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# Title 4 - DRINKING WATER REVOLVING FUND

## Section 1160 - Definitions

As used in this section:

**1.** "Allocation" means the amount of moneys allocated to reduce a recipient's or group of recipients' total financing costs for one or more eligible projects. **2.** "Construction" means the erection, building, acquisition, alteration, reconstruction, improvement, enlargement or extension of an eligible project; the inspection and supervision thereof; and the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary thereto. **3.** "Corporation" means the New York state environmental facilities corporation, continued pursuant to section twelve hundred eighty-two of the public authorities law, or any successor thereto. **4.** "Eligible project" means a project for construction of a water supply facility which is intended to improve drinking water facilities, including a project that would be eligible for financing under or designed to comply with the requirements of the federal safe drinking water act or other applicable federal law and state drinking water quality goals and standards, which the commissioner has determined: **(a)** is necessary for the objectives and goals of the state sanitary code or the federal safe drinking water act to assure safe public drinking water; **(b)** represents a reasonable effort to develop a viable water supply that can consistently meet drinking water standards; **(c)** takes into consideration the water resources management strategy pursuant to title twenty-nine of article fifteen of the environmental conservation law; **(d)** is a project for which financial assistance is available from the fund; and **(e)** conforms with applicable state rules and regulations. **5.** "Financial assistance to a recipient" has the same meaning as set forth in subdivision four of section twelve hundred eighty-five-m of the public authorities law. **6.** "Financing agreement" means an agreement between the corporation and one or more recipients meeting the requirements of section eleven hundred sixty-three of this title. **7.** "Fund" means the drinking water revolving fund established under section twelve hundred eighty-five-m of the public authorities law. **8.** "Intended use plan" means a plan identifying the intended uses of the amounts available in the fund, including but not limited to: **(a)** a list of those projects for construction of water supply facilities on the priority list developed pursuant to section eleven hundred sixty-one of this title; **(b)** a description of the short and long term goals and objectives of the fund; **(c)** information on the activities to be supported, including a description of project categories, terms of financial assistance and communities served; and **(d)** the criteria and method established for the distribution of financial assistance from the fund. **9.** "Municipality" means any county, city, town, village, district corporation,

county or town improvement district, school district, Indian nation or tribe recognized by the state or the United States with a reservation wholly or partly within the boundaries of New York state, any public benefit corporation or public authority established pursuant to the laws of New York or any agency of New York state which is empowered to construct and operate an eligible project, or any two or more of the foregoing which are acting jointly in connection with an eligible project. **10.** "Recipient" means any municipality, public utility, or person, including any individual, firm, partnership, association, not-for-profit corporation or other corporation organized and existing under the laws of the state or any other state which is empowered to construct and operate an eligible project, or any two or more of the foregoing which are acting jointly in connection with an eligible project.

N.Y. Pub. Health Law § 1160

#### Section 1161 - Eligible projects; priority ranking

Subject to the provisions of section thirty-two of the chapter of the laws of 1996 which added this section, in consultation with the commissioner of environmental conservation, the commissioner shall establish and maintain a list of potentially eligible projects and shall establish, pursuant to rules and regulations, a process for listing potentially eligible projects identified by potential recipients and a priority ranking system for the purpose of providing financial assistance to recipients for such projects under this title. In establishing such system, the commissioner shall take into account the public health significance of such potentially eligible projects which shall include, but need not be limited to, an assessment of (i) public health and safety; (ii) population affected; (iii) attainment of state drinking water quality goals and standards; (iv) taking into consideration the water resources management strategy pursuant to title twenty-nine of article fifteen of the environmental conservation law; (v) taking into consideration future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable; and (vi) compliance with state and federal law, rules and regulations.

N.Y. Pub. Health Law § 1161

Amended by New York Laws 2014, ch. 355, Sec. 13, eff. 3/21/2015.

Section 1162 - Financial assistance; criteria and standards; regulations **1.** The corporation is authorized to promulgate regulations, developed in consultation with the commissioner and the director of the division of the budget, for the purpose of carrying out its responsibilities under this title, including establishing criteria and standards for determining the amount and kind of financial assistance to a recipient for an eligible project. To the extent financial assistance to a recipient for an eligible project is provided from the proceeds of bonds or notes of the corporation, the amount of an allocation applicable to the portion of such eligible project financed with such financial assistance shall be determined by the corporation in accordance with such regulations, if any. **2.** The department is authorized to promulgate regulations, developed in consultation with the director of the division of the budget and the corporation, for the purpose of carrying out its responsibilities under this title.

Section 1163 - Financing agreements

The corporation and any recipient having the power to contract with respect to the financing of an eligible project may enter into a loan or other financing agreement providing for the construction and financing of eligible projects. The corporation shall prepare each financing agreement, which shall include but is not limited to the following provisions:

**1.** A description of the eligible project; **2.** An estimate of the eligible project cost; **3.** A right of the corporation to approve any contracts for services and construction funded pursuant to a financing agreement, and to inspect and review the construction of eligible projects; **4.** Notwithstanding the provisions of any other law, general, special or local, inconsistent with this section, a right of the corporation to invest proceeds of the corporation's bonds or notes, including proceeds of bonds or notes of the recipient, as provided in subdivision four of section twelve hundred eighty-four of the public authorities law and as provided in subdivision six of section twelve hundred eighty-five-m of the public authorities law.

Such right shall include the right to invest such monies together with any other monies held by the corporation pursuant to the provisions of section twelve hundred eighty-five-m of the public authorities law;

**5.** Remedies in the event of a recipient's failure to comply with the terms of a financing agreement; **6.** An agreement by the corporation to: **(a)** lend to the recipient for the construction of an eligible project a specified amount from the proceeds of the corporation's bonds or notes, not to exceed the estimated reasonable cost of construction of the eligible project established in the financing agreement, subject to the ability of the corporation to provide such financing, including any other approvals required by state or federal law and such other conditions as the corporation shall determine necessary or desirable; **(b)** use reasonable efforts to issue its bonds or notes in an amount sufficient to finance the estimated reasonable cost of the eligible project, including but not limited to costs of issuance, credit support fees, if any, trustees' fees, interest during construction, and such reserve funds, if any, as may be necessary to secure such bonds or notes; **(c)** for any financial assistance made from the proceeds of the corporation's bonds or notes, establish an allocation and provide to the recipient an interest rate subsidy allocation for the eligible project in accordance with this title and section twelve hundred eighty-five-m of the public authorities law; **(d)** in the alternative, provide financial assistance to the recipient for the construction of an eligible project in a specified amount from any moneys in or available for deposit in the fund, not to exceed the estimated reasonable cost of construction of the eligible project established in the loan or other financing agreement, as determined by the corporation; **(e)** administer the investment of funds held in accordance with such agreement, including funds of the recipient; **7.** An agreement by the recipient to: **(a)** proceed expeditiously with and complete the eligible project in accordance with plans approved; **(b)** commence operation of the eligible project on completion of the project, and not abandon, discontinue operation of, sell, transfer or otherwise dispose of the eligible project as long as a loan or other financial assistance to the recipient for such project remains outstanding, without approval of the commissioner; provided, however, that the commissioner shall not approve disposition of the eligible project

without the concurrent approval of the corporation. None of the foregoing shall limit the commissioner's authority to terminate or impose conditions upon the operation of an eligible project pursuant to the provisions of this chapter and any implementing regulations thereto; (c) operate and maintain the eligible project in accordance with applicable requirements of federal and state law; (d) establish and maintain project accounts in accordance with the financing agreement and generally accepted accounting standards; (e) establish a dedicated source of revenue (which may include a general obligation of the recipient) providing for: (i) operation and maintenance costs of the eligible project and equipment renewal and replacement; and (ii) loan repayment regardless of whether the eligible project is in operation; (f) notwithstanding the provisions of any other law, general, special or local, inconsistent with this section, delegate to the corporation the authority to invest proceeds of bonds or notes issued by the corporation or the recipient on behalf of the recipient; and (g) permit any reviews or audits and provide assistance determined to be reasonable and necessary by the department or the corporation; **8.** Such other agreements or covenants as may be deemed necessary or desirable in connection with the issuance by the corporation of its bonds or notes.

N.Y. Pub. Health Law § 1163

#### Section 1164 - Inspection and certification

The corporation shall provide the means of ensuring compliance by recipients with each financing agreement by:

- 1.** Retaining the right to inspect and review work on each eligible project in progress and upon completion, and determining whether such work was undertaken and completed in compliance with all relevant plans and the terms of such financing agreement;
- 2.** Retaining the right to disburse or refuse to disburse payments to a recipient pursuant to a financing agreement;
- 3.** Retaining the right to disburse or refuse to disburse payments to a recipient pursuant to a financing agreement based upon the determinations of any review or audit;
- 4.** Establishing remedies if work on an eligible project has not been completed in accordance with all relevant plans and the terms of such financing agreement due to factors within the recipient's control; and
- 5.** Requiring a recipient to maintain project accounts with respect to any eligible project.

Nothing herein shall be construed to affect or diminish the general authority of the department to inspect and review the work on any project financed pursuant to this title, or to inspect the records relating to such project, for the purpose of determining compliance with any other provisions of this chapter.

N.Y. Pub. Health Law § 1164

#### Section 1165 - Noncompliance; notification

In the event the work completed pursuant to a financing agreement or loan agreement is deemed not in compliance with such agreement, the corporation shall expeditiously notify the recipient of such non-compliance and indicate the reasons for such determination.

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Section 1166 - Implementation agreements

For the purpose of implementing the drinking water revolving fund program set forth in this title and section twelve hundred eighty-five-m of the public authorities law, and ensuring compliance with the requirements of the state sanitary code, the federal safe drinking water act or other applicable federal law, the department may:

**1.** Arrange in consultation with the corporation for independently conducted reviews and audits on at least an annual basis necessary to carry out the objectives of the fund. **2.** Submit a copy of each draft intended use plan to the governor, the director of the division of the budget, the chairman of the senate finance committee and the chairman of the assembly ways and means committee and submit a copy of each final intended use plan to such persons. **3.** Enter into any agreement between the state of New York and the administrator of the United States environmental protection agency and take all other actions necessary to comply with the requirements of the federal safe drinking water act or applicable federal law and state law, including, but not limited to, approving each project as an eligible project under the program. **4.** Enter into such agreements with the corporation as to the administration and implementation of the drinking water revolving fund as may be deemed desirable or necessary, which agreements may provide for among other things, the allocation and delegation of responsibilities of the commissioner, the department or the corporation set forth in this title amongst such parties.

Section 1167 - Financial assistance; recipients

The corporation may provide financial assistance to recipients pursuant to paragraph (a) of subdivision four of section twelve hundred eighty-five-m of the public authorities law from any available moneys in the fund other than the proceeds of the corporation's bonds or notes or moneys needed to comply with subdivision five of section twelve hundred eighty-five-m of the public authorities law if and to the extent the corporation determines that it is unable to, or that it is impractical or inadvisable to, finance all or a portion of the costs of an eligible project from the proceeds of bonds or notes that are special obligations of the corporation.

The interest rate charged on any loan made by the corporation pursuant to this section shall be such interest rate as determined by the corporation (including a zero percent rate of interest), but shall in any event be no more than two-thirds of the market rate of interest otherwise applicable thereto.

Section 1168 - Construction contracts; designations

The contracts for the construction of eligible projects constructed and financed pursuant to a financing agreement shall be subject to the requirements and provisions of article fifteen-A of the executive law and, for such purposes, any such contract shall be considered a "state contract" and the department shall be the "contracting agency" for each such contract.

N.Y. Pub. Health Law § 1168

Section 1169 - Compliance with other laws

Nothing contained in this title shall be held to alter or abridge the powers and duties of the department of environmental conservation.

N.Y. Pub. Health Law § 1169