

Water Pollution Control Loan Fund Ohio Revised Code Section 6111.036

(A) There is hereby created the water pollution control loan fund to provide financial, technical, and administrative assistance for the following purposes:

- (1) Construction of publicly owned wastewater treatment works, as "construction" and "treatment works" are defined in section 212 of the "Federal Water Pollution Control Act," by municipal corporations, other political subdivisions, and interstate agencies having territory in this state;
- (2) Implementation of nonpoint source pollution management programs under section 319 of that act;
- (3) Development and implementation of estuary conservation and management programs under section 320 of that act.

To the extent they are otherwise allowable as determined by the director of environmental protection, the purposes identified under division (A) of this section are intended to include activities benefiting the waters of the state that are authorized under Chapter 3746. of the Revised Code.

The fund shall be administered by the director consistent with the "Federal Water Pollution Control Act"; regulations adopted under it, including, without limitation, regulations establishing public participation requirements applicable to the providing of financial assistance; this section; and rules adopted under division (O) of this section.

Moneys in the water pollution control loan fund shall be separate and apart from and not a part of the state treasury or of the other funds of the Ohio water development authority. Subject to the terms of the agreements provided for in divisions (B), (C), (D), and (F) of this section, moneys in the fund shall be held in trust by the Ohio water development authority for the purposes of this section, shall be kept in the same manner that funds of the authority are kept under section 6121.11 of the Revised Code, and may be invested in the same manner that funds of the authority are invested under section 6121.12 of the Revised Code. No withdrawals or disbursements shall be made from the water pollution control loan fund without the written authorization of the director or his designated representative. The manner of authorization for any withdrawals or disbursements from the fund to be made by the authority shall be established in the agreements authorized under division (C) of this section.

(B) The director may enter into agreements to receive and assign moneys credited or to be credited to the water pollution control loan fund. The director may reserve capitalization grant moneys allotted to the state under sections 601 and 604(c)(2) of the "Federal Water Pollution Control Act" for the other purposes authorized for the use of capitalization grant moneys under sections 603(d)(7) and 604(b) of that act.

(C) The director shall ensure that fiscal controls are established for prudent administration of the water pollution control loan fund. For that purpose, the director and the Ohio water development authority shall enter into any necessary and appropriate agreements under which the authority may perform or provide any of the following:

- (1) Fiscal controls and accounting procedures governing fund balances, receipts, and disbursements;
- (2) Administration of loan accounts;
- (3) Maintaining, managing, and investing moneys in the fund.

Any agreement entered into under this division shall provide for the payment of reasonable fees to the Ohio water development authority for any services it performs under the agreement and may provide for reasonable fees for the assistance of financial or accounting advisors. Payments of any such fees to

the authority may be made from the water pollution control loan fund to the extent authorized by division (H)(7) of this section or from the water pollution control loan administrative fund created in division (E) of this section. The authority may enter into loan agreements with the director and recipients of financial assistance from the fund as provided in this section.

(D) The water pollution control loan fund shall consist of the moneys credited to it from all capitalization grants received under sections 601 and 604(c)(2) of the "Federal Water Pollution Control Act," all moneys received as capitalization grants under section 205(m) of that act, all matching moneys credited to the fund arising from nonfederal sources, all payments of principal and interest for loans made from the fund, and all investment earnings on moneys held in the fund. On or before the date on which a quarterly capitalization grant payment will be received under that act, matching moneys equal to at least twenty per cent of the quarterly capitalization grant payment shall be credited to the fund. The Ohio water development authority may make moneys available to the director for the purpose of providing the matching moneys required by this division, subject to such terms as the director and the authority consider appropriate, and may pledge moneys that are held by the authority to secure the payment of bonds or notes issued by the authority to provide those matching moneys. The authority may make moneys available to the director for that purpose from any funds now or hereafter available to the authority from any source, including, without limitation, the proceeds of bonds or notes heretofore or hereafter issued by the authority under Chapter 6121. of the Revised Code. Matching moneys made available to the director by the authority from the proceeds of any such bonds or notes shall be made available subject to the terms of the trust agreements relating to the bonds or notes. Any such matching moneys shall be made available to the director pursuant to a written agreement between the director and the authority that contains such terms as the director and the authority consider appropriate, including, without limitation, a provision providing for repayment to the authority of those matching moneys from moneys deposited in the water pollution control loan fund, including, without limitation, the proceeds of bonds or notes issued by the authority for the benefit of the fund and payments of principal and interest on loans made from the fund, or from any other sources now or hereafter available to the director for the repayment of those matching moneys.

(E) All moneys credited to the water pollution control loan fund, all interest earned on moneys in the fund, and all payments of principal and interest for loans made from the fund shall be dedicated in perpetuity and used and reused solely for the purposes set forth in division (A) of this section, except as otherwise provided in division (D) or (F) of this section. The director may establish and collect fees to be paid by recipients of financial assistance under this section, and all moneys arising from the fees shall be credited to the water pollution control loan administrative fund, which is hereby created in the state treasury, and shall be used to defray the costs of administering this section.

(F) The director and the Ohio water development authority shall enter into trust agreements to enable the authority to issue and refund bonds or notes for the sole benefit of the water pollution control loan fund, including, without limitation, the raising of the matching moneys required by division (D) of this section. These agreements may authorize the pledge of moneys accruing to the fund from payments of principal and interest on loans made from the fund adequate to secure bonds or notes, the proceeds of which bonds or notes shall be for the sole benefit of the water pollution control loan fund. The agreements may contain such terms as the director and the authority consider reasonable and proper for the security of the bondholders or noteholders.

(G) The director shall enter into binding commitments to provide financial assistance from the water pollution control loan fund in an amount equal to one hundred twenty per cent of the amount of each

capitalization grant payment received, within one year after receiving each such grant payment. The director shall provide the financial assistance in compliance with this section and rules adopted under division (O) of this section. The director shall ensure that all moneys credited to the fund are disbursed in an expeditious and timely manner. During the second year of operation of the water pollution control loan program, the director also shall ensure that not less than twenty-five per cent of the financial assistance provided under this section during that year is provided for the purpose of division (H)(2) of this section for the purchase or refinancing of debt obligations incurred after March 7, 1985, but not later than July 1, 1988, except that if the amount of money reserved during the second year of operation of the program for the purchase or refinancing of those debt obligations exceeds the amount required for the projects that are eligible to receive financial assistance for that purpose, the director shall distribute the excess moneys in accordance with the current priority system and list prepared under division (I) of this section to provide financial assistance for projects that otherwise would not receive assistance in that year.

(H) Moneys credited to the water pollution control loan fund shall be used only for the following purposes:

(1) To make loans, subject to all of the following conditions:

(a) The loans are made at or below market rates of interest, including, without limitation, interest free loans;

(b) Periodic payments of principal and interest shall commence not later than one year after completion of the project, and all loans shall be fully amortized not later than twenty years after project completion;

(c) Each recipient of a loan shall establish a dedicated source of revenue for repayment of the loan;

(d) All payments of principal and interest on the loans shall be credited to the fund, except as otherwise provided in division (D) or (F) of this section.

(2) To purchase or refinance at or below market rates of interest debt obligations incurred after March 7, 1985, by municipal corporations, other political subdivisions, and interstate agencies having territory in the state;

(3) To guarantee or purchase insurance for debt obligations of municipal corporations, other political subdivisions, and interstate agencies having territory within the state when the guarantee or insurance would improve the borrower's access to credit markets or would reduce the interest rate paid on those obligations;

(4) As a source of revenue or security for the payment of principal and interest on general obligation or revenue bonds or notes issued by this state if the proceeds of the sale of the bonds or notes will be deposited in the fund;

(5) To provide loan guarantees for revolving loan funds established by municipal corporations and other political subdivisions that are similar to the water pollution control loan fund;

(6) To earn interest on moneys credited to the fund;

(7) To pay the reasonable costs of administering the fund and this section, except that cumulative expenditures from the fund for administrative costs shall not at any time exceed four per cent of the total amount of the capitalization grants received.

(I) The director periodically shall prepare in accordance with rules adopted under division (O) of this section a state priority system and list ranking assistance proposals principally on the basis of their relative water quality and public health benefits and the financial need of the applicants for assistance. Assistance for proposed activities from the water pollution control loan fund shall be limited to those activities appearing on that priority list and shall be awarded based upon their priority sequence on the list and the applicants' readiness to proceed with their proposed activities. The director annually shall

prepare and circulate for public review and comment a plan that defines the goals and intended uses of the fund, as required by section 606(c) of the "Federal Water Pollution Control Act."

(J) Financial assistance from the water pollution control loan fund first shall be used to ensure maintenance of progress, as determined by the governor, toward compliance with enforceable deadlines, goals, and requirements under the "Federal Water Pollution Control Act" that are pertinent to the purposes of the fund set forth in divisions (A)(1) to (3) of this section, including, without limitation, the municipal compliance deadline under that act.

(K) The director may provide financial assistance from the water pollution control loan fund for a publicly owned treatment works project only after determining that:

(1) Sewerage systems tributary to the treatment works are not subject to excessive infiltration and inflow;

(2) The applicant for financial assistance has the legal, institutional, managerial, and financial capability to construct, operate, and maintain its publicly owned treatment works;

(3) The applicant will implement a financial management plan that includes, without limitation, provisions for satisfactory repayment of the financial assistance, a proportional user charge system to pay the operation, maintenance, and replacement expenses of the project, and, if appropriate in the director's judgment, an adequate capital improvements fund;

(4) The proposed disposal system of which the project is a part is economically and nonmonetarily cost-effective, based upon an evaluation of feasible alternatives that meet the waste water treatment needs of the planning area in which the proposed project is located;

(5) Based upon the environmental review conducted by the director under division (L) of this section, there are no significant adverse environmental effects resulting from the proposed disposal system and the system has been selected from among environmentally sound alternatives;

(6) Public participation has occurred during the process of planning the project in compliance with applicable requirements under the "Federal Water Pollution Control Act";

(7) The applicant has submitted a facilities plan for the project that meets the applicable program requirements and that has been approved by the director;

(8) The application meets the requirements of this section and rules adopted under division (O) of this section and is consistent with the intent of Title VI of the "Federal Water Pollution Control Act" and regulations adopted under it;

(9) The application meets such other requirements as the director considers necessary or appropriate to protect the environment or ensure the financial integrity of the fund while implementing this section.

(L) The director shall perform and document for public review an independent, comprehensive environmental review of the assistance proposal for each activity receiving financial assistance under this section. The review shall serve as the basis for the determinations to be made under division (K)(5) or (Q)(4) of this section, as applicable, and may include, without limitation, an environmental assessment, any necessary supplemental studies, and an enforceable mitigation plan. The director may establish environmental impact mitigation terms or conditions for the implementation of an assistance proposal, including, without limitation, the installation or modification of a disposal system, in his approval of the plans for the installation or modification as authorized by section 6111.44 of the Revised Code or through other legally enforceable means. The review shall be conducted in accordance with applicable rules adopted under division (O) of this section.

(M) The director, consistent with this section and applicable rules adopted under division (O) of this section, may enter into any agreement with an applicant that is necessary or appropriate to provide

assistance from the water pollution control loan fund. Based upon his review of an assistance proposal, including, without limitation, approval for the project under section 6111.44 of the Revised Code, the environmental review conducted under division (L) of this section, and the other requirements of this section and rules adopted under it, the director may establish in the agreement terms and conditions of the assistance to be offered to an applicant. In addition to any other available remedies, the director may terminate, suspend, or require immediate repayment of financial assistance provided under this section to, or take any other enforcement action available under this chapter against, a recipient of financial assistance under this section who defaults on any payment required in the agreement for financial assistance or otherwise violates a term or condition of the agreement or of the plan approval for the project under section 6111.44 of the Revised Code.

(N) Based upon the director's judgment as to the financial need of the applicant and as to what constitutes the most effective allocation of funds to achieve statewide water pollution control objectives, the director may establish the terms, conditions, and amount of financial assistance to be offered to an applicant from the water pollution control loan fund. The director, to the extent consistent with the water quality improvement priorities reflected in the current priority system and list prepared under division (I) of this section and with the long-term financial integrity of the fund, shall ensure each year that financial assistance in an amount equal to the cost of the assistance proposals of applicants having a high level of economic need that are on the current priority list and for which funding is available in that year is made available from the fund to those applicants at an interest rate that is lower than that offered to other applicants for financial assistance from the fund for assistance proposals that are on the current priority list and for which funding is available in that year. The director shall determine the economic need of applicants for financial assistance in accordance with uniform criteria established in rules adopted under division (O) of this section.

(O) The director may adopt rules in accordance with Chapter 119. of the Revised Code for the implementation and administration of this section and section 6111.037 [6111.03.7] of the Revised Code. Any such rules governing the planning, design, and construction of water pollution control projects, establishing an environmental review process, establishing requirements for the preparation of environmental impact reports and mitigation plans, governing the establishment of priority systems for providing financial assistance under this section and section 6111.037 [6111.03.7] of the Revised Code, and governing the terms and conditions of assistance, shall be consistent with the intent of Titles II and VI and sections 319 and 320 of the "Federal Water Pollution Control Act." The rules governing the establishment of priority systems for financial assistance and governing terms and conditions of assistance shall provide for the most effective allocation of moneys from the water pollution control loan fund to achieve water quality and public health objectives throughout the state as determined by the director.

(P)(1) For the purpose of this section, appealable actions of the director pursuant to section 3745.04 of the Revised Code are limited to the following:

- (a) Approval of draft priority systems, draft priority lists, and draft written program administration policies;
- (b) Approval or disapproval of project facility plans under division (K)(7) of this section;
- (c) Approval or disapproval of plans and specifications for a project under section 6111.44 of the Revised Code and issuance of a permit to install in connection with a project pursuant to rules adopted under section 6111.03 of the Revised Code;
- (d) Approval or disapproval of an application for assistance.

(2) Notwithstanding section 119.06 of the Revised Code, the director may take final action described in division (P)(1)(a), (b), (c), or (d) of this section without holding an adjudication hearing in connection with the action and without first issuing a proposed action under section 3745.07 of the Revised Code.

(3) Each action described in divisions (P)(1)(a), (b), (c), and (d) of this section is a separate and discrete action of the director. Appeals of any such action are limited to the issues concerning the specific action appealed, and the appeal shall not include issues determined under the scope of any prior action.

(Q) The director may provide financial assistance for the implementation of a nonpoint source management program activity only after determining all of the following:

(1) The activity is consistent with the state's nonpoint source management program;

(2) The applicant has the legal, institutional, managerial, and financial capability to implement, operate, and maintain the activity;

(3) The cost of the activity is reasonable considering monetary and nonmonetary factors;

(4) Based on the environmental review conducted by the director under division (L) of this section, the activity will not result in significant adverse environmental impacts;

(5) The application meets the requirements of this section and rules adopted under division (O) of this section and is consistent with the intent of Title VI of the "Federal Water Pollution Control Act" and regulations adopted under it;

(6) The applicant will implement a financial management plan, including, without limitation, provisions for satisfactory repayment of the financial assistance;

(7) The application meets such other requirements as the director considers necessary or appropriate to protect the environment and ensure the financial integrity of the fund while implementing this section.

(R) As used in this section, "Federal Water Pollution Control Act" means the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended by the "Clean Water Act of 1977," 91 Stat. 1566, 33 U.S.C.A. 1251, the "Act of October 21, 1980," 94 Stat. 2360, 33 U.S.C.A. 1254, the "Municipal Wastewater Treatment Construction Grant Amendments of 1981," 95 Stat. 1623, 33 U.S.C.A. 1281, and the "Water Quality Act of 1987," 101 Stat. 7, 33 U.S.C.A. 1251.