

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1995

By: Pope (Clay) and Liotta of
the House

and

Price of the Senate

COMMITTEE SUBSTITUTE

[waters and water rights - Wastewater Facility
Construction Revolving Loan Account and program -
codification -

emergency]

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

SECTION 1. AMENDATORY 82 O.S. 2001, Section 1085.51, is amended to read as follows:

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 Revolving Loan Account~~ Clean Water State Revolving Fund Program and a Clean Water State Revolving Fund to implement Title VI of the federal Water Quality Act of 1987.

SECTION 2. AMENDATORY 82 O.S. 2001, Section 1085.52, is amended to read as follows:

For the purposes of this act:

1. "~~Wastewater project~~ Water quality 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,
- c. urban storm water activities that are administered under the Oklahoma Brownfields Voluntary Redevelopment Act for eligible entities that have obtained a draft or final permit pursuant to the National Pollution Discharge Elimination Act or the Oklahoma Pollution Discharge Elimination Act, or
- d. any ~~implementation~~ capital works, capital improvements, capital equipment, environmental cleanups, land acquisition, or implementation of management practices 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 of this title,
- e. any implementation of estuary conservation and management programs as authorized by the federal Water Quality Act of 1987,
- f. any other water quality project as may be authorized by the federal Water Quality Act of 1987;

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. "Clean Water SRF Loan Account" means the Clean Water State Revolving Fund Loan Account created pursuant to Section 1085.53 of this title;

6. "Clean Water SRF Loan Administrative Fund" means the Clean Water State Revolving Fund Loan Administrative Fund created pursuant to Section 1085.64 of this title;

7. "Conservation Commission" means the Oklahoma Conservation Commission;

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

~~6.~~ 9. "Federal Water Quality Act of 1987" means the federal Water Quality Act of 1987 as exists on the effective date of this act, as may be amended, or any successor statute.

SECTION 3. AMENDATORY 82 O.S. 2001, Section 1085.53, is amended to read as follows:

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 Revolving~~ Clean Water State Revolving Fund 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~~ water quality project 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 Revolving~~ Clean Water SRF 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 Revolving~~ Clean Water SRF 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 Revolving~~ Clean Water SRF 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.

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 Revolving~~ Clean Water SRF Loan Account established in the Water Resources Fund to make grants.

SECTION 4. AMENDATORY 82 O.S. 2001, Section 1085.54, is amended to read as follows:

A. All funds available in the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF 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 Clean Water Act, ~~including urban storm water activities conducted pursuant to Section 2-15-101, et seq. of Title 27A of the Oklahoma Statutes, that are exempt from funds administered under the Nonpoint Source Management Program of the 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 Board shall use the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF 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 year after completion of any ~~wastewater~~ water

quality project and all loans will be fully amortized consistent with the federal Water Quality Act of 1987,

- d. the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF 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~~ water quality 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 Revolving~~ Clean Water SRF 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 Revolving~~ Clean Water SRF Loan Account;

7. To administer the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF Loan Account pursuant to the provisions of this act. All funds to be utilized for administrative costs from the ~~Wastewater Facility Construction Revolving Loan Account~~ Clean Water SRF 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 Revolving~~ Clean Water SRF 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. 2001, Section 1085.55, is amended to read as follows:

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

1. Prepare and maintain the priority list for ~~publicly owned treatment works~~ all water quality projects. In developing the priority list, the Board shall rely on input from the Department and the Conservation Commission;

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

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

B. In determining the cost effectiveness of any ~~wastewater~~ water quality 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~~ water quality project while recognizing environmental and other nonmonetary considerations determined to be relevant by the Board.

SECTION 6. AMENDATORY 82 O.S. 2001, Section 1085.56, is amended to read as follows:

The Oklahoma Water Resources Board shall ~~prescribe~~ promulgate such rules as may be necessary for determining the eligibility and priority of entities for ~~wastewater~~ water quality projects in order to receive loans made pursuant to the federal Water Quality Act of 1987 and from the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF 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~~ water quality project loan to comply with rules ~~adopted~~ promulgated by the Environmental Quality Board pursuant to the Oklahoma Environmental Quality Code, or the Conservation Commission, whichever has jurisdiction; and

4. Require the ~~wastewater~~ water quality 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.

SECTION 7. AMENDATORY 82 O.S. 2001, Section 1085.57, is amended to read 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 ~~Wastewater Facility Construction Revolving~~ Clean Water SRF 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 Revolving~~ Clean Water SRF 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 Revolving~~ Clean Water SRF 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 Revolving~~ Clean Water SRF 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 Facility Construction Revolving~~ Clean Water SRF 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. 2001, Section 1085.58, is amended to read as follows:

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

1. Cost of the ~~proposed construction~~ water quality;
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 pollution control project, the application shall include a written concurrence by the Conservation Commission, or the Department of Environmental Quality, whichever agency has jurisdiction, that the proposed water quality project:

1. Meets or will meet a critical local or state need, as defined in the State Nonpoint Source Assessment and Management Report;

2. Is needed or will be needed to comply with the State Nonpoint Source Assessment and Management Report;

3. Is designed to prevent, reduce, or halt the pollution of the waters of the state; and

4. Is cost effective.

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. 2001, Section 1085.59, is amended to read as follows:

An investment certificate shall not be issued under Sections 1085.31 through 1085.39 of ~~Title 82 of the Oklahoma Statutes~~ this title 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. AMENDATORY 82 O.S. 2001, Section 1085.60, is amended to read as follows:

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

SECTION 11. AMENDATORY 82 O.S. 2001, Section 1085.61, is amended to read as follows:

In the event of a default in payment of the principal or interest on loans made from the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF Loan Account pursuant to this act, the Attorney General, 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 12. AMENDATORY 82 O.S. 2001, Section 1085.62, is amended to read as follows:

In order to comply with the requirements of federal and state laws, the Board shall complete the following:

1. Establish criteria for determining the interest rates on loans to be made from the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF 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~~ Revolving Clean Water SRF 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 Revolving~~ Clean Water SRF Loan Account and implementation of the provisions of Sections 1085.51 through 1085.65 of this title. The report shall contain information to show the actual use and the recipients of loans made from the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF 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~~ water quality projects which may be eligible for financial assistance under Sections 1085.51 through 1085.65 of this title.

SECTION 13. AMENDATORY 82 O.S. 2001, Section 1085.64, is amended to read as follows:

A. In order to administer the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF Loan Account, there is hereby created in the State Treasury a "~~Wastewater Facility Construction Revolving~~ Clean Water SRF Loan Administrative Fund". The ~~Wastewater Facility Construction Revolving~~ Clean Water SRF 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 ~~Wastewater Facility Construction Revolving~~ Clean Water SRF Loan Administrative Fund shall consist of monies deposited into the fund from the following sources:

1. Loan processing and application processing and loan administrative fees heretofore collected by the Oklahoma Water Resources Board on loans made from the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF Loan ~~Program~~ Account and designated by the Board for transfer and deposit into the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF Loan Administrative Fund;

2. Application processing and loan administrative fees collected by the Board after the effective date of this section on

loans made from the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF Loan Program; and

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

B. Monies in, or investment income derived from, the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF Loan Administrative Fund shall be restricted and used solely for the purpose of administering the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF Loan Account or as otherwise authorized by the federal Water Quality Act of 1987 or guidance or regulation promulgated thereunder. Monies in the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF Loan Administrative Fund, or investment income derived therefrom shall be used by the Board in carrying out its responsibilities as provided in ~~Section~~ Sections 1085.51 through 1085.65 of this title and shall be subject to annual designation by the State Legislature.

C. The monies placed in the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF 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 ~~Wastewater Facility Construction Revolving~~ Clean Water SRF 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 ~~Wastewater Facility Construction Revolving~~ Clean Water SRF Loan Administrative Fund into the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF 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 expenditure from the ~~Wastewater Facility Construction Revolving~~ Clean Water SRF Loan Administrative Fund.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1085.65A of Title 82, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Water Resources Board shall enter into a written joint operating agreement(s) with the Oklahoma Conservation Commission and the Department of Environmental Quality for the purposes of carrying out with efficiency any of the Board's duties pursuant to Sections 1085.51 through 1085.65 of this title, including but not limited to:

1. The preparation and maintenance of a priority list for water quality projects;

2. With respect to any water quality projects for the purpose of watershed management or control of nonpoint source pollution, the determination that a proposed water quality 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 this state and comply with Oklahoma's Water Quality Standards, and
- d. is cost-effective; and

3. The preparation of any demand projections or the intended use plan as directed by this act.

SECTION 15. REPEALER 82 O.S. 2001, Section 1085.65, is hereby repealed.

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.

48-2-3213

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