§ 1285-m. Drinking water revolving fund. 1. (a) The corporation shall undertake and provide assistance in support of the program to make financial assistance available to recipients to encourage and support the planning, development and construction of water supply facilities in accordance with the provisions of this section and title four of article eleven of the public health law.

(b) There is hereby established in the custody of the corporation a special fund to be known as the drinking water revolving fund. Except as otherwise provided by this paragraph, moneys in the drinking water revolving fund shall be segregated from all other funds of or in the custody of the corporation subject to any rights of holders of corporation bonds or notes issued for the purposes of this section. Moneys in the drinking water revolving fund shall only be used in accordance with the provisions of this section and title four of article eleven of the public health law; provided that, in addition, to the extent permitted by federal or state law, moneys in the drinking water revolving fund may be transferred to and used for the purposes authorized for the water pollution control revolving fund, and moneys in the water pollution control revolving fund may be transferred to and used for the purposes authorized for the drinking water revolving fund. The moneys in the drinking water revolving fund shall be applied to or paid out for authorized purposes of such fund in accordance with subdivision four of this section and title four of article eleven of the public health law. To the extent approved by the commissioner of health and the commissioner of environmental conservation and notwithstanding the provisions of paragraph (a) of this subdivision, moneys in the drinking water revolving fund and in the water pollution control revolving fund may be held together; provided that all such moneys are segregated from all other funds of or in the custody of the corporation subject to any rights of holders of corporation bonds or notes issued for the purposes of this section; provided further, that the corporation shall establish and maintain or cause there to be established and maintained a system of tracking the application of such moneys to the purposes of this section. The corporation may establish within the drinking water revolving fund additional accounts or subaccounts and specify any conditions applicable to the transfer of moneys between such accounts or subaccounts. With respect to each eligible project, the

corporation shall establish and maintain a record of the allocation provided for the benefit of such project in accordance with the terms of the applicable financing agreement.

2. As used in this section, the terms "allocation", "construction", "eligible project", "fund" and "financing agreement" shall have the meanings set forth in section eleven hundred sixty of the public health law.

3. Such fund shall consist of all of the following:

(a) the proceeds of bonds or notes issued by the state pursuant to the Clean Water/Clean Air Bond Act of 1996; provided that up to two hundred sixty-five million dollars ($265,000,000) of such proceeds shall be available to finance state assistance payments in the manner set forth in paragraphs (a), (d), (e), (f) and (g) of subdivision four of this section, and up to ninety million dollars ($90,000,000) shall be available to finance state assistance payments in the manner set forth in paragraphs (d), (f) and (h) of subdivision four of this section;

(b) federal capitalization grants and awards or other federal assistance provided pursuant to the federal safe drinking water act for purposes of deposit in the fund and appropriated by the state for deposit therein;

(c) moneys appropriated by the state legislature for the purpose of such fund or otherwise transferred by the state for deposit therein by the comptroller as required by law;

(d) payments of principal and interest made by recipients pursuant to loan or other financing agreements entered into pursuant to subdivisions eight and nine of this section; provided, however, if financial assistance made pursuant to financing agreements were financed by the issuance of bonds or notes of the corporation, deposit of such payments into the fund shall be subject to the rights of the holders of such bonds or notes to receive such moneys;

(e) investment earnings on amounts in such fund; and

(f) the proceeds of bonds or notes issued by the corporation for purposes of providing financial assistance to recipients.

4. Moneys in the drinking water revolving fund shall be applied by the

corporation in accordance with this section and title four of article eleven of the public health law to provide financial assistance to recipients for construction of eligible projects and, upon consultation with the director of the division of the budget, for such other purposes permitted by the federal safe drinking water act, as amended, and to provide for the administrative and management costs of the program, provided however, that proceeds of bonds issued pursuant to the Clean Water/Clean Air Bond Act of 1996, other than proceeds of bonds used to finance the state match for federal capitalization grants for the drinking water revolving fund, shall not be used for administrative and management costs; and provided further, that proceeds of bonds issued pursuant to the Clean Water/Clean Air Bond Act of 1996, other than proceeds of bonds issued to finance the state match for federal capitalization grants for the drinking water revolving fund, shall not be used to finance costs with respect to the Croton filtration project. As used in this section "financial assistance to recipients" means any one or more of the following:

(a) making loans to recipients for construction of eligible projects on such terms as the corporation may determine, subject to any applicable provisions of federal or state law;

(b) buying or refinancing debt obligations of recipients at market or below market rates, subject to any applicable provisions of federal or state law;

(c) guarantying, or purchasing insurance or other credit enhancement for municipal obligations where such action would improve credit market access for or reduce interest rates on such municipal obligations;

(d) providing a source of revenue or security for payment of principal and interest on bonds or notes issued by the corporation if the proceeds of the sale of such bonds or notes will be deposited in the fund;

(e) providing interest rate subsidy allocations to subsidize loans to recipients made from the proceeds of the corporation's bonds or notes;

(f) paying, pursuant to subdivision seven of this section, the costs of the corporation and the department of health of administering and managing the program described in this section and title four of article eleven of the public health law and paying the costs of the corporation and the department of health of providing technical assistance with respect to such program; provided, however, that proceeds of bonds

issued pursuant to the Clean Water/Clean Air Bond Act of 1996, other than proceeds of bonds used to finance the state match for federal capitalization grants for the drinking water revolving fund, shall not be used for such costs;

(g) paying up to seventy-five percent of the principal on loans made to recipients under financing agreements if the corporation determines that the recipient would be unable to carry out the eligible project financed with such loan without creating a financial hardship on system users and without the subsidy afforded by such payment of principal, provided that (i) the amounts applied to such purpose shall be paid from interest earned on funds deposited in the fund and from interest received on other loans made from the fund, (ii) the amounts so applied shall not exceed, in the aggregate, the interest earnings received by the fund on fifty percent of the amounts deposited to the fund, and (iii) in accordance with regulations to be promulgated by the corporation, preference shall be given to small and rural communities in providing such principal subsidies; or

(h) making state assistance payments for the state share of the cost of an eligible project from up to ninety million dollars ($90,000,000) of the proceeds of state bonds and notes issued pursuant to the Clean Water/Clean Air Bond Act of 1996; provided that, in accordance with regulations to be promulgated by the corporation, preference shall be given to recipients which would be unable to carry out such eligible projects in the absence of such state assistance payments without creating a financial hardship on system users.

Subject to any applicable provisions of federal or state law, any financial assistance at an interest rate of zero percent provided to recipients that meet the financial hardship criteria regulations established pursuant to title four of article eleven of the public health law, may have a final maturity up to forty years following scheduled completion of the eligible project.

5. The corporation may make payments to the state in accordance with subdivision seven of this section to reimburse the state for expenditures made pursuant to appropriation to pay the cost of the corporation and the department of health for administering and managing

the drinking water revolving fund program, including provision of technical assistance. Such reimbursement may be made from:

(a) available investment earnings on all amounts in the drinking water revolving fund excluding all amounts in the fund which are the subject of allocations or other financial assistance to a recipient;

(b) payments received from a recipient for such purpose; and

(c) the proceeds of federal capitalization grants, awards or assistance available for administration and management of such program.

Notwithstanding the foregoing, if the sources of revenues described in paragraphs (a), (b) and (c) of this subdivision are at any time insufficient to make a reimbursement to the state pursuant to this subdivision when due, the corporation may make such reimbursement from any other available amounts in the drinking water revolving fund, excluding all amounts that are the subject of allocations, provided, that the amounts paid from fund sources other than those described in paragraphs (a), (b) and (c) of this subdivision shall be reimbursed upon a determination by the director of the budget that future revenues obtained from sources described in paragraphs (a), (b) and (c) of this subdivision are in excess of the amounts reasonably needed to make future reimbursements pursuant to this subdivision.

* 6. Moneys in the drinking water revolving fund may be invested as provided in subdivision four of section twelve hundred eighty-four of this title and may be further invested:

(a) in investment agreements continuously secured by obligations with any insurance company or reinsurance company or corporate affiliate thereof rated by a nationally recognized rating agency in one of its two highest categories, any bank, trust company or broker or dealer, as defined by the securities exchange act of 1934, which is a dealer in government bonds, which reports to, trades with and is recognized as a primary dealer by a federal reserve bank and is a member of the securities investors protection corporation, if such investment agreement provides that:

(i) such obligations securing such investment agreements are obligations as set forth in section ten of the general municipal law;

(ii) such obligations are to be delivered to a trustee for the benefit of the corporation or, with respect to moneys pledged under an indenture

of trust or trust agreement relating to bonds or notes of the corporation, to the trustee under such indenture or trust agreement, or are supported by a safe keeping receipt issued by a depository satisfactory to the corporation as applicable, provided that such investment agreements must provide that the value of the underlying obligations shall be maintained at a current market value, calculated no less frequently than monthly, of not less than the amount deposited thereunder;

(iii) a prior perfected security interest in the obligations which are securing such agreement has been granted to the corporation, such trustee or such depository as applicable; and

(iv) such obligations are free and clear of adverse third party claims; or

(b) in obligations as set forth in section ten of the general municipal law that are rated by a nationally recognized rating agency in one of its two highest rating categories.

* NB Effective until September 30, 2029

* 6. Moneys in the drinking water revolving fund may be invested as provided in subdivision four of section twelve hundred eighty-four of this title and may be further invested:

(a) in investment agreements continuously secured by obligations with any insurance company or reinsurance company or corporate affiliate thereof rated by a nationally recognized rating agency in one of its two highest categories, any bank, trust company or broker or dealer, as defined by the securities exchange act of 1934, which is a dealer in government bonds, which reports to, trades with and is recognized as a primary dealer by a federal reserve bank and is a member of the securities investors protection corporation, if such investment agreement provides that:

(i) such obligations securing such investment agreements are obligations as set forth in section ten of the general municipal law;

(ii) such obligations are to be delivered to a trustee for the benefit of the corporation or, with respect to moneys pledged under an indenture of trust or trust agreement relating to bonds or notes of the corporation, to the trustee under such indenture or trust agreement, or are supported by a safe keeping receipt issued by a depository satisfactory to the corporation as applicable, provided that such

investment agreements must provide that the value of the underlying obligations shall be maintained at a current market value, calculated no less frequently than monthly, of not less than the amount deposited thereunder;

(iii) a prior perfected security interest in the obligations which are securing such agreement has been granted to the corporation, such trustee or such depository as applicable; and

(iv) such obligations are free and clear of adverse third party claims; or

(b) in obligations the interest on which is excludable from gross income under section one hundred three of the internal revenue code, provided that such obligations are rated by a nationally recognized rating agency in one of its two highest rating categories.

* NB Effective September 30, 2029

7. The corporation may transfer to the state on such schedule as the corporation and the department of health shall agree amounts from the fund to reimburse the state in accordance with the provisions of subdivision five of this section.

8. In addition to the powers of the corporation granted elsewhere in this chapter, the corporation shall have the power to enter into loan and other financing agreements authorized by title four of article eleven of the public health law. Notwithstanding the powers granted to the corporation elsewhere in this title, the corporation's power to finance eligible projects from the fund is limited to eligible projects for which financing agreements have been executed pursuant to title four of article eleven of the public health law.

9. In addition to the powers granted to the corporation elsewhere in this chapter, the corporation may make loans or other financial assistance to recipients for purposes of financing eligible projects for which the fund may be used, subject to the limitations of subdivision eight of this section, may accept the obligations of any recipient as security for the repayment of a loan to such recipient, and may assign and pledge such recipient obligations and financing agreements for the benefit of the holders of obligations of the corporation. Loan proceeds

or other financial assistance may be disbursed to a recipient only in connection with facilities that have been certified by the commissioner of health as constituting an eligible project and in accordance with other restrictions as may be imposed in connection with such loan or obligations of the corporation from the proceeds of which such loan is made.

10. The corporation is authorized to arrange, in consultation with the department of health, for any audits required by law for the purpose of issuing its bonds or notes to provide financial assistance to recipients, and provide for the implementation of any independently conducted reviews or audits arranged pursuant to subdivision two of section eleven hundred sixty-six of the public health law.

11. In the event a municipality participating in the drinking water revolving fund program shall fail to make any payment due the corporation pursuant to any financing agreement or other obligation of the municipality sold to the corporation or issued as security for the undertaking of the municipality thereunder, the corporation shall certify to the comptroller, and notify the chairman of the senate finance committee, the chairman of the assembly ways and means committee, the director of the division of the budget and the governing body of the municipality that such municipality has failed to make such payment. Such certificate shall be in such form as may be determined by the corporation provided such certificate shall specify the exact amount of debt service and surcharge, if applicable, required to satisfy such municipality's unpaid obligation. The comptroller, upon receipt of such certificate from the corporation, is authorized to and shall, to the extent not otherwise prohibited by law and subject to any other provision of law providing for withholding of payments to the municipality which takes precedence over this subdivision, withhold from such municipality the next succeeding payments of state aid or local assistance otherwise payable to it to the extent necessary to meet the certified amount of debt service and surcharge, if applicable, due the corporation and shall immediately pay over to the corporation as a debt service payment on behalf of such municipality the amount so withheld.