

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 737

FINAL READING

Introduced by Friesen, 34.

Read first time January 06, 2016

Committee: Natural Resources

1 A BILL FOR AN ACT relating to the Wastewater Treatment Facilities
2 Construction Assistance Act; to amend sections 81-15,149, 81-15,150,
3 81-15,151, 81-15,154, 81-15,155, and 81-15,156, Reissue Revised
4 Statutes of Nebraska; to redefine a term; to change powers of the
5 Director of Environmental Quality; to change provisions relating to
6 the Wastewater Treatment Facilities Construction Loan Fund,
7 categories of loan eligibility, eligible items, loan conditions, and
8 loan terms; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-15,149, Reissue Revised Statutes of Nebraska,
2 is amended to read:

3 81-15,149 As used in the Wastewater Treatment Facilities
4 Construction Assistance Act, unless the context otherwise requires:

5 (1) Clean Water Act means the federal Clean Water Act, as amended,
6 33 U.S.C. 1251 et seq.;

7 (2) Construction means any of the following: Preliminary planning to
8 determine the feasibility of wastewater treatment works or nonpoint
9 source control systems; engineering, architectural, legal, fiscal, or
10 economic investigations or studies; surveys, designs, plans, working
11 drawings, specifications, procedures, or other necessary preliminary
12 actions; erection, building, acquisition, alteration, remodeling,
13 improvement, or extension of wastewater treatment works or nonpoint
14 source control systems; or the inspection or supervision of any of the
15 foregoing items;

16 (3) Council means the Environmental Quality Council;

17 (4) County means any county authorized to construct a sewerage
18 disposal system and plant or plants pursuant to the County Industrial
19 Sewer Construction Act;

20 (5) Department means the Department of Environmental Quality;

21 (6) Director means the Director of Environmental Quality;

22 (7) Eligible financial institution means a bank that agrees to
23 participate in the linked deposit program and which is chartered to
24 conduct banking in this state pursuant to the Nebraska Banking Act, is
25 chartered to conduct banking by another state and authorized to do
26 business in this state, or is a national bank authorized to do business
27 in this state;

28 (8) Fund means the Wastewater Treatment Facilities Construction Loan
29 Fund;

30 (9) Linked deposit program means the Wastewater Treatment Facilities
31 Construction Assistance Act Linked Deposit Program established in

1 accordance with section 81-15,151.03;

2 (10) Municipality means any city, town, village, district,
3 association, or other public body created by or pursuant to state law and
4 having jurisdiction over disposal of sewage, industrial wastes, or other
5 wastes;

6 (11) Nonpoint source control systems means projects which establish
7 the use of methods, measures, or practices to control the pollution of
8 surface waters and ground water that occurs as pollutants are transported
9 by water from diffuse or scattered sources. Such projects include, but
10 are not limited to, structural and nonstructural controls and operation
11 and maintenance procedures applied before, during, and after pollution-
12 producing activities. Sources of nonpoint source pollution may include,
13 but are not limited to, agricultural, forestry, and urban lands,
14 transportation corridors, stream channels, mining and construction
15 activities, animal feeding operations, septic tank systems, underground
16 storage tanks, landfills, and atmospheric deposition;

17 (12) Operate and maintain means all necessary activities including
18 the normal replacement of equipment or appurtenances to assure the
19 dependable and economical function of a wastewater treatment works or
20 nonpoint source control systems in accordance with its intended purpose;
21 and

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

25 Sec. 2. Section 81-15,150, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 81-15,150 The director may obligate and administer any federal
28 grants to municipalities and counties ~~for construction of publicly owned~~
29 ~~wastewater treatment works or nonpoint source control systems~~ pursuant to
30 the Wastewater Treatment Facilities Construction Assistance Act and the
31 Clean Water Act.

1 Sec. 3. Section 81-15,151, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 81-15,151 (1)(a) The Wastewater Treatment Facilities Construction
4 Loan Fund is hereby created. The fund shall be held as a trust fund for
5 the purposes and uses described in the Wastewater Treatment Facilities
6 Construction Assistance Act.

7 (b) The fund shall consist of federal capitalization grants, state
8 matching appropriations, repayments of principal and interest on loans,
9 and other money designated for the fund. The director may make loans from
10 the fund pursuant to the act and may use (i) up to four percent of all
11 federal capitalization grant awards to the fund, (ii) up to four hundred
12 thousand dollars per year, or (iii) the equivalent of one-fifth percent
13 per year of the current valuation of the fund for the reasonable cost of
14 administering the fund and conducting activities under Title VI of the
15 federal Clean Water Act.

16 (c) The state investment officer shall invest any money in the fund
17 available for investment pursuant to the Nebraska Capital Expansion Act
18 and the Nebraska State Funds Investment Act, except that (i) amounts
19 designated by the director for use in the linked deposit program shall be
20 deposited with eligible financial institutions by the director and (ii)
21 any bond proceeds in the fund shall be invested in accordance with the
22 terms of the documents under which the bonds are issued. The state
23 investment officer may direct that the bond proceeds shall be deposited
24 with the bond trustee for investment. Investment earnings shall be
25 credited to the fund.

26 (d) ~~(e)~~ The department may create or direct the creation of accounts
27 within the fund as the department determines to be appropriate and useful
28 in administering the fund and in providing for the security, investment,
29 and repayment of bonds.

30 (e) ~~(d)~~ The fund and the assets thereof may be used, to the extent
31 permitted by the Clean Water Act, as amended, and the regulations adopted

1 and promulgated pursuant to such act, (i) to pay or to secure the payment
2 of bonds and the interest thereon, except that amounts deposited into the
3 fund from state appropriations and the earnings on such appropriations
4 may not be used to pay or to secure the payment of bonds or the interest
5 thereon, (ii) to deposit as provided by the linked deposit program, and
6 (iii) to buy or refinance the debt obligation of municipalities for
7 wastewater treatment works if the debt was incurred and construction was
8 begun after March 7, 1985. Eligibility and terms of such refinancing
9 shall be in accordance with the Wastewater Treatment Facilities
10 Construction Assistance Act.

11 (2)(a) There is hereby created the Construction Administration Fund.
12 Any funds available for administering loans or fees collected pursuant to
13 the Wastewater Treatment Facilities Construction Assistance Act shall be
14 deposited in such fund. The fund shall be administered by the department
15 for the purposes of the act. The state investment officer shall invest
16 any money in the fund available for investment pursuant to the Nebraska
17 Capital Expansion Act and the Nebraska State Funds Investment Act.
18 Investment earnings shall be credited to the fund.

19 (b) The Construction Administration Fund and assets thereof may be
20 used, to the extent permitted by the Clean Water Act and the regulations
21 adopted and promulgated pursuant to such act, to fund subdivisions (11),
22 (12), and (13) of section 81-15,153. The annual obligation of the state
23 pursuant to subdivisions (11) and (13) of such section shall not exceed
24 sixty-five percent of the revenue from administrative fees collected
25 pursuant to this section in the prior fiscal year.

26 (c) The director may transfer any money in the Construction
27 Administration Fund to the Wastewater Treatment Facilities Construction
28 Loan Fund to meet the nonfederal match requirements of any applicable
29 federal capitalization grants or to meet the purposes of subdivision (11)
30 of section 81-15,153.

31 Sec. 4. Section 81-15,154, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 81-15,154 Categories of loan eligibility shall include: Primary,
3 secondary, ~~Secondary~~ or tertiary treatment and appurtenances;
4 infiltration and inflow correction; major sewer system rehabilitation;
5 new collector sewers and appurtenances; new interceptors and
6 appurtenances; acquisition of land integral to the treatment process;
7 acquisition of land and interests in land necessary for construction;
8 correction of combined sewer overflows; water conservation, efficiency,
9 or reuse; energy efficiency; reuse or recycling of wastewater,
10 stormwater, or subsurface drainage water; development and implementation
11 of watershed projects; measures to increase the security of treatment
12 works; and nonpoint source control systems. Loans shall be made only for
13 eligible items within such categories. For loans made entirely from state
14 funds, eligible items shall include, but not be limited to, the costs of
15 engineering services and contracted construction. Eligible items shall
16 not include the costs of water rights, ~~land, easements, and rights-of-~~
17 ~~way,~~ legal costs, fiscal agent's fees, operation and maintenance costs,
18 and municipal or county administrative costs. For loans made in whole or
19 in part from federal funds, eligible items shall be those identified
20 pursuant to the Clean Water Act.

21 Sec. 5. Section 81-15,155, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 81-15,155 (1) All loans made under the Wastewater Treatment
24 Facilities Construction Assistance Act shall be made only to
25 municipalities or to counties that:

26 (a) Meet the requirements of financial capability set by the
27 department;

28 (b) Pledge sufficient revenue sources for the repayment of the loan
29 if such revenue may by law be pledged for that purpose;

30 (c) Agree to maintain financial records according to generally
31 accepted government accounting standards and to conduct an audit of the

1 project's financial records;

2 (d) Provide a written assurance, signed by an attorney, that the
3 municipality or county has proper title, easements, and rights-of-way to
4 the property on or through which the wastewater treatment works or
5 nonpoint source control systems is to be constructed or extended;

6 (e) Require the contractor of the construction project to post
7 separate performance and payment bonds or other security approved by the
8 department in the amount of the bid;

9 (f) Provide a written notice of completion and start of operation of
10 the facility; and

11 (g) Employ a professional engineer to provide and be responsible for
12 engineering services on the project such as an engineering report,
13 construction contract documents, observation of construction, and startup
14 services.

15 (2) Loans made under the act for the construction, rehabilitation,
16 operation, and maintenance of wastewater treatment works shall be made
17 only to municipalities or to counties which meet the conditions of
18 subsection (1) of this section and, in addition, that:

19 (a) Develop and implement a long-term wastewater treatment works
20 management plan for the term of the loan, including yearly renewals;

21 (b) Provide capacity for up to the term of the loan, but not less
22 than twenty years, for domestic and industrial growth or reasonable
23 capacity as determined by the department;

24 (c) Agree to operate and maintain the wastewater treatment works so
25 that it will function properly over the structural and material design
26 life which shall not be less than twenty years; and

27 (d) Provide a certified operator pursuant to voluntary or mandatory
28 certification program, whichever is in effect.

29 Sec. 6. Section 81-15,156, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 81-15,156 Loan terms shall include, but not be limited to, the

1 following:

2 (1) The term of the loan shall not exceed the lesser of thirty years
3 or the projected useful life of the project ~~twenty years~~;

4 (2) The interest rate shall be at or below market interest rates;

5 (3) The annual principal and interest payment shall commence not
6 later than one year after completion of any project and all loans shall
7 be fully amortized not later than the loan term ~~twenty years~~ after the
8 date of completion of the project; and

9 (4) The loan recipient shall immediately repay any loan when a grant
10 has been received which covers costs provided for by such loan.

11 Sec. 7. Original sections 81-15,149, 81-15,150, 81-15,151,
12 81-15,154, 81-15,155, and 81-15,156, Reissue Revised Statutes of
13 Nebraska, are repealed.