

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2420

By: Hutchison

COMMITTEE SUBSTITUTE

An Act relating to waters and water rights; amending 82 O.S. 1991, Sections 1085.51, 1085.52, as amended by Section 325, Chapter 145, O.S.L. 1993, 1085.53, 1085.54, as amended by Section 326, Chapter 145, O.S.L. 1993, 1085.55, as amended by Section 327, Chapter 145, O.S.L. 1993, 1085.56, as amended by Section 328, Chapter 145, O.S.L. 1993, 1085.57, as amended by Section 329, Chapter 145, O.S.L. 1993, 1085.58, as amended by Section 330, Chapter 145, O.S.L. 1993, 1085.60, 1085.61, 1085.62, as amended by Section 331, Chapter 145, O.S.L. 1993, and 1085.64, as amended by Section 333, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1997, Sections 1085.52, 1085.54, 1085.55, 1085.56, 1085.57, 1085.58, 1085.62 and 1085.64), which relate to the Wastewater Facility Construction Revolving Loan Account; changing name to the Clean Water Revolving Loan Account; modifying and expanding purposes; updating language; modifying when account can be accessed; adding to powers and duties of the Oklahoma Water Resources Board; modifying and adding to contents of rules relating to determinations of eligibility; adding to requirements for application for certain projects; creating the Clean Water Loan Administrative Fund; making fund segregated, permanent, perpetual and not subject to fiscal year limitations; providing for content of fund; restricting use of monies or investment income; specifying uses; providing for investments; authorizing certain transfers; requiring certain audit; amending Section 2, Chapter 191, O.S.L. 1994, Section 3, Chapter 191, O.S.L. 1994, as amended by Section 1, Chapter 186, O.S.L. 1997, Section 10, Chapter 191, O.S.L. 1994, Section 11, Chapter 191, O.S.L. 1994, and Section 12, Chapter 191, O.S.L. 1994, as amended by Section 4, Chapter 186, O.S.L. 1997 (82 O.S. Supp. 1997, Sections 1085.72, 1085.73, 1085.80, 1085.81 and 1085.82), which relate to the Drinking Water Treatment Revolving Loan Account program; adding and modifying terms; updating language; creating the Source Water Protection Account and the Public Drinking Water Source Protection Account; making accounts segregated, permanent, perpetual and not subject to fiscal year limitations; providing for composition of monies of the funds; restricting use of funds; requiring joint operating agreements; authorizing investments; specifying limitations; authorizing transfers; requiring certain audits; amending 82 O.S. 1991, Section 1020.9, as amended by Section 14, Chapter 164, O.S.L. 1993 and 1020.15, as amended by Section 322, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1997, Sections 1020.9 and 1020.15), which relate to water use applications; restricting consideration of certain

evidence for applications relating to determination of waste by pollution; making use of fresh groundwater without a permit an act of waste; providing exceptions; prohibiting certain waste; clarifying and updating language; adding to certain restrictions; clarifying authority of Oklahoma Water Resources Board for certain violations; amending 62 O.S. 1991, Section 203, as last amended by Section 7, Chapter 186, O.S.L. 1997 (62 O.S. Supp. 1997, Section 203), which relates to apportionment of monies in State Treasury; adding to exceptions; updating language; repealing 82 O.S. 1991, Section 1085.65, as amended by Section 334, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1997, Section 1085.65), which relates to loan applications for nonpoint source management programs; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 82 O.S. 1991, Section 1085.51, is amended to read as follows:

Section 1085.51 In addition to the financial assistance program established under Sections 1085.31 through 1085.49 of this title pursuant to Section 39 of Article X of the Oklahoma Constitution, it is the intention of the Legislature to establish a ~~Wastewater Facility Construction~~ a clean water revolving loan program and a Clean Water Revolving Loan Account to implement Title VI of the federal Water Quality Act of 1987.

SECTION 2. AMENDATORY 82 O.S. 1991, Section 1085.52, as amended by Section 325, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1997, Section 1085.52), is amended to read as follows:

Section 1085.52 For the purposes of this act:

1. "~~Wastewater project~~ Project" means:

- a. any engineering undertaking or work to control or develop sewage treatment facilities of the state for all useful and lawful purposes,
- b. any system necessary to improve or develop sewage treatment, collection or distribution capabilities, or
- c. ~~any implementation~~ capital works, capital improvements, capital equipment, or environmental cleanups for the purpose of protecting or improving

surface or underground water quality through watershed management or control of nonpoint source ~~management programs~~ pollution as authorized by the federal Water Quality Act of 1987 and Section ~~1085.65~~ 1085.58 of this title;

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 sewer 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. "Federal Water Quality Act of 1987" means the federal Water Quality Act of 1987 as exists on ~~the effective date of this act~~ July 1, 1988, as may be amended, or any successor statute.

SECTION 3. AMENDATORY 82 O.S. 1991, Section 1085.53, is amended to read as follows:

Section 1085.53 A. Within the Water Resources Fund created pursuant to Section 1085.33 of ~~Title 82 of the Oklahoma Statutes~~ this title, there is hereby created the "~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account". The 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 Water Quality Act of 1987 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 Water Quality Act of 1987;

6. Proceeds from the sale of investment certificates issued to provide wastewater construction 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 ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account shall remain available in perpetuity for providing financial assistance in accordance with the federal Water Quality Act of 1987.

C. The monies in the ~~Wastewater Facility Construction~~ Clean Water 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 Water Quality Act of 1987.

D. The monies placed in the ~~Wastewater Facility Construction~~ Clean Water 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 Water Quality Act of 1987. Monies invested by the State Treasurer shall be available to meet program needs for funding as established by the ~~Department~~ Oklahoma Water Resources Board.

E. Notwithstanding the provisions of Section 1085.39 of ~~Title 82 of the Oklahoma Statutes~~ this title, the Board shall not use funds in the ~~Wastewater Facilities Construction~~ Clean Water Revolving Loan Account established in the Water Resources Fund to make grants.

SECTION 4. AMENDATORY 82 O.S. 1991, Section 1085.54, as amended by Section 326, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1997, Section 1085.54), is amended to read as follows:

Section 1085.54 A. All funds available in the ~~Wastewater Facility Construction~~ Clean Water 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, Oklahoma's Water Quality Standards, and ~~Federal~~ federal Clean Water Act. ~~Upon the determination by the Board that all enforceable requirements have been met by Oklahoma communities and all other eligible wastewater projects have been funded, funds in the account may be used for the implementation of the nonpoint source management program pursuant to Section 1085.65 of this title.~~

B. The Oklahoma Water Resources Board shall use the ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account only as provided by the federal Water Quality Act of 1987 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 Board pursuant to Section 1085.58 of this title ~~or the Oklahoma Conservation Commission pursuant to Section 1085.65 of this title,~~
 - b. the loan is made at or below market interest rates, including interest-free loans, at terms consistent with the federal Water Quality Act of 1987,
 - c. principal and interest payments will begin not later than one (1) year after completion of any ~~wastewater~~ project and all loans will be fully amortized consistent with the federal Water Quality Act of 1987,
 - d. the ~~Wastewater Facility Construction~~ Clean Water 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~~ project, 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 if the eligible entity obligations were incurred in construction which began after March 7, 1985;

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 ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account in compliance with applicable bond resolutions or indentures authorizing the sale;

5. To provide loan guarantees to similar revolving loan accounts or funds established by eligible entities;

6. To earn interest on accounts established under the ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account;

7. To administer the ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account pursuant to the provisions of this act. All funds to be utilized for administrative costs from the ~~Wastewater Facility Construction~~ Clean Water 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 ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account and which has been specifically approved by the Environmental Protection Agency pursuant to the federal Water Quality Act of 1987.

SECTION 5. AMENDATORY 82 O.S. 1991, Section 1085.55, as amended by Section 327, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1997, Section 1085.55), is amended to read as follows:

Section 1085.55 A. In addition to other powers and duties provided by law, the Oklahoma Water Resources Board shall have the power and duty to:

1. Prepare and maintain the priority list for ~~publicly owned treatment works~~ projects, taking into account available funding, relative need, and financial soundness of the Clean Water Revolving Loan Program;

2. Review and assess the planning and preliminary financial documents for and cost effectiveness of ~~wastewater~~ projects on the priority list;

3. Determine ~~wastewater~~ project feasibility and the entities' eligibility to receive funding from the ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account;

4. Perform the environmental review and make the appropriate environmental determinations in accordance with the environmental review process approved by the Environmental Protection Agency;

5. Provide oversight and technical assistance during the planning, design, and construction phase of the ~~wastewater~~ project for which the entity is applying for such loan; and

6. 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~~ Clean Water Revolving Loan Account.

B. In determining the cost effectiveness of any ~~wastewater~~ project, the Board shall require the preparation of a cost effective analysis of feasible ~~wastewater treatment or conveyance~~ alternatives capable of meeting state and federal water quality 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 effluent and water quality or public health requirements over the useful life of the ~~facility~~ project while recognizing environmental and other nonmonetary considerations determined to be relevant by the Board.

SECTION 6. AMENDATORY 82 O.S. 1991, Section 1085.56, as amended by Section 328, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1997, Section 1085.56), is amended to read as follows:

Section 1085.56 The Oklahoma Water Resources Board shall ~~prescribe~~ promulgate such rules as may be necessary for determining the eligibility and priority of entities for ~~wastewater~~ projects in order to receive loans made pursuant to the federal Water Quality Act of 1987 and from the ~~Wastewater Facility Construction~~ Clean Water 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 Oklahoma's Water Quality Standards, the Oklahoma Environmental Quality Code, and the federal Water Quality Act of 1987;
3. Require that to be approved, an applicant needs or will need the ~~wastewater~~ project loan to comply with rules ~~adopted~~ promulgated by the Environmental Quality Board pursuant to the Oklahoma Environmental Quality Code or any other state environmental agency with jurisdiction; and
4. Require the ~~wastewater~~ project to:
 - a. be designed to halt or prevent the pollution of the waters of this state and comply with Oklahoma's Water Quality Standards,
 - b. meet the Board's established environmental review criteria as provided for by the federal Water Quality Act of 1987,

- c. comply with minimum standards of the Federal Water Pollution Control Act, Chapter 26, Title 33, United States Code, or any similar or successor statute, and
- d. meet any other consideration deemed necessary by the Board; and

5. As applicable, give consideration to the sensitivity of a subject watershed and to the Oklahoma Conservation Commission's evaluation of and recommendation for the proposed project.

SECTION 7. AMENDATORY 82 O.S. 1991, Section 1085.57, as amended by Section 329, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1997, Section 1085.57), is amended to read as follows:

Section 1085.57 A. In addition to other powers and duties provided by law, the Oklahoma Water Resources 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 ~~Wastewater Facility Construction~~ Clean Water 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 ~~Wastewater Facility Construction~~ Clean Water 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 ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account to the Statewide Water Development Revolving Fund to be used for security or collateral for investment certificates issued for the ~~Wastewater Facility Construction~~ Clean Water 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 Water Quality Act of 1987. 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 ~~Wastewater Construction Facility~~ Clean Water Revolving Loan Account; provided, that said issuance shall be governed by the provisions of ~~Section~~ Sections 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. AMENDATORY 82 O.S. 1991, Section 1085.58, as amended by Section 330, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1997, Section 1085.58), is amended to read as follows:

Section 1085.58 A. The Oklahoma Water Resources Board shall provide financial review guidelines for use in preliminary evaluations of ~~wastewater~~ projects. The evaluation shall include such information as required by the Board, including but not limited to the:

1. Cost of the proposed ~~construction~~ project;
2. Amount of the loan requested;
3. Repayment schedule; and

4. Existing and anticipated assets and liabilities of the applicant.

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

C. The Board shall prepare its initial financial review of the entity based upon:

1. The documents submitted by the entity and any additional information requested by the Board 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. 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 to the Board.

F. If the Board recommends approval, the Board shall notify the entity of such acceptance.

G. If the loan application is for a watershed management or nonpoint source control project, the application shall include:

1. A written determination by the Oklahoma Conservation Commission or other state environmental agency with jurisdiction that the proposed project:

- a. meets or will meet a critical local or state need, as defined in the State Nonpoint Source Assessment and Management Report,
- b. is needed or will be needed to comply with the State Nonpoint Source Assessment and Management Report,
- c. is designed to prevent, reduce or halt the pollution of the waters of the state, and
- d. is cost effective; and

2. A written recommendation that a loan be made for the project.

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 of Environmental Quality~~ 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.

~~H.~~ 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.

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

SECTION 9. AMENDATORY 82 O.S. 1991, Section 1085.60, is amended to read as follows:

Section 1085.60 The Office of the State Auditor and Inspector shall perform an annual audit of any expenditures from the ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account.

SECTION 10. AMENDATORY 82 O.S. 1991, Section 1085.61, is amended to read as follows:

Section 1085.61 In the event of a default in payment of the principal or interest on loans made from the ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account pursuant to this act, the Attorney General⁷ is empowered and it shall be ~~his~~ the duty of the Attorney General 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 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 11. AMENDATORY 82 O.S. 1991, Section 1085.62, as amended by Section 331, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1997, Section 1085.62), is amended to read as follows:

Section 1085.62 In order to comply with the requirements of federal and state laws, the Oklahoma Water Resources Board shall complete the following:

1. Establish criteria for determining the interest rates on loans to be made from the ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account. Such criteria may incorporate applicable United States Environmental Protection Agency and ~~Farmers Home~~ Rural Development Administration guidelines for financial assistance.

a. In determining interest rates on loans made from the fund, in addition to other information, due consideration shall be given to:

- (1) providing for the maintenance of the account in perpetuity,
- (2) statewide needs for the assistance available pursuant to the provisions of this act,
- (3) five-year demand projections of the Board for assistance available pursuant to the provisions of this act,
- (4) prevailing market interest rates, and
- (5) debt service requirements of investment certificates issued by the Board to provide funds for the ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account.

b. In developing criteria for the determination of interest rates available to individual entities, in addition to other information, due consideration shall be given to:

- (1) financial resources of the entity,
- (2) the ability of the entity to repay the loan,
- (3) those entities that discharge into those streams and rivers designated as scenic river areas pursuant to the provisions of Section 1452 of this title or outstanding resource waters under Oklahoma's Water Quality Standards, and
- (4) prevailing market interest rates; and

2. Submission of an annual report by 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 ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account and implementation of the provisions of Sections 1085.51 through ~~1085.65~~ 1085.66 of this title. The report shall contain information to show the actual use and the recipients of loans made from the ~~Wastewater Facility Construction~~ Clean Water 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 ~~wastewater~~ projects which may be eligible for financial assistance under Sections 1085.51 through ~~1085.65~~ 1085.66 of this title.

SECTION 12. AMENDATORY 82 O.S. 1991, Section 1085.64, as amended by Section 333, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1997, Section 1085.64), is amended to read as follows:

Section 1085.64 A. In order to administer the ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Program, the following sources of revenues may be utilized:

1. Monies from the ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account pursuant to the federal Water Quality Act of 1987;
2. Loan processing 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 the Board shall be subject to annual designation by the State Legislature.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.66 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. In order to administer the Clean Water Revolving Loan Account, there is hereby created in the State Treasury a "Clean Water Loan Administrative Fund". The Clean Water Loan

Administrative Fund shall be set apart from all other Board accounts and funds and shall be a permanent and perpetual fund not subject to fiscal year limitations. The Clean Water Loan Administrative Fund shall consist of monies deposited into the fund from the following sources:

1. Application processing and loan administrative fees heretofore collected by the Board on loans made from the Clean Water Revolving Loan Program and designated by the Board for transfer and deposit into the Clean Water Loan Administrative Fund;

2. Application processing and loan administrative fees collected by the Board after the effective date of this act on loans made from the Clean Water Revolving Loan Program; and

3. Any other funds, whether public or private, that have been designated by the source thereof for deposit in the Clean Water Loan Administrative Fund.

B. Monies in, or investment income derived from, the Clean Water Loan Administrative Fund shall be restricted and used solely for the purpose of administering the Clean Water Revolving Loan Account or as otherwise authorized by the federal Water Quality Act of 1987 or guidance or regulations promulgated thereunder. Monies in the Clean Water Loan Administrative Fund, or investment income derived therefrom, shall be used by the Board in carrying out its responsibilities as provided in Sections 1085.51 through 1085.66 of Title 82 of the Oklahoma Statutes and shall be subject to annual designation by the State Legislature.

C. The monies placed in the Clean Water Loan Administrative Fund may 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, all in a manner consistent with the federal Water Quality Act of 1987 or regulations promulgated thereunder. The Board may transfer to the Clean Water Loan Administrative Fund income

derived from investment of the fund. Monies invested by the State Treasurer shall be available to meet administrative funding needs.

D. The Board is authorized to transfer monies from the Clean Water Loan Administrative Fund into the Clean Water Revolving Loan Account to be utilized for purposes consistent with the federal Water Quality Act of 1987.

E. The Board shall cause to be completed an annual audit of any expenditures from the Clean Water Loan Administrative Fund.

SECTION 14. AMENDATORY Section 2, Chapter 191, O.S.L. 1994 (82 O.S. Supp. 1997, Section 1085.72), is amended to read as follows:

Section 1085.72 For the purposes of Sections 1085.72 through 1085.84A of this title and Section 19 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 water 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~~ July 1, 1994, as may be amended, or any successor statute; and

7. "Source water protection programs" means those activities authorized by the federal Safe Drinking Water Act and this act.

SECTION 15. AMENDATORY Section 3, Chapter 191, O.S.L. 1994, as amended by Section 1, Chapter 186, O.S.L. 1997 (82 O.S. Supp. 1997, Section 1085.73), is amended to read as follows:

Section 1085.73 A. Within the Water Resources Fund created pursuant to Section 1085.33 of this title, 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. 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. 1. Within the Water Resources Fund created pursuant to Section 1085.33 of this title, there is hereby created the "Public Drinking Water Source Protection Account". Said account shall be a program set-aside, shall be set apart from all other board accounts and funds, and shall be a permanent and perpetual account not subject to fiscal year limitations. The Public Drinking Water Source Protection Account shall consist of a portion of the federal capitalization grants awarded to the state under the federal Safe Drinking Water Act which is set aside by the Department, together with state monies or monies designated for deposit to the account from any other source, public or private. The Public Drinking Water Source Protection Account may be used by the Department and the Board for activities in accordance with and as authorized by Section 1452(k) of the federal Safe Drinking Water Act, including but not limited to:

a. providing loans to eligible entities:

(1) to acquire land or a conservation easement from a willing seller or grantor in order to protect the entities' source water from contamination and to ensure compliance with national primary drinking water regulations, or

(2) to implement voluntary, incentive-based measures to protect source water in certain delineated areas in order to facilitate compliance with national primary drinking water regulations, and

b. making expenditures to delineate and assess source water protection areas and for the establishment and implementation of wellhead protection programs.

2. The principal amounts of the federal capitalization grants, less program set-asides, 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 this title, the Board shall not use funds in the Drinking Water Treatment Revolving Loan Account established in the Water Resources Fund to make grants.

SECTION 16. AMENDATORY Section 10, Chapter 191, O.S.L. 1994 (82 O.S. Supp. 1997, Section 1085.80), is amended to read as follows:

Section 1085.80 The Department of Environmental Quality, with the cooperation of the Oklahoma Water Resources Board, shall cause to be completed an annual audit of any expenditures from the Drinking Water Treatment Revolving Loan Account.

SECTION 17. AMENDATORY Section 11, Chapter 191, O.S.L. 1994 (82 O.S. Supp. 1997, Section 1085.81), is amended to read as follows:

Section 1085.81 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 Sections 1085.72 through 1085.84A of this title and Section 19 of this act, the Attorney General is empowered to 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 18. AMENDATORY Section 12, Chapter 191, O.S.L. 1994, as amended by Section 4, Chapter 186, O.S.L. 1997 (82 O.S. Supp. 1997, Section 1085.82), is amended to read as follows:

Section 1085.82 In order to comply with the requirements of federal and state laws, the Department of Environmental Quality and the Oklahoma Water Resources Board shall enter into a written joint operating agreement to carry out with efficiency their respective duties ~~under~~ pursuant to Sections 1085.72 through 1085.84A of this title and Section 19 of this act. At a minimum, the agreement shall provide for the following:

1. Joint procedures consistent with Sections 1085.72 through 1085.84A of this title and Section 19 of 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 Rural Development Administration guidelines for financial assistance; ~~and~~

2. A division of funding from, and activities to implement the uses of, the Source Water Protection Account; and

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

A. In order to capitalize grant funds to access and implement source water protection, there is hereby created in the State Treasury the "Source Water Protection Account". The Source Water Protection Account shall be set apart from all other Board accounts and funds and shall be a permanent and perpetual fund not subject to fiscal year limitations. The Source Water Protection Account shall consist of monies deposited into the fund from the following sources:

1. Monies set aside from the state's safe drinking water capitalization grant funds to be used by the Department and the Board to implement source water protection programs, including, but not limited to:

a. providing loans to eligible entities:

- (1) to acquire land or a conservation easement from a willing seller or grantor in order to protect the entities' source water from contamination and to ensure compliance with national primary drinking water regulations, or
- (2) to implement voluntary, incentive-based measures to protect source water in certain delineated areas in order to facilitate compliance with national primary drinking water regulations, and

b. making expenditures to delineate and assess source water protection areas and for the establishment and implementation of wellhead protection programs; and

2. Any other funds, whether public or private, that have been designated by the source thereof for deposit in the Source Water Protection Account.

B. Monies in, or investment income derived from, the Source Water Protection Account shall be restricted and used solely as authorized by the federal Safe Drinking Water Act or guidance or regulations promulgated thereunder. Monies in the Source Water

Protection Account, or investment income derived therefrom, shall be used by the Oklahoma Water Resources Board and the Department of Environmental Quality in carrying out their responsibilities as provided in the written annual joint operating agreement identified in Section 1085.82 of Title 82 of the Oklahoma Statutes.

C. The monies placed in the Source Water Protection Account may 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, all in a manner consistent with the federal Safe Drinking Water Act or regulations promulgated thereunder. The Board may transfer to the Source Water Protection Account income derived from investment of the fund. Monies invested by the State Treasurer shall be available to implement source water protection programs.

D. The Department is authorized to transfer monies from the Source Water Protection Account into the Drinking Water Treatment Revolving Loan Account to be utilized for purposes consistent with the federal Safe Drinking Water Act.

E. The Department and Board shall cause to be completed an annual audit of any expenditures from the Source Water Protection Account.

SECTION 20. AMENDATORY 82 O.S. 1991, Section 1020.9, as amended by Section 14, Chapter 164, O.S.L. 1993 (82 O.S. Supp. 1997, Section 1020.9), is amended to read as follows:

Section 1020.9 A. Before the Oklahoma Water Resources Board takes final action on the application, the Board shall determine from the evidence presented, from the hydrologic surveys or reports and from other relevant data available to the Board and applicant, whether the lands owned or leased by the applicant overlie the fresh groundwater basin or subbasin and whether the use to which the applicant intends to put the water is a beneficial use. If so, and if the Board finds that waste ~~will~~ is

not likely to occur, the Board shall approve the application by issuing a regular permit. If another federal or state agency regulates activities of the applicant that may cause pollution to waters of the state, then the Board shall consider evidence only regarding activities regulated by the Board in determining whether waste by pollution is likely to occur.

B. Except as otherwise provided in subsection C of this section, a regular permit shall allocate to the applicant the proportionate part of the maximum annual yield of the basin or subbasin. The proportionate part shall be that percentage of the total annual yield of the basin or subbasin, previously determined to be the maximum annual yield as provided in Section 1020.5 of this title, which is equal to the percentage of the land overlying the fresh groundwater basin or subbasin which the applicant owns or leases and which is dedicated to the application.

C. If the lands dedicated to the application overlie two or more groundwater basins and both basins have had maximum annual yields determined, the amount to be authorized by the regular permit shall be calculated on the basin having the greatest maximum annual yield. If the lands dedicated to the application overlie two or more groundwater basins or subbasins and the maximum annual yield has been determined for at least one but not all the basins or subbasins, a temporary permit may be issued to the applicant if the applicant demonstrates by substantial competent evidence that the water to be withdrawn by the temporary permit will not be taken from a basin or subbasin for which the maximum annual yield has been determined. If the land overlies two or more groundwater basins or subbasins and the maximum annual yield has not been determined for any of the basins or subbasins, more than one temporary permit may be issued for the land if the applicant demonstrates by substantial competent evidence from which basin the water will be withdrawn for each of the permits.

D. The permit shall specify the location of the permitted well or wells and other terms and conditions as specified by the Board, including but not limited to the rate of withdrawal, the level of perforating and the level of sealing the well. A regular

permit shall not be granted for less than the remaining life of the basin or subbasin as previously determined by the Board.

SECTION 21. AMENDATORY 82 O.S. 1991, Section 1020.15, as amended by Section 322, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1997, Section 1020.15), is amended to read as follows:

Section 1020.15 ~~The~~ A. Except for domestic use, use of fresh groundwater without a permit shall constitute an act of waste for purposes of this section.

B. After a permit to use groundwater is issued, or in cases of domestic use, the Oklahoma Water Resources Board shall not permit any fresh ~~ground-water~~ groundwater user to commit waste by:

1. ~~Drilling a well, taking, or using fresh ground water~~ without a permit, except for domestic use;
2. Taking more fresh ~~ground-water~~ groundwater than is authorized by the permit;
3. Taking or using fresh ~~ground-water~~ groundwater in any manner so that the water is lost for beneficial use;
4. Transporting fresh ~~ground-water~~ groundwater from a well to the place of use in such a manner that there is an excessive loss in transit;
5. Using fresh ~~ground-water~~ groundwater in such an inefficient manner that excessive losses occur;
6. Allowing any fresh ~~ground-water~~ groundwater to reach a pervious stratum and be lost into cavernous or otherwise pervious materials encountered in a well;
7. Permitting or causing the pollution of a fresh water strata or basin through any act subject to regulation by the Board which will permit fresh ~~ground-water~~ groundwater polluted by minerals or other waste to filter or otherwise intrude into such a basin or subbasin;
8. Drilling wells and producing fresh ~~ground-water~~ groundwater therefrom except in accordance with the well spacing previously determined by the Board;
9. Using fresh ~~ground-water~~ groundwater for air conditioning or cooling purposes without providing facilities to aerate and reuse such water where feasible; or

10. Failure to properly plug abandoned fresh water wells and to file reports thereof in accordance with rules of the Board ~~and file reports thereof~~.

C. Any employee of the Board having evidence that an act of waste is being committed in his presence, or ~~on the filing~~ after investigation of a complaint by another individual, shall immediately proceed to cite such violator and if such act of waste continues shall thereupon file a complaint in the district court of the county wherein such violation has occurred, and it shall be the duty of the district attorney of said county to prosecute such complaint. In addition thereto, if any person commits waste as described in this section, the Board shall immediately issue a cease and desist order, and if the waste continues after the violator receives the order, the Board shall then immediately institute action to enjoin in a court of competent jurisdiction and may suspend any permit to take water as long as such waste continues.

D. Provided, however, that in cases of waste by pollution, any complaint ~~or~~ investigation, or any other enforcement matter, other than ~~an individual proceeding~~ enforcement involving the suspension of an Oklahoma Water Resources Board permit or involving a violation of a rule of the Board, shall be referred to and subject to the jurisdiction of the Department of Environmental Quality or other appropriate state agency.

SECTION 22. AMENDATORY 62 O.S. 1991, Section 203, as last amended by Section 7, Chapter 186, O.S.L. 1997 (62 O.S. Supp. 1997, Section 203), is amended to read as follows:

Section 203. A. Except as otherwise provided by subsection B of this section, all monies that may come into the State Treasury, pursuant to the provisions of Section 201 et seq. of this title, together with all amounts that may be received by the State Treasurer as investment income or as interest on average daily bank balances, including investment income or interest on deposits from funds deposited to the credit of the Constitutional Reserve Fund created pursuant to Section 23 of Article 10 of the Oklahoma

Constitution, shall be apportioned and credited to the General Revenue Fund for the current year.

B. The provisions of subsection A of this section shall not apply to:

1. Interest received on deposits from funds under the control of the Commissioners of the Land Office;

2. Funds in the Department of Human Services Federal Disallowance Fund;

3. Interest received on deposits from funds under the control of the Santa Claus Commission;

4. The Risk Management Revolving Fund;

5. Investment income and interest received from funds in the Quartz Mountain Revolving Fund from insurance claims;

6. The Drinking Water Treatment Revolving Loan Account and the Drinking Water Treatment Loan Administrative Fund; and

7. The ~~Wastewater Facility Construction~~ Clean Water Revolving Loan Account and Clean Water Loan Administrative Fund.

SECTION 23. REPEALER 82 O.S. 1991, Section 1085.65, as amended by Section 334, Chapter 145, O.S.L. 1993 (82 O.S. Supp. 1997, Section 1085.65), is hereby repealed.

SECTION 24. 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.

46-2-9583

KSM