

WATER POLLUTION LOANS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Bill Wright

AN ACT RELATING TO ENVIRONMENTAL QUALITY; ALLOWING THE WATER QUALITY BOARD TO MAKE LOANS TO POLITICAL SUBDIVISIONS AND PRIVATE ENTITIES TO ACQUIRE, CONSTRUCT, OR IMPLEMENT PROJECTS TO ABATE, PREVENT, OR REDUCE WATER POLLUTION CAUSED BY NONPOINT SOURCES; REQUIRING THE WATER QUALITY BOARD TO MAKE RULES REGARDING LOANS FOR NONPOINT SOURCE PROJECTS; CLARIFYING THE DEFINITION OF WASTEWATER PROJECT; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

19-5-104, as last amended by Chapter 126, Laws of Utah 1998

73-10b-2, as last amended by Chapter 112, Laws of Utah 1991

73-10c-2, as last amended by Chapter 71, Laws of Utah 1997

73-10c-5, as last amended by Chapter 71, Laws of Utah 1997

ENACTS:

73-10c-4.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **19-5-104** is amended to read:

19-5-104. Powers and duties of board.

(1) The board has the following powers and duties, but the board shall give priority to pollution that results in hazards to the public health:

(a) develop programs for the prevention, control, and abatement of new or existing pollution of the waters of the state;

(b) advise, consult, and cooperate with other agencies of the state, the federal government, other states, and interstate agencies, and with affected groups, political subdivisions, and industries to further the purposes of this chapter;

(c) encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and causes of water pollution as the board finds necessary to discharge its duties;

(d) collect and disseminate information relating to water pollution and the prevention, control, and abatement of water pollution;

(e) adopt, modify, or repeal standards of quality of the waters of the state and classify those waters according to their reasonable uses in the interest of the public under conditions the board may prescribe for the prevention, control, and abatement of pollution;

(f) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, taking into account Subsection (2), to:

(i) implement the awarding of construction loans to political subdivisions and municipal authorities under Section 11-8-2, including:

(A) requirements pertaining to applications for loans;

(B) requirements for determination of eligible projects;

(C) requirements for determination of the costs upon which loans are based, which costs may include engineering, financial, legal, and administrative expenses necessary for the construction, reconstruction, and improvement of sewage treatment plants, including major interceptors, collection systems, and other facilities appurtenant to the plant;

(D) a priority schedule for awarding loans, in which the board may consider in addition to water pollution control needs any financial needs relevant, including per capita cost, in making a determination of priority; and

(E) requirements for determination of the amount of the loan~~[-taking into consideration the availability of federal grants in determining the eligible project costs and in establishing priorities];~~

(ii) implement the awarding of loans for nonpoint source projects pursuant to Section 73-10c-4.5;

~~[(ii)]~~ (iii) set effluent limitations and standards subject to Section 19-5-116;

~~[(iii)]~~ (iv) implement or effectuate the powers and duties of the board; and

~~[(iv)]~~ (v) protect the public health for the design, construction, operation, and maintenance

of individual wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies;

(g) issue, modify, or revoke orders:

(i) prohibiting or abating discharges;

(ii) requiring the construction of new treatment works or any parts of them, or requiring the modification, extension, or alteration of existing treatment works as specified by board rule or any parts of them, or the adoption of other remedial measures to prevent, control, or abate pollution;

(iii) setting standards of water quality, classifying waters or evidencing any other determination by the board under this chapter; and

(iv) requiring compliance with this chapter and with rules made under this chapter;

(h) review plans, specifications, or other data relative to disposal systems or any part of disposal systems, and issue construction permits for the installation or modification of treatment works or any parts of them;

(i) after public notice and opportunity for a public hearing, issue, continue in effect, revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe to control the management of sewage sludge or to prevent or control the discharge of pollutants, including effluent limitations for the discharge of wastes into the waters of the state;

(j) give reasonable consideration in the exercise of its powers and duties to the economic impact of water pollution control on industry and agriculture;

(k) exercise all incidental powers necessary to carry out the purposes of this chapter, including delegation to the department of its duties as appropriate to improve administrative efficiency;

(l) meet the requirements of federal law related to water pollution;

(m) establish and conduct a continuing planning process for control of water pollution including the specification and implementation of maximum daily loads of pollutants;

(n) make rules governing inspection, monitoring, recordkeeping, and reporting requirements for underground injections and require permits for them, to protect drinking water sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil, recognizing that

underground injection endangers drinking water sources if:

(i) injection may result in the presence of any contaminant in underground water which supplies or can reasonably be expected to supply any public water system, as defined in Section 19-4-102; and

(ii) the presence of the contaminant may result in the public water system not complying with any national primary drinking water standards or may otherwise adversely affect the health of persons;

(o) make rules governing sewage sludge management, including permitting, inspecting, monitoring, recordkeeping, and reporting requirements;

(p) adopt and enforce rules and establish fees to cover the costs of testing for certification of operators of treatment works and sewerage systems operated by political subdivisions; and

(q) notwithstanding the provisions of Section 19-4-112, make rules governing design and construction of irrigation systems which convey sewage treatment facility effluent of human origin in pipelines under pressure, unless contained in surface pipes wholly on private property and for agricultural purposes, and which are constructed after May 4, 1998.

(2) In determining eligible project costs and in establishing priorities pursuant to Subsection (1)(f)(i), the board shall take into consideration the availability of federal grants.

~~[(2)]~~ (3) In establishing certification rules under Subsection (1)(p), the board shall:

(a) base the requirements for certification on the size, treatment process type, and complexity of the treatment works and sewerage systems operated by political subdivisions;

(b) allow operators until three years after the date of adoption of the rules to obtain initial certification;

(c) allow new operators one year from the date they are hired by a treatment plant or sewerage system or three years after the date of adoption of the rules, whichever occurs later, to obtain certification;

(d) issue certification upon application and without testing, at a grade level comparable to the grade of current certification to operators who are currently certified under the voluntary certification plan for wastewater works operators as recognized by the board; and

(e) issue a certification upon application and without testing that is valid only at the treatment

works or sewerage system where that operator is currently employed if the operator:

- (i) is in charge of and responsible for the treatment works or sewerage system on March 16, 1991;
- (ii) has been employed at least ten years in the operation of that treatment works or sewerage system prior to March 16, 1991; and
- (iii) demonstrates to the board his capability to operate the treatment works or sewerage system at which he is currently employed by providing employment history and references as required by the board.

Section 2. Section **73-10b-2** is amended to read:

73-10b-2. Definitions.

As used in this chapter:

- (1) "Drinking water project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses which has at least 15 service connections or serves an average of 25 individuals daily for at least 60 days of the year and includes collection, treatment, storage, and distribution facilities under the control of the operator and used primarily with the system, and collection pretreatment or storage facilities used primarily in connection with the system but not under the operator's control.
- (2) "Political subdivision" means any county, city, town, improvement district, metropolitan water district, water conservancy district, special service district, drainage district, irrigation district, separate legal or administrative entity created under [~~the~~] Title 11, Chapter 13, Interlocal Cooperation Act, or any other entity constituting a political subdivision under the laws of Utah.
- (3) "Sinking fund" means the 1983 general obligation water, wastewater, and drinking water bonds sinking fund created by Section 73-10b-12.
- (4) "Waters of this state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, irrigation system, drainage system, or other body or accumulation of water, whether surface, underground, natural, artificial, public, or private, or other water resource of the state, which is contained within or flows in or through Utah.
- (5) "Water project" means any work or facility necessary or desirable to conserve, develop,

protect, or treat the waters of this state including, without limitation, any reservoir, diversion dam, irrigation dam and system, culinary water system, water work, water treatment facility, canal, ditch, aqueduct, pipeline, and related structures and facilities.

(6) "Water project costs" or "wastewater project costs" or "drinking water project costs" means, as appropriate, the cost of acquiring and constructing any water project, wastewater project or drinking water project, including:

(a) the cost of acquisition and construction of any facility or any modification, improvement, or extension of a facility;

(b) any cost incident to the acquisition of any necessary property, easement, or right-of-way;

(c) engineering or architectural fees, legal fees, fiscal agents', and financial advisors' fees;

(d) any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project;

(e) costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications, and the inspection and supervision of the construction of any facility;

(f) interest accruing on loans made under this chapter during acquisition and construction of the water project, drinking water project, or wastewater project; and

(g) any other cost incurred by the political subdivision, the Board of Water Resources, the Division of Water Resources, the Water Quality Board, the Drinking Water Board, or the Department of Environmental Quality, in connection with the issuance of obligations of the political subdivision to evidence any loan made to it under this chapter.

(7) "Wastewater project" means any sewer, storm or sanitary sewage system, sewage treatment facility and system, lagoon, sewage collection facility and system, and related pipelines, and all similar systems, works, and facilities necessary or desirable to collect, hold, cleanse, or purify any sewage or other polluted waters of this state.

Section 3. Section **73-10c-2** is amended to read:

73-10c-2. Definitions.

As used in this chapter:

(1) "Board" means the Board of Water Resources of the Department of Natural Resources.

(2) "Council" means the Water Development Coordinating Council created pursuant to Section 63-34-3, and this chapter.

(3) "Credit enhancement agreement" means any agreement entered into under this chapter between the Drinking Water Board or Water Quality Board, on behalf of the state, and a political subdivision, for the purpose of providing methods and assistance to political subdivisions to improve the security for and marketability of drinking water project obligations and wastewater project obligations.

(4) "Drinking Water Board" means the Drinking Water Board created in Title 19, Chapter 4, Safe Drinking Water Act.

(5) "Drinking water or wastewater project obligation" means, as appropriate, any bond, note, or other obligation of a political subdivision issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading, or improving a drinking water project or wastewater project.

(6) "Drinking water project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses, which has at least 15 service connections or serves an average of 25 individuals daily for at least 60 days of the year and includes collection, treatment, storage, and distribution facilities under the control of the operator and used primarily with the system and collection pretreatment or storage facilities used primarily in connection with the system but not under its control.

(7) "Financial assistance programs" means the various programs administered by the state whereby loans, grants, and other forms of financial assistance are made available to political subdivisions of this state to finance the costs of water and wastewater projects.

(8) "Hardship Grant Assessment" means the charge the Water Quality Board or Drinking Water Board assesses to recipients of [~~federal State Revolving Fund~~] loans under [~~33 U.S.C.A. 1251 et seq., federal Clean Water Act, or 42 U.S.C.A. 300f et seq., federal Safe Drinking Water Act,~~] Subsection 73-10c-5(2)(b) or 73-10c-5(3)(b) in lieu of or in addition to interest charged on these loans.

(9) "Nonpoint source project" means any facility, system, practice, or mechanism to abate,

prevent, or reduce pollution of waters of this state caused by nonpoint sources.

~~[(9)]~~ (10) "Political subdivision" means any county, city, town, improvement district, water conservancy district, special service district, drainage district, metropolitan water district, irrigation district, separate legal or administrative entity created under ~~[the]~~ Title 11, Chapter 13, Interlocal Cooperation Act, or any other entity constituting a political subdivision under the laws of this state.

~~[(10)]~~ (11) "Security account" means the Water Development Security Account within the General Fund created by this chapter.

~~[(11)]~~ (12) "Wastewater project" means any sewer, storm or sanitary sewage system, sewage treatment facility, lagoon, sewage collection facility and system, and related pipelines, and all similar systems, and works, and facilities necessary or desirable to collect, hold, cleanse, or purify any sewage or other polluted waters of this state.

~~[(12)]~~ (13) "Waters of this state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, irrigation system, drainage system, or other body or accumulation of water whether surface, underground, natural, artificial, public, private, or other water resource of the state which is contained within or flows in or through the state.

~~[(13)]~~ (14) "Water Quality Board" means the Water Quality Board created in Title 19, Chapter 5, Water Quality Act.

Section 4. Section **73-10c-4.5** is enacted to read:

73-10c-4.5. Nonpoint source project loans -- Project objectives -- Water Quality Board duties.

(1) The Water Quality Board may make loans from the Utah State Revolving Fund for Wastewater Projects Subaccount created in Subsection 73-10c-5(2)(b) to political subdivisions, individuals, corporations, associations, or other private entities to acquire, construct, or implement nonpoint source projects.

(2) The Water Quality Board may award the loans only for nonpoint source projects that will achieve one or more of the following objectives:

(a) abate or reduce raw sewage discharges;

(b) repair or replace failing individual on-site wastewater disposal systems;

- (c) abate or reduce untreated or uncontrolled runoff;
- (d) improve critical aquatic habitat resources;
- (e) conserve soil, water, or other natural resources;
- (f) protect and improve ground water quality;
- (g) preserve and protect the beneficial uses of waters of the state;
- (h) reduce the number of water bodies not achieving water quality standards;
- (i) improve watershed management; or
- (j) prepare and implement total maximum daily load (TMDL) assessments.
- (3) The Water Quality Board shall:
 - (a) determine the amount, term, and interest rate for each loan made under this section;
 - (b) assure that adequate security is obtained for each loan;
 - (c) establish criteria and procedures for determining priority nonpoint source projects and award loans in accordance with those priorities; and
 - (d) make rules to implement this section in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 5. Section **73-10c-5** is amended to read:

73-10c-5. Water Development Security Account created -- Water Quality Security and Drinking Water Security Subaccounts created -- Use -- Revolving loan funds -- Hardship grants.

(1) There is established a restricted account within the General Fund known as the Water Development Security Account which includes the Water Quality Security Subaccount and the Drinking Water Security Subaccount.

(2) The Water Quality Security Subaccount consists of three subaccounts:

(a) the Utah Wastewater Loan Program Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from the ~~principal~~ repayment of the principal of loans made by the Water Quality Board under Sections 73-10b-5, 73-10c-4, 73-10c-6, 73-10g-4, and 73-10h-4 from the Utah Wastewater Loan Program Subaccount;

(iii) except for payments, if any, necessary to comply with Section 148(f), Internal Revenue Code of 1986, income earned after June 30, 1984, on proceeds of bonds authorized by Sections 73-10b-5, 73-10g-4, and 73-10h-4 [~~from the Utah Wastewater Loan subaccount~~]; and

(iv) money deposited in the subaccount under any other law[~~;~~];

(b) the Utah State Revolving Fund for Wastewater Projects Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received from the Utah Wastewater Loan Program Subaccount applied to meet match requirements for federal funds under 33 U.S.C.A. 1251 et seq., federal Clean Water Act;

(iii) money received from the repayment of loans made by the Water Quality Board under [~~this section~~] Section 73-10c-4 from the Utah State Revolving Fund for Wastewater Projects Subaccount;

(iv) money received from the repayment of loans made by the Water Quality Board under Section 73-10c-4.5;

[~~(iv)~~] (v) money deposited in the subaccount under any other law;

[~~(v)~~] (vi) money received under and subject to the restrictions of 33 U.S.C.A. 1251 et seq., federal Clean Water Act, and which is eligible for use in state revolving loan funds established to meet the requirements of the act; and

[~~(vi)~~] (vii) all investment income derived from money in the Utah State Revolving Fund for Wastewater Projects Subaccount[~~;~~]; and

(c) the Hardship Grant Program for Wastewater Projects Subaccount, which consists of:

(i) money appropriated to the subaccount by the Legislature;

(ii) money received as interest [~~payment~~] payments on loans made by the Water Quality Board under Sections 73-10b-5, 73-10c-4, 73-10c-6, 73-10g-4, and 73-10h-4, from the Utah Wastewater Loan Program Subaccount;

(iii) money deposited in the subaccount under any other law;

(iv) the Hardship Grant Assessment charged to State Revolving Fund loan recipients; and

(v) all investment income derived from money in the Utah Wastewater Loan Program Subaccount or the Hardship Grant Program for Wastewater Projects Subaccount.

- (3) The Drinking Water Security Subaccount consists of three subaccounts:
- (a) the Drinking Water Loan Program Subaccount, which consists of:
 - (i) money appropriated to the subaccount by the Legislature;
 - (ii) money received from the ~~[principal]~~ repayment of the principal of loans made by the Drinking Water Board under Sections 73-10b-6, 73-10c-4, 73-10c-6, 73-10g-5, and 73-10h-5, from the Drinking Water Loan Program Subaccount;
 - (iii) except for payments, if any, necessary to comply with Section 148(f), Internal Revenue Code of 1986, income earned after June 30, 1984, on proceeds of bonds authorized by Sections 73-10b-6, 73-10g-5, and 73-10h-5 ~~[from the Drinking Water Loan Program subaccount]~~; and
 - (iv) money deposited in the subaccount under any other law[-];
 - (b) the State Revolving Fund for Drinking Water Projects Subaccount, which consists of:
 - (i) money appropriated to the subaccount by the Legislature;
 - (ii) money received from the Utah Drinking Water Loan Program Subaccount and applied to meet match requirements for federal funds under 42 U.S.C.A. 300f et seq., federal Safe Drinking Water Act;
 - (iii) money received from the repayment of loans made by the Drinking Water Board under ~~[this section]~~ Section 73-10c-4 from the State Revolving Fund for Drinking Water Projects Subaccount;
 - (iv) money deposited in the subaccount under any other law;
 - (v) money received under and subject to the restrictions of 42 U.S.C.A. 300f et seq., federal Safe Drinking Water Act, and which is eligible for use in state revolving loan funds established to meet the requirements of the act; and
 - (vi) all investment income derived from money in the State Revolving Fund for Drinking Water Projects Subaccount[-]; and
 - (c) the Hardship Grant Program for Drinking Water Projects Subaccount, which consists of:
 - (i) money appropriated to the subaccount by the Legislature;
 - (ii) money received from ~~[the]~~ interest ~~[repayment of]~~ payments on loans made by the Drinking Water Board under Sections 73-10b-6, ~~[73-10c-5]~~ 73-10c-4, 73-10c-6, 73-10g-5, and

73-10h-5, from the Drinking Water Loan Program Subaccount;

(iii) money deposited in the subaccount under any other law;

(iv) the Hardship Grant Assessment charged to State Revolving Fund loan recipients; and

(v) all investment income derived from money in the Drinking Water Loan Program

Subaccount or the Hardship Grant Program for Drinking Water Projects Subaccount.

(4) State monies in the Water Quality Security Subaccount and the Drinking Water Security Subaccount may be applied to meet match requirements for federal funds under 33 U.S.C.A. 1251 et seq., federal Clean Water Act and 42 U.S.C.A. 300f et seq., federal Safe Drinking Water Act.

(5) If the money in the security account is insufficient for the purposes for which the security account is established, the council shall ask the governor to request the Legislature to appropriate additional money to the account.

(6) (a) The Drinking Water Board and Water Quality Board may use the money in the appropriate security account subaccount only to the extent of the money available in the account, for the support of drinking water projects and wastewater projects in accordance with the terms of credit enhancement agreements, grant agreements, and loan agreements.

(b) Repayments to the security account from loans made by the acting board, monies allocated by the Legislature, and interest accrued on these monies shall remain available for use by that board for further project funding.

(7) Funds received under Section 1452 of the federal Safe Drinking Water Act, 42 U.S.C.A. 300f et seq., may be used for providing financial assistance to community water systems and nonprofit noncommunity water systems as defined and within the limits of that act.