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[PART III.] DRINKING WATER FINANCING

§340E-31 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.

"Drinking water fund" means the drinking water treatment revolving loan fund established by section 340E-35. [L 1997, c 218, pt of §2; am L 2009, c 98, §4]

[§340E-32] Declaration of policy. The State's policy is to protect and improve drinking water quality by financing eligible projects consistent with applicable federal and state laws. [L 1997, c 218, pt of §2]

[§340E-33] Powers and duties. (a) The director may approve grants, loans, and other financial assistance consistent with this part and the Federal Act to eligible public water systems in the State.

(b) The director may 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 the Federal Act.

(c) The director may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept drinking water fund capitalization and other grants. Federal capitalization grants shall be used only for the drinking water fund and other uses allowed by the Federal Act (e.g., section 1452(a)(2), (a)(3), (d), (g)(2), and (k) of the Federal Act).

(d) The director may adopt rules pursuant to chapter 91 for the purposes of this part, including rules setting fees for loans and other financial assistance issued through the drinking water fund and penalties for default of loans or other financial assistance.

(e) The director shall 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. Federal funds in the drinking water fund shall be kept in a separate account or series of accounts from the account or accounts for state funds in the drinking water fund.

(f) The director may perform any act considered reasonably necessary, advisable, or expedient for the administration of this part or the advancement of the purposes of this part.

(g) The director may create one or more separate accounts or subaccounts within the drinking water fund and may specify any conditions applicable to the transfer of moneys and securities among such accounts and subaccounts.

(h) The director may create one or more separate accounts or subaccounts outside the drinking water fund to handle funds for programs and administrative expenses consistent with the Federal Act, and the director may specify any conditions applicable to the transfer of moneys and securities among such accounts and subaccounts and to the drinking water fund.

(i) Moneys in accounts outside the drinking water fund may 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 accounts established under this part as the director considers appropriate.

(j) Not less than twenty days prior to the convening of each regular session of the legislature, the director shall submit to the legislature a financial report addressing the operations of the drinking water fund during the last completed fiscal year, including information on each grant, loan, or other financial assistance made during that year. The report shall include:

- (1) The name of the recipient;
- (2) The effective date of the financial assistance;
- (3) The amount provided; and
- (4) The intended or actual use of the funds. [L 1997, c 218, pt of §2]

[§340E-33.5] Use of American Recovery and Reinvestment Act of 2009 and other federal moneys. (a) The director may provide financial assistance to public water systems for the construction of necessary drinking water infrastructure projects, through the drinking water 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 drinking water 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 drinking water fund, including forgiveness of principal, zero and negative interest loans, and grants to public water systems that meet eligibility requirements for the drinking water fund.

(c) The director shall certify that a project is entitled to priority over other eligible projects on the basis of drinking water quality 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 drinking water infrastructure, to the extent allowed by federal law.

(e) Each project receiving financial assistance shall conform with the conditions for drinking water project financial assistance under section 340E-37(a). [L 2009, c 98, §2]

[§340E-34] Grants. (a) The director may make grants to public water systems from state funds as authorized and appropriated by the legislature for the construction of necessary water treatment works or other related drinking water projects. Grants shall not be made from the drinking water fund.

(b) The director shall coordinate the granting of state funds with available federal funds for the same purpose. Grants involving federal funds shall be consistent with federal law.

(c) The director may allocate grants to drinking water projects on the basis of existing health concerns. No grant shall be made for any project unless:

(1) The project conforms with the state grant plan to provide safe drinking water;

(2) The project is certified by the director as being entitled to priority over other eligible projects on the basis of financial as well as drinking water quality needs; and

(3) In the case of water treatment works, the applicant for the grant commits to maintain the water treatment plant efficiently and properly after its construction. [L 1997, c 218, pt of §2]

[§340E-35] Drinking water treatment revolving loan fund; establishment, purpose. There is established in the state treasury a fund to be known as the drinking water treatment revolving loan fund to be administered by the director. The fund shall be administered, operated, and maintained to remain available in perpetuity to provide loans and other financial assistance to eligible public water systems for projects or activities eligible under this part and the Federal Act. [L 1997, c 218, pt of §2]

§340E-36 Drinking water fund; uses and limitations; types of assistance. (a) Moneys in the drinking water fund may be used only as allowed and limited by sections 1452(a)(2) and (3),

1452(d), and 1452(k)(1) and (2) of the Federal Act and this part. Such uses include loans and other financial assistance for facilitating compliance with applicable national primary drinking water regulations or otherwise significantly furthering the health protection objectives of the Federal Act.

(b) Moneys in the drinking water fund may be used only:

(1) To provide, make, and condition loans;

(2) To buy or refinance debt obligations of a municipality, as defined by the Federal Act, at or below market interest rates if the debt obligation is incurred after July 1, 1993;

(3) To guarantee or purchase or provide insurance for a public water system obligation if such action would improve credit market access or reduce interest rates applicable to the obligation;

(4) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the drinking water fund;

(5) To earn interest on the amounts deposited into the drinking water fund; and

(6) To provide interest rate subsidies by depositing revolving fund moneys into interest bearing accounts in participating financial institutions that issue loans for the implementation of eligible projects under section 340E-35.

(c) Five per cent of the moneys in the drinking water fund shall be set aside for use in the geographic areas of the State serviced by water catchment systems for the purposes identified in subsection (b); provided, if no such area qualifies for use of the moneys in the drinking water fund, the moneys shall no longer be set aside and revert back as unrestricted moneys to the fund. [L 1997, c 218, pt of §2; am L 2002, c 132, §2]

[§340E-37] Drinking water fund; conditions. (a) No loan or other financial assistance shall be made from the drinking water fund for any project unless:

(1) The project conforms with the state intended use plan to provide safe drinking water which meets section 1452 of the Federal Act;

(2) The project is certified by the director as being entitled to priority over other eligible projects on the basis of financial as well as drinking water quality needs; and

(3) In the case of water treatment works, the applicant for the loan or other financial assistance commits to maintain the water treatment works efficiently and properly after its construction.

(b) Except for subsidies to disadvantaged communities made consistently with section 1452(d) of the Federal Act, all loans from the drinking water fund shall:

(1) Be made at or below market interest rates, including interest free loans;

(2) Require payments of principal and interest with repayment commencing not later than one year after completion of the project for which the loan is made, and be fully amortized not later than twenty years after project completion, except that for disadvantaged communities an extended repayment term may be provided as allowed by the Federal Act;

(3) Require the recipient of the loan to establish a dedicated source of revenue (or in the case of a privately owned system, demonstrate that there is adequate security) for the repayment of the loans. For a county, the dedicated source may be a pledge of the county's full faith and credit (a general obligation payable from its general fund), of special assessments, of revenues from an undertaking, system or improvements, including user charges, or of any other source of revenue; and

(4) Be repaid, both principal and any interest, to the credit of the drinking water fund. [L 1997, c 218, pt of §2]

[§340E-38] Drinking water fund; deposits. The following may be deposited into the drinking water fund:

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

(2) Appropriations by the legislature to the drinking water fund;

(3) Payments of principal and interest, matching funds, and other amounts made by public water systems under loans or other agreements entered into with the director under this part;

(4) Fees for loans and other items;

(5) Moneys paid to the drinking water fund as a result of court-ordered awards of judgments;

(6) Moneys paid to the drinking water fund in court-approved or out-of-court settlements;

(7) All interest attributable to investment of moneys deposited in the drinking water fund; and

(8) All moneys allotted or directed to the drinking water fund from other sources. [L 1997, c 218, pt of §2]

[§340E-39] Drinking water fund; fees. (a) 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 drinking water facilities, and activities of the drinking water fund under the Federal Act and shall be used exclusively to support the activities of the drinking water fund.

(b) All moneys collected as fees shall be deposited into an administrative expense account or accounts as needed to comply with the Federal Act and shall be used exclusively to support the activities of the drinking water fund. [L 1997, c 218, pt of §2]

[§340E-40] Drinking water fund; interest and investment on accounts. Moneys in the drinking water 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 drinking water fund. [L 1997, c 218, pt of §2]

[§340E-41] Compliance. The failure or inability of any public water system to receive funds under this part or any other loan or grant program, or any delay in obtaining the funds, shall not alter the obligation of the public water system to comply in a timely manner with all applicable requirements of this chapter or rules adopted under this chapter. [L 1997, c 218, pt of §2]