

LEGISLATIVE BILL 737

Approved by the Governor February 24, 2016

Introduced by Friesen, 34.

A BILL FOR AN ACT relating to the Wastewater Treatment Facilities Construction Assistance Act; to amend sections 81-15,149, 81-15,150, 81-15,151, 81-15,154, 81-15,155, and 81-15,156, Reissue Revised Statutes of Nebraska; to redefine a term; to change powers of the Director of Environmental Quality; to change provisions relating to the Wastewater Treatment Facilities Construction Loan Fund, categories of loan eligibility, eligible items, loan conditions, and loan terms; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 81-15,149, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,149 As used in the Wastewater Treatment Facilities Construction Assistance Act, unless the context otherwise requires:

(1) Clean Water Act means the federal Clean Water Act, as amended, 33 U.S.C. 1251 et seq.;

(2) Construction means any of the following: Preliminary planning to determine the feasibility of wastewater treatment works or nonpoint source control systems; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications, procedures, or other necessary preliminary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of wastewater treatment works or nonpoint source control systems; or the inspection or supervision of any of the foregoing items;

(3) Council means the Environmental Quality Council;

(4) County means any county authorized to construct a sewerage disposal system and plant or plants pursuant to the County Industrial Sewer Construction Act;

(5) Department means the Department of Environmental Quality;

(6) Director means the Director of Environmental Quality;

(7) Eligible financial institution means a bank that agrees to participate in the linked deposit program and which is chartered to conduct banking in this state pursuant to the Nebraska Banking Act, is chartered to conduct banking by another state and authorized to do business in this state, or is a national bank authorized to do business in this state;

(8) Fund means the Wastewater Treatment Facilities Construction Loan Fund;

(9) Linked deposit program means the Wastewater Treatment Facilities Construction Assistance Act Linked Deposit Program established in accordance with section 81-15,151.03;

(10) Municipality means any city, town, village, district, association, or other public body created by or pursuant to state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes;

(11) Nonpoint source control systems means projects which establish the use of methods, measures, or practices to control the pollution of surface waters and ground water that occurs as pollutants are transported by water from diffuse or scattered sources. Such projects include, but are not limited to, structural and nonstructural controls and operation and maintenance procedures applied before, during, and after pollution-producing activities. Sources of nonpoint source pollution may include, but are not limited to, agricultural, forestry, and urban lands, transportation corridors, stream channels, mining and construction activities, animal feeding operations, septic tank systems, underground storage tanks, landfills, and atmospheric deposition;

(12) Operate and maintain means all necessary activities including the normal replacement of equipment or appurtenances to assure the dependable and economical function of a wastewater treatment works or nonpoint source control systems in accordance with its intended purpose; and

(13) Wastewater treatment works means the structures, equipment, and processes, and land required to collect, transport, and treat domestic or industrial wastes and to dispose of the effluent and sludges.

Sec. 2. Section 81-15,150, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,150 The director may obligate and administer any federal grants to municipalities and counties for construction of publicly owned wastewater treatment works or nonpoint source control systems pursuant to the Wastewater Treatment Facilities Construction Assistance Act and the Clean Water Act.

Sec. 3. Section 81-15,151, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,151 (1)(a) The Wastewater Treatment Facilities Construction Loan Fund is hereby created. The fund shall be held as a trust fund for the purposes and uses described in the Wastewater Treatment Facilities Construction Assistance Act.

(b) The fund shall consist of federal capitalization grants, state matching appropriations, repayments of principal and interest on loans, and

other money designated for the fund. The director may make loans from the fund pursuant to the act and may use (i) up to four percent of all federal capitalization grant awards to the fund, (ii) up to four hundred thousand dollars per year, or (iii) the equivalent of one-fifth percent per year of the current valuation of the fund for the reasonable cost of administering the fund and conducting activities under Title VI of the federal Clean Water Act.

(c) The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that (i) amounts designated by the director for use in the linked deposit program shall be deposited with eligible financial institutions by the director and (ii) any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

(d) ~~(e)~~ The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for the security, investment, and repayment of bonds.

(e) ~~(d)~~ The fund and the assets thereof may be used, to the extent permitted by the Clean Water Act, as amended, and the regulations adopted and promulgated pursuant to such act, (i) to pay or to secure the payment of bonds and the interest thereon, except that amounts deposited into the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon, (ii) to deposit as provided by the linked deposit program, and (iii) to buy or refinance the debt obligation of municipalities for wastewater treatment works if the debt was incurred and construction was begun after March 7, 1985. Eligibility and terms of such refinancing shall be in accordance with the Wastewater Treatment Facilities Construction Assistance Act.

(2)(a) There is hereby created the Construction Administration Fund. Any funds available for administering loans or fees collected pursuant to the Wastewater Treatment Facilities Construction Assistance Act shall be deposited in such fund. The fund shall be administered by the department for the purposes of the act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings shall be credited to the fund.

(b) The Construction Administration Fund and assets thereof may be used, to the extent permitted by the Clean Water Act and the regulations adopted and promulgated pursuant to such act, to fund subdivisions (11), (12), and (13) of section 81-15,153. The annual obligation of the state pursuant to subdivisions (11) and (13) of such section shall not exceed sixty-five percent of the revenue from administrative fees collected pursuant to this section in the prior fiscal year.

(c) The director may transfer any money in the Construction Administration Fund to the Wastewater Treatment Facilities Construction Loan Fund to meet the nonfederal match requirements of any applicable federal capitalization grants or to meet the purposes of subdivision (11) of section 81-15,153.

Sec. 4. Section 81-15,154, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,154 Categories of loan eligibility shall include: Primary, secondary, Secondary or tertiary treatment and appurtenances; infiltration and inflow correction; major sewer system rehabilitation; new collector sewers and appurtenances; new interceptors and appurtenances; acquisition of land integral to the treatment process; acquisition of land and interests in land necessary for construction; correction of combined sewer overflows; water conservation, efficiency, or reuse; energy efficiency; reuse or recycling of wastewater, stormwater, or subsurface drainage water; development and implementation of watershed projects; measures to increase the security of treatment works; and nonpoint source control systems. Loans shall be made only for eligible items within such categories. For loans made entirely from state funds, eligible items shall include, but not be limited to, the costs of engineering services and contracted construction. Eligible items shall not include the costs of water rights, ~~land, easements, and rights-of-way~~, legal costs, fiscal agent's fees, operation and maintenance costs, and municipal or county administrative costs. For loans made in whole or in part from federal funds, eligible items shall be those identified pursuant to the Clean Water Act.

Sec. 5. Section 81-15,155, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,155 (1) All loans made under the Wastewater Treatment Facilities Construction Assistance Act shall be made only to municipalities or to counties that:

- (a) Meet the requirements of financial capability set by the department;
- (b) Pledge sufficient revenue sources for the repayment of the loan if such revenue may by law be pledged for that purpose;
- (c) Agree to maintain financial records according to generally accepted government accounting standards and to conduct an audit of the project's financial records;
- (d) Provide a written assurance, signed by an attorney, that the municipality or county has proper title, easements, and rights-of-way to the property on or through which the wastewater treatment works or nonpoint source control systems is to be constructed or extended;

(e) Require the contractor of the construction project to post separate performance and payment bonds or other security approved by the department in the amount of the bid;

(f) Provide a written notice of completion and start of operation of the facility; and

(g) Employ a professional engineer to provide and be responsible for engineering services on the project such as an engineering report, construction contract documents, observation of construction, and startup services.

(2) Loans made under the act for the construction, rehabilitation, operation, and maintenance of wastewater treatment works shall be made only to municipalities or to counties which meet the conditions of subsection (1) of this section and, in addition, that:

(a) Develop and implement a long-term wastewater treatment works management plan for the term of the loan, including yearly renewals;

(b) Provide capacity for up to the term of the loan, but not less than twenty years, for domestic and industrial growth or reasonable capacity as determined by the department;

(c) Agree to operate and maintain the wastewater treatment works so that it will function properly over the structural and material design life which shall not be less than twenty years; and

(d) Provide a certified operator pursuant to voluntary or mandatory certification program, whichever is in effect.

Sec. 6. Section 81-15,156, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,156 Loan terms shall include, but not be limited to, the following:

(1) The term of the loan shall not exceed the lesser of thirty years or the projected useful life of the project ~~twenty years~~;

(2) The interest rate shall be at or below market interest rates;

(3) The annual principal and interest payment shall commence not later than one year after completion of any project and all loans shall be fully amortized not later than the loan term ~~twenty years~~ after the date of completion of the project; and

(4) The loan recipient shall immediately repay any loan when a grant has been received which covers costs provided for by such loan.

Sec. 7. Original sections 81-15,149, 81-15,150, 81-15,151, 81-15,154, 81-15,155, and 81-15,156, Reissue Revised Statutes of Nebraska, are repealed.