

No. 185. An act relating to the Clean Water State Revolving Loan Fund.

(H.777)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 24 V.S.A. § 4751 is amended to read:

§ 4751. DECLARATION OF POLICY

It is hereby declared to be in the public interest to foster and promote timely expenditures by municipalities for water systems, ~~water pollution abatement and control facilities~~ clean water projects, and solid waste management, each of which is declared to be an essential governmental function when undertaken and implemented by a municipality. It is also declared to be in the public interest to promote expenditures for certain existing privately owned public water systems and certain privately owned ~~wastewater and public and~~ potable water supply systems to bring those systems into compliance with federal and State standards and to protect public health and the environment. Additionally, it is declared to be in the public interest to promote clean water projects to protect and improve the quality of waters of the State.

Sec. 2. 24 V.S.A. § 4752 is amended to read:

§ 4752. DEFINITIONS

As used in this chapter:

* * *

(10) ~~“Privately owned wastewater system” means a privately owned wastewater system, that receives primarily domestic type wastes. [Repealed.]~~

(11) ~~“Water pollution abatement and control facilities”~~ “Clean water project” means “water pollution abatement and control facilities,” as defined in 10 V.S.A. § 1571, and such equipment, conveyances, ~~and~~ structural or nonstructural facilities ~~owned or operated by a municipality,~~ and natural resources projects that are needed for and appurtenant to the prevention, management, treatment, storage, or disposal of stormwater, sewage, or waste, or that provide water quality benefits, including a wastewater treatment facility, combined sewer separation facilities, an indirect discharge system, a wastewater system, flood resiliency work related to a structural facility, or a groundwater protection project.

* * *

(17) “Natural resources project” means a project to protect, conserve, or restore natural resources, including the acquisition of easements and land, for the purpose of providing water quality benefits.

(18) “Sponsorship program” means an arrangement in which natural resources projects are paired with water pollution abatement and control facilities projects, as defined in 10 V.S.A. § 1571, for the purposes of water quality improvement. Under the sponsorship program, a municipality may obtain a loan for both a natural resources project and a water pollution abatement and control facilities project. The loan rate and terms shall be adjusted to forgive all or a portion of the natural resources project over the life

of the loan. Only municipalities and nonprofit organizations may receive funds under a sponsorship program.

Sec. 3. 24 V.S.A. § 4753 is amended to read:

§ 4753. REVOLVING LOAN FUNDS; AUTHORITY TO SPEND; REPORT

(a) There is hereby established a series of special funds to be known as:

(1) The Vermont Environmental Protection Agency (EPA) Pollution Control Revolving Fund, which shall be used, consistent with federal law, to provide loans ~~to municipalities and State agencies~~ for planning and construction of ~~water pollution abatement and control facilities~~ clean water projects, including acquisitions of project-related easements, land, options to purchase land, and temporary or permanent rights-of-way, and for implementing related management programs.

(2) The Vermont Pollution Control Revolving Fund, which shall be used to provide loans to municipalities and State agencies for planning and construction of ~~water pollution abatement and control facilities~~ clean water projects, including acquisitions of project-related easements, land, options to purchase land, and temporary or permanent rights-of-way.

* * *

Sec. 4. 24 V.S.A. § 4754 is amended to read:

§ 4754. LOAN APPLICATION

A municipality may apply for a loan, the proceeds of which shall be used to acquire, design, plan, construct, enlarge, repair, or improve a ~~publicly owned~~

~~water pollution abatement and pollution control facility~~ a clean water project, public water supply systems as defined in subdivision 4752(9) of this title, or a solid waste handling and disposal facility, or certain privately owned ~~wastewater systems~~ clean water projects as described in section 4763 of this title, or to implement a related management program. In addition, the loan proceeds shall be used to pay the outstanding balance of any engineering planning advances made to the municipal applicant under this chapter and determined by the Secretary to be due and payable following construction of the improvements to be financed by the proceeds of the loan. The Bond Bank may prescribe any form of application or procedure required of a municipality for a loan hereunder. ~~Such~~ The application shall include such information as the Bond Bank shall deem necessary for the purpose of implementing this chapter.

Sec. 5. 24 V.S.A. § 4755(a) is amended to read:

(a) Except as provided by subsection (c) of this section, the Bond Bank may make loans to a municipality on behalf of the State for one or more of the purposes set forth in section 4754 of this chapter. Each of ~~such~~ the loans shall be made subject to the following conditions and limitations:

* * *

(4) Notwithstanding any other provisions of law, municipal legislative bodies may execute notes and incur debt on behalf of municipalities:

(A) with voter approval at a duly warned meeting, for amounts less than \$75,000.00; ~~or~~

(B) by increasing previously approved bond authorizations by up to \$75,000.00 to cover unanticipated project costs or the cost of directly and functionally related enhancements; or

(C) without voter approval for a natural resources project under the sponsorship program, as defined in section 4752 of this title, provided that:

(i) the amount of the debt incurred does not exceed an amount to be forgiven or cancelled upon the completion of the project; and

(ii) the municipality obtains voter approval for the paired water pollution abatement and control facilities project under the sponsorship program, pursuant to the requirements set forth in chapter 53 of this title.

* * *

Sec. 6. 24 V.S.A. § 4758(a) is amended to read:

(a) Periodically, and at least annually, the Secretary shall prepare and certify to the Bond Bank a project priority list of those municipalities whose publicly ~~owned projects~~, or privately owned ~~wastewater systems~~, clean water projects are eligible for financing or assistance under this chapter. In determining financing availability for ~~water pollution abatement and control facilities~~ clean water projects under this ~~chapter~~ chapter subchapter, the Secretary shall apply the criteria adopted pursuant to 10 V.S.A. § 1628.

Sec. 7. 24 V.S.A. § 4763 is amended to read:

§ 4763. ~~LOANS FOR PRIVATELY OWNED WASTEWATER SYSTEMS~~
TO MUNICIPALITIES FOR PRIVATELY OWNED CLEAN
WATER PROJECTS

(a) Where the ~~secretary~~ Secretary has determined that ~~the construction, repair, or replacement of a privately owned wastewater system~~ a privately owned clean water project is the preferred alternative to abate or control a pollution problem or to provide water quality benefits, a loan may be made to a municipality from the Vermont ~~environmental protection agency (EPA)~~ pollution control revolving fund Environmental Protection Agency Pollution Control Revolving Fund established in section 4753 of this title. In such cases, the following conditions shall apply:

(1) Guaranteed repayment of the loan will be based on a municipal bond, but actual repayment may be made with funds from the owner, as set forth in an agreement between the owner and the municipality.

(2) In all cases, there shall be a binding agreement between the owner and the municipality that provides for the proper operation and maintenance of the ~~privately owned wastewater system~~ privately owned clean water project for at least the term of the loan.

(3) All conditions and limitations of section 4755 of this title apply to loans made under this section.

(4) No construction loan shall be made to a municipality under this subsection, nor shall any part of any revolving loan made under this subsection be expended until all of the following take place:

(A) The ~~secretary~~ Secretary certifies to the ~~bond bank~~ Bond Bank that all land use, subdivision, public building, and water supply and wastewater permits necessary to construct and operate ~~the~~ any improvements to be financed by the loan have been issued to the owner of the ~~privately owned wastewater system~~ privately owned clean water project.

(B) The applicant municipality certifies to the ~~bond bank~~ Bond Bank that the ~~private system~~ owner has secured all ~~state~~ State and federal permits, licenses, and approvals necessary to construct and operate the ~~improvements~~ clean water project to be financed by the loan.

(C) The ~~secretary~~ Secretary certifies to the ~~bond bank~~ Bond Bank that the loan eligibility priority established under section 4758 of this title entitles the applicant municipality to immediate financing or assistance under this chapter.

(D) The applicant municipality, in the case of applications by towns, cities, and incorporated villages, and with respect to all loans awarded after July 1, 1992, certifies to the ~~bond bank~~ Bond Bank that the project conforms to a duly adopted capital budget and program, consistent with chapter 117 of this title, for meeting the pollution control needs of the municipality.

(E) The applicant municipality, in the case of an application by a district, certifies to the ~~bond bank~~ Bond Bank that the project conforms to a capital budget and program duly adopted by the district in accordance with the provisions of its charter.

(b) The ~~bond bank~~ Bond Bank may make loans to a municipality for the preparation of final engineering plans and specifications for the construction of a ~~privately owned wastewater system~~ privately owned clean water project or element of such a project in the same manner as set forth in subsection 4756(b) of this title.

Sec. 8. 24 V.S.A. § 4763a is redesignated to read:

§ 4763a. LOANS TO MUNICIPALITIES FOR PRIVATELY OWNED
POTABLE WATER SUPPLIES

Sec. 9. 24 V.S.A. § 4763c is redesignated to read:

§ 4763c. LOANS TO MUNICIPALITIES FOR MUNICIPAL PUBLIC
WATER SUPPLY SYSTEMS

Sec. 10. 24 V.S.A. chapter 120, subchapter 3 is redesignated to read:

Subchapter 3. Private Loans for Privately Owned Public Water Systems

Sec. 11. 24 V.S.A. chapter 120, subchapter 4 is added to read:

Subchapter 4. Private Loans for Clean Water Projects

§ 4780. ELIGIBILITY AND LOAN APPLICATION

(a) The Vermont Economic Development Authority (VEDA) is authorized to make loans on behalf of the State to private entities for a clean water project;

provided, however, that no State funds are used. Such loans shall be issued and administered by VEDA pursuant to this subchapter.

(b) A private entity may apply to VEDA for a loan from the Vermont Environmental Protection Agency Pollution Control Revolving Fund, established in section 4753 of this title, for a clean water project. The loan proceeds shall be used to acquire, design, plan, construct, enlarge, repair, improve, or implement a clean water project. Loan proceeds shall not be used for operation and maintenance expenses or laboratory fees for monitoring.

(c) The Secretary and VEDA may prescribe any form of application or procedure for a loan hereunder, request from an applicant any information deemed necessary to implement this subchapter, and impose an application fee and an administrative fee determined reasonable and necessary to cover administrative costs. Fee proceeds shall be deposited in the administrative fee account established in subsection 4755(a) of this chapter.

§ 4782. CONDITIONS OF LOAN AGREEMENT

(a) VEDA may make loans to applicants on behalf of the State for one or more of the purposes set forth in subsection 4781(b) of this title. Each loan shall be made subject to the following conditions:

(1) The loan shall be evidenced by a note payable over a term not to exceed 30 years. Repayment shall commence not later than one year after completion of the project for which loan funds have been issued.

(2) The loan shall be secured with assets as determined by VEDA.

VEDA may also require that the applicant assign all or a portion of any revenues from the clean water project as security for the loan or may require the establishment of a reserve fund.

(3) The rate of interest charged for loans shall be set by the State Treasurer, taking into consideration prevailing borrowing rates available to similarly situated applicants from private lenders and the administrative fees to be charged to applicants. VEDA, in cooperation with the Secretary, shall periodically recommend interest rates to be set by the State Treasurer that are the lowest practicable rates consistent with maintaining the long-term integrity of the Fund. The interest rate set by the State Treasurer may be less than the prevailing borrowing rates available to similarly situated applicants from private lenders, but not less than zero percent.

(b) The loan agreement shall specify the terms and conditions of the loan and its repayment by the applicant, as well as other terms and conditions determined necessary by the Secretary and VEDA.

(c) Disbursement of loan proceeds shall be based on certification to the Secretary and VEDA by the loan recipient demonstrating that the costs for which reimbursement is requested have been incurred and paid by the recipient. The recipient shall provide supporting evidence of payment upon the request of VEDA. Partial disbursements of loan proceeds shall be made not more frequently than monthly.

(d) Interim financing charges or short-term interest costs may constitute an allowable cost of a project for which a loan is extended, provided VEDA approved in advance the terms, conditions, interest rate, and other related matters concerning the financing or interest cost. In the event short-term financing is unavailable to the applicant, VEDA may make interim loan disbursements not more frequently than monthly to the applicant and its general contractor as co-payees upon submission of a certified request for payment supported by actual invoices or other evidence satisfactory to VEDA of costs incurred.

(e) VEDA shall have the right prior to making any disbursement of the loan proceeds to require confirmation from an independent registered professional engineer that any work has been performed according to project plans and specifications approved by the Secretary.

(f) VEDA may require as part of the loan agreement that the applicant cause an audit of the project costs to be prepared and approved by VEDA prior to VEDA's making final payment of the loan amount.

(g) In the event of default, any amounts owed upon the loan shall be considered a debt for the purposes of 32 V.S.A. § 5932(4). VEDA may recover such debt pursuant to the setoff debt collection remedy established under 32 V.S.A. §§ 5933 and 5934.

§ 4783. QUALIFICATIONS FOR ELIGIBILITY; CERTIFICATION

No loan to an applicant shall be made under this subchapter until:

(1) The applicant has certified all of the following to VEDA:

(A) all State and federal permits and licenses necessary to undertake the project for which financing has been sought will be obtained prior to the expenditure of construction funds under the loan;

(B) the applicant has sufficient means to pay the principal and interest on the loans and to pay any anticipated costs of operating and maintaining the financed project;

(C) if the applicant is subject to the jurisdiction of the Public Utility Commission under 30 V.S.A §§ 102 and 203(6), the applicant has obtained the following approvals, if such approvals are necessary for the project, and has provided VEDA with copies of those approvals:

(i) the certificate of public good issued by the Public Utility Commission pursuant to 30 V.S.A. §§ 231 (public good) and 108 (approving the loan); and

(ii) the decision and order of the Public Utility Commission approving rates that are to be charged by the applicant.

(D) the municipality or municipalities in which the clean water project is located have provided a letter of support for the project.

(2) The Secretary has certified to VEDA that the applicant and the project qualify for financing or assistance under section 4784 of this title and that the project has priority for receipt of financial assistance.

§ 4784. LOAN PRIORITIES

(a) The Secretary shall at least annually prepare and certify to VEDA a list of privately owned clean water projects, ranked in priority order, that are eligible for financial assistance under this subchapter.

(b) In determining financing ability for clean water projects under this subchapter, the Secretary shall apply the criteria adopted pursuant to 10 V.S.A.

§ 1628; provided, however:

(1) No privately owned clean water project authorized under this subchapter shall be prioritized above a municipal clean water project.

(2) No more than 20 percent of the funds identified in the annual State intended use plan (IUP) and allocated for clean water projects may be used for loans to privately owned clean water projects, unless there occurs a surplus of funds, in which case those funds may be used to fund additional privately owned clean water projects.

§ 4785. LIABILITY AGAINST DEFAULT

Under no circumstance shall the State become responsible for owning or operating a clean water project when the loan recipient defaults on a loan obligation or abandons the project.

§ 4786. ACTION FOR RECEIVERSHIP

Upon default of a loan, VEDA shall have the right to petition the Superior Court in the county in which the clean water project is located, or the Public

Utility Commission for projects subject to the jurisdiction of the Commission, to appoint a receiver.

§ 4787. LOAN CONSOLIDATION

Loans, or the outstanding balance of loans, made for the purpose of preparing engineering plans for a project may be consolidated with any subsequent loans for construction.

* * * Sunset of Loans to Private Entities * * *

Sec. 12. SUSPENSION OF PRIVATE LOANS FOR CLEAN WATER
PROJECTS

(a) Neither the Vermont Economic Development Authority (VEDA) nor the Secretary of Natural Resources shall accept, review, or act on any applications for loans to private entities under 24 V.S.A. chapter 120, subchapter 4 submitted after June 30, 2023. However, VEDA and the Secretary shall continue to review and act on initial applications submitted on or before June 30, 2023, as well as any amendments to timely initial applications.

(b) It is the intent of the General Assembly that the private loans under 24 V.S.A. chapter 120, subchapter 4, the expansion of 24 V.S.A. chapter 120 to provide funding for natural resources projects, and the sponsorship program defined at 24 V.S.A. § 4752(18) shall all be reviewed during the 2023 legislative session.

* * * Technical Corrections * * *

Sec. 13. 24 V.S.A. § 4764 is amended to read:

§ 4764. PLANNING

(a) Engineering planning advance. A municipality or a combination of two or more municipalities desiring an advance of funds for engineering planning for public water supply systems, as defined in subdivision 4752(9) of this title, or improvements, or for ~~water pollution abatement and control facilities~~ clean water projects or improvements, may apply to the Department for an advance under this chapter. As used in this subsection, “engineering planning” may include source exploration, surveys, reports, designs, plans, specifications, or other engineering services necessary in preparation for construction of the types of systems or facilities referred to in this section.

* * *

Sec. 14. 24 V.S.A. § 4766 is amended to read:

§ 4766. AWARD OF ADVANCE

(a) The Department may award an engineering planning advance, as defined in section 4764 of this title, in an amount determined by standards established by the Department, and pursuant to the following:

(1) for public water supply systems, as defined in subdivision 4752(9) of this title, when it finds the same to be necessary in order to preserve or enhance the quality of water provided to the inhabitants of the municipality, or to alleviate an adverse public health condition, or to allow for orderly

development and growth of the municipality, except that no funds may be awarded until the Department determines that the applicant has complied with the provisions of 10 V.S.A. § 1676a, unless such funds are solely for the purpose of determining the effect of the proposed project on agriculture; or

(2) for planning of ~~water pollution abatement and control facilities~~ clean water projects, in order to enable a municipality to comply with water quality standards established under 10 V.S.A. chapter 47.

* * *

Sec. 15. 10 V.S.A. § 1251(18) is amended to read:

§ 1251. DEFINITIONS

Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:

* * *

(18) ~~“Pollution abatement facilities” means municipal sewage treatment plants, pumping stations, interceptor and outfall sewers, and attendant facilities as prescribed by the Department to abate pollution of the waters of the State.~~

[Repealed.]

* * *

Sec. 16. 10 V.S.A. § 1259(j) is amended to read:

(j) No person shall discharge waste from hydraulic fracturing, as that term is defined in 29 V.S.A. § 503, into or from a pollution abatement facility, as that term is defined in section ~~1251~~ 1278 of this title.

Sec. 17. 10 V.S.A. § 1278 is amended to read:

§ 1278. OPERATION, MANAGEMENT, AND EMERGENCY RESPONSE
PLANS FOR POLLUTION ABATEMENT FACILITIES

(a) Findings. The General Assembly finds that the State shall protect Vermont's lakes, rivers, and streams from pollution by implementing programs to prevent sewage spills to Vermont waters and by requiring emergency planning to limit the damage from spills which do occur. In addition, the General Assembly finds it to be cost-effective and generally beneficial to the environment to continue State efforts to ensure energy efficiency in the operation of treatment facilities.

(b) Planning requirement. Effective July 1, 2007, the Secretary of Natural Resources shall as part of a permit issued under section 1263 of this title, require a pollution abatement facility, as that term is defined in ~~section 1251 of this title~~ section, to prepare and implement an operation, management, and emergency response plan for those portions of each pollution abatement facility that include the treatment facility, the sewage pumping stations, and the sewer line stream crossing. As used in this section, "pollution abatement facility" means municipal sewage treatment plants, pumping stations, interceptor and outfall sewers, and attendant facilities as prescribed by the Department to abate pollution of the waters of the State.

(c) Collection system planning. As of July 1, 2010, the Secretary of Natural Resources, as part of a permit issued under section 1263 of this title,

shall require a pollution abatement facility, as that term is defined in ~~section 1251 of this title~~ subsection (b) of this section, to prepare and implement an operation, management, and emergency response plan for that portion of each pollution abatement facility that includes the sewage collection systems. The requirement to develop a plan under this subsection shall be included in a permit issued under section 1263 of this title, and a plan developed under this subsection shall be subject to public review and inspection.

* * *

Sec. 18. 10 V.S.A. § 1622 is amended to read:

§ 1622. ELIGIBLE PROJECTS

As used in this subchapter, eligible project costs for water pollution abatement and control facilities projects shall include equipment, conveyances, and structural or nonstructural facilities needed for and appurtenant to the prevention, management, treatment, storage, or disposal of sewage, waste, or stormwater, and the associated costs, including planning and design costs, necessary to construct the improvements, including costs to acquire land for the project.

Sec. 19. 24 V.S.A. § 4771(a) is amended to read:

(a) VEDA may make loans to applicants on behalf of the State for one or more of the purposes set forth in subsection 4770(b) of this title. Each such loan shall be made subject to the following conditions:

* * *

(4) The rate of interest charged for loans shall be set by the State Treasurer, taking into consideration prevailing borrowing rates available to similarly situated applicants from private lenders and administrative fees to be charged to applicants. VEDA, in cooperation with the Secretary, shall periodically recommend interest rates to be set by the State Treasurer which are the lowest practicable rates consistent with maintaining the long-term integrity of the Fund. The interest rate set by the State Treasurer may be less than the prevailing borrowing rates available to similarly situated applicants from private lenders, but not less than zero percent.

(5)(A) Notwithstanding subdivision (4) of this subsection, a privately owned nonprofit community type system may qualify for a 30-year loan term at an interest rate, plus administrative fee, to be established by the Secretary of Natural Resources ~~which~~ that shall be no more than three percent or less than minus three percent, provided that the applicant system meets the income level and annual household user cost requirements of a disadvantaged municipality as defined in subdivision 10 V.S.A. § 1571(9)(A), and at least 80 percent of the residential units served by the water system is continuously occupied by local residents and at least 80 percent of the water produced is for residential use.

(B) [Repealed.]

(C) If the Secretary determines that a privately owned nonprofit community type system qualifies for a loan under this subdivision, the Secretary shall certify the loan term and interest rate to VEDA. In no instance

shall the annual interest rate, plus an administrative fee, be less than is necessary to achieve an annual household user cost equal to one percent of the median household income of the applicant water system computed in the same manner as prescribed in subdivision ~~10 V.S.A. § 1624(b)(2)(B)~~ 4763c(b)(2) of this title.

Sec. 20. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: May 28, 2018