

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2426

By: Benson of the House

and

Easley of the Senate

AS INTRODUCED

An Act relating to waters and water rights; providing legislative intent; defining terms; creating the Drinking Water Treatment Revolving Loan Account; providing for composition of the account; providing for purposes; prohibiting certain uses; providing for deposits and expenditures; authorizing issuance of certain investment certificates; specifying powers and duties of the State Department of Environmental Quality, the Environmental Quality Board and the Oklahoma Water Resources Board; requiring rules specifying certain criteria; requiring certain cost effective analysis; providing for certain loans; providing for certain financial reviews; providing for procedures; providing for disbursement of certain funds; requiring certain audits; providing procedures for collection of certain payments; adding to the powers and duties of the Attorney General; requiring certain written agreement; providing for contents; requiring certain plans and reports; specifying sources of revenue for administration of the Drinking Water Program; specifying additional

use of the account; providing for codification;
providing an effective date; and declaring an
emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1085.71 of Title 82, unless
there is created a duplication in numbering, reads as follows:

In addition to the financial assistance programs established
under Sections 1085.31 through 1085.49 and Sections 1085.51 through
1085.65 of this title pursuant to Section 39 of Article X of the
Oklahoma Constitution, it is the intention of the Legislature to
establish a Drinking Water Treatment Revolving Loan Account to
implement the federal Safe Drinking Water Act.

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1085.72 of Title 82, unless
there is created a duplication in numbering, reads as follows:

For the purposes of this act:

1. "Drinking water treatment project" means:
 - a. any engineering undertaking or work to control or
develop drinking water treatment facilities of
eligible entities for all useful and lawful purposes,
 - b. any system necessary to improve or develop drinking
water supply, treatment or distribution capabilities,
or
 - c. any implementation of water source protection programs
as authorized by the federal Safe Drinking Water Act
and this act;

2. "Investment certificate" means any note or bond, including any renewal note or refunding bond, authorized and issued by the Board pursuant to the provisions of this act;

3. "Eligible entity" means any city, town, county or the State of Oklahoma, and any rural water district, public trust, master conservancy district, any other political subdivision or any combination thereof;

4. "Board" means the Oklahoma Water Resources Board;

5. "Department" means the Department of Environmental Quality; and

6. "Safe Drinking Water Act" means the federal Safe Drinking Water Act as exists on the effective date of this act, as may be amended, or any successor statute.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.73 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. Within the Water Resources Fund created pursuant to Section 1085.33 of Title 82 of the Oklahoma Statutes, there is hereby created the "Drinking Water Treatment Revolving Loan Account". For purposes of implementing the federal Safe Drinking Water Act, said account shall be the drinking water treatment state revolving loan fund required to be established by the federal Safe Drinking Water Act. The Drinking Water Treatment Revolving Loan Account shall be set apart as a permanent and perpetual account not subject to fiscal year limitations and shall consist of:

1. All monies received pursuant and subject to the restrictions of the federal Safe Drinking Water Act which are eligible for use in state revolving loan funds established to meet the requirements of that act;

2. Monies appropriated to the account;

3. Payments of principal and interest and penalty payments on loans made directly from federal grant monies and state-appropriated monies in the account;

4. Payments of principal and interest and penalty payments on loans made from the proceeds of the sale of investment certificates in the account or as may be provided in applicable bond resolutions or indentures as appropriate;

5. All income from the investment of monies held in the account consistent with applicable bond resolutions or indentures as allowed by the federal Safe Drinking Water Act;

6. Proceeds from the sale of investment certificates issued to provide water treatment loans pursuant to the provisions of this act except as otherwise provided by the applicable bond resolutions or indentures as appropriate; and

7. Any other sums designated for deposit to the account from any source, public or private.

B. The principal amounts of the federal capitalization grants and state matching funds in the Drinking Water Treatment Revolving Loan Account shall be maintained for providing financial assistance in accordance with the federal Safe Drinking Water Act.

C. The monies in the Drinking Water Treatment Revolving Loan Account shall be used for the purpose of making loans to eligible entities pursuant to the provisions of this act or for such other purposes authorized by the federal Safe Drinking Water Act.

D. The monies placed in the Drinking Water Treatment Revolving Loan Account shall be invested by the State Treasurer in an adequately collateralized manner and as prescribed by Section 89.2 of Title 62 of the Oklahoma Statutes or pursuant to investment contracts or agreements with entities maintaining a rating in the top two categories by a nationally recognized municipal bond rating agency, in the manner consistent with the provisions of the federal Safe Drinking Water Act. Monies invested by the State Treasurer

shall be available to meet program needs for funding as established by the Department.

E. Notwithstanding the provisions of Section 1085.39 of Title 82 of the Oklahoma Statutes, the Board shall not use funds in the Drinking Water Treatment Revolving Loan Account established in the Water Resources Fund to make grants.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.74 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. All funds available in the Drinking Water Treatment Revolving Loan Account shall first be used to assure maintenance of progress towards compliance with enforceable deadlines, goals and requirements of the Oklahoma Environmental Quality Code and the federal Safe Drinking Water Act.

B. The Board shall use the Drinking Water Treatment Revolving Loan Account only as provided by the federal Safe Drinking Water Act for the following purposes:

1. To make a loan to an eligible entity if:

- a. the loan application, project and planning documents have been approved by the Department and Board pursuant to Section 8 of this act,
- b. the loan is made at or below market interest rates, including interest-free loans, at terms consistent with the federal Safe Drinking Water Act,
- c. principal and interest payments will begin not later than one (1) year after completion of any drinking water treatment project and all loans will be fully amortized consistent with the federal Safe Drinking Water Act,
- d. the Drinking Water Treatment Revolving Loan Account will be credited with all payments of principal of and interest on all loans,

- e. the applicant demonstrates to the satisfaction of the Board the financial capability to assure sufficient revenues to pay debt service,
- f. the recipient of the loan establishes a dedicated source of revenue for payment of debt service for the loan, and
- g. the recipient agrees to maintain financial records in accordance with governmental accounting standards, to conduct an annual audit of the financial records relating to the treatment works, and to submit the audit report to the Board on a scheduled annual basis;

2. To buy or refinance eligible entity obligations at or below market rates;

3. To guarantee or purchase insurance for eligible entities if the guarantee or insurance would improve access to market credit or reduce interest rates;

4. As a source of revenue or security for the payment of principal of and interest on any investment certificate issued by the Board. The proceeds of the sale of such investment certificates shall be deposited in the Drinking Water Treatment Revolving Loan Account in compliance with applicable bond resolutions or indentures authorizing the sale;

5. As a source of revenue or security for the payment of interest on a local obligation, if the payment from the Drinking Water Treatment Revolving Loan Account does not reduce the effective interest rate of the obligation by more than 2.5 percentage points;

6. To earn interest on accounts established under the Drinking Water Treatment Revolving Loan Account;

7. To administer the Drinking Water Treatment Revolving Loan Account pursuant to the provisions of this act. All funds to be utilized for administrative costs from the Drinking Water Treatment

Revolving Loan Account shall be subject to annual designation by the State Legislature; and

8. For such other purpose or in such other manner, as is determined by the Board to be an appropriate use of the Drinking Water Treatment Revolving Loan Account and which has been specifically approved by the Environmental Protection Agency pursuant to the federal Safe Drinking Water Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.75 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. In addition to other powers and duties provided by law, the Department shall have the power and duty to:

1. Prepare and maintain the priority list for treatment works;
2. Review and assess the planning and preliminary financial documents for and cost effectiveness of drinking water treatment projects on the priority list;
3. Determine drinking water treatment project feasibility and the entities' eligibility to receive funding from the Drinking Water Treatment Revolving Loan Account;
4. Determine which applications should be referred to the Board for loans from the Drinking Water Treatment Revolving Loan Account;
5. Perform any required environmental review and make any required environmental determinations in accordance with any necessary environmental review process approved by the Environmental Protection Agency;
6. Provide oversight and technical assistance during the planning, design, and construction phase of the drinking water treatment project for which the entity is applying for such loan; and
7. Be the instrumentality to make application to the Environmental Protection Agency for the capitalization grant which is to be placed in the Wastewater Facility Construction Revolving

Loan Account, enter into the capitalization grant agreement, and be the recipient of the capitalization grant.

B. In determining the cost effectiveness of any drinking water treatment project, the Department shall require the preparation of a cost effective analysis of feasible drinking water treatment or conveyance alternatives capable of meeting state and federal drinking water standards and public health requirements. The cost effective analysis shall detail all monetary costs including but not limited to the present worth or equivalent annual value of all capital costs and operation, maintenance and replacement costs. The alternative selected shall be the most economical means of meeting applicable state and federal drinking water standards or public health requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations determined to be relevant by the Department.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.76 of Title 82, unless there is created a duplication in numbering, reads as follows:

The Environmental Quality Board shall prescribe such rules as may be necessary for determining the eligibility and priority of entities for drinking water treatment projects in order to receive loans made pursuant to the federal Safe Drinking Water Act and from the Drinking Water Treatment Revolving Loan Account. At a minimum, such rules shall:

1. Ensure the fair and equitable prioritization of entities eligible for loans made pursuant to the provisions of this act;
2. Be in conformance with applicable provisions of the Oklahoma Environmental Quality Code and the federal Safe Drinking Water Act;
3. Require that to be approved, an applicant needs or will need the drinking water treatment project loan to comply with rules adopted by the Environmental Quality Board pursuant to the Oklahoma Environmental Quality Code; and

4. Require the drinking water treatment project to:
 - a. comply with minimum standards and requirements of the federal Safe Drinking Water Act or any similar or successor statute,
 - b. meet the Department's rules for drinking water and established environmental review criteria as provided for by applicable federal law, and
 - c. meet any other consideration deemed necessary by the Department.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.77 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. In addition to other powers and duties provided by law, the Board shall have the power and duty to:

1. Manage, maintain, expend and otherwise administer monies in the Water Resources Fund and any accounts or subaccounts therein, except as otherwise provided by paragraph 2 of this subsection, pursuant to the provisions of Sections 1085.31 through 1085.39 of this title;

2. Manage, maintain, expend and otherwise administer monies in the Drinking Water Treatment Revolving Loan Account pursuant to the statutory authority of the Oklahoma Water Resources Board and shall manage the account so as to make available the amounts necessary to fund loans to eligible entities entitled to receive funding;

3. Establish separate accounts and subaccounts within the Water Resources Fund and provide that such accounts be segregated and used for specified purposes or held as security for designated obligations;

4. Issue investment certificates to provide necessary funds for the Drinking Water Treatment Revolving Loan Account pursuant to the provisions of subsection B of this section;

5. Enter into binding loan agreements with the eligible entities; and

6. Transfer, when necessary, monies from the Drinking Water Treatment Revolving Loan Account to the Statewide Water Development Revolving Fund to be used for security or collateral for investment certificates issued for the Drinking Water Treatment Revolving Loan Account. The monies so transferred and the interest income from such monies shall be restricted for use to those programs authorized by the federal Safe Drinking Water Act. The Board shall establish such accounts and subaccounts within the Statewide Water Development Revolving Fund necessary to implement the provisions of this paragraph.

B. The Board may issue investment certificates to provide necessary funds for the Drinking Water Treatment Revolving Loan Account; provided that said issuance shall be governed by the provisions of Section 1085.33 and Section 1085.37 of this title. The Board shall not issue such investment certificates unless:

1. The Board has determined that the issuance of the investment certificates is an economical way to provide loan funds to meet the demand for funding and is beneficial for the long term stability of the fund. Prior to issuance of any such bonds, the Board shall fully consider all comments submitted by the public concerning issuance of the bonds; and

2. The issuance of such certificates has been reviewed and approved pursuant to the Oklahoma Bond Oversight and Reform Act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.78 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. Within one hundred eighty (180) days after the effective date of this act, the Board shall provide financial review guidelines to the Department for use by the Department in preliminary evaluations of drinking water treatment projects. The

evaluation shall include such information as required by the Board, including but not limited to the:

1. Cost of the proposed construction;
2. Amount of the loan requested;
3. Repayment schedule; and
4. Existing and anticipated assets and liabilities of the

applicant.

B. Upon a determination by the Department that an entity meets the criteria to receive funding pursuant to the provisions of this act, the Department shall forward to the Board a request for an initial financial review.

C. Upon receipt of the request, the Board shall prepare its initial financial review of the entity based upon:

1. The documents submitted by the entity and the Department and any additional information requested by the Board through the Department necessary to make a financial review of such entity; and
2. The proposed loan amount and interest rate for which the entity qualifies.

D. The initial financial review may either recommend approval or rejection of the proposed loan.

E. The Board shall return the initial financial evaluation to the Department with a written recommendation of approval or rejection. If the Board recommends rejection, the written recommendations shall include reasons for said rejection. The Board shall forward a written copy of the rejection notice to the entity. The entity may then be allowed to modify any such documents in order to comply with the requirements of the Board and may resubmit the necessary financial documents through the Department to the Board.

F. If the Board recommends approval, the Board shall notify the Department of such acceptance. Upon receipt of such notice and upon approval of the planning documents by the Department, the Department shall notify the entity.

G. Upon a determination of compliance with applicable state and federal laws, the Department is authorized to approve and forward the application and necessary documents to the Board with the recommendation that a loan be made to the entity pursuant to the federal Safe Drinking Water Act from the Drinking Water Treatment Revolving Loan Account.

H. Upon review of the application and applicable documents, the Board shall either approve or reject the loan application. The Board may request additional information from the applicant or the Department in order to complete the financial review of the application for the loan. The Board shall notify the applicant of any rejection of an application. Notification of approval of an application for a loan shall be sent to the Department, who shall notify the applicant. The Department shall have authority to grant final approval for loan closing.

I. Upon the closing of the loan, the Board shall authorize disbursement of funds from the account pursuant to the provisions of this act, the loan documents and rules of the Board that provide for the release of the loan proceeds.

J. Payment on loans shall be made to the Board as provided in the loan documents.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.79 of Title 82, unless there is created a duplication in numbering, reads as follows:

An investment certificate shall not be issued under Sections 1085.31 through 1085.39 of Title 82 of the Oklahoma Statutes or pursuant to the provisions of this act unless the issuance has been reviewed and approved pursuant to the Oklahoma Bond Oversight and Reform Act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.80 of Title 82, unless there is created a duplication in numbering, reads as follows:

The Department, with the cooperation of the Board, shall cause to be completed an annual audit of any expenditures from the Drinking Water Treatment Revolving Loan Account.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.81 of Title 82, unless there is created a duplication in numbering, reads as follows:

In the event of a default in payment of the principal or interest on loans made from the Drinking Water Treatment Revolving Loan Account pursuant to this act, the Attorney General is empowered and it shall be his or her duty to take action to collect amounts due to the account. The Attorney General shall institute appropriate proceedings by mandamus or other legal remedies to compel the defaulting party and its officers, agents, and employees to cure the default by appropriate means, including performing duties that they are legally obligated to perform. Those proceedings shall be brought and venue shall be in the district court of Oklahoma County.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.82 of Title 82, unless there is created a duplication in numbering, reads as follows:

In order to comply with the requirements of federal and state laws, the Department and the Board shall enter into a written joint operating agreement to carry out with efficiency their respective duties under this act. At a minimum, the agreement shall provide for the following:

1. Joint procedures consistent with this act to establish criteria for determining the interest rates on loans to be made from the Drinking Water Treatment Revolving Loan Account. Such criteria may incorporate applicable United States Environmental Protection Agency and Farmers Home Administration guidelines for financial assistance; and

2. Submission of an annual joint report by the Department and the Board to the Governor and to the Speaker of the House of Representatives and the President Pro Tempore of the Senate within one hundred twenty (120) days of the end of each fiscal year concerning the Drinking Water Treatment Revolving Loan Account and implementation of the provisions of this act. The report shall contain information to show the actual use and the recipients of loans made from the Drinking Water Treatment Revolving Loan Account. In addition, the report shall contain five-year demand projections on anticipated loan funds required and ten-year and twenty-year projections as to possible funding needs for drinking water treatment projects which may be eligible for financial assistance pursuant to this act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.83 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. The Department shall prepare an annual intended use plan with the cooperation of the Board and shall submit such plan to the United States Environmental Protection Agency. The plan shall contain all information required by pertinent provisions of the federal Safe Drinking Water Act and may contain such other information as the Department may determine. An opportunity for public review of and comment on the plan before submittal shall be provided.

B. The Department shall prepare an annual report with the cooperation of the Board and shall submit such report to the United States Environmental Protection Agency. The annual report shall contain all information required by pertinent provisions of the federal Safe Drinking Water Act and may contain such other information as required by the Capitalization Grant Agreement.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.84 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. In order to administer the Drinking Water Treatment Program contemplated by this act, the following sources of revenues may be utilized:

1. Monies from the Drinking Water Treatment Revolving Loan Account pursuant to the federal Safe Drinking Water Act;

2. Loan processing and administrative fees; and

3. Appropriations from the state's General Revenue Fund or other funds as may be provided for this purpose.

B. All funds to be utilized for administration by each agency shall be subject to annual designation by the State Legislature.

SECTION 15. This act shall become effective July 1, 1994.

SECTION 16. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-2-8041

KSM