



M A S S A C H U S E T T S
C L E A N W A T E R T R U S T

Public Comment Period for Implementing the Water
Infrastructure Transfer Act

Posted: July 1, 2020
Comment Deadline: August 6, 2020 by 12:00 PM

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Introduction. The Massachusetts Clean Water Trust (the Trust), in partnership with the Massachusetts Department of Environmental Protection (MassDEP), is furthering the Commonwealth of Massachusetts' commitment to providing lead-free drinking water by committing \$30 million for projects that remediate lead in drinking water or planning projects that identify sources of lead for remediation. The funding will be provided as additional subsidy in the form of loan forgiveness to [Disadvantaged Committees](#). The funding source is from a one-time transfer from the Clean Water State Revolving Fund (CWSRF) to the Drinking Water State Revolving Fund (DWSRF).

Public Comment Period. The Trust is requesting public comments on the following information by August 6th, 2020 at 12:00 PM. Please provide comments by email to Joshua Derouen, at jderouen@tre.state.ma.us. Responses to comments received during the comment period will be posted to the [Trust's website](#) by August 14th, 2020. Once the public comment period has ended, the Trust will finalize the program and present it to the Board of Trustees for approval. If approved, MassDEP will amend the CWSRF and DWSRF Intended Use Plans to include the lead subsidy program.

Overview. On October 4, 2019, the [Water Infrastructure Funding Transfer Act](#) (WIFTA)¹ was signed into law. This statute temporarily expands the CWSRF to DWSRF transfer authority specifically to address a threat to public health because of heightened exposure to lead in drinking water. This temporary authority allows the Commonwealth to transfer up to 5% of the cumulative CWSRF federal grants to the DWSRF. The transferred funds may be used to provide financial support in the form of forgiveness of loan principal, negative interest loans or grants (or any combination). This authority is in addition to the existing transfer authority² under the Safe Drinking Water Act. The transfer must be completed by October 4, 2020.

Proposed Program. The Trust is proposing to transfer \$30 million from the CWSRF to the DWSRF to provide additional subsidy in the form of loan forgiveness. Project activities eligible for this enhanced loan forgiveness include planning and construction for lead removal, corrosion control capital improvements, and full replacement of lead pipes and service lines. The project eligibility will be determined by MassDEP's project engineers following an established ranking system.

The loan forgiveness will be distributed in accordance with the [Affordability Calculation](#) and the Disadvantaged Communities designation. The subsidy funds for lead removal projects will be in addition to the annual loan forgiveness provided by the Trust. This means that eligible projects can receive two forms of loan forgiveness. However, projects cannot receive loan forgiveness that would cause the total loan subsidy to be in excess of a 75% subsidy compared to a market rate loan at the time of loan approval.

In accordance with the guidance from the Environmental Protection Agency (EPA), eligible projects must enter into Project Approval Certificates with MassDEP within three years from the

¹ S.1689 - A bill to permit States to transfer certain funds from the clean water revolving fund of a State to the drinking water revolving fund of the State in certain circumstances, and for other purposes. Pub. L. 116-63

² 42 U.S.C. 300j-12 note; Pub. L. 104-182

date of the funds transfer from the CWSRF to the DWSRF. Once the funds are committed to an eligible project, the funds must be drawn within five years.

Based upon the EPA guidance, eligible projects must have applied or will apply to MassDEP on either the 2020, 2021 or 2022 DWSRF Intended Use Plans (IUPs). However, if during this period, the Trust does not receive enough applications from Disadvantaged Communities to account for the \$30 million in additional subsidies, the Trust reserves the right to expand assistance to all eligible projects.

Considerations. The DWSRF routinely receives project proposals primarily focusing on lead remediation. On the 2020 IUP, two Disadvantaged Communities applied for \$19.3 million in eligible lead remediation projects (based on an initial review of the applications). One project applicant has decided not to move forward due to the COVID-19 pandemic but will reapply next year. With this consistent level of interest, the Trust is confident that by focusing subsidy to these projects, more communities will decide to take advantage of the unique opportunity to remediate lead at a greatly reduced cost.

In recent years, Congress has increased the percent of the federal DWSRF grant the Trust can provide as additional subsidy each year. The Trust has decided not to provide the largest percentage of additional subsidy allowed because each dollar provided as additional subsidy reduces the annual capacity of the DWSRF. The Trust and MassDEP have successfully increased DWSRF capacity from \$106 million in 2015 to \$166 million in 2020 by strategically utilizing available funds. The increased capacity has allowed the DWSRF to offer financing to the highest priority projects that applied for financing but has not been able to offer financing to all eligible projects like the CWSRF. Transferring funds from the CWSRF to the DWSRF will allow the DWSRF to help move these vital lead remediation projects forward, while continuing to ensure that the program can still offer financing to other vital projects, such as PFAS remediation.

The Trust has evaluated the financial impact that the transfer will have on the CWSRF and determined it will not adversely impact the Trust's ability to finance high priority projects. The annual CWSRF IUP consistently commits to financing all eligible proposals for approximately half a billion dollars of projects and transferring \$30 million will not impact that capacity.

Conclusion. The Trust and MassDEP believe this program can offer a unique opportunity to provide additional subsidy to Disadvantaged Communities to ensure the water being provided to the Commonwealth's most susceptible residents is free from lead. It provides the Commonwealth an opportunity to incentivize identifying and removing lead from public drinking water at a greatly reduced cost and to do it sooner than later. Thank you for taking the time to review the proposed program and the Trust and MassDEP welcome your comments to help make it a success.