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[PART V.] WATER POLLUTION CONTROL FINANCING

Cross References

Drinking water financing, see §§340E-31 to 41.

§342D-80 Definitions. As used in this part, unless the context otherwise requires:

"American Recovery and Reinvestment Act of 2009" means the federal law, Public Law 111-5, making appropriations for various purposes, including job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization purposes.

"Corpus allocation" means the amount of moneys in the revolving fund that is allocated by the director to provide earnings to reduce an eligible party's total financing costs for one or more eligible projects.

"Eligible party" means a county, state agency, or private person.

"Revolving fund" means the water pollution control revolving fund established by section 342D-83. [L 1997, c 221, pt of §1; am L 2002, c 132, §3; am L 2009, c 98, §5]

§342D-81 Declaration of policy. The State's policy is to promote water pollution prevention and control, including the use of recycled water, by financing eligible projects of eligible parties consistent with applicable federal and state laws. The State intends the financing to occur through a revolving fund loan program that makes loans to eligible parties at or below market rates and a leveraging program that uses revenue bonds and revolving fund loan programs together in a coordinated manner that does not cause the state debt ceiling to be exceeded. [L 1997, c 221, pt of §1; am L 2001, c 269, §5; am L 2002, c 132, §4]

§342D-82 Powers and duties. (a) In addition to any other power or duty prescribed by law, the director shall:

(1) Establish fiscal controls and accounting procedures at least sufficient to assure proper accounting for appropriate accounting periods of payments, disbursements, revenues, and fees received and made for fund balances at the beginning and end of the accounting period;

(2) Comply with sections 39-61 and 39-62 and ensure that any revenue bonds issued are excluded from the state constitutional debt ceiling. The revolving fund is a "special fund" within the meaning of article VII, section 13, of the state constitution and part III of chapter 39. The revolving fund is not a "special fund" within the meaning of sections 36-27 and 36-30; and

(3) No later than twenty days prior to the convening of each regular session of the legislature, submit to the legislature a financial report addressing the operations of the revolving fund during the last completed fiscal year.

(b) The director may:

(1) Provide financial assistance consistent with this part to any eligible party for the prevention, control, and abatement of water pollution in the State;

(2) Enter into any necessary or required agreement and give or make any necessary or required assurance, designation, or certification with or to any person in order to receive payments or to make or provide any financial assistance in conformance with Title 33 United States Code sections 1329, 1330, and 1383 to 1387;

(3) Enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants;

(4) Adopt rules pursuant to chapter 91 for the purposes of this part, including rules setting fees for loans issued through the revolving fund and penalties for default of loan repayments;

(5) Pledge funds, loans, and accounts or subaccounts in the revolving fund to the payment or security of revenue bonds or loans issued under this part and make such corpus allocations as the director deems appropriate. The pledge shall constitute a lien and security interest on such funds and loans to the extent and with the priority as set forth in the document establishing the pledge, without physical delivery, recording, or other further act;

(6) Perform any act considered reasonably necessary, advisable, or expedient for the administration of this part or the advancement of the purposes of this part; and

(7) Direct the creation of one or more separate accounts or subaccounts within the revolving fund and specify any conditions applicable to the transfer of moneys and securities among the accounts and subaccounts. [L 1997, c 221, pt of §1; am L 2002, c 132, §5]

[§342D-82.5] Use of American Recovery and Reinvestment Act of 2009 and other federal moneys. (a) The director may provide financial assistance for publicly owned wastewater treatment works for the construction of necessary wastewater infrastructure projects, through the revolving fund, using moneys from the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

(b) The director may establish a separate account within the revolving fund and assign to that account federal moneys appropriated under federal laws that authorize principal forgiveness, zero and negative interest loans, and grants, including the American Recovery and Reinvestment Act of 2009 and other applicable federal acts. The director may use those moneys and in so doing may include additional requirements and subsidization not applicable to the remainder of the revolving fund, including forgiveness of principal, zero and negative interest loans, and grants to publicly-owned wastewater treatment works that meet eligibility requirements for the revolving fund.

(c) The director shall certify that a project receiving financial assistance is entitled to priority over other eligible projects on the basis of water pollution and financial needs, as well as a preference to those projects that can be started and completed expeditiously as stipulated under the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

(d) Among eligible projects, the director may also give priority to projects that incorporate renewable energy, energy efficiency, and conservation measures in wastewater infrastructure, to the extent allowed by federal law.

(e) Each project receiving financial assistance shall be in conformance with the conditions for water pollution control financing under section 342D-87(a)(1), (2), (4), and (5), and (b). [L 2009, c 98, §3]

§342D-83 Revolving fund; establishment, purposes, coordination. (a) There is established in the state treasury a fund to be known as the water pollution control revolving fund to be administered by the director. The revolving fund shall be administered, operated, and maintained to remain available in perpetuity for its stated purpose.

(b) The purpose of the revolving fund is to provide financial assistance to eligible parties for projects or activities to:

(1) Enable counties and state agencies to plan, design, and construct publicly owned wastewater treatment works in accordance with title 33 United States Code sections 1381 to 1387;

(2) Enable eligible parties to implement management programs established under title 33 United States Code section 1329;

(3) Enable eligible parties to implement conservation and management plans established under title 33 United States Code section 1330;

(4) Enable eligible parties to construct, repair, or replace a privately owned decentralized wastewater treatment system and individual wastewater system that treats municipal wastewater or domestic sewage under title 33 United States Code section 1383;

(5) Enable eligible nonprofit entities to provide assistance to small and medium sized publicly owned treatment works for training activities, planning, design, and associated preconstruction activities under title 33 United States Code section 1383;

(6) Enable eligible parties to manage, reduce, treat, or recapture stormwater or subsurface drainage water under title 33 United States Code section 1383;

(7) Enable eligible parties to develop and implement watershed projects meeting the criteria under title 33 United States Code section 1274;

(8) Enable counties and state agencies to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse under title 33 United States Code section 1383;

(9) Enable counties and state agencies to reduce the energy consumption needs for publicly owned treatment works under title 33 United States Code section 1383;

(10) Enable eligible parties to reuse or recycle wastewater, stormwater, or subsurface drainage water under title 33 United States Code section 1383; and

(11) Enable eligible parties to increase the security of publicly owned treatment works under title 33 United States Code section 1383. [L 1997, c 221, pt of §1; am L 2002, c 132, §6; am L 2016, c 240, §2]

§342D-84 Revolving fund; uses. (a) Moneys in the revolving fund, if consistent with the purpose of the revolving fund stated in section 342D-83(b), may be used to:

(1) Provide, make, and condition loans;

(2) Guarantee eligible party loans and bonds and to purchase or provide bond insurance or other credit enhancement or liquidity support for eligible party debt service payments when such action would improve credit market access or reduce interest rates;

(3) Buy or refinance debt obligations of eligible parties at or below market rates, when the debt obligations were incurred after March 7, 1985;

(4) Support and pay the reasonable costs of administering the revolving fund, including operation and maintenance of the revolving fund, subject to the limits in Title 33 United States Code section 1383(d)(7) and Title 40 Code of Federal Regulations section 35.3120(g), and to provide a source of revenue or security for such support and payment;

(5) Pay the principal, interest, and redemption premium, if any, on revenue bonds issued by the director, if the proceeds of revenue bonds will be deposited in the revolving fund;

(6) Provide interest rate subsidies from earnings on corpus allocation to subsidize loans to eligible parties made from the proceeds of the revenue bonds of the department; and

(7) Provide interest rate subsidies to eligible parties by depositing revolving fund moneys into interest bearing accounts in participating financial institutions that issue loans for the implementation of eligible projects under section 342D-83(b).

(b) The entire water pollution control loan program, and not only those accounts or subaccounts funded by revenue bond proceeds, shall be subject to section 39-61 for the purposes of accomplishing leveraging and exclusion of the revenue bonds from the state constitutional debt ceiling. [L 1997, c 221, pt of §1; am L 2002, c 132, §7]

§342D-85 Revolving fund; deposits. The following may be deposited into the revolving fund:

(1) Federal capitalization grant funds and other federal grants, loans, or appropriations;

(2) Appropriations by the legislature to the revolving fund;

(3) Payments of principal and interest and other amounts made by eligible parties pursuant to loans or other agreements entered into with the director pursuant to this part; provided that if the loans were financed by proceeds of revenue bonds of the director, the deposit of the payments into the revolving fund shall be subject to the rights of the holders of the bonds to receive the moneys;

(4) Fees for loans and other items under section 342D-86;

(5) Proceeds of revenue bonds issued by the director for the purpose of providing financial assistance to eligible parties;

(6) Moneys paid to the revolving fund as a result of court ordered awards of judgments;

(7) Moneys paid to the revolving fund in court-approved or out-of-court settlements;

(8) All interest attributable to investment of moneys deposited in the revolving fund; and

(9) All moneys allotted or directed to the revolving fund from other sources. [L 1997, c 221, pt of §1; am L 2002, c 132, §8]

Note

The amendment made by L 2014, c 218, §8 is not included in this section.

[§342D-86] Revolving fund; fees, interest, and investment on accounts. (a) The director may establish fees for loans, loan and bond guarantees, debt purchase and refinancing, interest rate subsidies, and other credit enhancement or liquidity support issued or provided through the revolving fund.

(b) The director shall adopt rules pursuant to chapter 91 for the purposes of this part, including fees for loans and other financial assistance, and penalties for default of loan and other financial assistance repayments.

(c) If established, fees shall cover the costs of current activities, including the issuance of loans and other financial assistance, monitoring of loans and other financial assistance repayments and conditions, technical review of the planning and design documents, monitoring of construction activities, conducting operation and maintenance inspections of wastewater facilities, and other activities of the revolving fund pursuant to Title 33 United States Code sections 1381 to 1387.

(d) All moneys collected as fees shall be deposited into an administrative expense account or accounts as needed to comply with Title 33 United States Code section 1383(d)(7) and shall be used exclusively to support the activities of the revolving fund.

(e) Moneys in the revolving fund shall be placed in interest bearing investments or otherwise invested at the discretion of the director until such time as the moneys may be needed. All interest accruing from the investment of these moneys shall be credited to the revolving fund; provided that moneys which are pledged as security for payment of revenue bonds may be invested as provided in section 342D-91. [L 1997, c 221, pt of §1]

§342D-87 Revolving fund; conditions. (a) The following conditions shall apply to each project receiving water pollution control financing under this part:

(1) The project shall conform with the state water quality management plan developed under title 33 United States Code section 1285(j), 1288, 1313(e), 1329, or 1330;

(2) The project shall be certified by the director as entitled to priority over other eligible projects on the basis of financial and water pollution control needs;

(3) In the case of wastewater treatment works construction projects, the application or agreement for the loan shall contain:

(A) Reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the treatment works after its construction;

(B) Reasonable assurances by the applicant that an impact fee structure will be instituted to ensure that new developments pay their appropriate share of the costs of the wastewater treatment works, as determined by the counties; and

(C) Any other provisions required by federal or state law or deemed necessary or convenient by the director;

(4) The county or state agency receiving these funds for a construction project shall require the installation of the low flow water fixtures and devices for faucets, hose bibbs, showerheads, urinals, and toilets in all new construction projects; provided that the fixtures and devices shall be approved by the International Association of Plumbing and Mechanical Officials and shall comply with applicable American National Standards Institute standards and any other standards as may be required by the respective county for all new residential and public buildings; and

(5) The county receiving these funds shall take specific steps to reduce polluted runoff into state waters through educational and regulatory programs.

(b) The use of federal funds and state matching funds in the revolving fund shall be in conformance with title 33 United States Code sections 1381 to 1387.

(c) The director may make and condition loans from the revolving fund which shall:

(1) Be made at or below market interest rates; and

(2) Require periodic payments of principal and interest with repayment commencing not later than one year after completion of the project for which the loan is made;

provided that all loans shall be fully amortized upon the expiration of the term of the loan.

(d) No loan of funds from the revolving fund shall be made unless the loan recipient pledges a dedicated source of revenue for the repayment of the loans. This pledge may be a county's full faith and credit (a general obligation payable from its general fund), special assessments, revenues from an undertaking, system, or improvements, including user charges, or any other source of revenue.

(e) Notwithstanding section 414D-85 to the contrary, the director may hold individual members of the nonprofit organization that received the loan jointly and severally liable for the nonpayment or default of the loan. [L 1997, c 221, pt of §1; am L 2016, c 240, §3]

[§342D-88] Revenue bonds; authorization. (a) The director of health, with the approval of the governor and the [director of finance], may issue revenue bonds at such times and in such

amount or amounts, not to exceed \$250,000,000 in aggregate principal, as may be necessary to carry out the purposes of this part.

(b) All such bonds shall be issued pursuant to part III of chapter 39, except as provided in this part.

(c) The resolution or certificate providing for the issuance of the bonds may provide that all or part of the proceeds of the bonds shall be deposited in the revolving fund, where the proceeds shall be held and invested in a separate account or accounts until used in accordance with section 342D-84. [L 1997, c 221, pt of §1]

[§342D-89] Revenue bonds; payment and security. (a) The revenue bonds shall be payable from and secured by the revenues derived from the benefits of the water pollution control loan program for which the revenue bonds are issued, including:

(1) Any repayment of eligible loans or other agreements entered into for the water pollution control loan programs;

(2) Revenues derived from insurance proceeds; and

(3) Reserve accounts and earnings thereon.

(b) The director may pledge any and all revenues derived from the water pollution control loan program to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds may be additionally secured by the pledge or assignment of the loans and other agreements or any note, other undertaking, or obligation held by the director or the department to secure the loans.

(d) The director may issue such types of bonds as the director may determine, including bonds on which the principal and interest are payable exclusively from the income and revenues of the water pollution control loan program. [L 1997, c 221, pt of §1]

[§342D-90] Revenue bonds; amount issued. The director may include the costs of undertaking, administering, operating, and maintaining the water pollution control loan programs for which the bonds are issued in determining the principal amount of bonds to be issued. In determining the cost of undertaking, administering, operating, and maintaining the loan programs, the director may include the cost of studies and surveys; insurance premiums; underwriting fees; financial consultants, legal, accounting, and other services incurred; reserve account, trustee, custodian, and rating agency fees; and interest on the bonds for a period not to

exceed one year beyond the estimated completion of the loan projects for which the bonds are issued. [L 1997, c 221, pt of §1]

[§342D-91] Revenue bonds; investment of proceeds, and redemption. Subject to any agreement with the holders of its revenue bonds, the director may:

(1) Invest moneys not required for immediate use, including proceeds from the sale of any revenue bonds, funds held in reserve or sinking funds or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control. No provisions with respect to the investment of moneys or the acquisition, operation, or disposition of property by other public bodies shall be applicable to the director or department unless the legislature shall specifically so state; and

(2) Purchase revolving fund revenue bonds out of any fund or money available therefor, and hold, cancel, or resell the revenue bonds. [L 1997, c 221, pt of §1]

[§342D-92] Trustee; designation; duties. The director may designate a trustee for each issue of revenue bonds secured under the same indenture; provided that the trustee may be approved by the director of finance. The trustee may have any duties and functions authorized by part III of chapter 39, as deemed necessary, advisable, or expedient by the director for the purposes of this part. [L 1997, c 221, pt of §1]

[§342D-93] Trust indenture. (a) Any trust indenture entered into by the director may contain covenants and provisions as authorized by part III of chapter 39, and approved by the director of finance, as deemed necessary, advisable, or expedient by the director for the purposes of this part.

(b) A trust indenture may also contain provisions deemed necessary, advisable, or expedient by the director to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the water pollution control loan program or in the financing of the costs of administering, operating, or maintaining the water pollution control loan program to which such trust indenture relates. [L 1997, c 221, pt of §1]