

LEGISLATIVE BILL 514

Approved by the Governor February 13, 2014

Introduced by Carlson, 38.

FOR AN ACT relating to the Wastewater Treatment Facilities Construction Assistance Act; to amend sections 81-15,148, 81-15,149, 81-15,151, and 81-15,152, Reissue Revised Statutes of Nebraska, and sections 81-15,147 and 81-15,153, Revised Statutes Cumulative Supplement, 2012; to state findings; to define terms; to eliminate obsolete provisions; to provide for certain debt obligation refinancing and a linked deposit program; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 81-15,147, Revised Statutes Cumulative Supplement, 2012, is amended to read:

81-15,147 Sections 81-15,147 to 81-15,157 and section 5 of this act shall be known and may be cited as the Wastewater Treatment Facilities Construction Assistance Act.

Sec. 2. Section 81-15,148, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,148 The Legislature finds that the construction, rehabilitation, operation, and maintenance of modern and efficient sewer systems and wastewater treatment works are essential to protecting and improving the state's water quality, that protecting water quality is an issue of concern to all citizens of the state, that in addition to protecting and improving the state's water quality, adequate wastewater treatment works are essential to economic growth and development, and that the amount of needed assistance which may be provided to municipalities or counties for wastewater treatment purposes can be increased and needed projects can be undertaken more expeditiously through the issuance of revenue bonds and the deposit of the proceeds thereof into the Wastewater Treatment Facilities Construction Loan Fund.

The Legislature finds that construction, rehabilitation, operation, and maintenance of nonpoint source control systems are essential to water quality protection, that such systems are financially burdensome to municipalities and counties, and that the amount of needed assistance which may be provided to municipalities or counties for nonpoint source control systems can be increased and needed projects can be undertaken more expeditiously through the issuance of revenue bonds and the deposit of the proceeds ~~thereof~~ of such bonds into the Wastewater Treatment Facilities Construction Loan Fund.

The Legislature finds and determines that the issuance of revenue bonds for the purpose of financing the fund serves a public purpose by assisting municipalities or counties in providing and improving wastewater treatment facilities and nonpoint source control systems and thereby providing clean water to the citizens of the state, promoting the health and well-being of the citizens, and assisting in the economic growth and development of the state and its political subdivisions. The full faith and credit and the taxing power of the state are not pledged to the payment of such bonds or the interest thereon.

The Legislature finds that a linked deposit program established to make low-interest loans available for the construction, rehabilitation, and enhancement of and assistance with nonpoint source control systems will improve the water quality of the waters of the state.

Sec. 3. 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;

~~(6)~~ (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 5 of this act;

~~(7)~~ (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;

~~(8)~~ (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;

~~(9)~~ (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

~~(10)~~ (13) Wastewater treatment works means the structures, equipment, and processes required to collect, transport, and treat domestic or industrial wastes and to dispose of the effluent and sludges.

Sec. 4. 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 of Environmental Quality~~ director may make loans from the fund pursuant to the act and may use up to four percent of all federal capitalization grant awards to the fund for the reasonable cost of administering the fund and conducting activities under Title VI of the federal Clean Water 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, 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.

(c) 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.

(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.

Prior to December 31, 1996, money or obligations from the Petroleum Release Remedial Action Cash Fund may be transferred to or deposited in the Wastewater Treatment Facilities Construction Loan Fund as designated by the Director of Environmental Quality. Prior to December 31, 1996, the fund and the assets thereof, including federal capitalization grants, not otherwise pledged for inconsistent purposes may be, to the extent permitted by the Clean Water Act, as amended, and the regulations adopted and promulgated pursuant to such act, in whole or in part transferred to or invested in obligations of the Petroleum Release Remedial Action Cash Fund at the direction of the director in a manner consistent with section 66-1519.01.

(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 ~~fund~~ 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 ~~(9)~~, ~~(10)~~, and (11), (12), and (13) of section 81-15,153. The annual obligation of the state pursuant to subdivisions ~~(9)~~ and (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 ~~(9)~~ (11) of section 81-15,153.

Sec. 5. (1) The department may establish and administer the linked deposit program, pursuant to rules and regulations adopted and promulgated by the council, to promote loans by eligible financial institutions for the construction, rehabilitation, and enhancement of nonpoint source control systems for public or private owners thereof. When an eligible financial institution has executed a linked deposit agreement with the director, the director may deposit a portion of the Wastewater Treatment Facilities Construction Loan Fund with the eligible financial institution in low-yielding deposit accounts, certificates of deposit, or other authorized deposits as set forth in the linked deposit agreement between the director and the eligible financial institution. Such deposits shall not be subject to the requirements of the Public Funds Deposit Security Act. In the linked deposit agreement, the eligible financial institution shall make loans available at an interest rate lower than the otherwise prevailing interest rate for construction, rehabilitation, and enhancement of nonpoint source control systems. Eligibility for the linked deposit program shall be determined pursuant to rules and regulations adopted and promulgated by the council.

(2) Linked deposit program loans may be made to public or private owners by eligible financial institutions for the construction, rehabilitation, and enhancement of nonpoint source control systems including:

- (a) Onsite wastewater and private septic systems;
- (b) Local water protection projects, including best management practices for nutrient controls; and
- (c) Eligible nonpoint source activities under the Livestock Waste Management Act.

Sec. 6. Section 81-15,152, Reissue Revised Statutes of Nebraska, is amended to read:

81-15,152 The council shall have the following powers and duties:

(1) The power to adopt and promulgate rules and regulations to govern the application procedure and requirements for making loans under the Wastewater Treatment Facilities Construction Assistance Act;

(2) The power to adopt a system for the ranking of wastewater treatment construction projects with known needs or for which loan applications have been received by the department. In establishing the system the council shall consider, among other things, the severity of pollution, public health, water quality impact, population, financial capability, and eligibility of the construction project for federal or state funds. This priority system shall be reviewed annually by the council;

(3) The power to adopt and promulgate rules and regulations to govern types of nonpoint source control system projects which will be eligible for loans and to adopt a system for priority ranking of such projects;

(4) The power to adopt a system of establishing interest rates to be charged on loans. The system shall presume that the current market interest rate shall be charged unless a municipality or a county demonstrates a serious financial hardship. The system may allow discounted interest rates for short-term loans. The following factors shall be considered when making a determination of serious financial hardship: Income level of residents; amount of debt and debt service requirements; and level of user fees both in absolute terms and relative to income of residents;

(5) The power to create an administrative fee to be assessed on a loan for the purpose of administering the Wastewater Treatment Facilities Construction Assistance Act. Such fee shall be based on the availability of federal funding for such purpose and the projected administrative needs for carrying out the purposes of the act;

(6) The power to determine the maximum amount of any one loan or combination of loans for any single municipality or any single county;

(7) Except as limited by section 81-15,151, the power to obligate the Wastewater Treatment Facilities Construction Loan Fund and the assets thereof, in whole or in part, to repay with interest loans to or deposits into the fund, including bonds, the proceeds of which are deposited into the fund; and

(8) The power to adopt and promulgate rules and regulations to govern the application procedure and requirements, including any funding caps and cost-share requirements, for grants pursuant to subdivision ~~(10)~~ (12) of section 81-15,153;—

(9) The power to adopt and promulgate rules and regulations to establish and administer the linked deposit program; and

(10) The power to adopt and promulgate rules and regulations for refinancing of debt obligations of municipalities in accordance with section 81-15,151.

Sec. 7. Section 81-15,153, Revised Statutes Cumulative Supplement, 2012, is amended to read:

81-15,153 The department shall have the following powers and duties:

(1) The power to establish a program to make loans to municipalities or to counties, individually or jointly, for construction or modification of publicly owned wastewater treatment works in accordance with the Wastewater Treatment Facilities Construction Assistance Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(2) The power to establish a program to make loans to municipalities or to counties for construction, rehabilitation, operation, or maintenance of nonpoint source control systems in accordance with the Wastewater Treatment Facilities Construction Assistance Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(3) The power, if so authorized by the council pursuant to section 81-15,152, to execute and deliver documents obligating the Wastewater Treatment Facilities Construction Loan Fund and the assets thereof to the extent permitted by section 81-15,151 to repay, with interest, loans to or deposits into the fund and to execute and deliver documents pledging to the extent permitted by section 81-15,151 all or part of the fund and its assets to secure, directly or indirectly, the loans or deposits;

(4) The power to establish the linked deposit program to promote loans for construction, rehabilitation, operation, or maintenance of nonpoint source control systems in accordance with the Wastewater Treatment Facilities Construction Assistance Act and the rules and regulations adopted and promulgated pursuant to such act;

~~(4)~~ (5) The duty to prepare an annual report for the Governor and the Legislature containing information which shows the financial status of the program. The report submitted to the Legislature shall be submitted electronically;

~~(5)~~ (6) The duty to establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods, including the following:

(a) Accounting from the Nebraska Investment Finance Authority for the costs associated with the issuance of bonds pursuant to the act;

(b) Accounting for payments or deposits received by the fund;

(c) Accounting for disbursements made by the fund; and

(d) Balancing the fund at the beginning and end of the accounting period;

~~(6)~~ (7) The duty to establish financial capability requirements that assure sufficient revenue to operate and maintain a facility for its useful life and to repay the loan for such facility;

~~(7)~~ (8) The power to determine the rate of interest to be charged on a loan in accordance with the rules and regulations adopted and promulgated by

the council;

(9) The power to refinance debt obligations of municipalities in accordance with the rules and regulations adopted and promulgated by the council;

~~(8)~~ (10) The power to enter into required agreements with the United States Environmental Protection Agency pursuant to the Clean Water Act;

~~(9)~~ (11) The power to enter into agreements to provide grants concurrent with loans to municipalities with populations of ten thousand inhabitants or less which demonstrate serious financial hardships. The department may authorize grants for up to one-half of the eligible project cost. Such grants shall contain a provision that payment of the amount allocated is conditional upon the availability of appropriated funds;

~~(10)~~ (12) The power to authorize emergency grants to municipalities with wastewater treatment facilities which have been damaged or destroyed by natural disaster or other unanticipated actions or circumstances. Such grants shall not be used for routine repair or maintenance of facilities;

~~(11)~~ (13) The power to provide financial assistance to municipalities with populations of ten thousand inhabitants or less for completion of engineering studies, research projects, investigating low-cost options for achieving compliance with the Clean Water Act, encouraging wastewater reuse, and conducting other studies for the purpose of enhancing the ability of communities to meet the requirements of the Clean Water Act. The department may authorize financial assistance for up to ninety percent of the eligible project cost. Such state allocation shall contain a provision that payment of the amount obligated is conditional upon the availability of appropriated funds; and

~~(12)~~ (14) Such other powers as may be necessary and appropriate for the exercise of the duties created under the Wastewater Treatment Facilities Construction Assistance Act.

Sec. 8. Original sections 81-15,148, 81-15,149, 81-15,151, and 81-15,152, Reissue Revised Statutes of Nebraska, and sections 81-15,147 and 81-15,153, Revised Statutes Cumulative Supplement, 2012, are repealed.