

HOUSE BILL NO. 601

INTRODUCED BY O'KEEFE, GAGE, HARP, HALLIGAN, REAM,
WALKER, RANEY, O'CONNELL, WESTLAKE, CAMPBELL, PATTERSON,
DRISCOLL, LYNCH, KOEHNKE, IVERSON, JENKINS, COHEN,
J. BROWN, REHBERG, GLASER, JERGESON, STANG, RAPP-SVRCEK,
WYATT, GILBERT, JOHNSON, ELLIOTT, HARPER, CODY, STEPPLER,
DEBRUYCKER, ABRAMS, KADAS, SPAETH, GERVAIS, COCCHIARELLA,
DARKO, STRIZICH, KIMBERLEY, PAVLOVICH, BLOTKAMP, DAVIS,
MCDONOUGH, MOORE, BARDANOUE, SQUIRES, BISHOP, DEMARS,
ADDY, THOFT, NISBET, BACHINI, MAZUREK, VINCENT, QUILICI,
PECK, BRADLEY, D. BROWN, RAMIREZ, MERCER, GRADY, MENAHAN,
MCCORMICK, DAILY, RUSSELL, BROOKE, GIACOMETTO, SCHYE

BY REQUEST OF THE DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION AND THE
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

IN THE HOUSE

FEBRUARY 7, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
FEBRUARY 8, 1989	FIRST READING.
FEBRUARY 16, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. PRINTING REPORT.
FEBRUARY 18, 1989	SECOND READING, DO PASS.
FEBRUARY 19, 1989	ENGROSSING REPORT.
FEBRUARY 20, 1989	ON MOTION TAKEN FROM ENGROSSING AND REREFERRED TO COMMITTEE ON APPROPRIATIONS.
MARCH 17, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 18, 1989	PRINTING REPORT.
MARCH 22, 1989	SECOND READING, DO PASS. ENGROSSING REPORT.

MARCH 23, 1989

THIRD READING, PASSED.
AYES, 95; NOES, 2.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 27, 1989

INTRODUCED AND REFERRED TO COMMITTEE
ON FINANCE & CLAIMS.

FIRST READING.

IN THE HOUSE

APRIL 8, 1989

ON MOTION, RULES SUSPENDED TO ALLOW
TRANSMITTAL AFTER 83RD DAY

IN THE SENATE

APRIL 15, 1989

COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

APRIL 17, 1989

SECOND READING, CONCURRED IN.

APRIL 19, 1989

THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 19, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 601

HARP

BY REQUEST OF THE DEPARTMENT OF NATURAL

RESOURCES AND CONSERVATION AND THE

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A WASTEWATER

TREATMENT WORKS REVOLVING LOAN PROGRAM; ESTABLISHING A

WASTEWATER TREATMENT WORKS REVOLVING FUND; AUTHORIZING THE

ACCEPTANCE OF FEDERAL CAPITALIZATION GRANTS UNDER THE

FEDERAL CLEAN WATER ACT; AUTHORIZING THE DEPARTMENT OF

NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF

HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER THE PROGRAM;

AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND

THE STATE'S SHARE OF THE REVOLVING FUND; STATUTORILY

APPROPRIATING TO THE DEPARTMENT OF NATURAL RESOURCES AND

CONSERVATION AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL

SCIENCES ALL MONEY RECEIVED UNDER THE PROGRAM; AMENDING

SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

This bill creates a revolving loan program capitalized with federal and state funds to provide financial assistance for water pollution control projects. A statement of intent is required for this bill because it delegates rulemaking

authority to the board of health and environmental sciences and the board of natural resources and conservation to implement the provisions of this bill.

The boards are authorized to adopt rules necessary for the establishment and administration of the water treatment works revolving loan program. The authority includes establishing rules:

(1) prescribing the form and content of applications for loans and refinancing agreements;

(2) governing the application of the criteria for awarding loans;

(3) establishing additional terms and conditions for making the loans and the security instruments and other necessary agreements; and

(4) establishing ceilings on the amount of individual loans, if deemed appropriate and necessary for the successful administration of the program, to be made to municipalities and private concerns.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [This act] may be cited as the "Wastewater Treatment Revolving Fund Act".

NEW SECTION. **Section 2.** Definitions. Unless the context requires otherwise, in [this act] the following definitions apply:

1 (1) "Administrative costs" means costs incurred by the
2 department and the department of natural resources and
3 conservation in the administration of the program, including
4 but not limited to costs of servicing loans and issuing
5 debt; program start-up costs; financial, management, and
6 legal consulting fees; and reimbursement costs for support
7 services from other state agencies.

8 (2) "Cost" means, with reference to a wastewater
9 treatment works project, all capital costs incurred or to be
10 incurred by a municipality or a private concern, including
11 but not limited to engineering, financing and other fees,
12 interest during construction, and a reasonable allowance for
13 contingencies to the extent permitted by the federal act and
14 regulations promulgated thereunder.

15 (3) "Federal act" means the Federal Water Pollution
16 Control Act, also known as the Clean Water Act, 33 U.S.C.
17 1251 through 1387, as amended.

18 (4) "Loan" means a loan of money from the revolving
19 fund to a municipality or a private concern.

20 (5) "Municipality" means any city, town, or other local
21 government unit having authority to own and operate a sewage
22 system and wastewater treatment works.

23 (6) "Private concern" means an individual or other
24 entity eligible for a loan or loans for a pollution control
25 project for a nonpoint source under section 319 of the

1 federal act.

2 (7) "Program" means the wastewater treatment works
3 revolving loan program established by [this act].

4 (8) "Project" means a wastewater treatment works or
5 part of a wastewater treatment works for which a
6 municipality or private concern makes an application for a
7 loan or other financial assistance.

8 (9) "Revolving fund" means the fund established by
9 [section 5].

10 NEW SECTION. **Section 3. Wastewater treatment works**
11 **revolving loan program.** There is a program under which the
12 state may provide financial assistance to municipalities and
13 private concerns to finance or refinance part or all of the
14 cost of projects. The program must be administered in
15 accordance with [this act] and the federal act.

16 NEW SECTION. **Section 4. Authorization of agreement --**
17 **content.** (1) The department may enter into a capitalization
18 grant agreement or other agreement with the United States
19 environmental protection agency to implement the program and
20 may accept from that agency other grants and loans to carry
21 out the program.

22 (2) In entering into the agreement, the director of the
23 department may commit the state to:

24 (a) accept grant payments from the environmental
25 protection agency in accordance with the schedule

1 established by the administrator of that agency and deposit
2 the payments in the revolving fund established in [section
3 5];

4 (b) deposit in the revolving fund from state money an
5 amount equal to at least 20% of the total amount of all
6 capitalization grants made to the state as provided by
7 [section 5] on or before the date on which each quarterly
8 federal grant payment is made to the state;

9 (c) provide financial assistance to municipalities and
10 private concerns in accordance with [this act] in an amount
11 equal to 120% of the amount of each grant payment within a
12 time period not to exceed 1 year after receipt of a grant;

13 (d) expend all funds in the revolving fund in an
14 expeditious and timely manner;

15 (e) use all funds deposited in the revolving fund as a
16 result of the capitalization grant to ensure progress, as
17 determined by the governor of the state, toward compliance
18 with enforceable deadlines, goals, and requirements of the
19 federal act;

20 (f) expend each quarterly grant payment in accordance
21 with the laws and procedures applicable to commitment or
22 expenditure of revenues of the state;

23 (g) use accounting, audit, and fiscal procedures
24 conforming to generally accepted government accounting
25 standards;

1 (h) as a condition of making a loan or providing other
2 financial assistance from the revolving fund, require that
3 the municipality or private concern will maintain project
4 accounts in accordance with generally accepted government
5 accounting standards;

6 (i) make annual reports to the environmental protection
7 agency concerning the use of the revolving fund as required
8 by the federal act; and

9 (j) any other covenants, commitments, and obligations
10 necessary to ensure that the state's administration of the
11 program is consistent with the provisions of [this act].

12 **NEW SECTION. Section 5. Revolving fund.** (1) There is
13 established in the state treasury a separate account
14 designated as the wastewater treatment works revolving fund.
15 There are established in the revolving fund as subaccounts a
16 federal allocation account, a state allocation account, an
17 administration account, an investment income account, and a
18 debt service account.

19 (2) There must be credited to:

20 (a) the federal allocation account, all amounts
21 received by the state pursuant to the federal act as
22 capitalization grants for a state revolving fund to assist
23 construction of wastewater treatment works and grants or
24 transfers of grants received under subchapter II of the
25 federal act for construction of wastewater treatment works;

(b) the state allocation account, the proceeds of bonds of the state issued pursuant to [section 11] and other money appropriated by the legislature;

(c) the administration account, 4%, or the maximum amount allowed by the federal act, of the capitalization grant award for payment of administrative costs;

(d) the investment account, all money received from investment of amounts in the other accounts in the revolving fund; and

(e) the debt service account, all interest earnings on bond proceeds and the interest portion of loan repayments.

(3) Each loan made as authorized by [section 10] must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department of natural resources and conservation as recommended by the department, and all amounts received in repayment of principal of a loan must be credited in the same proportion to the federal allocation account or the state allocation account, or both. All amounts received in payment of interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to [section 11] 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 by the board of examiners, upon request

of the department of natural resources and conservation, to other accounts within the revolving fund.

(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund as it considers necessary to account for the program money and to ensure compliance with the federal act and [this act].

NEW SECTION. **Section 6.** Uses of revolving fund. Money in the revolving fund may be used to:

(1) make loans to municipalities and private concerns to finance all or a portion of the cost of a project;

(2) buy or refinance debt obligations of municipalities that were issued to finance projects within the state at or below market rates, provided that the obligations were incurred after March 7, 1985;

(3) guarantee or purchase insurance for obligations of municipalities that were issued to finance projects in order to enhance credit or reduce interest rates;

(4) provide a source of revenue or security for general obligation bonds the proceeds of which are deposited in the revolving fund;

(5) provide loan guarantees for similar revolving funds established by municipalities;

(6) earn interest on fund accounts; and

(7) pay reasonable administrative costs of the

1 revolving fund program not to exceed 4%, or the maximum
2 amount allowed under the federal act, of all federal grant
3 awards to the fund.

4 NEW SECTION. Section 7. Applications. (1) The
5 department shall, after consultation with the department of
6 natural resources and conservation, establish loan
7 application procedures, including forms for the
8 applications. Each application for a loan to finance
9 construction of a project must include:

10 (a) a reasonably detailed description of the project;

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

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

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

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

20 (f) if the applicant is a municipality, a statement as
21 to whether, at the time of application, there are any
22 outstanding bonds, notes, or other obligations of the
23 municipality that were issued or incurred to finance any
24 part of the municipality's sewage system and, if so, a
25 description of the bonds, notes, or other obligations; and

1 (g) any other information that the department or the
2 department of natural resources and conservation may require
3 to determine the feasibility of a project and the
4 applicant's ability to repay the loan, including but not
5 limited to engineering reports, economic feasibility
6 studies, and legal opinions.

7 (2) Each application for a loan to refinance a project,
8 including a purchase of outstanding obligations issued by a
9 municipality to finance a project in whole or in part, must
10 include:

11 (a) a reasonably detailed description of the project;

12 (b) a schedule of the cost of the project;

13 (c) the date on which construction of the project
14 began;

15 (d) a description of the bonds, notes, or other
16 obligations to be refinanced and of any other notes, bonds,
17 or obligations issued or incurred to finance any part of the
18 municipality's sewage system; and

19 (e) any other information that the department or the
20 department of natural resources and conservation may
21 require.

22 (3) Each application for financial assistance in the
23 form of a guaranty or the purchase of insurance for a
24 municipal obligation must include all items required by
25 subsection (1) and any other information the department may

1 require.

2 **NEW SECTION. Section 8. Evaluation of applications.**

3 After consultation with the department of natural resources
4 and conservation, the department shall evaluate and annually
5 rank applications for loans and other financial assistance.
6 In ranking the applications, the department must consider
7 the following factors:

8 (1) the ability of the municipality or private concern
9 to pay the costs of the project without the requested
10 financial assistance;

11 (2) the amount available for financial assistance in
12 the revolving fund;

13 (3) the total amount requested by other applications
14 that have been received or that are likely to be received;

15 (4) the need for and benefit to be derived from the
16 project;

17 (5) in the case of an application to refinance an
18 outstanding obligation, the benefit of refinancing as
19 measured by a decrease in interest rates and whether the
20 refinancing permits the construction of an additional
21 project by the municipality; and

22 (6) any other criteria that the department determines
23 appropriate, considering the purposes of the federal act and
24 the program.

25 **NEW SECTION. Section 9. Rulemaking.** The board and the

1 board of natural resources and conservation may adopt rules
2 within their respective authorities established within the
3 provisions of [this act], including rules:

4 (1) prescribing the form and content of applications
5 for loans and refinancing agreements;

6 (2) governing the application of the criteria for
7 awarding loans;

8 (3) establishing additional terms and conditions for
9 the making of loans and the security instruments and other
10 necessary agreements; and

11 (4) establishing ceilings on the amount of individual
12 loans to be made to municipalities and private concerns, if
13 considered appropriate and necessary for the successful
14 administration of the program.

15 **NEW SECTION. Section 10. Loans.** (1) Upon approval of
16 an application by the department, the department of natural
17 resources and conservation may lend amounts on deposit in
18 the revolving fund to a municipality or private concern to
19 pay part or all of the cost of a project or to buy or
20 refinance an outstanding obligation of a municipality that
21 was issued to finance a project. The loan is subject to the
22 municipality or private concern complying with the following
23 conditions:

24 (a) meeting requirements of financial capability set by
25 the department of natural resources and conservation to

1 assure sufficient revenues to operate and maintain the
2 project for its useful life and to repay the loan;

3 (b) agreeing to operate and maintain the project
4 properly over its structural and material design life, which
5 may not be less than 20 years;

6 (c) agreeing to maintain proper financial records in
7 accordance with recognized government accounting procedures
8 and agreeing that all records are subject to audit;

9 (d) meeting the requirements listed in the federal act
10 for projects constructed with funds directly made available
11 by federal capitalization grants;

12 (e) providing legal assurance that all necessary
13 property titles, easements, and rights-of-way have been
14 obtained to construct, operate, and maintain the project;

15 (f) submitting an engineering report evaluating the
16 proposed project, including information demonstrating its
17 cost-effectiveness and environmental information necessary
18 for the department and the department of natural resources
19 and conservation to fulfill their responsibilities under the
20 Montana Environmental Policy Act and rules adopted to
21 implement that act;

22 (g) complying with plan and specification requirements
23 for public wastewater systems established by the board; and

24 (h) providing for proper construction inspection and
25 project management.

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

7 (3) Subject to the limitations of the federal act, the
8 interest rate on a loan must enable the state to pay the
9 principal of and interest on the bonds issued pursuant to
10 [section 11].

11 (a) The interest rate must be determined as of the date
12 the loan is authorized by the department of natural
13 resources and conservation.

14 (b) The rate may include any additional rate that the
15 department of natural resources and conservation considers
16 reasonable or necessary to provide a reserve for the
17 repayment of the loan. The additional rate may be fixed or
18 variable or may be calculated according to a formula, and it
19 may differ from the rate established for any other loan.

20 (4) Each loan must be evidenced by a bond, note, or
21 other evidence of indebtedness of the municipality or
22 private concern, in a form prescribed or approved by the
23 department of natural resources and conservation, except
24 that the bond, note, or other evidence must include
25 provisions required by the federal act and must be

consistent with the provisions of [this act]. 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 of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private concern. Administrative fees must be deposited in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in [section 5]. Money deposited in the special administrative costs account must be used for the payment of administrative costs of the program.

NEW SECTION. Section 11. Authorization of bonds -- appropriation of proceeds. (1) The board of examiners is authorized, upon request of the department of natural resources and conservation, to issue and sell bonds of the state in an aggregate principal amount not exceeding \$10 million to provide money for the revolving loan 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, are appropriated to the state allocation account of the wastewater treatment works revolving fund. Any premium and accrued interest must be deposited to the debt service account. Proceeds of bonds deposited in the state allocation account may be used to pay the costs of issuing the bonds. For purposes of sections 17-5-803 and 17-5-804, the state allocation account constitutes a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in [this act] 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 of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and the revolving fund as security for the bonds.

NEW SECTION. Section 12. Statutory appropriation. Money in the revolving fund is statutorily appropriated, as provided in 17-7-502, for the purposes of making loans to municipalities and private concerns, paying administrative costs of the program, and paying debt service on

obligations. Money in the special administrative costs account authorized by [section 10] is statutorily appropriated for administrative costs of the department and the department of natural resources and conservation relating to the program.

NEW SECTION. Section 13. Creation of debt. The legislature, through the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed \$10 million and the issuance and sale of general obligation bonds in this amount for the purpose of providing the state's share of the program.

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: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987; and [section 12].

(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

LC 0222/01

1 such payments. (In subsection (3): pursuant to sec. 15, Ch.
2 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
3 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
4 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
5 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
6 1987, terminates July 1, 1988.)"

7 NEW SECTION. **Section 15.** Codification instruction.
8 [Sections 1 through 13] are intended to be codified as an
9 integral part of Title 75, chapter 5, and the provisions
10 Title 75, chapter 5, apply to [sections 1 through 13].

11 NEW SECTION. **Section 16.** Requirements for approval of
12 state debt -- severability. Because [section 13] authorizes
13 the creation of a state debt, a vote of two-thirds of the
14 members of each house is required for enactment of [section
15 13]. If [this act] is not approved by the required vote,
16 [section 13] is void. The remaining sections of [this act]
17 are valid and remain in effect in all valid applications
18 upon enactment.

19 NEW SECTION. **Section 17.** Effective date. [This act] is
20 effective July 1, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB601, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act entitled "An act creating the wastewater treatment works revolving loan program; establishing a treatment works revolving fund; authorizing the acceptance of federal capitalization grants under the Federal Clean Water Act; assigning responsibility to the Department of Natural Resources and Conservation and the Department of Health and Environmental Sciences with respect thereto; authorizing the issuance of general obligation bonds to fund the state's share of the revolving fund; and statutorily appropriating to the Department of Natural Resources and Conservation and the Department of Health and Environmental Sciences all monies received under the program."

The program will provide reduced interest loans for communities to finance water pollution control projects. The program will be designed to provide a reliable source of funds for these purposes in perpetuity.

ASSUMPTIONS:

1. The revolving loan program will be funded with appropriations authorized by the 1987 Amendments to the Federal Water Pollution Control Act for a six-year period beginning with FFY89. Grants made by the federal government to the state to capitalize the loan program must be matched by a state share equal to 20% of the federal appropriation. Montana's share, as provided for under this legislation, will be provided through sale of general obligation bonds. Bond issuance costs are estimated to be 3%. This loan program would increase state debt but would not affect the state's bond rating.
2. Federal monies shown for the biennium come from appropriations for federal fiscal years 1989, 90, and 91. The FFY89 funds are actual appropriations; the 90 and 91 funds are based on authorized appropriations.
3. Up to 4% of the capitalization grant can be utilized for administration of the program. Administrative costs specific to loan processing will be charged against the loan. Future administrative costs after federal payments cease will be charged against the loan. Administrative costs assumed hiring of one additional FTE and support of existing DHES and DNRC staff. Use of financial consultants is also anticipated.

FISCAL IMPACT:

	Current	FY90		Current	FY91	
	Law	Proposed	Change	Law	Proposed	Change
Total Revenue:	\$ -0-	\$7,162,737	\$7,162,737	\$ -0-	\$9,998,268	\$9,998,268
Total Expenditures:	\$ -0-	\$7,162,737	\$7,162,737	\$ -0-	\$9,998,268	\$9,998,268
Net Effect:	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-


DATE 2/13/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING


DATE 2/13/89

MARK O'KEEFE, PRIMARY SPONSOR

Fiscal Note for HB601, as introduced

Corrected

HB601

Fiscal Note Request HB601 as introduced

Form BD-15

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FUND IMPACT:

All federal revenues will be provided by a grant from the Environmental Protection Agency. State funds are derived by bond proceeds.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

All principal and interest payments provided on loans made to local governments for water pollution control projects must be paid back to the revolving fund for future disbursement. Interest rates can vary from 0% to market rates with payment periods not to exceed 20 years. With reduced interest rates, local expenditures for needed projects will be reduced in comparison to other forms of public finance through borrowing. Loss of financial assistance provided through grants will impose a financial hardship on many small communities.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

This program will provide a long-range source of financial assistance for water pollution control facilities. The program is capitalized with federal and state funds for a six-year period with all principal and interest earnings to be deposited back into the fund. The program will be designed to operate in perpetuity. Many wastewater treatment facilities built initially with federal grants will require upgrading or replacement in the 1990's. New sewage collection systems for unsewered communities have been identified as a major need in Montana. This program will provide a reliable source of financing for this type of infrastructure project. Federal funds of \$39,916,200 and a state match of \$8,222,700 are estimated amounts to be used to capitalize this program over a six-year period.

Corrected HB 601

STATE OF MONTANA - FISCAL NOTE

Form BD-15

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A bill for an act entitled "An act creating the wastewater treatment works revolving loan program; establishing a treatment works revolving fund; authorizing the acceptance of federal capitalization grants under the Federal Clean Water Act; assigning responsibility to the Department of Natural Resources and Conservation and the Department of Health and Environmental Sciences with respect thereto; authorizing the issuance of general obligation bonds to fund the state's share of the revolving fund; and statutorily appropriating to the Department of Natural Resources and Conservation and the Department of Health and Environmental Sciences all monies received under the program."

The program will provide reduced interest loans for communities to finance water pollution control projects. The program will be designed to provide a reliable source of funds for these purposes in perpetuity.

ASSUMPTIONS:

1. The revolving loan program will be funded with appropriations authorized by the 1987 Amendments to the Federal Water Pollution Control Act for a six-year period beginning with FFY89. Grants made by the federal government to the state to capitalize the loan program must be matched by a state share equal to 20% of the federal appropriation. Montana's share, as provided for under this legislation, will be provided through sale of general obligation bonds. Bond issuance costs are estimated to be 3%. This loan program would increase state debt but would not affect the state's bond rating.
2. Federal monies shown for the biennium come from appropriations for federal fiscal years 1989, 90, and 91. The FFY89 funds are actual appropriations; the 90 and 91 funds are based on authorized appropriations.
3. Up to 4% of the capitalization grant can be utilized for administration of the program. Administrative costs specific to loan processing will be charged against the loan. Future administrative costs after federal payments cease will be charged against the loan. Administrative costs assumed hiring of one additional FTE and support of existing DHES and DNRC staff. Use of financial consultants is also anticipated.

FISCAL IMPACT:

	Current Law	FY90 Proposed Law	Change	Current Law	FY91 Proposed Law	Change
Total Revenue:	\$ -0-	\$7,162,737	\$7,162,737	\$ -0-	\$9,998,268	\$9,998,268
Total Expenditures:	\$ -0-	\$7,162,737	\$7,162,737	\$ -0-	\$9,998,268	\$9,998,268
Net Effect:	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-


DATE 2/13/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING


DATE 2/13/89

MARK O'KEEFE, PRIMARY SPONSOR

Fiscal Note for HB601, as introduced

HB 601

FUND IMPACT:

All federal revenues will be provided by a grant from the Environmental Protection Agency. State funds are derived by bond proceeds.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

All principal and interest payments provided on loans made to local governments for water pollution control projects must be paid back to the revolving fund for future disbursal. Interest rates can vary from 0% to market rates with payment periods not to exceed 20 years. With reduced interest rates, local expenditures for needed projects will be reduced in comparison to other forms of public finance through borrowing. Loss of financial assistance provided through grants will impose a financial hardship on many small communities.

TECHNICAL NOTES:

This program will provide a long-range source of financial assistance for water pollution control facilities. The program is capitalized with federal and state funds for a six-year period with all principal and interest earnings to be deposited back into the fund. The program will be designed to operate in perpetuity. Many wastewater treatment facilities built initially with federal grants will require upgrading or replacement in the 1990's. New sewage collection systems for unsewered communities have been identified as a major need in Montana. This program will provide a reliable source of financing for this type of infrastructure project. Federal funds of \$39,916,200 and a state match of \$8,222,700 are estimated amounts to be used to capitalize this program over a six-year period.

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 601

INTRODUCED BY O'KEEFE, GAGE, HARP, HALLIGAN, REAM,
WALKER, RANEY, O'CONNELL, WESTLAKE, CAMPBELL, PATTERSON,
DRISCOLL, LYNCH, KOEHNKE, IVERSON, JENKINS, COHEN,
J. BROWN, REHBERG, GLASER, JERGESON, STANG, RAPP-SVRCEK,
WYATT, GILBERT, JOHNSON, ELLIOTT, HARPER, CODY, STEPPLER,
DEBRUYCKER, ABRAMS, KADAS, SPAETH, GERVAIS, COCCHIARELLA,
DARKO, STRIZICH, KIMBERLEY, PAVLOVICH, BLOTKAMP, DAVIS,
MCDONOUGH, MOORE, BARDANOUE, SQUIRES, BISHOP, DEMARS,
ADDY, THOFT, NISBET, BACHINI, MAZUREK, VINCENT, QUILICI,
PECK, BRADLEY, D. BROWN, RAMIREZ, MERCER, GRADY, MENAHAN,
MCCORMICK, DAILY, RUSSELL, BROOKE, GIACOMETTO

BY REQUEST OF THE DEPARTMENT OF NATURAL

RESOURCES AND CONSERVATION AND THE

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A WASTEWATER
TREATMENT WORKS REVOLVING LOAN PROGRAM; ESTABLISHING A
WASTEWATER TREATMENT WORKS REVOLVING FUND; AUTHORIZING THE
ACCEPTANCE OF FEDERAL CAPITALIZATION GRANTS UNDER THE
FEDERAL CLEAN WATER ACT; AUTHORIZING THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER THE PROGRAM;
AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND
THE STATE'S SHARE OF THE REVOLVING FUND; STATUTORILY

APPROPRIATING TO THE DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
SCIENCES ALL MONEY RECEIVED UNDER THE PROGRAM; AMENDING
SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

This bill creates a revolving loan program capitalized
with federal and state funds to provide financial assistance
for water pollution control projects. A statement of intent
is required for this bill because it delegates rulemaking
authority to the board of health and environmental sciences
and the board of natural resources and conservation to
implement the provisions of this bill.

The boards are authorized to adopt rules necessary for
the establishment and administration of the water treatment
works revolving loan program. The authority includes
establishing rules:

- (1) prescribing the form and content of applications
for loans and refinancing agreements;
- (2) governing the application of the criteria for
awarding loans;
- (3) establishing additional terms and conditions for
making the loans and the security instruments and other
necessary agreements; and
- (4) establishing ceilings on the amount of individual

loans, if deemed appropriate and necessary for the successful administration of the program, to be made to municipalities and private concerns.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [This act] may be cited as the "Wastewater Treatment Revolving Fund Act".

NEW SECTION. **Section 2.** Definitions. Unless the context requires otherwise, in [this act] the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to costs of servicing loans and issuing debt; program start-up costs; financial, management, and legal consulting fees; and reimbursement costs for support services from other state agencies.

(2) "Cost" means, with reference to a wastewater treatment works project, all capital costs incurred or to be incurred by a municipality or a private concern, including but not limited to engineering, financing and other fees, interest during construction, and a reasonable allowance for contingencies to the extent permitted by the federal act and regulations promulgated thereunder.

(3) "Federal act" means the Federal Water Pollution

Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended.

(4) "Loan" means a loan of money from the revolving fund to a municipality or a private concern.

(5) "Municipality" means any city, town, or other local government unit having authority to own and operate a sewage system and wastewater treatment works.

(6) "Private concern" means an individual or other entity eligible for a loan or loans for a pollution control project for a nonpoint source under section 319 of the federal act.

(7) "Program" means the wastewater treatment works revolving loan program established by [this act].

(8) "Project" means a wastewater treatment works or part of a wastewater treatment works for which a municipality or private concern makes an application for a loan or other financial assistance.

(9) "Revolving fund" means the fund established by [section 5].

NEW SECTION. **Section 3.** Wastewater treatment works revolving loan program. There is a program under which the state may provide financial assistance to municipalities and private concerns to finance or refinance part or all of the cost of projects. The program must be administered in accordance with [this act] and the federal act.

NEW SECTION. Section 4. Authorization of agreement --

content. (1) The department may enter into a capitalization grant agreement or other agreement with the United States environmental protection agency to implement the program and may accept from that agency other grants and loans to carry out the program.

(2) In entering into the agreement, the director of the department may commit the state to:

(a) accept grant payments from the environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in [section 5];

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by [section 5] on or before the date on which each quarterly federal grant payment is made to the state;

(c) provide financial assistance to municipalities and private concerns in accordance with [this act] in an amount equal to 120% of the amount of each grant payment within a time period not to exceed 1 year after receipt of a grant;

(d) expend all funds in the revolving fund in an expeditious and timely manner;

(e) use all funds deposited in the revolving fund as a

result of the capitalization grant to ensure progress, as determined by the governor of the state, toward compliance with enforceable deadlines, goals, and requirements of the federal act;

(f) expend each quarterly grant payment in accordance with the laws and procedures applicable to commitment or expenditure of revenues of the state;

(g) use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(h) as a condition of making a loan or providing other financial assistance from the revolving fund, require that the municipality or private concern will maintain project accounts in accordance with generally accepted government accounting standards;

(i) make annual reports to the environmental protection agency concerning the use of the revolving fund as required by the federal act; and

(j) any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of [this act].

NEW SECTION. Section 5. Revolving fund. (1) There is established in the state treasury a separate account designated as the wastewater treatment works revolving fund. There are established in the revolving fund as subaccounts a

1 federal allocation account, a state allocation account, an
2 administration account, an investment income account, and a
3 debt service account.

4 (2) There must be credited to:

5 (a) the federal allocation account, all amounts
6 received by the state pursuant to the federal act as
7 capitalization grants for a state revolving fund to assist
8 construction of wastewater treatment works and grants or
9 transfers of grants received under subchapter II of the
10 federal act for construction of wastewater treatment works;

11 (b) the state allocation account, the proceeds of
12 bonds of the state issued pursuant to [section 11] and other
13 money appropriated by the legislature;

14 (c) the administration account, 4%, or the maximum
15 amount allowed by the federal act, of the capitalization
16 grant award for payment of administrative costs;

17 (d) the investment account, all money received from
18 investment of amounts in the other accounts in the revolving
19 fund; and

20 (e) the debt service account, all interest earnings on
21 bond proceeds and the interest portion of loan repayments.

22 (3) Each loan made as authorized by [section 10] must
23 be funded and disbursed from the federal allocation account
24 or the state allocation account, or both, by the department
25 of natural resources and conservation as recommended by the

1 department, and all amounts received in repayment of
2 principal of a loan must be credited in the same proportion
3 to the federal allocation account or the state allocation
4 account, or both. All amounts received in payment of
5 interest on a loan must be credited to the revolving fund.
6 If bonds have been issued pursuant to [section 11] and are
7 outstanding, the interest payments must be transferred to
8 the debt service account securing the bonds. Money in the
9 debt service account that is not required for debt service
10 may be transferred by the board of examiners, upon request
11 of the department of natural resources and conservation, to
12 other accounts within the revolving fund.

13 (4) The department of natural resources and
14 conservation may establish additional accounts and
15 subaccounts within the revolving fund as it considers
16 necessary to account for the program money and to ensure
17 compliance with the federal act and [this act].

18 NEW SECTION. **Section 6. Uses of revolving fund.** Money
19 in the revolving fund may be used to:

20 (1) make loans to municipalities and private concerns
21 to finance all or a portion of the cost of a project;

22 (2) buy or refinance debt obligations of
23 municipalities that were issued to finance projects within
24 the state at or below market rates, provided that the
25 obligations were incurred after March 7, 1985;

1 (3) guarantee or purchase insurance for obligations of
2 municipalities that were issued to finance projects in order
3 to enhance credit or reduce interest rates;

4 (4) provide a source of revenue or security for
5 general obligation bonds the proceeds of which are deposited
6 in the revolving fund;

7 (5) provide loan guarantees for similar revolving
8 funds established by municipalities;

9 (6) earn interest on fund accounts; and

10 (7) pay reasonable administrative costs of the
11 revolving fund LOAN program not to exceed 4%, or the maximum
12 amount allowed under the federal act, of all federal grant
13 awards to the fund.

14 NEW SECTION. Section 7. Applications. (1) The
15 department shall, after consultation with the department of
16 natural resources and conservation, establish loan
17 application procedures, including forms for the
18 applications. Each application for a loan to finance
19 construction of a project must include:

20 (a) a reasonably detailed description of the project;

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

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

25 (d) identification of the source or sources of funds

1 to be used in addition to the proceeds of the loan to pay
2 the cost of the project;

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

5 (f) if the applicant is a municipality, a statement as
6 to whether, at the time of application, there are any
7 outstanding bonds, notes, or other obligations of the
8 municipality that were issued or incurred to finance any
9 part of the municipality's sewage system and, if so, a
10 description of the bonds, notes, or other obligations; and

11 (g) any other information that the department or the
12 department of natural resources and conservation may require
13 to determine the feasibility of a project and the
14 applicant's ability to repay the loan, including but not
15 limited to engineering reports, economic feasibility
16 studies, and legal opinions.

17 (2) Each application for a loan to refinance a
18 project, including a purchase of outstanding obligations
19 issued by a municipality to finance a project in whole or in
20 part, must include:

21 (a) a reasonably detailed description of the project;

22 (b) a schedule of the cost of the project;

23 (c) the date on which construction of the project
24 began;

25 (d) a description of the bonds, notes, or other

1 obligations to be refinanced and of any other notes, bonds,
2 or obligations issued or incurred to finance any part of the
3 municipality's sewage system; and

4 (e) any other information that the department or the
5 department of natural resources and conservation may
6 require.

7 (3) Each application for financial assistance in the
8 form of a guaranty or the purchase of insurance for a
9 municipal obligation must include all items required by
10 subsection (1) and any other information the department may
11 require.

12 **NEW SECTION. Section 8. Evaluation of applications.**

13 After consultation with the department of natural resources
14 and conservation, the department shall evaluate and annually
15 rank applications for loans and other financial assistance.
16 In ranking the applications, the department must consider
17 the following factors:

18 (1) the ability of the municipality or private concern
19 to pay the costs of the project without the requested
20 financial assistance;

21 (2) the amount available for financial assistance in
22 the revolving fund;

23 (3) the total amount requested by other applications
24 that have been received or that are likely to be received;

25 (4) the need for and benefit to be derived from the

1 project;

2 (5) in the case of an application to refinance an
3 outstanding obligation, the benefit of refinancing as
4 measured by a decrease in interest rates and whether the
5 refinancing permits the construction of an additional
6 project by the municipality; and

7 (6) any other criteria that the department determines
8 appropriate, considering the purposes of the federal act and
9 the program.

10 **NEW SECTION. Section 9. Rulemaking.** The board and the
11 board of natural resources and conservation may adopt rules
12 within their respective authorities established within the
13 provisions of [this act], including rules:

14 (1) prescribing the form and content of applications
15 for loans and refinancing agreements;

16 (2) governing the application of the criteria for
17 awarding loans;

18 (3) establishing additional terms and conditions for
19 the making of loans and the security instruments and other
20 necessary agreements; and

21 (4) establishing ceilings on the amount of individual
22 loans to be made to municipalities and private concerns, if
23 considered appropriate and necessary for the successful
24 administration of the program.

25 **NEW SECTION. Section 10. Loans.** (1) Upon approval of

1 an application by the department, the department of natural
 2 resources and conservation may lend amounts on deposit in
 3 the revolving fund to a municipality or private concern to
 4 pay part or all of the cost of a project or to buy or
 5 refinance an outstanding obligation of a municipality that
 6 was issued to finance a project. The loan is subject to the
 7 municipality or private concern complying with the following
 8 conditions:

9 (a) meeting requirements of financial capability set
 10 by the department of natural resources and conservation to
 11 assure sufficient revenues to operate and maintain the
 12 project for its useful life and to repay the loan;

13 (b) agreeing to operate and maintain the project
 14 properly over its structural and material design life, which
 15 may not be less than 20 years;

16 (c) agreeing to maintain proper financial records in
 17 accordance with recognized government accounting procedures
 18 and agreeing that all records are subject to audit;

19 (d) meeting the requirements listed in the federal act
 20 for projects constructed with funds directly made available
 21 by federal capitalization grants;

22 (e) providing legal assurance that all necessary
 23 property titles, easements, and rights-of-way have been
 24 obtained to construct, operate, and maintain the project;

25 (f) submitting an engineering report evaluating the

1 proposed project, including information demonstrating its
 2 cost-effectiveness and environmental information necessary
 3 for the department and the department of natural resources
 4 and conservation to fulfill their responsibilities under the
 5 Montana Environmental Policy Act and rules adopted to
 6 implement that act;

7 (g) complying with plan and specification requirements
 8 for public wastewater systems established by the board; and

9 (h) providing for proper construction inspection and
 10 project management.

11 (2) Each loan, unless prepaid, is payable subject to
 12 the limitations of the federal act, with interest paid in
 13 annual or more frequent installments, the first of which
 14 must be received not more than 1 year after the completion
 15 date of the project and the last of which must be received
 16 not more than 20 years after the completion date.

17 (3) Subject to the limitations of the federal act, the
 18 interest rate on a loan must enable the state to pay the
 19 principal of and interest on the bonds issued pursuant to
 20 [section 11].

21 (a) The interest rate must be determined as of the
 22 date the loan is authorized by the department of natural
 23 resources and conservation.

24 (b) The rate may include any additional rate that the
 25 department of natural resources and conservation considers

1 reasonable or necessary to provide a reserve for the
2 repayment of the loan. The additional rate may be fixed or
3 variable or may be calculated according to a formula, and it
4 may differ from the rate established for any other loan.

5 (4) Each loan must be evidenced by a bond, note, or
6 other evidence of indebtedness of the municipality or
7 private concern, in a form prescribed or approved by the
8 department of natural resources and conservation, except
9 that the bond, note, or other evidence must include
10 provisions required by the federal act and must be
11 consistent with the provisions of [this act]. The bond,
12 note, or other evidence is not required to be identical for
13 all loans.

14 (5) As a condition to making a loan, the department of
15 natural resources and conservation, with the concurrence of
16 the department, may impose a reasonable administrative fee
17 that may be paid from the proceeds of the loan or other
18 available funds of the municipality or private concern.
19 Administrative fees must be deposited in a special
20 administrative costs account that the department of natural
21 resources and conservation may create for that purpose
22 outside the revolving fund provided for in [section 5].
23 Money deposited in the special administrative costs account
24 must be used for the payment of administrative costs of the
25 program.

1 NEW SECTION. **Section 11. Authorization of bonds --**
2 **appropriation of proceeds.** (1) The board of examiners is
3 authorized, upon request of the department of natural
4 resources and conservation, to issue and sell bonds of the
5 state in an aggregate principal amount not exceeding \$10
6 million to provide money for the revolving loan program. The
7 bonds are general obligations on which the full faith,
8 credit, and taxing powers of the state are pledged for
9 payment of the principal and interest. The bonds must be
10 issued as provided by Title 17, chapter 5, part 8.

11 (2) The proceeds of the bonds, other than any premium
12 and accrued interest received, are appropriated to the state
13 allocation account of the wastewater treatment works
14 revolving fund. Any premium and accrued interest must be
15 deposited to the debt service account. Proceeds of bonds
16 deposited in the state allocation account may be used to pay
17 the costs of issuing the bonds. For purposes of sections
18 17-5-803 and 17-5-804, the state allocation account
19 constitutes a capital projects account. The proceeds must be
20 available to the department and the department of natural
21 resources and conservation and may be used for the purposes
22 authorized in [this act] without further budgetary
23 authorization.

24 (3) In the resolution authorizing the sale and
25 issuance of the bonds, the board of examiners, upon the

request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and the revolving fund as security for the bonds.

NEW SECTION. Section 12. Statutory appropriation.

Money in the revolving fund is statutorily appropriated, as provided in 17-7-502, for the purposes of making loans to municipalities and private concerns, paying administrative costs of the program, and paying debt service on obligations. Money in the special administrative costs account authorized by [section 10] is statutorily appropriated for administrative costs of the department and the department of natural resources and conservation relating to the program.

NEW SECTION. Section 13. Creation of debt. The legislature, through the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed \$10 million and the issuance and sale of general obligation bonds in this amount for the purpose of providing the state's share of the program.

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: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1,

1 Chapter 454, Laws of 1987; and [section 12].

2 (4) There is a statutory appropriation to pay the
3 principal, interest, premiums, and costs of issuing, paying,
4 and securing all bonds, notes, or other obligations, as due,
5 that have been authorized and issued pursuant to the laws of
6 Montana. Agencies that have entered into agreements
7 authorized by the laws of Montana to pay the state
8 treasurer, for deposit in accordance with 17-2-101 through
9 17-2-107, as determined by the state treasurer, an amount
10 sufficient to pay the principal and interest as due on the
11 bonds or notes have statutory appropriation authority for
12 such payments. (In subsection (3): pursuant to sec. 15, Ch.
13 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
14 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
15 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
16 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
17 1987, terminates July 1, 1988.)"

18 NEW SECTION. Section 15. Codification instruction.
19 [Sections 1 through 13] are intended to be codified as an
20 integral part of Title 75, chapter 5, and the provisions
21 Title 75, chapter 5, apply to [sections 1 through 13].

22 NEW SECTION. Section 16. Requirements for approval of
23 state debt -- severability. Because [section 13] authorizes
24 the creation of a state debt, a vote of two-thirds of the
25 members of each house is required for enactment of [section

1 13]. If [this act] is not approved by the required vote,
2 [section 13] is void. The remaining sections of [this act]
3 are valid and remain in effect in all valid applications
4 upon enactment.

5 NEW SECTION. Section 17. Effective date. [This act]
6 is effective July 1, 1989.

-End-

HB 0601/03
RE-REFERRED AND
APPROVED BY COMMITTEE
ON APPROPRIATIONS
AS AMENDED

HOUSE BILL NO. 601

INTRODUCED BY O'KEEFE, GAGE, HARP, HALLIGAN, REAM,
WALKER, RANEY, O'CONNELL, WESTLAKE, CAMPBELL, PATTERSON,
DRISCOLL, LYNCH, KOEHNKE, IVERSON, JENKINS, COHEN,
J. BROWN, REHBERG, GLASER, JERGESON, STANG, RAPP-SVRCEK,
WYATT, GILBERT, JOHNSON, ELLIOTT, HARPER, CODY, STEPPLER,
DEBRUYCKER, ABRAMS, KADAS, SPAETH, GERVAIS, COCCHIARELLA,
DARKO, STRIZICH, KIMBERLEY, PAVLOVICH, BLOTKAMP, DAVIS,
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ADDY, THOFT, NISBET, BACHINI, MAZUREK, VINCENT, QUILICI,
PECK, BRADLEY, D. BROWN, RAMIREZ, MERCER, GRADY, MENAHAN,
MCCORMICK, DAILY, RUSSELL, BROOKE, GIACOMETTO

BY REQUEST OF THE DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION AND THE
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A WASTEWATER
TREATMENT WORKS REVOLVING LOAN PROGRAM; ESTABLISHING A
WASTEWATER TREATMENT WORKS REVOLVING FUND; AUTHORIZING THE
ACCEPTANCE OF FEDERAL CAPITALIZATION GRANTS UNDER THE
FEDERAL CLEAN WATER ACT; AUTHORIZING THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER THE PROGRAM;
AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND
THE STATE'S SHARE OF THE REVOLVING FUND; STATUTORILY

APPROPRIATING TO THE DEPARTMENT OF NATURAL RESOURCES AND
CONSERVATION AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
SCIENCES \$66 MONEY RECEIVED UNDER THE PROGRAM; AMENDING
SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

This bill creates a revolving loan program capitalized
with federal and state funds to provide financial assistance
for water pollution control projects. A statement of intent
is required for this bill because it delegates rulemaking
authority to the board of health and environmental sciences
and the board of natural resources and conservation to
implement the provisions of this bill.

The boards are authorized to adopt rules necessary for
the establishment and administration of the water treatment
works revolving loan program. The authority includes
establishing rules:

- (1) prescribing the form and content of applications
for loans and refinancing agreements;
- (2) governing the application of the criteria for
awarding loans;
- (3) establishing additional terms and conditions for
making the loans and the security instruments and other
necessary agreements; and
- (4) establishing ceilings on the amount of individual

loans, if deemed appropriate and necessary for the successful administration of the program, to be made to municipalities and private concerns.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Short title. [This act] may be cited as the "Wastewater Treatment Revolving Fund Act".

NEW SECTION. **Section 2.** Definitions. Unless the context requires otherwise, in [this act] the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to costs of servicing loans and issuing debt; program start-up costs; financial, management, and legal consulting fees; and reimbursement costs for support services from other state agencies.

(2) "Cost" means, with reference to a wastewater treatment works project, all capital costs incurred or to be incurred by a municipality or a private concern, including but not limited to engineering, financing and other fees, interest during construction, and a reasonable allowance for contingencies to the extent permitted by the federal act and regulations promulgated thereunder.

(3) "Federal act" means the Federal Water Pollution

Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended.

(4) "Loan" means a loan of money from the revolving fund to a municipality or a private concern.

(5) "Municipality" means any city, town, or other local government unit having authority to own and operate a sewage system and wastewater treatment works.

(6) "Private concern" means an individual or other entity eligible for a loan or loans for a pollution control project for a nonpoint source under section 319 of the federal act.

(7) "Program" means the wastewater treatment works revolving loan program established by [this act].

(8) "Project" means a wastewater treatment works or part of a wastewater treatment works for which a municipality or private concern makes an application for a loan or other financial assistance.

(9) "Revolving fund" means the fund established by [section 5].

NEW SECTION. **Section 3.** Wastewater treatment works revolving loan program. There is a program under which the state may provide financial assistance to municipalities and private concerns to finance or refinance part or all of the cost of projects. The program must be administered in accordance with [this act] and the federal act.

NEW SECTION. Section 4. Authorization of agreement --

content. (1) The department may enter into a capitalization grant agreement or other agreement with the United States environmental protection agency to implement the program and may accept from that agency other grants and loans to carry out the program.

(2) In entering into the agreement, the director of the department may commit the state to:

(a) accept grant payments from the environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in [section 5];

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by [section 5] on or before the date on which each quarterly federal grant payment is made to the state;

(c) provide financial assistance to municipalities and private concerns in accordance with [this act] in an amount equal to 120% of the amount of each grant payment within a time period not to exceed 1 year after receipt of a grant;

(d) expend all funds in the revolving fund in an expeditious and timely manner;

(e) use all funds deposited in the revolving fund as a

result of the capitalization grant to ensure progress, as determined by the governor of the state, toward compliance with enforceable deadlines, goals, and requirements of the federal act;

(f) expend each quarterly grant payment in accordance with the laws and procedures applicable to commitment or expenditure of revenues of the state;

(g) use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(h) as a condition of making a loan or providing other financial assistance from the revolving fund, require that the municipality or private concern will maintain project accounts in accordance with generally accepted government accounting standards;

(i) make annual reports to the environmental protection agency concerning the use of the revolving fund as required by the federal act; and

(j) any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of [this act].

NEW SECTION. Section 5. Revolving fund. (1) There is established in the state treasury a separate account designated as the wastewater treatment works revolving fund. There are established in the revolving fund as subaccounts a

1 federal allocation account, a state allocation account, an
2 administration account, an investment income account, and a
3 debt service account.

4 (2) There must be credited to:

5 (a) the federal allocation account, all amounts
6 received by the state pursuant to the federal act as
7 capitalization grants for a state revolving fund to assist
8 construction of wastewater treatment works and grants or
9 transfers of grants received under subchapter II of the
10 federal act for construction of wastewater treatment works;

11 (b) the state allocation account, the proceeds of
12 bonds of the state issued pursuant to [section 11] and other
13 money appropriated by the legislature;

14 (c) the administration account, 4%, or the maximum
15 amount allowed by the federal act, of the capitalization
16 grant award for payment of administrative costs;

17 (d) the investment account, all money received from
18 investment of amounts in the other accounts in the revolving
19 fund; and

20 (e) the debt service account, all interest earnings on
21 bond proceeds and the interest portion of loan repayments.

22 (3) Each loan made as authorized by [section 10] must
23 be funded and disbursed from the federal allocation account
24 or the state allocation account, or both, by the department
25 of natural resources and conservation as recommended by the

1 department, and all amounts received in repayment of
2 principal of a loan must be credited in the same proportion
3 to the federal allocation account or the state allocation
4 account, or both. All amounts received in payment of
5 interest on a loan must be credited to the revolving fund.
6 If bonds have been issued pursuant to [section 11] and are
7 outstanding, the interest payments must be transferred to
8 the debt service account securing the bonds. Money in the
9 debt service account that is not required for debt service
10 may be transferred by the board of examiners, upon request
11 of the department of natural resources and conservation, to
12 other accounts within the revolving fund.

13 (4) The department of natural resources and
14 conservation may establish additional accounts and
15 subaccounts within the revolving fund as it considers
16 necessary to account for the program money and to ensure
17 compliance with the federal act and [this act].

18 NEW SECTION. **Section 6.** Uses of revolving fund. Money
19 in the revolving fund may be used to:

20 (1) make loans to municipalities and private concerns
21 to finance all or a portion of the cost of a project;

22 (2) buy or refinance debt obligations of
23 municipalities that were issued to finance projects within
24 the state at or below market rates, provided that the
25 obligations were incurred after March 7, 1985;

(3) guarantee or purchase insurance for obligations of municipalities that were issued to finance projects in order to enhance credit or reduce interest rates;

(4) provide a source of revenue or security for general obligation bonds the proceeds of which are deposited in the revolving fund;

(5) provide loan guarantees for similar revolving funds established by municipalities;

(6) earn interest on fund accounts; and

(7) pay reasonable administrative costs of the revolving fund LOAN program not to exceed 4%, or the maximum amount allowed under the federal act, of all federal grant awards to the fund.

NEW SECTION. Section 7. Applications. (1) The department shall, after consultation with the department of natural resources and conservation, establish loan application procedures, including forms for the applications. Each application for a loan to finance construction of a project 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) if the applicant is a municipality, a statement as to whether, at the time of application, there are any outstanding bonds, notes, or other obligations of the municipality that were issued or incurred to finance any part of the municipality's sewage system and, if so, a description of the bonds, notes, or other obligations; and

(g) any other information that the department or the department of natural resources and conservation may require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to engineering reports, economic feasibility studies, and legal opinions.

(2) Each application for a loan to refinance a project, including a purchase of outstanding obligations issued by a municipality to finance a project in whole or in part, must include:

(a) a reasonably detailed description of the project;

(b) a schedule of the cost of the project;

(c) the date on which construction of the project began;

(d) a description of the bonds, notes, or other

obligations to be refinanced and of any other notes, bonds, or obligations issued or incurred to finance any part of the municipality's sewage system; and

(e) any other information that the department or the department of natural resources and conservation may require.

(3) Each application for financial assistance in the form of a guaranty or the purchase of insurance for a municipal obligation must include all items required by subsection (1) and any other information the department may require.

NEW SECTION. Section 8. Evaluation of applications.

After consultation with the department of natural resources and conservation, the department shall evaluate and annually rank applications for loans and other financial assistance. In ranking the applications, the department must consider the following factors:

(1) the ability of the municipality or private concern to pay the costs of the project without the requested financial assistance;

(2) the amount available for financial assistance in the revolving fund;

(3) the total amount requested by other applications that have been received or that are likely to be received;

(4) the need for and benefit to be derived from the

project;

(5) in the case of an application to refinance an outstanding obligation, the benefit of refinancing as measured by a decrease in interest rates and whether the refinancing permits the construction of an additional project by the municipality; and

(6) any other criteria that the department determines appropriate, considering the purposes of the federal act and the program.

NEW SECTION. Section 9. Rulemaking. The board and the board of natural resources and conservation may adopt rules within their respective authorities established within the provisions of [this act], including rules:

(1) prescribing the form and content of applications for loans and refinancing agreements;

(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; and

(4) establishing ceilings on the amount of individual loans to be made to municipalities and private concerns, if considered appropriate and necessary for the successful administration of the program.

NEW SECTION. Section 10. Loans. (1) Upon approval of

1 an application by the department, the department of natural
 2 resources and conservation may lend amounts on deposit in
 3 the revolving fund to a municipality or private concern to
 4 pay part or all of the cost of a project or to buy or
 5 refinance an outstanding obligation of a municipality that
 6 was issued to finance a project. The loan is subject to the
 7 municipality or private concern complying with the following
 8 conditions:

9 (a) meeting requirements of financial capability set
 10 by the department of natural resources and conservation to
 11 assure sufficient revenues to operate and maintain the
 12 project for its useful life and to repay the loan;

13 (b) agreeing to operate and maintain the project
 14 properly over its structural and material design life, which
 15 may not be less than 20 years;

16 (c) agreeing to maintain proper financial records in
 17 accordance with recognized government accounting procedures
 18 and agreeing that all records are subject to audit;

19 (d) meeting the requirements listed in the federal act
 20 for projects constructed with funds directly made available
 21 by federal capitalization grants;

22 (e) providing legal assurance that all necessary
 23 property titles, easements, and rights-of-way have been
 24 obtained to construct, operate, and maintain the project;

25 (f) submitting an engineering report evaluating the

1 proposed project, including information demonstrating its
 2 cost-effectiveness and environmental information necessary
 3 for the department and the department of natural resources
 4 and conservation to fulfill their responsibilities under the
 5 Montana Environmental Policy Act and rules adopted to
 6 implement that act;

7 (g) complying with plan and specification requirements
 8 for public wastewater systems established by the board; and
 9 (h) providing for proper construction inspection and
 10 project management.

11 (2) Each loan, unless prepaid, is payable subject to
 12 the limitations of the federal act, with interest paid in
 13 annual or more frequent installments, the first of which
 14 must be received not more than 1 year after the completion
 15 date of the project and the last of which must be received
 16 not more than 20 years after the completion date.

17 (3) Subject to the limitations of the federal act, the
 18 interest rate on a loan must enable the state to pay the
 19 principal of and interest on the bonds issued pursuant to
 20 [section 11].

21 (a) The interest rate must be determined as of the
 22 date the loan is authorized by the department of natural
 23 resources and conservation.

24 (b) The rate may include any additional rate that the
 25 department of natural resources and conservation considers

1 reasonable or necessary to provide a reserve for the
2 repayment of the loan. The additional rate may be fixed or
3 variable or may be calculated according to a formula, and it
4 may differ from the rate established for any other loan.

5 (4) Each loan must be evidenced by a bond, note, or
6 other evidence of indebtedness of the municipality or
7 private concern, in a form prescribed or approved by the
8 department of natural resources and conservation, except
9 that the bond, note, or other evidence must include
10 provisions required by the federal act and must be
11 consistent with the provisions of [this act]. The bond,
12 note, or other evidence is not required to be identical for
13 all loans.

14 (5) As a condition to making a loan, the department of
15 natural resources and conservation, with the concurrence of
16 the department, may impose a reasonable administrative fee
17 that may be paid from the proceeds of the loan or other
18 available funds of the municipality or private concern.
19 Administrative fees must be deposited in a special
20 administrative costs account that the department of natural
21 resources and conservation may create for that purpose
22 outside the revolving fund provided for in [section 5].
23 Money deposited in the special administrative costs account
24 must be used for the payment of administrative costs of the
25 program.

1 NEW SECTION. **Section 11. Authorization of bonds --**
2 **appropriation of proceeds.** (1) The board of examiners is
3 authorized, upon request of the department of natural
4 resources and conservation, to issue and sell bonds of the
5 state in an aggregate principal amount not exceeding \$10
6 million to provide money for the revolving loan program. The
7 bonds are general obligations on which the full faith,
8 credit, and taxing powers of the state are pledged for
9 payment of the principal and interest. The bonds must be
10 issued as provided by Title 17, chapter 5, part 8.

11 (2) The proceeds of the bonds, other than any premium
12 and accrued interest received, are appropriated to the state
13 allocation account of the wastewater treatment works
14 revolving fund. Any premium and accrued interest must be
15 deposited to the debt service account. Proceeds of bonds
16 deposited in the state allocation account may be used to pay
17 the costs of issuing the bonds. For purposes of sections
18 17-5-803 and 17-5-804, the state allocation account
19 constitutes a capital projects account. The proceeds must be
20 available to the department and the department of natural
21 resources and conservation and may be used for the purposes
22 authorized in [this act] without further budgetary
23 authorization.

24 (3) In the resolution authorizing the sale and
25 issuance of the bonds, the board of examiners, upon the

request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and the revolving fund as security for the bonds.

NEW SECTION. Section 12. Statutory appropriation.

Money in the revolving fund is statutorily appropriated, as provided in 17-7-502, for the purposes of making loans to municipalities and private concerns, ~~paying administrative costs--of--the--program,~~ and paying debt service on obligations. Money in the special administrative costs account authorized by [section 10] is ~~statutorily appropriated--for-administrative-costs-of-the-department-and the--department--of--natural--resources---and---conservation relating-to-the-program~~ SUBJECT TO LEGISLATIVE APPROPRIATION CONSTRAINTS, AND EXPENDITURES FROM THIS ACCOUNT MUST BE MADE FROM TEMPORARY APPROPRIATIONS, AS DESCRIBED IN 17-7-501(1) OR (2), MADE FOR THAT PURPOSE.

NEW SECTION. Section 13. Creation of debt. The legislature, through the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed \$10 million and the issuance and sale of general obligation bonds in this amount for the purpose of providing the

state's share of the program.

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: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;

1 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;
 2 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103;
 3 section 13, House Bill No. 861, Laws of 1985; and section 1,
 4 Chapter 454, Laws of 1987; and [section 12].

5 (4) There is a statutory appropriation to pay the
 6 principal, interest, premiums, and costs of issuing, paying,
 7 and securing all bonds, notes, or other obligations, as due,
 8 that have been authorized and issued pursuant to the laws of
 9 Montana. Agencies that have entered into agreements
 10 authorized by the laws of Montana to pay the state
 11 treasurer, for deposit in accordance with 17-2-101 through
 12 17-2-107, as determined by the state treasurer, an amount
 13 sufficient to pay the principal and interest as due on the
 14 bonds or notes have statutory appropriation authority for
 15 such payments. (In subsection (3): pursuant to sec. 15, Ch.
 16 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
 17 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
 18 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
 19 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
 20 1987, terminates July 1, 1988.)"

21 NEW SECTION. **Section 15.** Codification instruction.
 22 [Sections 1 through 13] are intended to be codified as an
 23 integral part of Title 75, chapter 5, and the provisions
 24 Title 75, chapter 5, apply to [sections 1 through 13].

25 NEW SECTION. **Section 16.** Requirements for approval of

1 state debt -- severability. Because [section 13] authorizes
 2 the creation of a state debt, a vote of two-thirds of the
 3 members of each house is required for enactment of [section
 4 13]. If [this act] is not approved by the required vote,
 5 [section 13] is void. The remaining sections of [this act]
 6 are valid and remain in effect in all valid applications
 7 upon enactment.

8 NEW SECTION. **Section 17.** Effective date. [This act]
 9 is effective July 1, 1989.

-End-

1 HOUSE BILL NO. 601

2 INTRODUCED BY O'KEEFE, GAGE, HARP, HALLIGAN, REAM,
3 WALKER, RANEY, O'CONNELL, WESTLAKE, CAMPBELL, PATTERSON,
4 DRISCOLL, LYNCH, KOEHNKE, IVERSON, JENKINS, COHEN,
5 J. BROWN, REHBERG, GLASER, JERGESON, STANG, RAPP-SVRCEK,
6 WYATT, GILBERT, JOHNSON, ELLIOTT, HARPER, CODY, STEPPLER,
7 DEBRUYCKER, ABRAMS, KADAS, SPAETH, GERVAIS, COCCHIARELLA,
8 DARKO, STRIZICH, KIMBERLEY, PAVLOVICH, BLOTKAMP, DAVIS,
9 MCDONOUGH, MOORE, BARDANOUVE, SQUIRES, BISHOP, DEMARS,
10 ADDY, THOFT, NISBET, BACHINI, MAZUREK, VINCENT, QUILICI,
11 PECK, BRADLEY, D. BROWN, RAMIREZ, MERCER, GRADY, MENAHAN,
12 MCCORMICK, DAILY, RUSSELL, BROOKE, GIACOMETTO

13 BY REQUEST OF THE DEPARTMENT OF NATURAL

14 RESOURCES AND CONSERVATION AND THE

15 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

16
17 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A WASTEWATER
18 TREATMENT WORKS REVOLVING LOAN PROGRAM; ESTABLISHING A
19 WASTEWATER TREATMENT WORKS REVOLVING FUND; AUTHORIZING THE
20 ACCEPTANCE OF FEDERAL CAPITALIZATION GRANTS UNDER THE
21 FEDERAL CLEAN WATER ACT; AUTHORIZING THE DEPARTMENT OF
22 NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF
23 HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER THE PROGRAM;
24 AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND
25 THE STATE'S SHARE OF THE REVOLVING FUND; STATUTORILY

1 APPROPRIATING TO THE DEPARTMENT OF NATURAL RESOURCES AND
2 CONSERVATION AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
3 SCIENCES ALL MONEY RECEIVED UNDER THE PROGRAM; AMENDING
4 SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE."

6 STATEMENT OF INTENT

7 This bill creates a revolving loan program capitalized
8 with federal and state funds to provide financial assistance
9 for water pollution control projects. A statement of intent
10 is required for this bill because it delegates rulemaking
11 authority to the board of health and environmental sciences
12 and the board of natural resources and conservation to
13 implement the provisions of this bill.

14 The boards are authorized to adopt rules necessary for
15 the establishment and administration of the water treatment
16 works revolving loan program. The authority includes
17 establishing rules:

18 (1) prescribing the form and content of applications
19 for loans and refinancing agreements;

20 (2) governing the application of the criteria for
21 awarding loans;

22 (3) establishing additional terms and conditions for
23 making the loans and the security instruments and other
24 necessary agreements; and

25 (4) establishing ceilings on the amount of individual

1 loans, if deemed appropriate and necessary for the
2 successful administration of the program, to be made to
3 municipalities and private concerns.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 NEW SECTION. **Section 1.** Short title. [This act] may
7 be cited as the "Wastewater Treatment Revolving Fund Act".

8 NEW SECTION. **Section 2.** Definitions. Unless the
9 context requires otherwise, in [this act] the following
10 definitions apply:

11 (1) "Administrative costs" means costs incurred by the
12 department and the department of natural resources and
13 conservation in the administration of the program, including
14 but not limited to costs of servicing loans and issuing
15 debt; program start-up costs; financial, management, and
16 legal consulting fees; and reimbursement costs for support
17 services from other state agencies.

18 (2) "Cost" means, with reference to a wastewater
19 treatment works project, all capital costs incurred or to be
20 incurred by a municipality or a private concern, including
21 but not limited to engineering, financing and other fees,
22 interest during construction, and a reasonable allowance for
23 contingencies to the extent permitted by the federal act and
24 regulations promulgated thereunder.

25 (3) "Federal act" means the Federal Water Pollution

1 Control Act, also known as the Clean Water Act, 33 U.S.C.
2 1251 through 1387, as amended.

3 (4) "Loan" means a loan of money from the revolving
4 fund to a municipality or a private concern.

5 (5) "Municipality" means any city, town, or other
6 local government unit having authority to own and operate a
7 sewage system and wastewater treatment works.

8 (6) "Private concern" means an individual or other
9 entity eligible for a loan or loans for a pollution control
10 project for a nonpoint source under section 319 of the
11 federal act.

12 (7) "Program" means the wastewater treatment works
13 revolving loan program established by [this act].

14 (8) "Project" means a wastewater treatment works or
15 part of a wastewater treatment works for which a
16 municipality or private concern makes an application for a
17 loan or other financial assistance.

18 (9) "Revolving fund" means the fund established by
19 [section 5].

20 NEW SECTION. **Section 3.** Wastewater treatment works
21 revolving loan program. There is a program under which the
22 state may provide financial assistance to municipalities and
23 private concerns to finance or refinance part or all of the
24 cost of projects. The program must be administered in
25 accordance with [this act] and the federal act.

NEW SECTION. Section 4. Authorization of agreement --

content. (1) The department may enter into a capitalization grant agreement or other agreement with the United States environmental protection agency to implement the program and may accept from that agency other grants and loans to carry out the program.

(2) In entering into the agreement, the director of the department may commit the state to:

(a) accept grant payments from the environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in [section 5];

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by [section 5] on or before the date on which each quarterly federal grant payment is made to the state;

(c) provide financial assistance to municipalities and private concerns in accordance with [this act] in an amount equal to 120% of the amount of each grant payment within a time period not to exceed 1 year after receipt of a grant;

(d) expend all funds in the revolving fund in an expeditious and timely manner;

(e) use all funds deposited in the revolving fund as a

result of the capitalization grant to ensure progress, as determined by the governor of the state, toward compliance with enforceable deadlines, goals, and requirements of the federal act;

(f) expend each quarterly grant payment in accordance with the laws and procedures applicable to commitment or expenditure of revenues of the state;

(g) use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(h) as a condition of making a loan or providing other financial assistance from the revolving fund, require that the municipality or private concern will maintain project accounts in accordance with generally accepted government accounting standards;

(i) make annual reports to the environmental protection agency concerning the use of the revolving fund as required by the federal act; and

(j) any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of [this act].

NEW SECTION. Section 5. Revolving fund. (1) There is established in the state treasury a separate account designated as the wastewater treatment works revolving fund. There are established in the revolving fund as subaccounts a

1 federal allocation account, a state allocation account, an
2 administration account, an investment income account, and a
3 debt service account.

4 (2) There must be credited to:

5 (a) the federal allocation account, all amounts
6 received by the state pursuant to the federal act as
7 capitalization grants for a state revolving fund to assist
8 construction of wastewater treatment works and grants or
9 transfers of grants received under subchapter II of the
10 federal act for construction of wastewater treatment works;

11 (b) the state allocation account, the proceeds of
12 bonds of the state issued pursuant to [section 11] and other
13 money appropriated by the legislature;

14 (c) the administration account, 4%, or the maximum
15 amount allowed by the federal act, of the capitalization
16 grant award for payment of administrative costs;

17 (d) the investment account, all money received from
18 investment of amounts in the other accounts in the revolving
19 fund; and

20 (e) the debt service account, all interest earnings on
21 bond proceeds and the interest portion of loan repayments.

22 (3) Each loan made as authorized by [section 10] must
23 be funded and disbursed from the federal allocation account
24 or the state allocation account, or both, by the department
25 of natural resources and conservation as recommended by the

1 department, and all amounts received in repayment of
2 principal of a loan must be credited in the same proportion
3 to the federal allocation account or the state allocation
4 account, or both. All amounts received in payment of
5 interest on a loan must be credited to the revolving fund.
6 If bonds have been issued pursuant to [section 11] and are
7 outstanding, the interest payments must be transferred to
8 the debt service account securing the bonds. Money in the
9 debt service account that is not required for debt service
10 may be transferred by the board of examiners, upon request
11 of the department of natural resources and conservation, to
12 other accounts within the revolving fund.

13 (4) The department of natural resources and
14 conservation may establish additional accounts and
15 subaccounts within the revolving fund as it considers
16 necessary to account for the program money and to ensure
17 compliance with the federal act and [this act].

18 NEW SECTION. Section 6. Uses of revolving fund. Money
19 in the revolving fund may be used to:

20 (1) make loans to municipalities and private concerns
21 to finance all or a portion of the cost of a project;

22 (2) buy or refinance debt obligations of
23 municipalities that were issued to finance projects within
24 the state at or below market rates, provided that the
25 obligations were incurred after March 7, 1985;

1 (3) guarantee or purchase insurance for obligations of
2 municipalities that were issued to finance projects in order
3 to enhance credit or reduce interest rates;

4 (4) provide a source of revenue or security for
5 general obligation bonds the proceeds of which are deposited
6 in the revolving fund;

7 (5) provide loan guarantees for similar revolving
8 funds established by municipalities;

9 (6) earn interest on fund accounts; and

10 (7) pay reasonable administrative costs of the
11 revolving fund LOAN program not to exceed 4%, or the maximum
12 amount allowed under the federal act, of all federal grant
13 awards to the fund.

14 NEW SECTION. Section 7. Applications. (1) The
15 department shall, after consultation with the department of
16 natural resources and conservation, establish loan
17 application procedures, including forms for the
18 applications. Each application for a loan to finance
19 construction of a project must include:

20 (a) a reasonably detailed description of the project;

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

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

25 (d) identification of the source or sources of funds

1 to be used in addition to the proceeds of the loan to pay
2 the cost of the project;

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

5 (f) if the applicant is a municipality, a statement as
6 to whether, at the time of application, there are any
7 outstanding bonds, notes, or other obligations of the
8 municipality that were issued or incurred to finance any
9 part of the municipality's sewage system and, if so, a
10 description of the bonds, notes, or other obligations; and

11 (g) any other information that the department or the
12 department of natural resources and conservation may require
13 to determine the feasibility of a project and the
14 applicant's ability to repay the loan, including but not
15 limited to engineering reports, economic feasibility
16 studies, and legal opinions.

17 (2) Each application for a loan to refinance a
18 project, including a purchase of outstanding obligations
19 issued by a municipality to finance a project in whole or in
20 part, must include:

21 (a) a reasonably detailed description of the project;

22 (b) a schedule of the cost of the project;

23 (c) the date on which construction of the project
24 began;

25 (d) a description of the bonds, notes, or other

1 obligations to be refinanced and of any other notes, bonds,
2 or obligations issued or incurred to finance any part of the
3 municipality's sewage system; and

4 (e) any other information that the department or the
5 department of natural resources and conservation may
6 require.

7 (3) Each application for financial assistance in the
8 form of a guaranty or the purchase of insurance for a
9 municipal obligation must include all items required by
10 subsection (1) and any other information the department may
11 require.

12 NEW SECTION. Section 8. Evaluation of applications.
13 After consultation with the department of natural resources
14 and conservation, the department shall evaluate and annually
15 rank applications for loans and other financial assistance.
16 In ranking the applications, the department must consider
17 the following factors:

18 (1) the ability of the municipality or private concern
19 to pay the costs of the project without the requested
20 financial assistance;

21 (2) the amount available for financial assistance in
22 the revolving fund;

23 (3) the total amount requested by other applications
24 that have been received or that are likely to be received;

25 (4) the need for and benefit to be derived from the

1 project;

2 (5) in the case of an application to refinance an
3 outstanding obligation, the benefit of refinancing as
4 measured by a decrease in interest rates and whether the
5 refinancing permits the construction of an additional
6 project by the municipality; and

7 (6) any other criteria that the department determines
8 appropriate, considering the purposes of the federal act and
9 the program.

10 NEW SECTION. Section 9. Rulemaking. The board and the
11 board of natural resources and conservation may adopt rules
12 within their respective authorities established within the
13 provisions of [this act], including rules:

14 (1) prescribing the form and content of applications
15 for loans and refinancing agreements;

16 (2) governing the application of the criteria for
17 awarding loans;

18 (3) establishing additional terms and conditions for
19 the making of loans and the security instruments and other
20 necessary agreements; and

21 (4) establishing ceilings on the amount of individual
22 loans to be made to municipalities and private concerns, if
23 considered appropriate and necessary for the successful
24 administration of the program.

25 NEW SECTION. Section 10. Loans. (1) Upon approval of

1 an application by the department, the department of natural
 2 resources and conservation may lend amounts on deposit in
 3 the revolving fund to a municipality or private concern to
 4 pay part or all of the cost of a project or to buy or
 5 refinance an outstanding obligation of a municipality that
 6 was issued to finance a project. The loan is subject to the
 7 municipality or private concern complying with the following
 8 conditions:

9 (a) meeting requirements of financial capability set
 10 by the department of natural resources and conservation to
 11 assure sufficient revenues to operate and maintain the
 12 project for its useful life and to repay the loan;

13 (b) agreeing to operate and maintain the project
 14 properly over its structural and material design life, which
 15 may not be less than 20 years;

16 (c) agreeing to maintain proper financial records in
 17 accordance with recognized government accounting procedures
 18 and agreeing that all records are subject to audit;

19 (d) meeting the requirements listed in the federal act
 20 for projects constructed with funds directly made available
 21 by federal capitalization grants;

22 (e) providing legal assurance that all necessary
 23 property titles, easements, and rights-of-way have been
 24 obtained to construct, operate, and maintain the project;

25 (f) submitting an engineering report evaluating the

1 proposed project, including information demonstrating its
 2 cost-effectiveness and environmental information necessary
 3 for the department and the department of natural resources
 4 and conservation to fulfill their responsibilities under the
 5 Montana Environmental Policy Act and rules adopted to
 6 implement that act;

7 (g) complying with plan and specification requirements
 8 for public wastewater systems established by the board; and

9 (h) providing for proper construction inspection and
 10 project management.

11 (2) Each loan, unless prepaid, is payable subject to
 12 the limitations of the federal act, with interest paid in
 13 annual or more frequent installments, the first of which
 14 must be received not more than 1 year after the completion
 15 date of the project and the last of which must be received
 16 not more than 20 years after the completion date.

17 (3) Subject to the limitations of the federal act, the
 18 interest rate on a loan must enable the state to pay the
 19 principal of and interest on the bonds issued pursuant to
 20 [section 11].

21 (a) The interest rate must be determined as of the
 22 date the loan is authorized by the department of natural
 23 resources and conservation.

24 (b) The rate may include any additional rate that the
 25 department of natural resources and conservation considers

1 reasonable or necessary to provide a reserve for the
2 repayment of the loan. The additional rate may be fixed or
3 variable or may be calculated according to a formula, and it
4 may differ from the rate established for any other loan.

5 (4) Each loan must be evidenced by a bond, note, or
6 other evidence of indebtedness of the municipality or
7 private concern, in a form prescribed or approved by the
8 department of natural resources and conservation, except
9 that the bond, note, or other evidence must include
10 provisions required by the federal act and must be
11 consistent with the provisions of [this act]. The bond,
12 note, or other evidence is not required to be identical for
13 all loans.

14 (5) As a condition to making a loan, the department of
15 natural resources and conservation, with the concurrence of
16 the department, may impose a reasonable administrative fee
17 that may be paid from the proceeds of the loan or other
18 available funds of the municipality or private concern.
19 Administrative fees must be deposited in a special
20 administrative costs account that the department of natural
21 resources and conservation may create for that purpose
22 outside the revolving fund provided for in [section 5].
23 Money deposited in the special administrative costs account
24 must be used for the payment of administrative costs of the
25 program.

1 NEW SECTION. Section 11. Authorization of bonds --
2 appropriation of proceeds. (1) The board of examiners is
3 authorized, upon request of the department of natural
4 resources and conservation, to issue and sell bonds of the
5 state in an aggregate principal amount not exceeding \$10
6 million to provide money for the revolving loan program. The
7 bonds are general obligations on which the full faith,
8 credit, and taxing powers of the state are pledged for
9 payment of the principal and interest. The bonds must be
10 issued as provided by Title 17, chapter 5, part 8.

11 (2) The proceeds of the bonds, other than any premium
12 and accrued interest received, are appropriated to the state
13 allocation account of the wastewater treatment works
14 revolving fund. Any premium and accrued interest must be
15 deposited to the debt service account. Proceeds of bonds
16 deposited in the state allocation account may be used to pay
17 the costs of issuing the bonds. For purposes of sections
18 17-5-803 and 17-5-804, the state allocation account
19 constitutes a capital projects account. The proceeds must be
20 available to the department and the department of natural
21 resources and conservation and may be used for the purposes
22 authorized in [this act] without further budgetary
23 authorization.

24 (3) In the resolution authorizing the sale and
25 issuance of the bonds, the board of examiners, upon the

1 request of the department of natural resources and
2 conservation, may create separate accounts or subaccounts to
3 provide for the payment security of the bonds and may pledge
4 the interest component of the loan repayments credited to
5 the revolving fund and the revolving fund as security for
6 the bonds.

7 NEW SECTION. Section 12. Statutory appropriation.
8 Money in the revolving fund is statutorily appropriated, as
9 provided in 17-7-502, for the purposes of making loans to
10 municipalities and private concerns, ~~paying administrative~~
11 ~~costs--of--the--program,~~ and paying debt service on
12 obligations. Money in the special administrative costs
13 account authorized by [section 10] is ~~statutorily~~
14 ~~appropriated--for--administrative--costs--of--the--department--and~~
15 ~~the--department--of--natural--resources---and---conservation~~
16 ~~relating-to-the-program~~ SUBJECT TO LEGISLATIVE APPROPRIATION
17 CONSTRAINTS, AND EXPENDITURES FROM THIS ACCOUNT MUST BE MADE
18 FROM TEMPORARY APPROPRIATIONS, AS DESCRIBED IN 17-7-501(1)
19 OR (2), MADE FOR THAT PURPOSE.

20 NEW SECTION. Section 13. Creation of debt. The
21 legislature, through the enactment of this law by a
22 two-thirds vote of the members of each house, authorizes the
23 creation of state debt in an amount not to exceed \$10
24 million and the issuance and sale of general obligation
25 bonds in this amount for the purpose of providing the

1 state's share of the program.

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

3 "17-7-502. Statutory appropriations -- definition --
4 **requisites for validity.** (1) A statutory appropriation is an
5 appropriation made by permanent law that authorizes spending
6 by a state agency without the need for a biennial
7 legislative appropriation or budget amendment.

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

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

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

16 (3) The following laws are the only laws containing
17 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
18 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
19 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
20 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
21 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
22 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
23 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
24 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;
25 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;

1 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;
 2 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103;
 3 section 13, House Bill No. 861, Laws of 1985; and section 1,
 4 Chapter 454, Laws of 1987; and [section 12].

5 (4) There is a statutory appropriation to pay the
 6 principal, interest, premiums, and costs of issuing, paying,
 7 and securing all bonds, notes, or other obligations, as due,
 8 that have been authorized and issued pursuant to the laws of
 9 Montana. Agencies that have entered into agreements
 10 authorized by the laws of Montana to pay the state
 11 treasurer, for deposit in accordance with 17-2-101 through
 12 17-2-107, as determined by the state treasurer, an amount
 13 sufficient to pay the principal and interest as due on the
 14 bonds or notes have statutory appropriation authority for
 15 such payments. (In subsection (3): pursuant to sec. 15, Ch.
 16 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
 17 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
 18 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
 19 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
 20 1987, terminates July 1, 1988.)"

21 NEW SECTION. Section 15. Codification instruction.
 22 [Sections 1 through 13] are intended to be codified as an
 23 integral part of Title 75, chapter 5, and the provisions
 24 Title 75, chapter 5, apply to [sections 1 through 13].

25 NEW SECTION. Section 16. Requirements for approval of

1 state debt -- severability. Because [section 13] authorizes
 2 the creation of a state debt, a vote of two-thirds of the
 3 members of each house is required for enactment of [section
 4 13]. If [this act] is not approved by the required vote,
 5 [section 13] is void. The remaining sections of [this act]
 6 are valid and remain in effect in all valid applications
 7 upon enactment.

8 NEW SECTION. Section 17. Effective date. [This act]
 9 is effective July 1, 1989.

-End-

1 HOUSE BILL NO. 601

2 INTRODUCED BY O'KEEFE, GAGE, HARP, HALLIGAN, REAM,
3 WALKER, RANEY, O'CONNELL, WESTLAKE, CAMPBELL, PATTERSON,
4 DRISCOLL, LYNCH, KOEHNKE, IVERSON, JENKINS, COHEN,
5 J. BROWN, REHBERG, GLASER, JERGESON, STANG, RAPP-SVRCEK,
6 WYATT, GILBERT, JOHNSON, ELLIOTT, HARPER, CODY, STEPPLER,
7 DEBRUYCKER, ABRAMS, KADAS, SPAETH, GERVAIS, COCCHIARELLA,
8 DARKO, STRIZICH, KIMBERLEY, PAVLOVICH, BLOTKAMP, DAVIS,
9 MCDONOUGH, MOORE, BARDANOUE, SQUIRES, BISHOP, DEMARS,
10 ADDY, THOFT, NISBET, BACHINI, MAZUREK, VINCENT, QUILICI,
11 PECK, BRADLEY, D. BROWN, RAMIREZ, MERCER, GRADY, MENAHAN,
12 MCCORMICK, DAILY, RUSSELL, BROOKE, GIACOMETTO, SCHYE

13 BY REQUEST OF THE DEPARTMENT OF NATURAL

14 RESOURCES AND CONSERVATION AND THE

15 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

16
17 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A WASTEWATER
18 TREATMENT WORKS REVOLVING LOAN PROGRAM; ESTABLISHING A
19 WASTEWATER TREATMENT WORKS REVOLVING FUND; AUTHORIZING THE
20 ACCEPTANCE OF FEDERAL CAPITALIZATION GRANTS UNDER THE
21 FEDERAL CLEAN WATER ACT; AUTHORIZING THE DEPARTMENT OF
22 NATURAL RESOURCES AND CONSERVATION AND THE DEPARTMENT OF
23 HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER THE PROGRAM;
24 AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND
25 THE STATE'S SHARE OF THE REVOLVING FUND; STATUTORILY

1 APPROPRIATING TO THE DEPARTMENT OF NATURAL RESOURCES AND
2 CONSERVATION AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
3 SCIENCES ALL MONEY RECEIVED UNDER THE PROGRAM; AMENDING
4 SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE."
5

6 STATEMENT OF INTENT

7 This bill creates a revolving loan program capitalized
8 with federal and state funds to provide financial assistance
9 for water pollution control projects. A statement of intent
10 is required for this bill because it delegates rulemaking
11 authority to the board of health and environmental sciences
12 and the board of natural resources and conservation to
13 implement the provisions of this bill.

14 The boards are authorized to adopt rules necessary for
15 the establishment and administration of the water treatment
16 works revolving loan program. The authority includes
17 establishing rules:

18 (1) prescribing the form and content of applications
19 for loans and refinancing agreements;

20 (2) governing the application of the criteria for
21 awarding loans;

22 (3) establishing additional terms and conditions for
23 making the loans and the security instruments and other
24 necessary agreements; and

25 (4) establishing ceilings on the amount of individual

1 loans, if deemed appropriate and necessary for the
2 successful administration of the program, to be made to
3 municipalities and private concerns.

4
5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

6 NEW SECTION. **Section 1. Short title.** [This act] may
7 be cited as the "Wastewater Treatment Revolving Fund Act".

8 NEW SECTION. **Section 2. Definitions.** Unless the
9 context requires otherwise, in [this act] the following
10 definitions apply:

11 (1) "Administrative costs" means costs incurred by the
12 department and the department of natural resources and
13 conservation in the administration of the program, including
14 but not limited to costs of servicing loans and issuing
15 debt; program start-up costs; financial, management, and
16 legal consulting fees; and reimbursement costs for support
17 services from other state agencies.

18 (2) "Cost" means, with reference to a wastewater
19 treatment works project, all capital costs incurred or to be
20 incurred by a municipality or a private concern, including
21 but not limited to engineering, financing and other fees,
22 interest during construction, and a reasonable allowance for
23 contingencies to the extent permitted by the federal act and
24 regulations promulgated thereunder.

25 (3) "Federal act" means the Federal Water Pollution

1 Control Act, also known as the Clean Water Act, 33 U.S.C.
2 1251 through 1387, as amended.

3 (4) "Loan" means a loan of money from the revolving
4 fund to a municipality or a private concern.

5 (5) "Municipality" means any city, town, or other
6 local government unit having authority to own and operate a
7 sewage system and wastewater treatment works.

8 (6) "Private concern" means an individual or other
9 entity eligible for a loan or loans for a pollution control
10 project for a nonpoint source under section 319 of the
11 federal act.

12 (7) "Program" means the wastewater treatment works
13 revolving loan program established by [this act].

14 (8) "Project" means a wastewater treatment works or
15 part of a wastewater treatment works for which a
16 municipality or private concern makes an application for a
17 loan or other financial assistance.

18 (9) "Revolving fund" means the fund established by
19 [section 5].

20 NEW SECTION. **Section 3. Wastewater treatment works**
21 **revolving loan program.** There is a program under which the
22 state may provide financial assistance to municipalities and
23 private concerns to finance or refinance part or all of the
24 cost of projects. The program must be administered in
25 accordance with [this act] and the federal act.

NEW SECTION. Section 4. Authorization of agreement --

content. (1) The department may enter into a capitalization grant agreement or other agreement with the United States environmental protection agency to implement the program and may accept from that agency other grants and loans to carry out the program.

(2) In entering into the agreement, the director of the department may commit the state to:

(a) accept grant payments from the environmental protection agency in accordance with the schedule established by the administrator of that agency and deposit the payments in the revolving fund established in [section 5];

(b) deposit in the revolving fund from state money an amount equal to at least 20% of the total amount of all capitalization grants made to the state as provided by [section 5] on or before the date on which each quarterly federal grant payment is made to the state;

(c) provide financial assistance to municipalities and private concerns in accordance with [this act] in an amount equal to 120% of the amount of each grant payment within a time period not to exceed 1 year after receipt of a grant;

(d) expend all funds in the revolving fund in an expeditious and timely manner;

(e) use all funds deposited in the revolving fund as a

result of the capitalization grant to ensure progress, as determined by the governor of the state, toward compliance with enforceable deadlines, goals, and requirements of the federal act;

(f) expend each quarterly grant payment in accordance with the laws and procedures applicable to commitment or expenditure of revenues of the state;

(g) use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards;

(h) as a condition of making a loan or providing other financial assistance from the revolving fund, require that the municipality or private concern will maintain project accounts in accordance with generally accepted government accounting standards;

(i) make annual reports to the environmental protection agency concerning the use of the revolving fund as required by the federal act; and

(j) any other covenants, commitments, and obligations necessary to ensure that the state's administration of the program is consistent with the provisions of [this act].

NEW SECTION. Section 5. Revolving fund. (1) There is established in the state treasury a separate account designated as the wastewater treatment works revolving fund. There are established in the revolving fund as subaccounts a

1 federal allocation account, a state allocation account, an
2 administration account, an investment income account, and a
3 debt service account.

4 (2) There must be credited to:

5 (a) the federal allocation account, all amounts
6 received by the state pursuant to the federal act as
7 capitalization grants for a state revolving fund to assist
8 construction of wastewater treatment works and grants or
9 transfers of grants received under subchapter II of the
10 federal act for construction of wastewater treatment works;

11 (b) the state allocation account, the proceeds of
12 bonds of the state issued pursuant to [section 11] and other
13 money appropriated by the legislature;

14 (c) the administration account, 4%, or the maximum
15 amount allowed by the federal act, of the capitalization
16 grant award for payment of administrative costs;

17 (d) the investment account, all money received from
18 investment of amounts in the other accounts in the revolving
19 fund; and

20 (e) the debt service account, all interest earnings on
21 bond proceeds and the interest portion of loan repayments.

22 (3) Each loan made as authorized by [section 10] must
23 be funded and disbursed from the federal allocation account
24 or the state allocation account, or both, by the department
25 of natural resources and conservation as recommended by the

1 department, and all amounts received in repayment of
2 principal of a loan must be credited in the same proportion
3 to the federal allocation account or the state allocation
4 account, or both. All amounts received in payment of
5 interest on a loan must be credited to the revolving fund.
6 If bonds have been issued pursuant to [section 11] and are
7 outstanding, the interest payments must be transferred to
8 the debt service account securing the bonds. Money in the
9 debt service account that is not required for debt service
10 may be transferred by the board of examiners, upon request
11 of the department of natural resources and conservation, to
12 other accounts within the revolving fund.

13 (4) The department of natural resources and
14 conservation may establish additional accounts and
15 subaccounts within the revolving fund as it considers
16 necessary to account for the program money and to ensure
17 compliance with the federal act and [this act].

18 NEW SECTION. Section 6. Uses of revolving fund. Money
19 in the revolving fund may be used to:

20 (1) make loans to municipalities and private concerns
21 to finance all or a portion of the cost of a project;

22 (2) buy or refinance debt obligations of
23 municipalities that were issued to finance projects within
24 the state at or below market rates, provided that the
25 obligations were incurred after March 7, 1985;

1 (3) guarantee or purchase insurance for obligations of
2 municipalities that were issued to finance projects in order
3 to enhance credit or reduce interest rates;

4 (4) provide a source of revenue or security for
5 general obligation bonds the proceeds of which are deposited
6 in the revolving fund;

7 (5) provide loan guarantees for similar revolving
8 funds established by municipalities;

9 (6) earn interest on fund accounts; and

10 (7) pay reasonable administrative costs of the
11 revolving fund LOAN program not to exceed 4%, or the maximum
12 amount allowed under the federal act, of all federal grant
13 awards to the fund.

14 **NEW SECTION. Section 7. Applications.** (1) The
15 department shall, after consultation with the department of
16 natural resources and conservation, establish loan
17 application procedures, including forms for the
18 applications. Each application for a loan to finance
19 construction of a project must include:

20 (a) a reasonably detailed description of the project;

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

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

25 (d) identification of the source or sources of funds

1 to be used in addition to the proceeds of the loan to pay
2 the cost of the project;

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

5 (f) if the applicant is a municipality, a statement as
6 to whether, at the time of application, there are any
7 outstanding bonds, notes, or other obligations of the
8 municipality that were issued or incurred to finance any
9 part of the municipality's sewage system and, if so, a
10 description of the bonds, notes, or other obligations; and

11 (g) any other information that the department or the
12 department of natural resources and conservation may require
13 to determine the feasibility of a project and the
14 applicant's ability to repay the loan, including but not
15 limited to engineering reports, economic feasibility
16 studies, and legal opinions.

17 (2) Each application for a loan to refinance a
18 project, including a purchase of outstanding obligations
19 issued by a municipality to finance a project in whole or in
20 part, must include:

21 (a) a reasonably detailed description of the project;

22 (b) a schedule of the cost of the project;

23 (c) the date on which construction of the project
24 began;

25 (d) a description of the bonds, notes, or other

1 obligations to be refinanced and of any other notes, bonds,
2 or obligations issued or incurred to finance any part of the
3 municipality's sewage system; and

4 (e) any other information that the department or the
5 department of natural resources and conservation may
6 require.

7 (3) Each application for financial assistance in the
8 form of a guaranty or the purchase of insurance for a
9 municipal obligation must include all items required by
10 subsection (1) and any other information the department may
11 require.

12 NEW SECTION. Section 8. Evaluation of applications.
13 After consultation with the department of natural resources
14 and conservation, the department shall evaluate and annually
15 rank applications for loans and other financial assistance.
16 In ranking the applications, the department must consider
17 the following factors:

18 (1) the ability of the municipality or private concern
19 to pay the costs of the project without the requested
20 financial assistance;

21 (2) the amount available for financial assistance in
22 the revolving fund;

23 (3) the total amount requested by other applications
24 that have been received or that are likely to be received;

25 (4) the need for and benefit to be derived from the

1 project;

2 (5) in the case of an application to refinance an
3 outstanding obligation, the benefit of refinancing as
4 measured by a decrease in interest rates and whether the
5 refinancing permits the construction of an additional
6 project by the municipality; and

7 (6) any other criteria that the department determines
8 appropriate, considering the purposes of the federal act and
9 the program.

10 NEW SECTION. Section 9. Rulemaking. The board and the
11 board of natural resources and conservation may adopt rules
12 within their respective authorities established within the
13 provisions of [this act], including rules:

14 (1) prescribing the form and content of applications
15 for loans and refinancing agreements;

16 (2) governing the application of the criteria for
17 awarding loans;

18 (3) establishing additional terms and conditions for
19 the making of loans and the security instruments and other
20 necessary agreements; and

21 (4) establishing ceilings on the amount of individual
22 loans to be made to municipalities and private concerns, if
23 considered appropriate and necessary for the successful
24 administration of the program.

25 NEW SECTION. Section 10. Loans. (1) Upon approval of

1 an application by the department, the department of natural
 2 resources and conservation may lend amounts on deposit in
 3 the revolving fund to a municipality or private concern to
 4 pay part or all of the cost of a project or to buy or
 5 refinance an outstanding obligation of a municipality that
 6 was issued to finance a project. The loan is subject to the
 7 municipality or private concern complying with the following
 8 conditions:

9 (a) meeting requirements of financial capability set
 10 by the department of natural resources and conservation to
 11 assure sufficient revenues to operate and maintain the
 12 project for its useful life and to repay the loan;

13 (b) agreeing to operate and maintain the project
 14 properly over its structural and material design life, which
 15 may not be less than 20 years;

16 (c) agreeing to maintain proper financial records in
 17 accordance with recognized government accounting procedures
 18 and agreeing that all records are subject to audit;

19 (d) meeting the requirements listed in the federal act
 20 for projects constructed with funds directly made available
 21 by federal capitalization grants;

22 (e) providing legal assurance that all necessary
 23 property titles, easements, and rights-of-way have been
 24 obtained to construct, operate, and maintain the project;

25 (f) submitting an engineering report evaluating the

1 proposed project, including information demonstrating its
 2 cost-effectiveness and environmental information necessary
 3 for the department and the department of natural resources
 4 and conservation to fulfill their responsibilities under the
 5 Montana Environmental Policy Act and rules adopted to
 6 implement that act;

7 (g) complying with plan and specification requirements
 8 for public wastewater systems established by the board; and

9 (h) providing for proper construction inspection and
 10 project management.

11 (2) Each loan, unless prepaid, is payable subject to
 12 the limitations of the federal act, with interest paid in
 13 annual or more frequent installments, the first of which
 14 must be received not more than 1 year after the completion
 15 date of the project and the last of which must be received
 16 not more than 20 years after the completion date.

17 (3) Subject to the limitations of the federal act, the
 18 interest rate on a loan must enable the state to pay the
 19 principal of and interest on the bonds issued pursuant to
 20 [section 11].

21 (a) The interest rate must be determined as of the
 22 date the loan is authorized by the department of natural
 23 resources and conservation.

24 (b) The rate may include any additional rate that the
 25 department of natural resources and conservation considers

1 reasonable or necessary to provide a reserve for the
2 repayment of the loan. The additional rate may be fixed or
3 variable or may be calculated according to a formula, and it
4 may differ from the rate established for any other loan.

5 (4) Each loan must be evidenced by a bond, note, or
6 other evidence of indebtedness of the municipality or
7 private concern, in a form prescribed or approved by the
8 department of natural resources and conservation, except
9 that the bond, note, or other evidence must include
10 provisions required by the federal act and must be
11 consistent with the provisions of [this act]. The bond,
12 note, or other evidence is not required to be identical for
13 all loans.

14 (5) As a condition to making a loan, the department of
15 natural resources and conservation, with the concurrence of
16 the department, may impose a reasonable administrative fee
17 that may be paid from the proceeds of the loan or other
18 available funds of the municipality or private concern.
19 Administrative fees must be deposited in a special
20 administrative costs account that the department of natural
21 resources and conservation may create for that purpose
22 outside the revolving fund provided for in [section 5].
23 Money deposited in the special administrative costs account
24 must be used for the payment of administrative costs of the
25 program.

1 NEW SECTION. **Section 11. Authorization of bonds --**
2 **appropriation of proceeds.** (1) The board of examiners is
3 authorized, upon request of the department of natural
4 resources and conservation, to issue and sell bonds of the
5 state in an aggregate principal amount not exceeding \$10
6 million to provide money for the revolving loan program. The
7 bonds are general obligations on which the full faith,
8 credit, and taxing powers of the state are pledged for
9 payment of the principal and interest. The bonds must be
10 issued as provided by Title 17, chapter 5, part 8.

11 (2) The proceeds of the bonds, other than any premium
12 and accrued interest received, are appropriated to the state
13 allocation account of the wastewater treatment works
14 revolving fund. Any premium and accrued interest must be
15 deposited to the debt service account. Proceeds of bonds
16 deposited in the state allocation account may be used to pay
17 the costs of issuing the bonds. For purposes of sections
18 17-5-803 and 17-5-804, the state allocation account
19 constitutes a capital projects account. The proceeds must be
20 available to the department and the department of natural
21 resources and conservation and may be used for the purposes
22 authorized in [this act] without further budgetary
23 authorization.

24 (3) In the resolution authorizing the sale and
25 issuance of the bonds, the board of examiners, upon the

1 request of the department of natural resources and
 2 conservation, may create separate accounts or subaccounts to
 3 provide for the payment security of the bonds and may pledge
 4 the interest component of the loan repayments credited to
 5 the revolving fund and the revolving fund as security for
 6 the bonds.

7 NEW SECTION. Section 12. Statutory appropriation.
 8 Money in the revolving fund is statutorily appropriated, as
 9 provided in 17-7-502, for the purposes of making loans to
 10 municipalities and private concerns, ~~paying administrative~~
 11 ~~costs--of--the--program,~~ and paying debt service on
 12 obligations. Money in the special administrative costs
 13 account authorized by [section 10] is ~~statutorily~~
 14 ~~appropriated--for--administrative--costs--of--the--department--and~~
 15 ~~the--department--of--natural--resources---and---conservation~~
 16 ~~relating-to-the-program~~ SUBJECT TO LEGISLATIVE APPROPRIATION
 17 CONSTRAINTS, AND EXPENDITURES FROM THIS ACCOUNT MUST BE MADE
 18 FROM TEMPORARY APPROPRIATIONS, AS DESCRIBED IN 17-7-501(1)
 19 OR (2), MADE FOR THAT PURPOSE.

20 NEW SECTION. Section 13. Creation of debt. The
 21 legislature, through the enactment of this law by a
 22 two-thirds vote of the members of each house, authorizes the
 23 creation of state debt in an amount not to exceed \$10
 24 million and the issuance and sale of general obligation
 25 bonds in this amount for the purpose of providing the

1 state's share of the program.

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

3 **"17-7-502. Statutory appropriations -- definition --**
 4 **requisites for validity.** (1) A statutory appropriation is an
 5 appropriation made by permanent law that authorizes spending
 6 by a state agency without the need for a biennial
 7 legislative appropriation or budget amendment.

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

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

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

16 (3) The following laws are the only laws containing
 17 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;
 18 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;
 19 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
 20 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
 21 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
 22 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
 23 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
 24 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;
 25 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;

1 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;
 2 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103;
 3 section 13, House Bill No. 861, Laws of 1985; and section 1,
 4 Chapter 454, Laws of 1987; and [section 12].

5 (4) There is a statutory appropriation to pay the
 6 principal, interest, premiums, and costs of issuing, paying,
 7 and securing all bonds, notes, or other obligations, as due,
 8 that have been authorized and issued pursuant to the laws of
 9 Montana. Agencies that have entered into agreements
 10 authorized by the laws of Montana to pay the state
 11 treasurer, for deposit in accordance with 17-2-101 through
 12 17-2-107, as determined by the state treasurer, an amount
 13 sufficient to pay the principal and interest as due on the
 14 bonds or notes have statutory appropriation authority for
 15 such payments. (In subsection (3): pursuant to sec. 15, Ch.
 16 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
 17 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
 18 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.
 19 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
 20 1987, terminates July 1, 1988.)"

21 NEW SECTION. Section 15. Codification instruction.
 22 [Sections 1 through 13] are intended to be codified as an
 23 integral part of Title 75, chapter 5, and the provisions
 24 Title 75, chapter 5, apply to [sections 1 through 13].

25 NEW SECTION. Section 16. Requirements for approval of

1 state debt -- severability. Because [section 13] authorizes
 2 the creation of a state debt, a vote of two-thirds of the
 3 members of each house is required for enactment of [section
 4 13]. If [this act] is not approved by the required vote,
 5 [section 13] is void. The remaining sections of [this act]
 6 are valid and remain in effect in all valid applications
 7 upon enactment.

8 NEW SECTION. Section 17. Effective date. [This act]
 9 is effective July 1, 1989.

-End-