

Unofficial Draft Copy

As of: August 25, 2008 (2:23pm)

LC5015

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act establishing the sustainable development revolving fund program, providing definitions, allowing for rulemaking; authorizing bonds and the creation of debt; establishing an advisory committee; amending section 17-7-502, MCA; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 13] may be cited as the "Sustainable Development Revolving Fund Act".

NEW SECTION. **Section 2. Statement of purpose -- findings.**

(1) The purpose of [sections 1 through 13] is to help facilitate residential development in Montana by offering an incentive for improvements to existing public water and sewer systems to provide additional service and the implementation of public water and sewer systems in new subdivisions instead of individual water wells and sewer systems.

(2) The legislature finds that:

(a) the use of individual water wells exempt from permitting and individual septic systems is appropriate in many parts of Montana;

(b) in high-growth areas, the use of public water and sewer systems in subdivisions may be preferable to individual wells and septic systems in order to protect water quality and the holders of senior water rights;

(c) extending existing public systems or building new public systems is expensive;

(d) it may be difficult for local governments to finance the improvements to public systems and other public entities may not be able to afford to build new public systems; and

(e) it is in the best interests of the state to provide a revolving loan fund to help public entities pay for the building or extension of public water and sewer systems.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 13], unless the context requires otherwise, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department in the administration of the program, including but not limited to:

- (a) costs of servicing loans and issuing debt;
- (b) program startup costs;
- (c) financial, management, and legal consulting fees; and
- (d) reimbursement costs for support services from other state agencies.

(2) "Applicant" means an incorporated city or town, a county, a consolidated local government, a tribal government, a county or multicounty water or sewer district, or an authority as

defined in 75-6-304.

(3) "Cost" means, with reference to a project, all capital costs incurred or to be incurred for a public system, including but not limited to:

(a) engineering, financing, and other fees;

(b) interest during construction; and

(c) construction.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Intended use plan" means the annual plan adopted by the department that describes how the state intends to use the money in the revolving fund.

(9) "Loan" means a loan of money from the revolving fund for project costs.

(14) "Program" means the sustainable development revolving fund program established by [sections 1 through 13].

(2) "Public system" means improvements to existing public water or sewer systems in order to provide additional service or new public water or new public sewer systems proposed to be built by an applicant that will serve at least 15 service connections used by year-round residents of the area served by the system or will regularly serve at least 25 year-round residents.

(17) "Revolving fund" means the sustainable development revolving fund established by [section 4].

NEW SECTION. Section 4. Sustainable development revolving fund program. There is a program under which the state may

provide financial assistance to public systems. The program must be administered in accordance with [sections 1 through 13].

NEW SECTION. **Section 5. Rulemaking authority.** The department may adopt rules:

- (1) prescribing the form and content of applications for loans;
- (2) governing the application of the criteria for awarding loans;
- (3) establishing additional terms and conditions for the making of loans and the security instruments and other necessary agreements;
- (4) establishing ceilings on the amount of individual loans to be made if considered appropriate and necessary for the successful administration of the program;
- (5) to maintain the financial integrity of the program; and
- (6) implementing [sections 1 through 13].

NEW SECTION. **Section 6. Revolving fund.** (1) There is established in the state treasury a separate account designated as the sustainable development revolving fund. The corpus of the fund must be available in perpetuity for providing assistance under [sections 1 through 13]. There are established within the revolving fund a state allocation account, an administration account, and an investment income account.

- (2) There must be credited to:
 - (a) the state allocation account:

(i) the net proceeds of bonds of the state issued pursuant to [section 13], less any proceeds deposited to the administration account as provided in subsection (1)(c);

(ii) money appropriated by the legislature; and

(iii) other available funds;

(c) the administration account, an amount not to exceed 4% of the:

(i) the proceeds of bonds of the state issued pursuant to [section 12] as the department determines necessary;

(ii) money appropriated by the legislature; and

(iii) other available funds.

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds; and

(e) the debt service account, the interest portion of loan repayments.

(3) Each loan made under [sections 1 through 13] must be funded and disbursed from the state allocation account by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to [section 12] and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the

bonds.

(4) The department may establish additional accounts and subaccounts within the revolving fund that it considers necessary to account for the program money and to ensure compliance with [sections 1 through 13].

NEW SECTION. **Section 7. Use of revolving fund.** (1) Money in the revolving fund may be used to:

(a) make loans for public systems as provided in [sections 1 through 13];

(b) leverage the total amount of revolving funds available by providing a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, the net proceeds of which are deposited in the revolving fund;

(c) pay reasonable administrative costs of the program, not to exceed 4% of the:

(i) proceeds of bonds of the state issued pursuant to [section 12] as the department determines necessary;

(ii) money appropriated by the legislature; and

(iii) other available funds.

(h) reimburse the expenses, as provided for in 2-18-501 through 2-18-503 and 5-2-302, of the advisory committee established pursuant to 75-6-231 while on official committee business.

(2) Money in the fund may not be used for expenditures related to monitoring, operation, and maintenance.

NEW SECTION. **Section 8. Use of funds - statutory appropriation.** Money in the revolving fund is statutorily appropriated, as provided in 17-7-502, for the purposes of providing financial assistance to public systems.

NEW SECTION. **Section 9. Evaluation of projects and loan applications.** The department shall evaluate projects and loan applications. In evaluating projects and applications, the following factors must be considered:

- (1) the technical design of the project to ensure compliance with all applicable statutes, rules, and design standards;
- (2) the financial capacity of the applicant;
- (3) the financial, managerial, and technical ability of the applicant to properly operate and maintain the project;
- (4) the total financing of the project to ensure completion;
- (5) the viability of the public system;
- (6) the ability of the applicant to pay the costs of the project without the requested financial assistance;
- (7) the total amount of loan funds available for financial assistance in the revolving fund;
- (8) the total amount requested by other applications that have been received or that are likely to be received;
- (9) the ranking of the project on the priority list in the intended use plan; and
- (10) any other criteria that the department determines to be appropriate, considering the purposes of the program.

NEW SECTION. **Section 10. Applications for loans.** (1) The department shall establish loan application procedures, including forms for the applications. Each application for a loan must include:

(a) a reasonably detailed description of the project;

(b) a reasonably detailed estimate of the cost of the project;

(c) a timetable for the construction of the project and for payment of the cost of the project;

(d) identification of the source or sources of funds to be used in addition to the proceeds of the loan to pay the cost of the project;

(e) the source or sources of revenue proposed to be used to repay the loan;

(f) a current financial statement of the applicant showing assets, liabilities, revenue, and expenses;

(g) a statement as to whether, at the time of application, there are any outstanding loans, notes, bonds, or other obligations payable from the revenue of the public system and, if so, a description of the loans, notes, bonds, or other obligations;

(h) a statement as to whether, at the time of the application, there are any outstanding loans, notes, or other obligations of the applicant and, if so, a description of the loans, notes, or other obligations; and

(i) any other information that the department may require to

determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to:

- (i) engineering reports;
- (ii) economic feasibility studies; and
- (iii) legal opinions.

NEW SECTION. **Section 11. Loan conditions.** (1) Upon approval of an application by the department, the department may lend amounts on deposit in the revolving fund to a public system to pay part or all of the cost of a project. The loan is subject to the applicant complying with the following conditions:

(a) meeting requirements of financial capability set by the department to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment of a dedicated source of revenue and the establishment and maintenance by the applicant of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the public system or the applicant's financial authority;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than the term of the loan;

(c) agreeing to maintain proper financial records in accordance with generally accepted accounting standards and agreeing that all records are subject to audit;

(d) providing legal assurance that all necessary property

titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(e) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department to fulfill its responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(h) complying with plan, specification, and other requirements for public systems established by the department of environmental quality; and

(i) providing for proper construction inspection and project management.

(2) Each loan, unless prepaid, is payable with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date.

(3) The department may determine the interest rate to ensure that the interest payments on the loans will be sufficient to pay for administrative costs and other reasonable costs of the program.

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the borrower, in a form prescribed or approved by the department. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department, may impose a reasonable administrative fee that may be paid from the

proceeds of the loan or other available funds of the applicant.

Administrative fees may be deposited:

(a) in a special administrative costs account that the department may create for that purpose outside the revolving fund provided for in [section 6]; or

(b) in the administrative account provided for in [section 6]. In determining into which account the administrative fees are deposited, the department shall take into consideration the needs and requirements of the programs. Money deposited in the special administrative costs account or the administration account must be used for the payment of administrative costs of the program.

NEW SECTION. **Section 12. Authorization of bonds --**

allocation of proceeds. (1) The board of examiners is authorized, upon request of the department, to issue and sell bonds of the state as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premium and accrued interest received, the amounts to be used to pay interest on the bonds, or the costs of issuing the bonds, are allocated to the state allocation account or the administration account of the revolving fund, as provided in [section 6]. Any premium and accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account of the revolving

fund. Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds. For purposes of 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department and may be used for the purposes authorized in [sections 1 through 13] without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the revolving fund and the interest component of the loan repayments credited to the revolving fund as security for the bonds.

(4) (a) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the power of a trustee inside or outside the state.

(b) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(c) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, to provide for the rights of the bondholders, and to ensure

compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer or the department, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(d) A trust indenture or an executed counterpart of a trust indenture developed pursuant to [sections 1 through 13] must be filed with the secretary of state.

NEW SECTION. Section 13. Priority -- intended use plan -- advisory committee. (1) Priority for loans must be given to applicants that propose improvements to existing public systems in order to provide additional service.

(2) The department shall prepare an annual intended use plan.

(3) The intended use plan must include:

(a) a list of projects in the state that are eligible for assistance, including both the priority assigned to each project based on public health needs and on the financial needs of the project and, to the extent known, the expected funding schedule for each project; and

(b) a description of the funds to be allocated under [section 7] for the annual fiscal period following publication of the intended use plan.

(4) Before finalizing an intended use plan, the department shall prepare a draft document containing the information required in subsection (3) and shall provide public notice and opportunity to comment on the draft document.

(5) (a) Following the public comment period provided for in subsection (4) and any department modifications to the intended use plan resulting from the public comment, a summary of the public comment and the intended use plan must be presented for review, comment, and recommendations to an advisory committee formed by the department and consisting of six individuals from the following entities appointed by their respective presiding officers, directors, or executive officials:

(i) one member from the Montana league of cities and towns;

(ii) one member from the Montana association of counties;

(iii) one member from the department of natural resources and conservation;

(iv) one member from the department of environmental quality; and

(v) two members from the legislature. One member must be from the house of representatives and one from the senate, and subject to 5-5-234, one must be from the majority party and one must be from the minority party.

(b) The advisory committee is attached to the department for administrative purposes only.

(5) The department shall address in writing any comments and recommendations provided by the advisory committee provided for in subsection (4).

Section 14. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503;

41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623;
53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415;
69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150;
77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518;
82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; 90-9-306;
[section 8]; and section 2, Chapter 6, Special Laws of May 2007.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates

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upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 10, Ch. 6, Sp. L. May 2007, the inclusion of section 2, Chapter 6, Special Laws of May 2007, terminates July 1, 2008; and pursuant to sec. 6, Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 is effective July 1, 2008, and terminates June 30, 2009.) "

{ *Internal References to 17-7-502:*

2-17-105	5-11-120	5-11-407	5-13-403
7-4-2502	10-1-1202	10-1-1303	10-2-603
10-3-203	10-3-310	10-3-312	10-3-312
10-3-314	10-4-301	15-1-111	15-1-121
15-1-218	15-23-706	15-31-906	15-35-108
15-36-332	15-37-117	15-39-110	15-65-121
15-70-101	15-70-369	15-70-601	16-11-509
17-1-508	17-3-106	17-3-212	17-3-222
17-3-241	17-6-101	17-7-304	17-7-501
18-11-112	19-3-319	19-6-404	19-6-410
19-9-702	19-13-604	19-17-301	19-18-512
19-19-305	19-19-506	19-20-604	19-20-607
19-21-203	20-8-107	20-9-534	20-9-622
20-26-1503	20-26-1503	22-3-1004	23-4-105
23-4-202	23-4-204	23-4-302	23-4-302
23-4-304	23-5-306	23-5-409	23-5-612
23-7-301	23-7-402	37-43-204	37-51-501
39-71-503	41-5-2011	42-2-105	44-1-504
44-12-206	44-13-102	50-4-623	53-1-109
53-6-703	53-24-108	53-24-108	53-24-206
60-11-115	61-3-415	69-3-870	75-1-1101
75-1-1101	75-5-1108	75-6-214	75-10-622
75-11-313	77-1-108	77-2-362	80-2-222
80-4-416	80-5-510	80-11-518	82-11-161
87-1-513	90-1-115	90-1-115	90-1-205
90-3-1003	90-9-306}		

NEW SECTION. **Section 15. ???Funding???** A creation of state debt would requires a 2/3 vote of each house and would need a repayment funding source. A general fund appropriation could provide a lump sum for the program. Other options???

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NEW SECTION. **Section 16. {standard} Codification**

instruction. [Sections 1 through 14] are intended to be codified as an integral part of Title 90, chapter 6, and the provisions of Title 90, chapter 6, apply to [sections 1 through 14].

- END -

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