

TITLE L

WATER MANAGEMENT AND PROTECTION

CHAPTER 486

AID TO MUNICIPALITIES FOR WATER POLLUTION CONTROL

Section 486:1

486:1 State Contributions. –

I. (a) The state of New Hampshire shall pay annually 20 percent of the annual amortization charges, meaning principal and interest, on the eligible costs resulting from the acquisition and construction of sewage disposal facilities by municipalities (meaning counties, cities, towns, or village districts), in accordance with RSA 485:8, RSA 485-A:4, IX, and RSA 485-A:4, XII, for the control of water pollution. The word "construction" shall include engineering services, in addition to the construction of new sewage treatment plants, pumping stations, intercepting sewers, and sewer separation by storm drains when the latter can be demonstrated as a cost-effective method for eliminating a combined sewer overflow structure; the altering, improving or adding to existing treatment plants, pumping stations, intercepting sewers, and sewer separation by storm drains when the latter can be demonstrated as a cost-effective method for eliminating a combined sewer overflow structure; provided the construction has been directed by the department, or constitutes a voluntary undertaking designed to control or reduce pollution in the surface waters of the state as defined in RSA 485-A:2, and the plan therefor is approved in compliance with the provisions of RSA 485:8, RSA 485-A:4, IX, and RSA 485-A:4, XII. The term "eligible costs" as used in this chapter, except as noted, shall mean the entire cost of the construction of treatment plants, pumping stations, intercepting sewers and sewer separation by storm drains as defined in the Clean Water Act of 1977, less any other grant or subsidy. Cash payments, net of any other grant or subsidy, made by municipalities toward eligible costs shall also be eligible for state contributions in accordance with this section.

(b) Notwithstanding the provisions of subparagraph I(a), state contributions shall not apply toward original costs for the construction of any sewage disposal facility that has received a subsidy in the form of principal forgiveness provided through the American Recovery and Reinvestment Act of 2009.

II. Notwithstanding the provisions of paragraph I, the state of New Hampshire shall make a grant to the respective communities for the following specific projects which are enumerated in this paragraph, in an amount that, subsequent to the application of all available federal funds and the 5 percent local share of each said project, shall provide funds to pay for all interest costs incurred by issuance of bond anticipation notes and upon completion of said project, shall provide funds which are equivalent to the annual amortization charges, meaning principal and interest, on the remaining portion of the eligible costs resulting from the acquisition and construction of said sewage disposal facilities:

- (a) Berlin;
- (b) Dover (secondary treatment facility, pump station, and force main);
- (c) Goffstown contracts 1C and 3A;
- (d) Littleton secondary treatment facility;
- (e) Manchester (west interceptor north II, Piscataquog River interceptor, northeast interceptor, west interceptor south);
- (f) Nashua secondary treatment facility;
- (g) Newport secondary treatment facility;
- (h) Plymouth secondary treatment facility;
- (i) Portsmouth expansion of primary treatment facility;
- (j) Walpole village interceptor sewers;
- (k) Winchester Ashuelot village interceptor.

III. Notwithstanding the provisions of paragraphs I and II, beginning July 1, 1993, the state of New Hampshire shall pay 20 percent of the annual amortization charges, meaning principal and interest, on the costs resulting from the acquisition and construction of sewage disposal facilities by municipalities (meaning counties, cities,

towns, or village districts), for the control of water pollution, which have commenced construction of wastewater treatment facilities since July 1, 1990.

(a) The word "construction" shall include:

- (1) Engineering services related to construction activities identified under this paragraph;
- (2) The construction of new sewage treatment plants, pumping stations, intercepting sewers, and sewer separation by storm drains when the latter can be demonstrated as a cost-effective method of eliminating a combined sewer overflow structure; and
- (3) The altering, improving or adding to existing treatment plants, pumping stations, intercepting sewers, and sewer separation by storm drains when the latter can be demonstrated as a cost-effective method for eliminating a combined sewer overflow structure.

(b) Construction undertaken under this paragraph shall be required to constitute an undertaking designed to control or reduce pollution in the ground waters or surface waters of the state as defined in RSA 485-A:2, and plans shall be approved in compliance with the provisions of RSA 485:8, RSA 485-A:4, IX, and RSA 485-A:4, XII.

(c) The word "costs" as used in this paragraph shall mean the eligible costs of the construction of treatment plants, pumping stations, intercepting sewers and sewer separation by storm drains as defined in the Clean Water Act of 1977, as amended, and as further defined in rules and regulations promulgated by the U.S. Environmental Protection Agency as provided for in the Clean Water Act of 1977, as amended.

(d) The term "eligible costs" as used in this paragraph shall exclude land acquisition, except for land which shall be an integral part of a treatment process; easements and rights-of-way necessary to the project; collector sewers; and any administrative, legal, and fiscal costs related to the project.

IV. The commissioner of the department of environmental services shall:

(a) Establish and maintain a priority list of projects eligible to receive grants pursuant to RSA 486:1, III. The priority list shall contain the following:

(1) A section listing the highest priority projects ready for construction and anticipated to receive grants from appropriated funds within the next fiscal year; and

(2) A section listing the projects that may receive grants from appropriations in subsequent fiscal years.

(b) The commissioner or his designee shall hold an annual public hearing to receive testimony on the projects recommended by the department to receive grants in the next fiscal year. After considering the testimony offered at the hearing, the commissioner shall finalize the priority list for the next fiscal year, and project assistance shall be granted accordingly.

(c) The commissioner shall continue to use the priority system as approved by the U.S. Environmental Protection Agency in accordance with 40 CFR Part 35 to rank projects for placement on the lists established under RSA 486:1, IV(a).

(d) The lists and priority system required by RSA 486:1, IV shall not be considered rules subject to the provisions of RSA 541-A.

V. The department shall perform the following functions related to administration of the provisions of RSA 486:1, III:

(a) Evaluate and recommend projects to be placed on the priority list established under RSA 486:1, IV.

(b) Assist municipalities to:

(1) Perform preliminary project planning and design.

(2) Select a qualified consulting engineer.

(3) Negotiate an engineering services agreement in accordance with the provisions of RSA 485-A:4, XII.

(4) Develop an acceptable grant application for funding under RSA 486:1, III.

(5) Conduct pre-construction conferences.

(6) Resolve any bid protests filed during the bidding period.

(7) Accomplish tasks necessary during the start-up phase of wastewater treatment plants or major pumping stations.

(c) Review and approve preliminary and final facilities plans for the proposed project.

(d) Review construction plans and specifications in accordance with RSA 485:8 and RSA 485-A:4, IX.

(e) Process grant applications for state approval.

(f) Approve construction plans and specifications and issue authorizations to advertise contracts for bids.

(g) Review and approve any revisions to plans and specifications prior to formal advertisement by the municipality.

- (h) Review and approve formal addenda to plans and specifications during the formal advertising period.
- (i) Review bid documentation to establish the low responsive and responsible bidder.
- (j) Issue authorization to award the construction contract to the lowest responsive and responsible bidder.
- (k) Perform periodic site inspections to insure compliance with executed construction contract documents.
- (l) Review and approve operation and maintenance manuals.
- (m) Review and approve change orders during the construction period.
- (n) Review all invoices related to the project submitted to the grantee on a monthly basis.
- (o) Conduct a final inspection of completed facilities and certify substantial completion.
- (p) Based upon a satisfactory final project inspection, review and approve final eligible project costs.

Source. 1989, 339:1. 1992, 277:3. 1996, 228:91, 106. 2010, 151:1, eff. Aug. 13, 2010. 2015, 276:116, eff. July 1, 2015.

Section 486:1-a

486:1-a Definitions. –

In this chapter:

- I. "Commissioner" means the commissioner of the department of environmental services.
- II. "Department" means the department of environmental services.

Source. 1996, 228:92, eff. July 1, 1996.

Section 486:2

486:2 Regional Treatment Plants. – [Repealed 2007, 138:6, III, eff. Aug. 17, 2007.]

Section 486:3

486:3 Alternate State Contribution. –

I. The North Conway Water Precinct or any of the municipalities of Derry, Salem, Wolfeboro, Hampton, Sunapee, Rochester, Laconia or any other municipality in receipt of an order issued by the department according to its priority criteria to undertake the construction of sewage disposal facilities in accordance with the provisions of RSA 485 or 485-A without the benefit of a federal grant is entitled to an alternate state contribution. This alternate contribution shall consist of the payment of 20 percent of the annual amortization charges, meaning principal and interest, on the original costs resulting from the acquisition and construction of the sewage disposal facilities. The word "construction" shall include engineering services, in addition to the construction of new sewage treatment plants, pumping stations, and intercepting sewers; and the altering, improving or adding to existing treatment plants, pumping stations and existing intercepting sewers, provided that the construction has been directed by the department or is an undertaking designed to control or reduce pollution in the ground or surface waters of the state, as defined in RSA 485-A:2, and provided that the plan for the facilities is approved in accordance with RSA 485:8. The term "original costs" as used in this section shall mean the entire cost of the construction as defined above, excluding land acquisition, easements, and rights of way necessary to the project.

II. In addition to any state contribution provided in this chapter, the commissioner of the department of environmental services, with approval from the governor and council, may, upon review of plans submitted by a municipality, and within the limits of available appropriations, pay 10 percent of the annual amortization charges, meaning principal and interest, on the eligible costs resulting from the acquisition and construction of sewage disposal facilities when such acquisition or construction will result in user fees that are 20 percent above the state-wide average for residential users, due to the adverse impact on the municipality's residences and businesses caused by such user fees. The term "eligible costs" as used in this paragraph shall exclude land acquisition, except for land which shall be an integral part of a treatment process; easements and rights of way necessary to the project; collector sewers; and any administrative, legal and fiscal costs related to the project.

III. In addition to any other state contribution provided under this chapter to municipalities for water pollution

control, the commissioner may, with approval from the governor and council, and upon review of plans and specifications submitted by a municipality and within the limits of available appropriations, pay 10 percent of the annual amortization charges, meaning principal and interest, on the eligible costs resulting from the acquisition and construction of septage and sludge handling and treatment facilities when such acquisition or construction will result in increased septage handling and/or treatment capacity to meet the septage disposal needs for that municipality, and pay 2 percent of the annual amortization charges, meaning principal and interest, on the eligible costs resulting from the acquisition and construction of septage and sludge handling and treatment facilities when such acquisition or construction will result in increased septage handling and/or treatment capacity to meet the septage disposal needs for each additional New Hampshire municipality pursuant to RSA 485-A:5-b, but not to exceed a total of 50 percent total contribution, including other contribution provided by this chapter. The term "eligible costs" as used in this paragraph shall exclude land acquisition, except for land that shall be an integral part of a treatment process; easements and rights of way necessary to the project; and any administrative, legal, and fiscal costs related to the project.

Source. 1989, 339:1. 1992, 277:1. 1996, 228:106. 2002, 209:2, eff. July 1, 2003.

Section 486:4

486:4 Limitation of Guarantee. – [Repealed 2015, 276:115, eff. July 1, 2015.]

Section 486:5

486:5 Equitable Allocation of Costs. –

Notwithstanding any other provision of this chapter, the department shall not approve any contribution under RSA 486:1 unless it shall first have determined that the applicant:

- I. Has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the department, will pay his proportionate share of the costs of operation and maintenance (including replacement) of waste treatment services provided by the applicant.
- II. Has made provision for the payment to such applicant by the industrial users of the treatment works, of that portion of the cost of construction of such treatment works (as determined by the department) which is allocable to the treatment of such industrial wastes to the extent attributable to the federal share of the cost of construction.
- III. Has legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction.

Source. 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

Section 486:6

486:6 Retention of Funds. –

I. The grantee shall retain an amount of the revenues derived from the payment of costs by industrial users of waste treatment services, to the extent costs are attributable to the federal share of eligible project costs provided pursuant to this chapter as determined by the department, equal to:

- (a) The amount of the nonfederal cost of the project paid by the grantee; plus
 - (b) The amount determined in accordance with rules adopted by the commissioner, pursuant to RSA 541-A, which is necessary for future expansion and reconstruction of the project, except that the retained amount shall not exceed 50 percent of the revenues from the project.
- II. That portion of revenues retained by the grantee attributable to paragraph I(b), together with any interest on that portion, shall be used solely for the purposes of future construction, expansion, and reconstruction of any treatment works within the grantee's jurisdiction.

Source. 1989, 339:1. 1996, 228:106, 110, eff. July 1, 1996.

Section 486:7

486:7 Application for Funding. – Application for payments under the provisions of this chapter shall be made in accordance with rules adopted by the department under RSA 541-A, and shall be based upon reports filed with the department prior to January 31 in the calendar year for which payment is being requested.

Source. 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

Section 486:8

486:8 Application Agreement. – Applications for state grants under this chapter shall contain an agreement that the applicant has installed the pollution control facilities in accordance with the plans and specifications approved by the department and will provide proper and efficient operation and maintenance of said facilities; that failure to install the facilities in accordance with said approved plans and specifications or to provide proper and efficient operation and maintenance of such facilities shall result in loss of payments of the annual grant installment next following such failure. Said loss of payment of the annual grant installment shall continue in effect until such time as the applicant has completed the steps necessary to install the control facilities in accordance with plans and specifications approved by the department or made provisions for proper and efficient operation and maintenance of said facilities in accordance with department instructions, or both.

Source. 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

Section 486:9

486:9 Operator Certification. – The operators of pollution control facilities shall be certified as to their qualifications and ability to operate said facilities in accordance with rules adopted by the commissioner under RSA 541-A.

Source. 1989, 339:1. 1996, 228:110, eff. July 1, 1996.

Section 486:10

486:10 Rulemaking. –

The commissioner may adopt rules under RSA 541-A relative to treatment of wastes by or from industrial and nonindustrial recipients of waste treatment services to establish:

- I. Classes of users of such services, including categories of industrial users.
- II. Criteria against which to determine the adequacy of charges imposed on classes and categories of users reflecting all factors that influence the cost of waste treatment, including strength, volume, and delivery flow rate characteristics of waste.
- III. Certification criteria for pollution control facilities operators.

Source. 1989, 339:1. 1996, 228:110. 2007, 138:5, eff. Aug. 17, 2007.

Section 486:11

486:11 Adoption of Federal Regulation. – The commissioner may adopt as state rules under RSA 541-A any federal regulations or guidelines issued by the administrator of the United States Environmental Protection Agency which are consistent with this chapter.

Source. 1989, 339:1. 1996, 228:110, eff. July 1, 1996.

Section 486:12

486:12 Action by Attorney General. – If the commissioner determines, following public hearing, that any industrial user of a treatment works subject to this chapter has failed, in whole or in part, to reimburse the owner

of the treatment works as provided in this chapter, and that the owner either has failed to take available legal recourse to compel compliance, or is incapable of doing so, then the commissioner may request the attorney general to institute appropriate legal action against such user in the name of the state and the owner of the treatment works.

Source. 1989, 339:1. 1996, 228:110, eff. July 1, 1996.

Section 486:13

486:13 Disposal of Septage. – To insure the efficient collection and disposal of material pumped from or otherwise removed from septic tanks or other sewage storage facilities, referred to in this section as "septage," the department is authorized and directed to require the installation and operation of a septage reception and treatment facility in conjunction with any pollution abatement project for which state or federal aid is allocated pursuant to the provisions of RSA 486 and PL 92-500 (or subsequent amendments thereto), respectively. The incorporation of septage reception and treatment facilities as provided in this section shall not be applied retroactively but rather shall apply to projects constructed after January 1, 1990. The department is further authorized to review and approve proposed charges to be levied by municipalities for said reception and treatment of septage. The purpose of such review is to assure that the proposed service charges are equitable to all parties concerned and in no case shall municipalities be required to provide service at a financial loss. Additionally, municipalities shall not be required to receive and treat septage in such amount or at such times as would interfere with proper operation of municipal treatment and disposal facilities. Nothing contained in this section shall be construed to limit or modify in any way the authority conferred upon the department of health and human services under the provisions of RSA 147, in connection with public dumping facilities or removal, transportation and disposal of putrescible material.

Source. 1989, 339:1. 1995, 310:181. 1996, 228:106, eff. July 1, 1996.

Section 486:14

486:14 State Water Pollution Control and Drinking Water Revolving Loan Funds. –

I. (a) Authority is granted for the state of New Hampshire to participate in the federally funded state water pollution control and drinking water revolving loan funds or grants as may be provided under the Clean Water Act, the Safe Drinking Water Act, or related federal legislation as amended from time to time. The loan funds shall be administered by the commissioner of the department of environmental services under rules adopted by the commissioner under the provisions of RSA 541-A.

(b) A sum equal to 2 percent of all loan principal balances outstanding each year, which shall be an administrative charge, shall be set aside to be used by the department of environmental services to pay the costs of administering the state water pollution control and drinking water revolving loan funds. The funds set aside shall be deposited in nonlapsing water pollution control and drinking water loan administration funds and shall be continually appropriated to the department exclusively for the purposes of this section. If the sum of the administrative charge plus interest charge as established by rules of the department of environmental services based on market rates is less than 2 percent for a loan, then the administrative charge shall be equal to this sum and no interest charge shall be assessed on the loan.

(c) The department of environmental services is authorized to review projects funded from the state water pollution and drinking water revolving loan funds for impacts on the human and natural environment similar in intent to the steps described in 40 C.F.R. part 6, sections 506 and 508 through 511, pursuant to rules adopted by the commissioner of the department of environmental services under RSA 541-A.

(d) [Repealed.]

II. It is the intent of the general court that many projects be considered for inclusion in the state water pollution control revolving loan fund program. The following projects shall be given first consideration for inclusion:

(a) Manchester sewage treatment plant expansion.

(b) Exeter sewage treatment plant.

(c) Monroe sewage treatment plant.

III. Any borrowing by a municipality from the loan fund or grant funded monies shall be governed by the

applicable provisions of RSA 33, provided that the first principal payment on any loan and the first of the annual payments required under RSA 33:2 may be deferred up to one year after the estimated or actual completion date of the project being financed by the loan, and provided further that no authenticating certificate shall be required under RSA 33:11.

Source. 1989, 339:1. 1996, 224:4. 2002, 251:1, I. 2009, 144:42. 2010, 151:2, eff. Aug. 13, 2010; 295:14, eff. Aug. 13, 2010 at 12:01 a.m.