

# SENATE BILL No. 731

February 2, 2016, Introduced by Senators ANANICH, YOUNG, BIEDA, GREGORY and KNEZEK and referred to the Committee on Government Operations.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending section 5409 (MCL 324.5409), as added by 1997 PA 26.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 5409. (1) A water supplier whose project plan is approved  
2 or under review by the department under section 5407 may apply for  
3 assistance from the fund by submitting an application to the  
4 department. A complete application shall include all of the  
5 following, if applicable, as determined by the department:

6           (a) If assistance is in the form of a loan, financial  
7 documentation that a dedicated source of revenue is established,  
8 consistent with obligations of debt instruments existing at the  
9 time assistance is requested, and pledged to both of the following  
10 purposes:

1 (i) The timely repayment of principal and interest.

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

4 (b) Evidence of an approved project plan.

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

9 (d) A certification by an authorized representative of the  
10 water supplier affirming that the supplier has the legal,  
11 institutional, technical, financial, and managerial capability to  
12 build, operate, and maintain the project. **HOWEVER, THE WATER**  
13 **SUPPLIER DOES NOT NEED TO CERTIFY THAT IT WILL OPERATE AND MAINTAIN**  
14 **ANY PORTION OF THE PROJECT THAT FUNDS THE REPLACEMENT OF PRIVATE**  
15 **SERVICE LINES.**

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

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

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

25 (h) A certification from an authorized representative of the  
26 water supplier that an undisclosed fact or event, or pending  
27 litigation, will not materially or adversely affect the project,

1 the prospects for its completion, or the water supplier's ability  
2 to make timely loan repayments, if applicable.

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

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

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

12 (l) An agreement that **INCLUDES EITHER OF THE FOLLOWING:**

13 (i) For water suppliers that are municipalities, all accounts  
14 will be maintained in accordance with generally accepted accounting  
15 practices, generally accepted government auditing standards, and  
16 ~~chapter 75 of title 31 of the United States Code, 31 U.S.C. USC~~  
17 7501 to 7507, as required by the federal safe drinking water act.

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

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

26 (n) An agreement that the water supplier will provide written  
27 authorizations to the department for the purpose of examining the

1 physical plant and for examining, reviewing, or auditing the  
2 operational or financial records of the project, and that the water  
3 supplier will require similar authorizations from all contractors,  
4 consultants, or agents with which it negotiates an agreement.

5 (o) An agreement that all pertinent records shall be retained  
6 and available to the department for a minimum of 3 years after  
7 initiation of the operation and that if litigation, a claim, an  
8 appeal, or an audit is begun before the end of the 3-year period,  
9 records shall be retained and available until the 3 years have  
10 passed or until the action is completed and resolved, whichever is  
11 longer. As used in this subdivision, "initiation of the operation"  
12 means the date certain set by the water supplier and accepted by  
13 the department, on which use of the project begins for the purposes  
14 for which it was constructed.

15 (p) If the project is segmented, as provided in section  
16 5406(3), a schedule for completion of the project and adequate  
17 assurance that the project will be completed with or without  
18 assistance from the fund or that the segmented project will be  
19 operational without completion of the entire project.

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

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

23 (S) ~~(2)~~—A demonstration that a dedicated source of revenue  
24 will be available ~~for operating and maintaining~~ **TO SUPPORT** the  
25 waterworks system and repaying the incurred debt.

26 (2) ~~(3)~~—The department shall accept applications for  
27 assistance from water suppliers in the fundable range of the

1 priority list and shall determine whether an application for  
2 assistance is complete.

3       (3) ~~(4)~~—The state is not liable to a water supplier, or any  
4 other person performing services for the water supplier, for costs  
5 incurred in developing or submitting an application for assistance  
6 under this part.

7       Enacting section 1. This amendatory act does not take effect  
8 unless Senate Bill No. 730

9               of the 98th Legislature is enacted into law.