

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)**

**Act 451 of 1994**

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

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**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

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### **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

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### **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

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### **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

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### **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

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### **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

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### **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

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### **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

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**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

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### **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

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### **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

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### **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

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### **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

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**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 Notes:** The repealed section pertained to implementation of arsenic testing program.

**Popular Name:** Act 451

**Popular Name:** NREPA