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68-221-1201. Short title.

This part shall be known and may be cited as the “Drinking Water Revolving Loan Fund Act of 1997.”

68-221-1202. Purpose and intent.

(a) The purpose of this part is to:

- (1) Facilitate statewide compliance with state and federal drinking water standards;
- (2) Provide Tennessee water systems with low-cost loans and other financial assistance for system improvements through the creation of a self-sustaining revolving loan program so as to improve drinking water systems; and
- (3) Enable the department to receive and use federal funds for the loan program and other purposes, including, but not limited to, technical assistance, authorized by the federal act.

(b) It is intended that the drinking water revolving loan program be used in coordination with state and federal assistance programs.

68-221-1203. Part definitions.

Terms used in this part that are defined in §§ 68-221-703 and 68-221-1003 shall have the same meaning in this part. As used in this part, unless the context otherwise requires:

- (1) “Federal act” means the Safe Drinking Water Act, or Title XIV of the Public Health Service Act, compiled in 42 U.S.C. § 300f et seq., as amended, and rules and regulations promulgated thereunder;
- (2) “Fund” means the water system revolving loan fund;
- (3) “Loan” means loans, loan guarantees, or a source of reserve and security for leveraged loans;
- (4) “Security” means that which is determined by the authority to be acceptable to secure a loan to a water system under this part and includes, but is not limited to, dedicated or other revenues of the system, collateral, letters of credit, and surety bonds;

- (5) “State act” means the Tennessee Safe Drinking Water Act of 1983, compiled in part 7 of this chapter, as amended, and rules and regulations promulgated thereunder; and
- (6) “System” and “water system” mean the community public water systems of a county, incorporated town or city, metropolitan government, a privately owned for-profit community public water system, utility district formed pursuant to the Utility District Law, compiled in title 7, chapter 82, water/wastewater authority, energy authority, state agency, or an instrumentality of government created by any one (1) or more of these or by an act of the general assembly as well as such governmental entity.

68-221-1204. Drinking water revolving loan fund.

- (a)
- (1) There is created in the state treasury a revolving loan fund to be known as the “drinking water revolving loan fund.”
- (2) The authority shall administer the fund and may adopt rules and regulations for such administration.
- (3) All interest and earnings of the fund shall remain a part of the fund.
- (4) No part of the fund shall revert to the general fund on any June 30, but shall remain a part of the revolving fund available for expenditure in accordance with this part.
- (5) The authority may charge and collect from systems and water systems administrative fees and expenses, including, but not limited to, reimbursement of all cost of financing by the authority that the authority determines to be reasonable and required. These fees and expenses shall not become part of the fund.
- (b)
- (1) The authority shall deposit in the fund all receipts from the repayment of principal and interest on loans made pursuant to this part.
- (2) The fund shall be established, maintained and credited with repayments, and the fund balance shall be available in perpetuity for providing such loans, pursuant to this part.
- (c) The department shall deposit in the fund federal funds allocated to the state pursuant to the federal act which have been determined by the department to be for the purpose of making loans to water systems and for which state matching funds are available.
- (d)
- (1) The department shall recommend annually to the general assembly the appropriate state funds necessary for the receipt of all available matching federal funds.
- (2) State money appropriated to the department or to the authority to carry out this part may be used, in addition to other purposes, to match federal funds allocated to the state pursuant to the Safe Drinking Water Act for the purpose of making loans to water systems.
- (e) The department shall deposit into the fund any federal funds allocated to the state to make loans and to subsidize loans made under the program authorized by this part.

68-221-1205. Program for loans, financing and refinancing — Powers of department and authority — Priority system

and list — Affordability criteria — Intended use plan — Recommendations for loans — Audit.

(a) The department, in conjunction with the authority shall administer a program for loans to water systems and the department may adopt regulations to govern the application procedure for loans under this part as well as to effectuate the purposes of this part.

(b) The department shall recommend to the authority an appropriate financing method for each water system which has applied for financial assistance under this part and which appears on the drinking water priority list established under this section. In recommending the interest rate for a loan, the department shall utilize the affordability criteria developed pursuant to this section. Water systems serving jurisdictions falling within the lower economic scale on the index shall be eligible for lower interest rates.

(c) Priority System. The department shall, after notice and opportunity for public comment, establish a priority system for loans under this part that to the maximum extent practicable, gives priority for the use of funds to projects that:

(1) Address the most serious risk to human health;

(2) Are necessary to ensure compliance with the requirements of the federal and state acts (including requirements for filtration); and

(3) Assist systems most in need on a per household basis according to state affordability criteria.

(d) Priority List. The department shall, after notice and opportunity for public comment, publish and periodically update a list of projects in the state that are eligible for assistance under this part, including the priority assigned to each project.

(e) The department shall, after notice and opportunity for public comment, establish affordability criteria for loans under this program which shall utilize an economic index based on factors which include, but are not limited to, per capita income and property values of the jurisdiction to be served.

(f) After providing for public review and comment, the department shall annually prepare a plan that identifies the intended uses of the amounts available to the fund. An intended use plan shall include:

(1) A list of the projects to be assisted in the first fiscal year that begins after the date of the plan, including a description of the project, the expected terms and schedule of financial assistance, and the size of the community served;

(2) The criteria and methods established for the distribution of funds, including the priority system; and

(3) A description of the financial status of the fund and the short-term and long-term goals of the fund.

(g) The department shall present to the authority its recommendations for loans to water systems. Prior to making a recommendation for loans to water systems, the department may ensure through an environmental review that loan funded projects shall be environmentally sound. The authority shall have final approval of such loans. Both the department and the authority shall be parties to the contracts with water systems concerning loans.

(h) The comptroller of the treasury shall make an annual audit of the fund as part of the comptroller of the treasury's annual audit of the authority and the department pursuant to § 9-3-211.

(i) The authority and the department shall have such other authority as may be necessary and appropriate for the exercise of the powers and duties conferred by this part.

(j) Notwithstanding any other provision of this part to the contrary, the department, in conjunction with the authority, may develop alternative financial assistance programs, which may include the issuance of the authority's revenue bonds, for water systems using the funds appropriated herein to effect the legislative intent of providing low-cost financial assistance to water systems, provided such programs are permissible under the federal act.

(k) Water systems and the authority shall have the powers discussed in § 68-221-1005(g), (h), (i), and (k), and may use such powers in the manner stated therein in relation to projects receiving loans under this part; provided, that this subsection (k) does not apply to privately owned for-profit community public water systems.

(l)

(1) The department and the authority may use any federal funds allocated to the state to make loans and to subsidize loans made through the program authorized by this part, through such mechanisms as forgiveness of principal and negative interest rates;

(2) The department and the authority may administer the program using the funds in accordance with the criteria set by the federal government; and

(3) The department may promulgate rules and develop forms that may be deemed necessary for the program.

68-221-1206. Prerequisites for and terms of loans.

(a) Loans shall be made only to water systems that:

(1) Are on the department's water system priority ranking list established pursuant to § 68-221-1205;

(2) Use the funds only for expenditures that will facilitate compliance with the federal act and the state act or otherwise significantly further the public health protection objectives of those acts;

(3) In the opinion of the authority, demonstrate technical, managerial, and financial capability to ensure compliance with the requirements of the federal act and the state act; provided, that systems without such current capability may receive loans if the owner or operator of the system agrees to undertake feasible and appropriate changes in operations as approved by the water and wastewater financing board (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) to ensure that the system has the technical, managerial, and financial capability to comply with the requirements of the state and federal acts over the long term;

(4) Are not in significant noncompliance with the federal act or the state act unless the use of the assistance will ensure compliance;

(5)

(A) In the opinion of the authority, demonstrate sufficient revenues to operate and maintain the water system for its useful life and to repay the loan;

(B) Pledge security as required by the authority for the repayment of the loan;

(C) Agree to adjust periodically fees and charges for services of the water system in order that loan payments and costs of the water system are timely paid; provided, however, upon determination that fees and charges are reasonable, the authority may in its discretion make a loan to a local government which is relying upon and using ad valorem taxes or other lawful

sources of revenue, in addition to fees and charges, to pay timely the loan payments and costs of the water system;

(6) Agree to maintain financial records in accordance with governmental accounting standards and to conduct an annual audit of the system's financial records in accordance with generally accepted governmental auditing standards and with minimum standards prescribed by the comptroller of the treasury, and to file such audit with the comptroller. In the event of the failure or refusal of the system to have the audit prepared, then the comptroller of the treasury may appoint an accountant or direct the department of audit to prepare the audit at the expense of the system;

(7) Provide such assurances as are reasonably requested by the authority and the department; and

(8) In the case of local governments with taxing power, agree to be subject to the jurisdiction of the water and waste water financing board established by this part; and all other local governments, notwithstanding any charter provision to the contrary, agree to be subject to the jurisdiction of the utility management review board created by title 7, chapter 82; provided, however, that any local government in existence on April 11, 2002, and under the terms of this section, subject to the jurisdiction of the utility management review board, other than utility districts formed under title 7, chapter 82, at any time after April 11, 2002, may irrevocably elect to come under the jurisdiction of the water and waste water financing board, and any such local government not in existence on April 11, 2002, may make such irrevocable election prior to obtaining a loan from the board. All such elections shall be submitted in writing to the director, with a copy to the authority.

(b) Loan funds may not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this section and the purchase is from a willing seller.

(c) Of the amount credited to the fund in any fiscal year, fifteen percent (15%) shall be available solely for providing loan assistance to water systems which regularly serve fewer than ten thousand (10,000) persons to the extent such funds can be obligated for eligible projects of water systems.

(d) The interest rate for each loan shall be less than or equal to the market interest rate, or the loan may be interest free.

(e) Principal and interest payments on each loan will commence not later than one (1) year after completion of the project for which the loan was made, and each loan will be fully amortized not later than twenty (20) years after the completion of the project, except that in the case of a disadvantaged community, as defined in subdivision (i)(2), the authority may provide an extended term for a loan, if the extended term:

(1) Terminates not later than thirty (30) years after the date of project completion; and

(2) Does not exceed the expected design life of the project.

(f) The drinking water revolving loan fund may also be used:

(1) To buy or refinance the debt obligation of a municipality or an inter-municipal or interstate agency at an interest rate that is less than or equal to the market interest rate if the debt obligation was incurred after July 1, 1993;

(2) To guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this section) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation;

(3) As a source of revenue or security for the payment of principal and interest on debt of the authority, if the proceeds of the sale of the bonds will be deposited into the fund;

- (4) To earn interest on the amounts deposited into the fund;
- (5) For loans to any systems to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with national primary drinking water regulations;
- (6) For loans to any water system to implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to section 1453 of the federal act, in order to facilitate compliance with national primary drinking water regulations applicable to the system under section 1412 of the federal act or otherwise significantly further the health protection objectives of this title. Funds authorized under this clause may be used to fund only voluntary, incentive-based mechanisms;
- (7) For loans to any water system to provide funding in accordance with section 1454(a)(1)(B)(i) of the federal act;
- (8) To provide assistance, including technical and financial assistance, to any water system as part of a capacity development strategy developed and implemented in accordance with section 1420(c) of the federal act;
- (9) To make expenditures from the capitalization grant for fiscal years 1996 and 1997 to delineate and assess source water protection areas for water systems in accordance with section 1453 of the federal act, except that funds set aside for such expenditure shall be obligated within four (4) fiscal years;
- (10) To make expenditures from the fund for the establishment and implementation of wellhead protection programs for water systems under section 1428 of the federal act; and
- (11) For loans to privately owned for-profit community public water systems as provided in federal law pursuant to 40 CFR Part 35; provided, that:
 - (A) No privately owned for-profit community public water systems shall be considered for loans with principal forgiveness under this program;
 - (B) Privately owned for-profit community public water systems shall be categorized as one hundred percent (100%) ability to pay on the index established pursuant to § 68-221-1205;
 - (C) A privately owned for-profit community public water system borrower shall have at least a debt/service coverage ratio of 1.25;
 - (D) Privately owned for-profit community public water systems shall provide security determined by the Tennessee local development authority to be acceptable to secure a loan under this part; and
 - (E) The Tennessee local development authority has the authority to direct a privately owned for-profit community public water system to the water and wastewater financing board for compliance as set forth in §§ 68-221-1009 and 68-221-1010, and by the comptroller of the treasury.
- (g) Loan funds may only be used for expenditures approved by the department.
- (h) The requirements of this section applicable to water systems applying for loans are deemed satisfied if any one of the entities jointly participating in the project being funded pursuant to the loan agreement satisfies the requirements.
- (i) Loan Subsidy. Notwithstanding any other provision of this part, in any case in which the state makes a loan pursuant to this part to a water system serving a disadvantaged community or a community that the state expects to become a disadvantaged community as the result of a proposed project, the state may provide additional subsidization (including forgiveness of principal).

(1) Total Amount of Subsidies. For each fiscal year, the total amount of loan subsidies may not exceed thirty percent (30%) of the amount of the capitalization grant received by the state for the year.

(2) Definition of Disadvantaged Community. In this subsection (i), the term “disadvantaged community” means the service area of a water system that meets affordability criteria established pursuant to this part.