

LEGISLATIVE BILL 880

Approved by the Governor April 15, 2024

Introduced by Hughes, 24.

A BILL FOR AN ACT relating to the Drinking Water State Revolving Fund Act; to amend sections 71-5318 and 71-5322, Revised Statutes Cumulative Supplement, 2022; to change a requirement relating to the Land Acquisition and Source Water Loan Fund; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 71-5318, Revised Statutes Cumulative Supplement, 2022, is amended to read:

71-5318 (1) The Drinking Water Facilities Loan Fund is created. The fund shall be held as a trust fund for the purposes and uses described in the Drinking Water State Revolving Fund Act.

The fund shall consist of federal capitalization grants, state matching appropriations, proceeds of state match bond issues credited to the fund, repayments of principal and interest on loans, transfers made pursuant to section 71-5327, and other money designated for the fund. The director may make loans from the fund pursuant to the Drinking Water State Revolving Fund Act and may conduct activities related to financial administration of the fund, administration or provision of technical assistance through public water system source water assessment programs, and implementation of a source water petition program under the Safe Drinking Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

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

The fund and the assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to (a) pay or to secure the payment of bonds and the interest thereon, except that amounts deposited into the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon, and (b) buy or refinance the debt obligation of any municipality for a public water supply system if the debt was incurred and construction began after July 1, 1993.

The director may transfer any money in the Drinking Water Facilities Loan Fund to the Wastewater Treatment Facilities Construction Loan Fund to meet the purposes of section 71-5327. The director shall identify any such transfer in the intended use plan presented to the council for annual review and adoption pursuant to section 71-5321.

(2) The Land Acquisition and Source Water Loan Fund is created. The fund shall be held as a trust for the purposes and uses described in the Drinking Water State Revolving Fund Act.

The fund shall consist of federal capitalization grants, state matching appropriations, proceeds of state match bond issues credited to the fund, repayments of principal and interest on loans, and other money designated for the fund. The director may make loans from the fund pursuant to the Drinking Water State Revolving Fund Act and may, ~~in consultation with the Director of Public Health of the Division of Public Health,~~ conduct activities other than the making of loans permitted under section 1452(k) of the Safe Drinking Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

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

The fund and assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to pay or secure the payment of bonds and the interest thereon, except that amounts credited to the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon.

The director may transfer any money in the Land Acquisition and Source Water Loan Fund to the Drinking Water Facilities Loan Fund.

(3) There is hereby created the Drinking Water Administration Fund. Any funds available for administering loans or fees collected pursuant to the

Drinking Water State Revolving Fund Act shall be remitted to the State Treasurer for credit to such fund. The fund shall be administered by the department for the purposes of the act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings shall be credited to the fund.

The fund and assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to fund subdivisions (9), (11), and (12) of section 71-5322. The annual obligation of the state pursuant to subdivisions (9) and (12) of section 71-5322 shall not exceed sixty-five percent of the revenue from administrative fees collected pursuant to section 71-5321 in the prior fiscal year.

The director may transfer any money in the Drinking Water Administration Fund to the Drinking Water Facilities Loan Fund to meet the state matching appropriation requirements of any applicable federal capitalization grants or to meet the purposes of subdivision (9) of section 71-5322.

Sec. 2. Section 71-5322, Revised Statutes Cumulative Supplement, 2022, is amended to read:

71-5322 The department shall have the following powers and duties:

(1) The power to establish a program to make loans to owners of public water systems, individually or jointly, for construction or modification of safe drinking water projects in accordance with the Drinking Water State Revolving Fund Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(2) The power, if so authorized by the council pursuant to section 71-5321, to execute and deliver documents obligating the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund and the assets thereof to the extent permitted by section 71-5318 to repay, with interest, loans to or credits into such funds and to execute and deliver documents pledging to the extent permitted by section 71-5318 all or part of such funds and assets to secure, directly or indirectly, the loans or credits;

(3) The duty to prepare an annual report for the Governor and the Legislature. The report submitted to the Legislature shall be submitted electronically;

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

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

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

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

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

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

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

(7) The power to develop an intended use plan, ~~in consultation with the Director of Public Health of the Division of Public Health,~~ for adoption by the council;

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

(9) The power to enter into agreements to provide grants and loan forgiveness concurrent with loans to public water systems that provide service to ten thousand persons or less, that are operated by political subdivisions, and that demonstrate serious financial hardships. The department may enter into agreements for up to seventy-five percent of the eligible project cost. Such agreements shall contain a provision that payment of the amount allocated is conditional upon the availability of appropriated funds;

(10) The power to enter into agreements to provide grants and loan forgiveness, for up to seventy-five percent of eligible project costs, concurrent with loans to public water systems for lead service line replacement projects in accordance with all federal regulatory and statutory provisions;

(11) The power to provide emergency funding to public water systems operated by political subdivisions with drinking water facilities which have been damaged or destroyed by natural disaster or other unanticipated actions or circumstances. Such funding shall not be used for routine repair or maintenance of facilities;

(12) The power to provide financial assistance consistent with the intended use plan, described in subdivision (7) of this section, for completion of engineering studies, research projects to investigate low-cost options for achieving compliance with safe drinking water standards, preliminary engineering reports, regional water system planning, source water protection, and other studies for the purpose of enhancing the ability of communities to meet the requirements of the Safe Drinking Water Act, to public water systems that provide service to ten thousand persons or less, that are operated by political subdivisions, and that demonstrate serious financial hardships. The department may enter into agreements for up to ninety percent of the eligible project cost. Such agreements shall contain a provision that payment of the amount obligated is conditional upon the availability of appropriated funds; and

(13) Such other powers as may be necessary and appropriate for the

exercise of the duties created under the Drinking Water State Revolving Fund Act.

Sec. 3. Original sections 71-5318 and 71-5322, Revised Statutes Cumulative Supplement, 2022, are repealed.