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75-5-1101. Short title. This part may be cited as the "Water Pollution Control State Revolving Fund Act".

75-5-1102. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to costs of servicing loans and issuing debt; program startup costs; financial, management, and legal consulting fees; and reimbursement costs for support services from other state agencies.

(2) "Cost" means, with reference to a project, all capital costs incurred or to be incurred by a municipality or a private person, including but not limited to engineering, construction, financing, and other fees, interest during construction, and a reasonable allowance for contingencies to the extent permitted by the federal act and regulations promulgated under the federal act.

(3) "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended.

(4) "Intended use plan" means the annual plan adopted by the department and submitted to the environmental protection agency that describes how the state intends to use the money in the revolving fund.

(5) "Loan" means a loan of money from the revolving fund to a municipality or a private person.

(6) "Municipality" means any state agency, city, town, or other public body created pursuant to state law, including an authority as defined in [75-6-304](#).

(7) "Private person" means an individual, corporation, partnership, or other nongovernmental legal entity.

(8) "Program" means the water pollution control state revolving fund program established by this part.

(9) "Project" means an activity that is eligible for financing by the program under the federal act, including treatment works, as defined under section 1292 of the federal act (33 U.S.C. 1292), and nonpoint source pollution control under section 1329 of the federal act (33 U.S.C. 1329), and

for which a municipality or private person makes an application for a loan or other financial assistance.

(10) "Revolving fund" means the fund established by [75-5-1106](#).

75-5-1103. Water pollution control state revolving fund program. There is a program under which the state may provide financial assistance to municipalities and private persons to finance or refinance part or all of the cost of projects. The program must be administered in accordance with this part and the federal act.

75-5-1104. Authorization of agreement -- content. (1) The department may enter into a capitalization grant agreement or other agreement with the United States environmental protection agency to implement the program and may accept from that agency other grants and loans to carry out the program.

(2) In entering into the agreement, the director of the department may commit the state to:

(a) accept grant payments from the environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in [75-5-1106](#);

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by [75-5-1106](#) on or before the date on which each quarterly federal grant payment is made to the state;

(c) provide financial assistance to municipalities and private persons in accordance with this part in an amount equal to 120% of the amount of each grant payment within a time period not to exceed 1 year after receipt of a grant;

(d) expend all funds in the revolving fund in an expeditious and timely manner;

(e) use all funds deposited in the revolving fund as a result of the capitalization grant to ensure progress, as determined by the governor of the state, toward compliance with enforceable deadlines, goals, and requirements of the federal act;

(f) expend each quarterly grant payment in accordance with the laws and procedures applicable to commitment or expenditure of revenues of the state;

(g) use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(h) as a condition of making a loan or providing other financial assistance from the revolving fund, require that the municipality or private person will maintain project accounts in accordance with generally accepted government accounting standards;

(i) make annual reports to the environmental protection agency concerning the use of the revolving fund as required by the federal act; and

(j) any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of this part.

75-5-1105. Rulemaking. The department and the department of natural resources and conservation may adopt rules to implement the provisions of this part, including rules:

(1) prescribing the form and content of applications for loans and refinancing agreements;

(2) governing the application of the criteria for awarding loans;

(3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements; and

(4) establishing ceilings on the amount of individual loans to be made to municipalities and private persons, if considered appropriate and necessary for the successful administration of the program.

75-5-1106. Revolving fund. (1) There is established in the state treasury a separate account designated as the water pollution control state revolving fund. There are established in the revolving fund as subaccounts a federal allocation account, a state allocation account, an administration account, an investment income account, and a debt service account.

(2) There must be credited to:

(a) the federal allocation account, all amounts received by the state from the following sources:

(i) funds provided pursuant to the federal act as capitalization grants for a state revolving fund to assist construction of projects;

(ii) grants or transfers of grants received under subchapter II of the federal act for projects; and

(iii) money transferred to the fund from the drinking water state revolving fund pursuant to [75-6-211](#);

(b) the state allocation account:

- (i) the net proceeds of bonds of the state issued pursuant to [75-5-1121](#), less any proceeds deposited to the administration account as provided in subsection (2)(c)(ii); and
 - (ii) other money appropriated by the legislature;
- (c) the administration account, an amount not to exceed 4% of the capitalization grant award or the maximum amount allowed by the federal act for payment of administrative costs and that may include a combination of:
- (i) federal funds; and
 - (ii) the proceeds of bonds of the state issued pursuant to [75-5-1121](#) as the department determines necessary and as required by the federal act for state matching funds to assist in administering the program;
 - (d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds; and
 - (e) the debt service account, the interest portion of loan repayments.
- (3) Each loan made as authorized by [75-5-1113](#) must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department and the department of natural resources and conservation as recommended by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to [75-5-1121](#) and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds. The department may transfer payments and prepayments of the principal of loans deposited in the state allocation account to the state allocation account of the state's drinking water revolving fund program.
- (4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund as it considers necessary to account for the program money and to ensure compliance with the federal act and this part.
- (5) As allowed under the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., the governor may reserve or transfer from the water pollution control state revolving fund program capitalization grant to the state's drinking water revolving fund program an amount up to 33% of the state's drinking water revolving fund program capitalization grant.

75-5-1107. Uses of revolving fund. Money in the revolving fund may be used to:

- (1) make loans to municipalities to finance all or a portion of the cost of a project and to make loans to private persons to finance all or a portion of the cost of nonpoint source pollution control projects;
- (2) buy or refinance debt obligations of municipalities that were issued to finance projects within the state at or below market rates, provided that the obligations were incurred after March 7, 1985;
- (3) guarantee or purchase insurance for obligations of municipalities that were issued to finance projects in order to enhance credit or reduce interest rates;
- (4) provide a source of revenue or security for general obligation bonds the proceeds of which are deposited in the revolving fund;
- (5) provide loan guarantees for similar revolving funds established by municipalities;
- (6) earn interest on fund accounts;
- (7) pay reasonable administrative costs of the program not to exceed 4% of all federal grant awards to the fund or the maximum amount allowed under the federal act; and
- (8) provide additional subsidization to eligible recipients in the form of forgiveness of principal of loans to the extent authorized or required by federal law and subject to satisfaction of conditions on loans described in [75-5-1113](#) or to satisfy any other incentives, conditions, or requirements of federal law related to the program.

75-5-1108. Use of funds -- statutory appropriation. Money in the revolving fund is statutorily appropriated, as provided in [17-7-502](#), for the purposes of making loans to municipalities and private concerns and paying debt service on obligations.

75-5-1109 and 75-5-1110 reserved.

75-5-1111. Applications. (1) The department shall, after consultation with the department of natural resources and conservation, establish loan application procedures, including forms for the applications. Each application for a loan to finance construction of a project must include:

- (a) a reasonably detailed description of the project;
- (b) a reasonably detailed estimate of the cost of the project;
- (c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) the source or sources of revenue proposed to be used to repay the loan;

(f) a current financial statement showing assets, liabilities, revenue, and expenses of the applicant;

(g) if the applicant is a municipality, a statement as to whether, at the time of application, there are any outstanding loans, notes, bonds, or other obligations of the municipality that were issued or incurred to finance any part of the municipality's project or system of which the project is a part and, if so, a description of the loans, notes, bonds, or other obligations;

(h) if the applicant is a private person, a statement as to whether, at the time of application, there are any outstanding loans, notes, or other obligations of the private person and, if so, a description of the loans, notes, or other obligations; and

(i) any other information that the department or the department of natural resources and conservation may require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to engineering reports, economic feasibility studies, and legal opinions.

(2) Each application for a loan to refinance a project, including a purchase of outstanding obligations issued by a municipality to finance a project in whole or in part, must include:

(a) a reasonably detailed description of the project;

(b) a schedule of the cost of the project;

(c) the date on which construction of the project began;

(d) a description of the loans, notes, bonds, or other obligations to be refinanced and of any other loans, notes, bonds, or obligations issued or incurred to finance any part of the municipality's project; and

(e) any other information that the department or the department of natural resources and conservation may require.

(3) Each application for financial assistance in the form of a guaranty or the purchase of insurance for a municipal obligation must include all items required by subsection (1) and any other information the department may require.

75-5-1112. Evaluation of projects and loan applications. The department of natural resources and conservation and the department shall evaluate projects and loan applications. In evaluating projects and loan applications, the following factors must be considered:

- (1) the technical design of the project to ensure compliance with all applicable statutes, rules, and design standards;
- (2) the financial capacity of the municipality or private person to repay the loan;
- (3) the financial, managerial, and technical ability of the municipality or private person to properly operate and maintain the project;
- (4) the feasibility of project completion given the total financing available;
- (5) the ability of the municipality or private person to pay the costs of the project without the requested financial assistance;
- (6) the total amount of loan funds available for financial assistance in the revolving fund;
- (7) the total amount requested in other applications that have been received or that are likely to be received;
- (8) the ranking of the project on the priority list or intended use plan; and
- (9) any other criteria that the department determines appropriate, considering the purposes of the federal act and the program.

75-5-1113. Conditions on loans. (1) Upon approval of a project by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a municipality or private person to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued to finance a project. The loan is subject to the municipality or private person complying with the following conditions:

- (a) meeting requirements of financial capability set by the department of natural resources and conservation to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment and maintenance by the municipality of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the municipality's obligation;
- (b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than the term of the loan;
- (c) agreeing to maintain proper financial records in accordance with generally accepted accounting standards and agreeing that all records are subject to audit;

- (d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;
 - (e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;
 - (f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;
 - (g) complying with plan and specification requirements and other requirements established by the department; and
 - (h) providing for proper construction inspection and project management.
- (2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments.
- (3) (a) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if paid timely and in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to [75-5-1121](#).
- (b) The interest rate must be determined as of the date the loan is authorized by the department of natural resources and conservation.
- (c) The rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the loans. The additional rate may be fixed or variable or may be calculated according to a formula, and it may differ from the rate established for any other loan. Once the reserve has been established at a level considered by the department to be reasonable and prudent for the loans outstanding, the department may use excess reserve payments to make grants to aid in the feasibility of projects.
- (4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the municipality or private person, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans. The department of natural resources and conservation may require that loans to private persons be further secured by a mortgage and other security interests in the project that is being financed or other forms of additional security as considered necessary, including personal guarantees and letters of credit.
- (5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid

from the proceeds of the loan or other available funds of the municipality or private person. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in [75-5-1106](#); or

(b) in the administration account. Money deposited in the administration account established in [75-5-1106](#) must be used for the payment of administrative costs of the program. Money deposited in the special administration costs account must be used for the payment of administrative costs of the program unless not required for that purpose, in which case the money may be transferred to other funds and accounts in the program.

75-5-1114 through 75-5-1120 reserved.

75-5-1121. Authorization of bonds -- allocation of proceeds. (1) Upon request of the department of natural resources and conservation and upon certification by the department that the state has entered into a capitalization grant agreement or other agreement with the United States government pursuant to [75-6-204](#) and that federal capitalization grants have been made to the state for the program, the board of examiners is authorized to issue and sell bonds of the state as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) (a) Except as otherwise provided in this subsection (2), the proceeds of the bonds are allocated to the state allocation account or the administration account of the revolving fund, as provided in [75-5-1106](#).

(b) Any accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account of the revolving fund.

(c) Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds.

(d) Any premium received must be deposited in the state allocation account, the debt service account, or the cost of issuance account as directed by the board of examiners in the resolution or trust indenture regarding the bonds.

(e) For purposes of [17-5-803](#) and [17-5-804](#), the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and the revolving fund as security for the bonds.

(4) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the powers of a trustee inside or outside the state.

(a) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(b) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, provide for the rights of the bondholders, and ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(c) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state.

75-5-1122. Creation of debt. The legislature, through the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed \$40 million in principal amount of general obligation bonds outstanding from time to time for the purpose of:

(1) providing the state's share of the program; and

(2) funding portions of loans on an interim basis pending receipt of:

(a) grant payments from the environmental protection agency for which federal legislation appropriating the proceeds of the grants has been enacted; or

(b) other revenue for the program.

75-5-1123 through 75-5-1125 reserved.

75-5-1126. Projects funded by federal government appropriations. For projects that are funded in part by appropriations from the federal government over a term of years, that have been approved by the department and the department of natural resources and conservation under [75-5-1112](#), and that are considered to be in compliance with [75-5-1113](#), the department of natural resources and conservation may advance money to a municipality in anticipation of the receipt of federal funds by the municipality on the following conditions:

- (1) congress has authorized the project and has committed to fund the project at a specified dollar amount over a period of years;
- (2) other funding agencies will not authorize construction of the project to begin until there is evidence that construction money will be available to the municipality to pay all of the construction costs;
- (3) the department and the department of natural resources and conservation determine that it is in the best interest of the state and the state's objectives under the program that the project begin construction prior to the receipt of all federal appropriations; and
- (4) the advance of the money will be in the form of a note that is issued pursuant to [7-7-109](#) in anticipation of a federal grant for which the municipality promises to pay and pledges to the department of natural resources and conservation the proceeds of the grant when received.