppliers if construction activities commenced, and the debt obligation was incurred, after June 17, 1997.
- (d) "Public water supply" means a waterworks system that provides water for drinking or household purposes to persons other than the water supplier, except for those waterworks systems that supply water to only 1 house, apartment, or other domicile occupied or intended to be occupied on a day-to-day basis by an individual, family group, or equivalent.
- (e) "State drinking water standards" means rules promulgated under section 5 of Act 399, MCL 325.1005, that establish water quality standards necessary to protect public health or that establish treatment techniques to meet these water quality standards.
- (f) "Water supplier" or "supplier" means a municipality or its designated representative accepted by the director, a legal business entity, or any other person that owns a public water supply. However, water supplier does not include a water hauler.
- (g) "Waterworks system" or "system" means a system of pipes and structures through which water is

obtained or distributed and includes any of the following that are actually used or intended to be used for the purpose of furnishing water for drinking or household purposes:

- (i) Wells and well structures.
- (ii) Intakes and cribs.
- (iii) Pumping stations.
- (iv) Treatment plants.
- (v) Storage tanks.
- (vi) Pipelines, service lines, and appurtenances.
- (vii) A combination of any of the items specified in subparagraphs (i) to (vi).

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. 2021, Act 45, Imd. Eff. July 1, 2021;—Am. Act 132, Imd. Eff. June 30, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5404 Water suppliers; qualifications for assistance.**

Sec. 5404. (1) Water suppliers that own the following types of public water supplies qualify to receive assistance under this part:

- (a) A community water supply.
- (b) A noncommunity water supply that operates as a nonprofit entity.

(2) Water suppliers identified in subsection (1) that serve 10,000 people or less may qualify for assistance from funds prescribed in section 1452(a)(2) of the federal safe drinking water act, 42 USC 300j-12.

(3) On completion and submittal of approved planning documents by an overburdened community to the department, if the overburdened community incurred planning costs related to the proposed project, the overburdened community must be directly reimbursed by the department to the extent funds are available. Technical assistance funds identified in section 1452(g)(2)(D) or section 1452(d)(1) of the federal safe drinking water act, 42 USC 300j-12, must be used to the extent available, to forgive repayment of the planning loan.

(4) Only water suppliers that have no outstanding prior year fees as prescribed in Act 399 may receive assistance under this part.

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5405 Water suppliers; application for assistance; planning document requirements.**

Sec. 5405. (1) A water supplier that is interested in applying for assistance under this part shall prepare and submit to the department a planning document as provided in this section. The department shall use the planning documents submitted under this section to develop a priority list for assistance as provided under this part. A water supplier 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 other projects or purposes.

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

(2) During the development of a planning document, a water supplier that is a municipality shall consider and utilize, where practicable, cooperative regional or intermunicipal projects, and a water supplier that is not a municipality shall consider and utilize, where practicable, connection to, or ownership by, a water supplier that is a municipality.

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

(a) The project is needed to ensure maintenance of or progress toward compliance with 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 including the cost of each 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) Consideration of opportunities to utilize 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.

(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 public consultation, participation, and input in the decision-making process during alternative selection.

(c) A demonstration that before the adoption of the planning document, the water supplier held a public meeting on the proposed project not less than 10 days after advertising the public meeting in local media of general circulation including, but not limited to, the water supplier'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 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) A planning document must include either of the following, as appropriate:

(a) For a water supplier that is a municipality, a resolution adopted by the governing board of the municipality approving the planning document.

(b) For a water supplier that is not a municipality, a statement of intent to implement the planning document.

(6) A planning document must not have as a primary purpose the construction of or expansion of a waterworks system to accommodate future development or fire protection.

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. 2021, Act 45, Imd. Eff. July 1, 2021;—Am. Act 132, Imd. Eff. June 30, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5406 Priority list of projects eligible for assistance; effective first day of fiscal year.**

Sec. 5406. (1) The department shall annually develop a priority list of projects eligible for assistance under this part. The priority list must be based on planning documents and the scoring criteria developed under section 5406a.

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

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. 2012, Act 561, Imd. Eff. Jan. 2, 2013;—Am. Act 132, Imd. Eff. June 30, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5406a Scoring criteria for the prioritization of projects; departmental duties.**

Sec. 5406a. (1) The department shall develop scoring criteria that assign points to and prioritize projects under section 5406 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 the 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) Drinking water regulatory compliance.

(b) Public health.

(c) Drinking water quality.

(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

### **324.5407 Identification of projects in fundable range.**

Sec. 5407. The department shall annually identify those projects in the fundable range of the priority list. Following the identification of projects in the fundable range, the department shall review, generally in priority order, the planning documents for these projects and, following completion of the environmental review process described in section 5408, either approve or disapprove the planning documents.

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5407a Segmentation of a project.**

Sec. 5407a. When the department prepares the priority list under section 5406, 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 the project if the cost of the proposed project is more than 30% of the amount available in the fund.

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

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5408 Planning documents; environmental review; categorical exclusion; criteria; environmental assessment; finding of no significant impact; environmental impact statement; record of decision; project reevaluation for compliance with national environmental policy act requirements; action prohibited during public comment period.**

Sec. 5408. (1) The department shall conduct an environmental review of the planning documents of 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 this review, the department may require the water supplier to submit additional information or meet additional public participation and coordination requirements to justify the environmental determination.

(2) Based on the environmental review under subsection (1), the department may issue a categorical exclusion for categories of actions that do not individually, cumulatively over time, or in conjunction with other federal, state, local, or private actions have a significant adverse effect on the quality of the human environment or public health. Additional environmental information documentation, environmental assessments, and environmental impact statements will not be required for excluded actions.

(3) Following receipt of the planning document, the director shall determine if the proposed project qualifies for a categorical exclusion and document the decision.

(4) The director may revoke a categorical exclusion and require a complete environmental review if, after the determination, the director finds any of the following:

(a) The proposed project no longer qualifies for a categorical exclusion due to changes in the proposed plan.

(b) New evidence exists documenting a serious health or environmental issue.

(c) Federal, state, local, or tribal laws will be violated by the proposed project.

(5) The proposed project must not qualify for a categorical exclusion if the director determines any of the following criteria are applicable:

(a) The proposed project will result in an increase in residuals and sludge generated by drinking water processes, either volume or type, that would negatively impact the performance of the waterworks system or

the disposal methods, or would threaten an aquifer recharge zone.

(b) The proposed project will provide service to a population greater than 30% of the existing population.

(c) The proposed project is known, or expected, to directly or indirectly affect cultural areas, fauna or flora habitats, endangered or threatened species, or environmentally important natural resource areas.

(d) The proposed project directly or indirectly involves the extension of transmission systems to new service areas.

(e) The proposed project is shown not to be the cost-effective alternative.

(f) The proposed project will cause significant public controversy.

(6) If, based on the environmental review under subsection (1), the department determines that an environmental assessment is necessary, the department may describe the following:

(a) The purpose and need for the project.

(b) The project, including its 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.

(7) The department may issue a finding of no significant impact, based on an environmental assessment that documents that potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(8) An environmental impact statement may be required when the department determines any of the following:

(a) The project will have a significant impact on the pattern and type of land use or the growth and distribution of the population.

(b) The effects of the project's construction or operation will conflict with local or state laws or policies.

(c) 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.

(d) The project will cause significant displacement of population.

(e) The project will directly or indirectly, such as through induced development, have a significant adverse effect on 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.

(f) The project will generate significant public controversy.

(9) Based on the environmental impact statement, a record of decision summarizing the findings of the environmental impact statement must be issued identifying those 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.

(10) 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 taken place, 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, requirements. 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.

(11) 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. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5409 Application for fund assistance; contents; availability of revenue sources; acceptance of applications by department; liability for incurred costs.**

Sec. 5409. (1) A water supplier whose planning document is approved or under review by the department under section 5407 may apply for assistance from the fund by submitting an application to the department. A completed application must include all of 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 obligations of debt instruments existing at the time assistance is requested, and pledged to both of the following purposes:

(i) The timely repayment of principal and interest.

(ii) Adequate revenues to fund the operation and maintenance of the project.

(b) Evidence of an approved planning document.

(c) A certified resolution from a water supplier that is a municipality, or a letter of appointment from a water supplier that is not a municipality, designating an authorized representative for the project.

(d) A certification by an authorized representative of the water supplier affirming that the water supplier has the legal, institutional, technical, financial, and managerial capability to build, operate, and maintain the project.

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

(f) A set of plans and specifications developed in accordance with Act 399 that is suitable for bidding.

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

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

(i) If applicable, all executed service contracts or agreements.

(j) An agreement that the water supplier will operate the waterworks system in compliance with applicable state and federal laws.

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

(l) An agreement that:

(i) For water suppliers that are municipalities, all accounts must be maintained in accordance with generally accepted accounting practices, generally accepted government auditing standards, and 31 USC 7501 to 7507, as required by the federal safe drinking water act.

(ii) For water suppliers that are not municipalities, all accounts must be maintained in accordance with generally accepted accounting practices and generally accepted auditing standards.

(m) An agreement that all water supplier contracts with contractors will require them to maintain project accounts in accordance with the requirements of this subsection and provide notice that any subcontractor may be subject to a financial audit as part of an overall project audit.

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

(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 or a claim, appeal, or 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 water supplier and accepted by the department, on which use of the project begins for the purposes for which it was constructed.

(p) An agreement that the project will proceed in a timely fashion if the application for assistance is approved.

(q) An application fee, if required by the department.

(2) A demonstration that a dedicated source of revenue will be available for operating and maintaining the waterworks system and repaying the incurred debt.

(3) The department shall accept applications for assistance from water suppliers in the fundable range of the priority list and determine whether an application for assistance is complete.

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

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5410 Water suppliers; responsibility to obtain permits or clearances; incorporation of provisions, conditions, and mitigative measures; review of documents by department; enforcement.**

Sec. 5410. (1) A water supplier who receives assistance under this part is responsible for obtaining any federal, state, or local permits or clearances required for the project and shall perform any surveys or studies that are required in conjunction with the permits or clearances.

(2) A water supplier who receives assistance under this part shall incorporate all appropriate provisions, conditions, and mitigative measures included in the applicable studies, surveys, permits, clearances, and licenses into the construction documents. These 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 shall be enforced by the water supplier or its designated representative and shall apply to all construction and post-construction activities, including disposal of all liquid or solid spoils, waste material, and residuals from construction.

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5411 Application for assistance; review by department; order of approval; incorporation of other documents; use of project assistance as matching requirements; eligibility certification.**

Sec. 5411. (1) The department shall review a complete application for assistance for a proposed project submitted under section 5409. If the department approves the application for assistance, the department shall issue an order of approval to establish the specific terms of the assistance. The order of approval shall include, but need not be 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 under subsection (1) shall incorporate all requirements, provisions, or information included in the application and other documents submitted to the department during the application process.

(3) The department shall not prohibit a water supplier from using assistance for a project to meet match requirements for federal loans or grants for that project.

(4) After issuance of the order of approval under subsection (1), the department shall certify to the authority that the water supplier is eligible to receive assistance.

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. 2012, Act 561, Imd. Eff. Jan. 2, 2013.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5412 Bypassed projects.**

Sec. 5412. (1) The department may bypass projects that fail to meet the schedule negotiated and agreed upon between the water supplier and the department, or that do not have approved planning documents and

specifications and an approvable application 90 days before the last day of the state fiscal year, whichever comes first.

(2) A water supplier may submit a written request to the department to extend a project schedule for not more than 60 days. The request must provide the reason for the noncompliance with the schedule. A water supplier may file 1 additional 30-day extension request to its schedule.

(3) A project bypassed under this section must not be considered for an order of approval until all other projects have either 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) The department shall provide affected water suppliers with a written notice of intent to bypass not less than 30 days before the bypass action.

(5) For projects bypassed under this section, the department shall transmit to the water supplier an official notice of bypass for the fundable project.

(6) A bypass action under this section does not modify any compliance dates established under 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.

(7) After a project is bypassed, the department may award assistance to projects outside the fundable range. Assistance must be made available to projects outside the fundable range in priority order contingent upon the water supplier's satisfaction of all applicable requirements for assistance within the time period established by the department, but not to exceed 60 days from the date of notification. The department shall notify water suppliers with projects outside the fundable range of bypass action, of the amount of bypassed funds available for obligation, and of the deadline for submittal of a complete, approvable application.

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

**324.5413 Determination to terminate assistance; issuance of order by department; cause; written notice to water supplier; repayment of outstanding loan balance not affected; other state and federal requirements not relieved; responsibility for settlement costs.**

Sec. 5413. (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.

(e) Failure to accept an offer of assistance from the fund within a period of 30 days after receipt of a proposed loan agreement from the authority.

(3) The department shall give written notice to the water supplier by certified letter of the intent to issue an order of termination. This notification shall 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 water supplier's requirement for repayment of the outstanding loan balance to the fund. The water supplier shall repay the outstanding loan proceeds according to a schedule established by the authority.

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

(6) Any settlement costs incurred in the termination of project assistance are the responsibility of the water supplier.

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997.

**Popular name:** Act 451

**Popular name:** NREPA

**324.5414 Determination to terminate assistance; petition by water supplier; issuance of order by department; cause; repayment of outstanding loan balance not affected; other state or federal laws not relieved; responsibility for settlement costs.**



Sec. 5414. (1) A water supplier may petition the department to make a determination that assistance to that water supplier should be terminated.

(2) Upon receipt of a petition under subsection (1), the department may issue an order recommending the authority to take appropriate action to terminate the assistance for a project for cause. The order 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 of termination to the authority recommending appropriate action.

(4) The termination of assistance by the authority does not excuse or otherwise affect the water supplier's requirement for repayment of the outstanding loan balance to the fund. The water supplier shall repay the outstanding loan proceeds according to a schedule established by the authority.

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

(6) Any settlement costs incurred in the termination of project assistance are the responsibility of the water supplier.

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5415 Annual establishment of interest rates.**

Sec. 5415. 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 for projects. The interest rates must be in effect for loans made during the next state fiscal year. The interest rates must be in effect for loans made during the next state fiscal year.

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5415a Project responsibilities of water supplier; departmental guidance.**

Sec. 5415a. (1) A water supplier 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 water supplier 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 water supplier 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

### **324.5416 Administration and implementation costs; payment sources.**

Sec. 5416. 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 allowed under the federal safe drinking water act.

(b) A local match provided by the water supplier receiving assistance not to exceed the department's administrative costs associated with providing the assistance.

(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) Collection of fees and charges by the department in connection with a transaction authorized under this part.

(f) Any other money appropriated by the legislature.

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

### **324.5417 Powers of department.**

Sec. 5417. In implementing this part, the department may do 1 or more of the following:

(a) Make, execute, and deliver contracts, conveyances, and other instruments necessary or convenient for the implementation of this part.

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

(c) Expend federal and state money allocated under the federal safe drinking water act for any of the following purposes, in accordance with that act:

(i) Fund activities authorized under section 1452(g)(2) of the federal safe drinking water act, 42 USC 300j-12, which may include fund administration and the provision of set-asides annually identified as part of an intended use plan.

(ii) Fund implementation of a technical assistance program created in Act 399 and used by the state to provide technical assistance to public water systems serving not more than 10,000 persons.

(iii) Fund activities authorized under section 1452(k) of the federal safe drinking water act, 42 USC 300j-12, which may include the lending of money for certain source water protection efforts, assisting in the implementation of capacity development strategies, conducting source water assessments, and implementing wellhead protection programs.

(d) 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.

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

(f) 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.

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

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

(i) 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.

(j) Apply for a capitalization grant and prepare, submit, and certify any required or appropriate information with that application.

(k) Establish priority lists and fundable ranges for projects and the scoring 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 select projects to be funded.

(l) Prepare and submit an annual intended use plan and an annual report as required under the federal safe drinking water act. The department shall annually invite stakeholders including, but not limited to, representatives of water utilities, local units of government, agricultural interests, industry, public health organizations, medical organizations, environmental organizations, consumer organizations, and drinking water consumers who are not affiliated with any of the other represented interests, to 1 or more public meetings to provide recommendations for the development of the annual intended use plan as it relates to the set-asides allowed under the federal safe drinking water act. The intended use plan must describe and identify all of the following:

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

(ii) The projects that will receive additional subsidization identified under subparagraph (i).

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

(m) Perform other functions necessary or convenient for the implementation of this part.

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997;—Am. Act 132, Imd. Eff. June 30, 2022.

**Popular name:** Act 451

**Popular name:** NREPA

**324.5418 Appeal; judicial review.**

Sec. 5418. Determinations made by the department may be appealed in writing to the director. Determinations made by the director are final. Judicial review may be sought under section 631 of the revised judicature act of 1961, 1961 PA 236, MCL 600.631.

**History:** Add. 1997, Act 26, Imd. Eff. June 17, 1997.

**Popular name:** Act 451

**Popular name:** NREPA

**324.5419 Repealed. 2002, Act 451, Eff. Sept. 30, 2003.**

**Compiler's note:** The repealed section pertained to implementation of arsenic testing program.

**Popular name:** Act 451

**Popular name:** NREPA