36.24.111 FINANCIAL AND OTHER REQUIREMENTS FOR LOANS TO PRIVATE PERSONS

(1) It is anticipated that the private persons or entities eligible for financing under the program may differ substantially in organizational structure, capitalization, creditworthiness, type and availability of security or collateral for the loan, and the numbers of users of the system. The department has determined it is not feasible to establish by rule specific underwriting criteria applicable to each type of loan to a private party. In general, for a loan to a private person or entity, the department shall determine, based on representation of the borrower and other information available to it, that adequate revenues exist, or are reasonably expected to be produced, to pay the principal of and interest on the loan when due, and that the borrower will provide, or cause to be provided, to the department security or other collateral providing reasonable assurance of payment in the event of a default.

(2) The department is authorized to request and review any financial information of the borrower or third parties who may provide collateral or additional security that the department may deem necessary and appropriate to make the determination required under (1).

(3) The department may require such security or collateral for a loan to a private person or entity as it may determine necessary and appropriate in the circumstances, taking into account, among other things, the nature of the borrower, the principal amount of the loan and the project being financed, including, but not limited to:

(a) a mortgage or trust indenture on the facilities being financed;

(b) a mortgage or trust indenture on other property of the borrower or a third party;

(c) an assignment of revenues or accounts receivable;

(d) personal, corporate or other guarantees;

(e) letters or lines of credit;

(f) certificates of deposit; and

(g) assignments or pledges of stock or other securities.

(4) The department may as a condition of the loan impose financial covenants on the borrower, including, for example, a limit on the ability of the borrower to incur additional indebtedness, and any covenants necessary to obtain, if feasible, or maintain the tax exempt status of the state bonds sold to finance the loan.

(5) The department shall, after consultation with the department of environmental quality, establish loan application procedures and forms of applications for loans to private persons. An application by a private person for a loan is to 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, including a construction budget;

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

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

(f) a current financial statement of the system or project showing assets, liabilities, revenues, and expenses, and three-year operating budget;

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

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

(i) any information that the department may require in order to determine the effect of making the loan on the tax-exempt status of the state's bonds; and

(j) any other information that the department or the department of environmental quality may require to determine the feasibility of a project and the applicant's ability to repay the loan, including but not limited to:

(i) engineering reports;

(ii) economic feasibility studies;

(iii) title reports;

(iv) maps, property records, evidence of water or other rights; and

(v) legal opinions.

Authorizing statute(s): 75-5-1105, MCA

Implementing statute(s): 75-5-1112, MCA

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