

Act No. 561
Public Acts of 2012
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senators Pavlov and Kowall

ENROLLED SENATE BILL No. 1157

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 5402, 5406, and 5411 (MCL 324.5402, 324.5406, and 324.5411), as added by 1997 PA 26.

The People of the State of Michigan enact:

Sec. 5402. As used in this part:

- (a) "Department" means the department of environmental quality or its authorized agent or representative.
- (b) "Director" means the director of the department of environmental quality or his or her designated representative.
- (c) "Disadvantaged community" means a municipality in which all of the following conditions are met:
 - (i) Users within the area served by a proposed public water supply project are directly assessed for the costs of construction.
 - (ii) The median annual household income of the area served by a proposed public water supply project does not exceed 120% of the statewide median annual household income for Michigan.
 - (iii) The municipality demonstrates at least 1 of the following:
 - (A) More than 50% of the area served by a proposed public water supply project is identified as a poverty area by the United States bureau of the census.
 - (B) The median annual household income of the area served by a proposed public water supply project is less than the most recently published federal poverty guidelines for a family of 4 in the 48 contiguous United States. In determining the median annual household income of the area served by the proposed public water supply project under this subparagraph, the municipality shall utilize the most recently published statistics from the United States Bureau of the Census, updated to reflect current dollars, for the community which most closely approximates the area being served. If these figures are not available for the area served by the proposed public water supply project, the municipality may have a survey conducted to document the median annual household income of the area served by the project.
 - (C) The median annual household income of the area served by a proposed public water supply project is less than the most recently published statewide median annual household income for this state, and annual user costs for water supply exceed 1% of the median annual household income of the area served by the proposed public water supply project.

(D) The median annual household income of the area served by a proposed public water supply project is not greater than 120% of the statewide median annual household income for this state, and annual user costs for water supply exceed 3% of the median annual household income of the area served by the proposed project.

(d) "Federal safe drinking water act" means the safe drinking water act, 42 USC 300f to 300j-26, and the rules promulgated under that act.

(e) "Fund" means the safe drinking water revolving fund established under section 16b of the shared credit rating act, 1985 PA 227, MCL 141.1066b.

(f) "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.

(g) "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.

(h) "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.

Sec. 5406. (1) The department shall annually develop a priority list of projects eligible for assistance under this part. Projects that are not funded during the year that a priority list developed under this section is in effect shall be automatically prioritized on the next annual list using the same criteria, unless the water supplier submits an amendment to its project plan that introduces new information to be used as the basis for prioritization. The priority list shall be based on project plans submitted by water suppliers under section 5405 and the criteria listed in subdivisions (a) through (f). Each project shall be assigned points up to a maximum of 1,000. The point values are maximum values available for each category or subcategory listed in this section and shall only be awarded if the project substantially addresses the problem for which the point award is given. If a project is primarily designed to replace individual wells at private homes, 50% or more of the homes in the affected area shall meet equivalent water quality or infrastructure deficiency criteria listed in subdivisions (a) through (f) in order to receive the maximum available points. If less than 50% of the homes in the affected area can demonstrate deficiencies, 1/2 of the total points available shall be awarded. Points shall be awarded as follows:

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

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

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

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

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

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

(i) If source or treatment facilities are upgraded, including the watermains to connect to the distribution system, a maximum of 125 points shall be awarded, if the improvement is:

(A) To meet minimum capacity requirements, 100 points shall be awarded.

(B) For reliability, 75 points shall be awarded.

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

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

(E) For source water protection, 50 points shall be awarded.

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

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

(B) For reliability, including looping or redundant feeds, 75 points shall be awarded.

(C) Other transmission or distribution system upgrades not included in subparagraph (ii)(A) or (B), 25 points shall be awarded.

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

(iii) If water storage facilities or pumping stations are upgraded, a maximum of 125 points shall be awarded, if the improvement is:

(A) To meet minimum capacity where storage or pumping capacity is less than minimum requirements, 100 points shall be awarded.

(B) For reliability, 75 points shall be awarded.

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

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

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

Population	Points
>50,000	50
10,001 - 50,000	40
3,301 - 10,000	30
501 - 3,300	20
0 - 500	10

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

(e) A maximum of 100 points shall be awarded for projects that include consolidation as follows:

(i) If 1 or more public water supplies are brought into compliance with state drinking water standards as a result of consolidation, 100 points shall be awarded.

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

(iii) Other consolidations, not included under subparagraph (i) or (ii), shall be awarded 40 points.

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

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

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

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

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

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

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

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

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

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

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

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.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 96th Legislature are enacted into law:

(a) Senate Bill No. 1155.

(b) Senate Bill No. 1156.

(c) Senate Bill No. 1158.

(d) House Bill No. 5673.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved

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Governor