

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 809

Introduced by Moser, 22.

Read first time January 06, 2022

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to water; to amend section 71-5322, Reissue
2 Revised Statutes of Nebraska, and sections 71-5318 and 81-15,153,
3 Revised Statutes Cumulative Supplement, 2020; to change provisions
4 relating to the use of the Land Acquisition and Source Water Loan
5 Fund; to change certain powers and duties of the Department of
6 Environment and Energy; to harmonize provisions; and to repeal the
7 original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 71-5318, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 71-5318 (1) The Drinking Water Facilities Loan Fund is created. The
4 fund shall be held as a trust fund for the purposes and uses described in
5 the Drinking Water State Revolving Fund Act.

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

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

27 The fund and the assets thereof may be used, to the extent permitted
28 by the Safe Drinking Water Act and the regulations adopted and
29 promulgated pursuant to such act, to (a) pay or to secure the payment of
30 bonds and the interest thereon, except that amounts deposited into the
31 fund from state appropriations and the earnings on such appropriations

1 may not be used to pay or to secure the payment of bonds or the interest
2 thereon, and (b) to buy or refinance the debt obligation of any
3 municipality for a public water supply system if the debt was incurred
4 and construction began after July 1, 1993.

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

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

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

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

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

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

9 (3) There is hereby created the Drinking Water Administration Fund.
10 Any funds available for administering loans or fees collected pursuant to
11 the Drinking Water State Revolving Fund Act shall be remitted to the
12 State Treasurer for credit to such fund. The fund shall be administered
13 by the department for the purposes of the act. The state investment
14 officer shall invest any money in the fund available for investment
15 pursuant to the Nebraska Capital Expansion Act and the Nebraska State
16 Funds Investment Act. Investment earnings shall be credited to the fund.

17 The fund and assets thereof may be used, to the extent permitted by
18 the Safe Drinking Water Act and the regulations adopted and promulgated
19 pursuant to such act, to fund subdivisions (9), (10), and (11) of section
20 71-5322. The annual obligation of the state pursuant to subdivisions (9)
21 and (11) of section 71-5322 shall not exceed sixty-five percent of the
22 revenue from administrative fees collected pursuant to section 71-5321 in
23 the prior fiscal year.

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

29 Sec. 2. Section 71-5322, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 71-5322 The department shall have the following powers and duties:

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

6 (2) The power, if so authorized by the council pursuant to section
7 71-5321, to execute and deliver documents obligating the Drinking Water
8 Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund
9 and the assets thereof to the extent permitted by section 71-5318 to
10 repay, with interest, loans to or credits into such funds and to execute
11 and deliver documents pledging to the extent permitted by section 71-5318
12 all or part of such funds and assets to secure, directly or indirectly,
13 the loans or credits;

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

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

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

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

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

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

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

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

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

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

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

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

20 (11) ~~(10)~~ The power to provide emergency funding to public water
21 systems operated by political subdivisions with drinking water facilities
22 which have been damaged or destroyed by natural disaster or other
23 unanticipated actions or circumstances. Such funding shall not be used
24 for routine repair or maintenance of facilities;

25 (12) ~~(11)~~ The power to provide financial assistance consistent with
26 the intended use plan, described in subdivision (7) of this section, for
27 completion of engineering studies, research projects to investigate low-
28 cost options for achieving compliance with safe drinking water standards,
29 preliminary engineering reports, regional water system planning, source
30 water protection, and other studies for the purpose of enhancing the
31 ability of communities to meet the requirements of the Safe Drinking

1 Water Act, to public water systems that provide service to ten thousand
2 persons or less, that are operated by political subdivisions, and that
3 demonstrate serious financial hardships. The department may enter into
4 agreements for up to ninety percent of the eligible project cost. Such
5 agreements shall contain a provision that payment of the amount obligated
6 is conditional upon the availability of appropriated funds; and

7 (13) ~~(12)~~ Such other powers as may be necessary and appropriate for
8 the exercise of the duties created under the Drinking Water State
9 Revolving Fund Act.

10 Sec. 3. Section 81-15,153, Revised Statutes Cumulative Supplement,
11 2020, is amended to read:

12 81-15,153 The department shall have the following powers and duties:

13 (1) The power to establish a program to make loans to municipalities
14 or to counties, individually or jointly, for construction or modification
15 of publicly owned wastewater treatment works in accordance with the
16 Wastewater Treatment Facilities Construction Assistance Act and the rules
17 and regulations of the council adopted and promulgated pursuant to such
18 act;

19 (2) The power to establish a program to make loans to municipalities
20 or to counties for construction, rehabilitation, operation, or
21 maintenance of nonpoint source control systems in accordance with the
22 Wastewater Treatment Facilities Construction Assistance Act and the rules
23 and regulations of the council adopted and promulgated pursuant to such
24 act;

25 (3) The power, if so authorized by the council pursuant to section
26 81-15,152, to execute and deliver documents obligating the Wastewater
27 Treatment Facilities Construction Loan Fund and the assets thereof to the
28 extent permitted by section 81-15,151 to repay, with interest, loans to
29 or deposits into the fund and to execute and deliver documents pledging
30 to the extent permitted by section 81-15,151 all or part of the fund and
31 its assets to secure, directly or indirectly, the loans or deposits;

1 (4) The power to establish the linked deposit program to promote
2 loans for construction, rehabilitation, operation, or maintenance of
3 nonpoint source control systems in accordance with the Wastewater
4 Treatment Facilities Construction Assistance Act and the rules and
5 regulations adopted and promulgated pursuant to such act;

6 (5) The duty to prepare an annual report for the Governor and the
7 Legislature containing information which shows the financial status of
8 the program. The report submitted to the Legislature shall be submitted
9 electronically;

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

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

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

16 (c) Accounting for disbursements made by the fund; and

17 (d) Balancing the fund at the beginning and end of the accounting
18 period;

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

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

25 (9) The power to refinance debt obligations of municipalities in
26 accordance with the rules and regulations adopted and promulgated by the
27 council;

28 (10) The power to enter into required agreements with the United
29 States Environmental Protection Agency pursuant to the Clean Water Act;

30 (11) The power to enter into agreements to provide grants and loan
31 forgiveness concurrent with loans to municipalities with populations of

1 ten thousand inhabitants or less as determined by the most recent federal
2 decennial census or the most recent revised certified count by the United
3 States Bureau of the Census which demonstrate serious financial
4 hardships. The department may authorize grants for up to seventy-five
5 percent ~~one-half~~ of the eligible project cost. Such grants shall contain
6 a provision that payment of the amount allocated is conditional upon the
7 availability of appropriated funds;

8 (12) The power to authorize emergency grants to municipalities with
9 wastewater treatment facilities which have been damaged or destroyed by
10 natural disaster or other unanticipated actions or circumstances. Such
11 grants shall not be used for routine repair or maintenance of facilities;

12 (13) The power to provide financial assistance to municipalities
13 with populations of ten thousand inhabitants or less as determined by the
14 most recent federal decennial census or the most recent revised certified
15 count by the United States Bureau of the Census for completion of
16 engineering studies, research projects, investigating low-cost options
17 for achieving compliance with the Clean Water Act, encouraging wastewater
18 reuse, and conducting other studies for the purpose of enhancing the
19 ability of communities to meet the requirements of the Clean Water Act.
20 The department may authorize financial assistance for up to ninety
21 percent of the eligible project cost. Such state allocation shall contain
22 a provision that payment of the amount obligated is conditional upon the
23 availability of appropriated funds;

24 (14) The power to provide grants or an additional interest subsidy
25 on loans for municipalities if the project contains a sustainable
26 community feature, measurable energy-use reductions, or low-impact
27 development or if there are any special assistance needs as determined
28 under section 81-1517; and

29 (15) Such other powers as may be necessary and appropriate for the
30 exercise of the duties created under the Wastewater Treatment Facilities
31 Construction Assistance Act.

1 Sec. 4. Original section 71-5322, Reissue Revised Statutes of
2 Nebraska, and sections 71-5318 and 81-15,153, Revised Statutes Cumulative
3 Supplement, 2020, are repealed.