

Chapter Adm 35

ENVIRONMENTAL IMPROVEMENT FUND

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Note: Chapter Adm 35 was created as an emergency rule effective March 18, 1991. Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1999, No. 523.

Adm 35.01 Purpose. The purpose of this chapter is to establish rules under ss. 281.58, 281.59, and 281.61, Stats., for the administration of a program to provide financial assistance for costs incurred to abate pollution of the waters of the state or to provide drinking water.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91; CR 22-079: am. Register July 2023 No. 811, eff. 8-1-23.

Adm 35.02 Definitions. In this chapter, the following terms shall have the respective meanings:

(2) “Department” means the department of administration.

(2m) “Environmental improvement fund” means the fund established under s. 25.43, Stats.

(3) “Financial assistance” means assistance from the environmental improvement fund under s. 281.58 (6) (b), 281.59 (12), or 281.61 (2r), Stats., including assistance that the department does not require the recipient to repay.

(3m) “Financial assistance agreement” means an agreement entered into by the department pursuant to s. 281.59 (11) (a), Stats., including an amendment to a financial assistance agreement.

(4) “Market interest rate” has the meaning given in s. 281.59 (1) (b), Stats.

(5) “Municipality” has the meaning given in s. 281.59 (1) (c), Stats.

(7) “Obligation” means financial assistance that the recipient must repay. Obligations include a recipient’s debts guaranteed or insured by the environmental improvement fund that the recipient must repay to another lender.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91; correction in (7) made under s. 13.93 (2m) (b) 7., Stats., Register February 2002 No. 554; CR 22-079: renum. (1) to (2m) and am., r. and recr. (3), cr. (3m), am. (4), (5), r. (6), r. and recr. (7) Register July 2023 No. 811, eff. 8-1-23; correction in (3) made under s. 35.17, Stats., Register July 2023 No. 811.

Adm 35.03 Conditions of financial assistance. (3)

(a) The department may not enter into a financial assistance agreement unless the recipient demonstrates to the satisfaction of the department that the recipient has the financial capacity to assure sufficient dedicated sources of revenue to operate and maintain the system as long as an obligation is outstanding for the project and to pay the debt service, including funding and maintaining any debt service reserve, on its obligation.

(b) The department shall require an opinion of counsel or bond counsel, acceptable to the department, to the effect that the obligation of the recipient is valid and enforceable.

(c) The department may require the opinion of counsel or bond counsel under par. (b) to include a statement that interest on the obligation is excluded from gross income for federal income tax purposes.

Published under s. 35.93, Stats. Updated on the first day of each month. Entire code is always current. The Register date on each page is the date the chapter was last published.

(4) (a) The department may not enter into a financial assistance agreement unless the recipient establishes one or more dedicated sources of revenue that the department deems sufficient for repayment of the obligation.

(b) The dedicated source of revenue pledged to repayment of the obligation shall include one or more of the following:

1. For a general obligation, an irrevocable pledge of ad valorem taxes.

2. For a revenue obligation, a pledge of net revenues available to the utility, including user fees, a pledge of special assessments, municipal payments, other income, or a combination thereof.

3. For a metropolitan sewerage district organized under ss. 200.21 to 200.65, Stats., a general obligation pledge of ad valorem taxes.

4. Any other dedicated source of revenue that the department deems satisfactory.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91; correction in (4) (b) 3. made under s. 13.93 (2m) (b) 7., Stats., Register February 2002 No. 554; CR 22-079: am. (title), r. (1), (2), am. (3) (a), (b), cr. (3) (c), am. (4) (a), (b) (intro.), cr. (4) (b) 4. Register July 2023 No. 811, eff. 8-1-23.

Adm 35.04 Credit and security. (2) A recipient may not pay the principal of an obligation prior to the payment schedule specified in the financial assistance agreement, except in accordance with the financial assistance agreement and the obligation.

(3) In administration of its powers and duties under s. 281.59 (11) (b), Stats., the department shall deduct, as a first charge against state payments due the municipality, any amounts due to the environmental improvement fund.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91; CR 22-079: r. (1), r. and recr. (2), am. (3) Register July 2023 No. 811, eff. 8-1-23.

Adm 35.05 Disbursement of financial assistance.

(1) The department may disburse the financial assistance to the recipient upon receiving a determination from the department of natural resources that the financial assistance requested by the recipient is eligible for disbursement under ch. NR 162 or 166 and the financial assistance agreement.

(2) The department may only disburse financial assistance in accordance with a financial assistance agreement.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91; CR 22-079: am. (title), (1), r. and recr. (2), r. (3) Register July 2023 No. 811, eff. 8-1-23; correction in (1) made under s. 35.17, Stats., Register July 2023 No. 811.

Adm 35.06 Interest rates. (1) The department shall periodically review, and may periodically change, the market interest rate. The market interest rate set by the department under this section shall be the market interest rate for the purpose of ss. 281.58 (12) and 281.61 (11), Stats. The department may consider any of the following factors when establishing or changing the market interest rate:

(a) Municipal bond market indexes.

(b) Comparable bond market transactions.
 (c) Expectations for bond market changes to the next planned periodic market interest rate review.

(d) Effective interest rates for environmental improvement fund revenue obligations issued under s. 281.59 (4), Stats.

(e) Efficient administration of the environmental improvement fund.

(2) The department may review and change the market interest rate at any time as necessary to aid the purposes of ss. 281.58, 281.59, and 281.61, Stats.

(3) The department may set multiple market interest rates applicable to different types of obligations, including the following:

(a) Obligations of different final or average maturity.

(b) Taxable obligations as compared to tax-exempt obligations.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91; CR 22-079: r. (intro.), renum. (1) to (1) (intro.) and am., cr. (1) (a) to (e), r. and recr. (2), (3) Register July 2023 No. 811, eff. 8-1-23.

Adm 35.07 Accountability for financial assistance.

(1) A financial assistance agreement shall require a recipient of financial assistance to do all of the following:

(a) Maintain project accounts in accordance with the financial assistance agreement.

(b) For financial assistance involving an obligation, provide, if available, audited financial statements upon request from the department and at least annually while the recipient has an obligation outstanding.

(c) Take no action to reduce the adequacy of the dedicated source of revenue established for repayment of the project in accordance with s. 281.58 (14) (b) 1. or 281.61 (8m) (a), Stats.

(2) The department may require or perform financial audits prior to, during or at the end of the term of the obligation.

(3) A recipient of financial assistance designated as federal equivalency by the department of natural resources shall comply with the federal Single Audit Act, 31 USC 7501 to 7507, and Office of Management and Budget Uniform Guidance.

(4) The department may rely on a commissioned audit unless it finds that the audit was not performed in accordance with state or federal auditing standards. The department may perform, or commission others to perform an additional audit or audits to supplement work done in a single audit, to the extent it deems necessary.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91; CR 22-079: am. (1) to (3) Register July 2023 No. 811, eff. 8-1-23; correction in (1) (c) made under s. 35.17, Stats., Register July 2023 No. 811.

Adm 35.08 Financial assistance amendments. Neither the recipient nor the department may enter into an amendment to a financial assistance agreement, except in accordance with the terms of the financial assistance agreement. The recipient may not amend the obligation, except in accordance with the terms of the obligation.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91; CR 22-079: r. and recr. Register July 2023 No. 811, eff. 8-1-23.

Adm 35.09 Variances. The department may approve a variance from requirements of this chapter when the department determines that the variance is essential to provide financial assistance within the scope and intent of the environmental improvement fund, or that the variance is in the best interest of the state. In approving a variance, the department may take into account such factors as good cause, circumstances beyond the control of the recipient or the department and financial hardship. A request by a recipient for a variance shall include a description of the nature of the variance and the circumstances leading to the request.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91; CR 22-079: am. Register July 2023 No. 811, eff. 8-1-23.