

The Code of Alabama 1975

Title 22 HEALTH, MENTAL HEALTH, AND ENVIRONMENTAL CONTROL.

Chapter 23B ALABAMA DRINKING WATER FINANCE AUTHORITY.

Section 22-23B-1

Legislative findings.

The Legislature hereby finds and declares that the following facts are true and correct:

The 104th Congress of the United States of America has recently enacted into law amendments to Public Law 104-182 (the "federal act") commonly known as the "Safe Drinking Water Act;"

Congress, in the federal act, has determined that the federal government is committed to maintaining and improving its partnership with the states in the administration and implementation of the federal act;

Congress has, in the federal act, determined that the requirements of the federal act with respect to safe drinking water will impose new requirements that may exceed the financial and technical capacity of many public water systems;

The federal act authorizes state revolving loan funds and authorizes the administrator of the Environmental Protection Agency to offer to enter into agreements with eligible states to make capitalization grants to further the health protection objectives of the federal act, promote the efficient use of fund resources and carry out the other purposes specified in the federal act;

The Legislature deems it necessary, desirable and in the public interest that the state take all action necessary to accomplish the full participation of the state in the revolving loan fund program authorized by the federal act in order to make available to public bodies funds available under the federal act;

Among the requirements of the federal act is the requirement that the state establish a revolving loan fund in compliance with the federal act and provide the other assurances, procedures and mechanisms to carry out the requirements of the federal act as a condition precedent to entering into a grant and other agreements with the federal government pursuant to which funds appropriated by the United States of America will be made available to the state for the purposes of the federal act;

It is necessary, desirable and in the public interest that the Alabama Department of Environmental Management, as the agency of the state charged with the primary responsibility for enforcing state and federal standards for public water systems in the state, be authorized and directed, together with the public corporation herein provided for, to take such actions as are necessary to comply with the provisions of the federal act and to enter into capitalization grants and other agreements with the United States of America pursuant to the federal act;

The federal act authorizes the authority to accelerate the availability of assistance to public bodies by leveraging the amounts available under the federal act through the issuance of bonds of the authority in order to make funds available to public bodies as soon as possible; and

It is necessary, desirable and in the public interest that the authority herein provided for be created for the purpose of issuing its bonds to fully utilize the federal assistance provided for in the federal act to the end that below market rate loans can be made available to public bodies for the purpose of facilitating compliance with the provisions of the federal act.

(Acts 1997, No. 97-415, p. 687, §1.)

Section 22-23B-2

Definitions.

The following words and phrases, whenever used in this chapter, shall have the following respective meanings unless the context clearly indicates otherwise:

AUTHORITY. The corporation organized pursuant to the provisions of this chapter as a public corporation, agency and instrumentality of the state and known as the "Alabama Drinking Water Finance Authority."

AUTHORIZING RESOLUTION. A resolution, order or other proceedings adopted by the board of directors of the authority authorizing the issuance of bonds, agreements and related matters.

BOARD OF DIRECTORS. The board of directors of the authority.

BOND PROCEEDS. The net proceeds of sale of bonds or notes, and the income derived from the investment of such proceeds.

BONDS. The bonds, notes or obligations or other evidences of indebtedness issued by the authority under the provisions of this chapter.

DEPARTMENT. The Alabama Department of Environmental Management or any successor.

FEDERAL ACT. The Act of Congress so designated (P.L. 104-182), as amended from time to time.

GOVERNMENT SECURITIES. Any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any federal agency to the extent such obligations are unconditionally guaranteed by the United States of America and any certificates or any other evidences of an ownership interest in such obligations of, or unconditionally guaranteed by, the United States of America or in specified portions thereof (which may consist of the principal thereof or the interest thereon).

PERMITTED INVESTMENTS.

a. Government securities;

b. Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies, to the extent that such obligations are secured by the full faith and credit of the United States of America: bank for cooperatives; federal intermediate credit banks; federal financing bank; federal home loan banks; federal farm credit bank; export-import bank of the United States; federal land banks; or farmers home administration, or any other agency or corporation which has been or may hereafter be created by or

pursuant to an Act of the Congress of the United States as an agency or instrumentality thereof, the bonds, debentures, participation certificates or notes of which are unconditionally guaranteed by the United States of America;

c. Bonds, notes, pass through securities or other evidences of indebtedness of the Government National Mortgage Association and participation certificates of the Federal Home Loan Mortgage Corporation;

d. Full faith and credit obligations of any state, provided that at the time of purchase such obligations are rated at least "AA" by Standard & Poor's Ratings Services and at least "Aa" by Moody's Investors Service, Inc.;

e. Time deposits evidenced by certificates of deposit issued by banks or savings and loan associations which are members of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, provided that, to the extent such time deposits exceed available federal deposit insurance, such time deposits are fully secured by obligations described in paragraphs a., b., and c. above, which at all times have a market value (exclusive of accrued interest) at least equal to such bank time deposits so secured, including interest;

f. Repurchase agreements for obligations of the type specified in paragraphs a., b., and c. above, provided such repurchase agreements are fully collateralized and secured by such obligations which have a market value (exclusive of accrued interest) at least equal to the purchase price of such repurchase agreements and which are held by a depository satisfactory to the authority in such manner as may be required to provide a perfected security interest in such obligations, and are 100 percent collateralized; and

g. Uncollateralized investment agreements with, or certificates of deposit issued by, banks or bank holding companies, the senior long-term securities of which are rated at least "AA" by Standard & Poor's Ratings Services and at least "Aa3" by Moody's Investors Service, Inc.

PROJECT. Projects eligible for assistance from the revolving loan fund as certified to the authority by the department, including, without limitation, (a) rehabilitation or development of sources to replace contaminated sources, (b) installation or upgrade of treatment facilities, (c) installation or upgrade of storage facilities, including finished water reservoirs, (d) installation or replacement of transmission and distribution systems, (e) consolidation of water supplies, (f) purchase of systems, (g) acquisition of real property and interests therein (including leasehold interests and rights-of-way), and (h) any expenditure of a type or category determined by the authority, the department or the Administrator of the Environmental Protection Agency to be of such nature as will facilitate compliance with national primary drinking water regulations or otherwise significantly further the health protection objectives of the federal act.

PUBLIC BODY. Includes each county, state agency, incorporated city or town, public corporation, district, cooperative, association, authority or any instrumentality thereof created by or pursuant to state law and having jurisdiction, power or authority with respect to the transmission, sale, production or delivery of drinking water, including also a combination of two or more of the foregoing.

REVOLVING LOAN FUND. The fund created by this chapter.

(Acts 1997, No. 97-415, p. 687, §2.)

Section 22-23B-3

Revolving Loan Fund established; maintenance; administration.

There is hereby established the State of Alabama Drinking Water Revolving Loan Fund, which shall be maintained in perpetuity and operated by the department as agent for the authority for the purposes stated herein. Grants from the federal government or its agencies allocated, allotted or paid to the state for capitalization of the revolving loan fund, state matching funds where required, and loan principal, interest, and penalties and interest income and all other amounts at anytime required or permitted to be paid into the revolving loan fund shall be deposited therein. Proceeds of bonds issued by the authority, proceeds of capitalization grants, funds appropriated by the state, loan principal and interest payments, interest income and all other funds of the authority shall be deposited with one or more banks designated by the authority to act as depository or trustee with respect to such funds. The authority may establish one or more accounts or sub-accounts in the revolving loan fund in connection with the issuance of bonds, the receipt of capitalization grants or any other funds. Amounts in the revolving loan fund shall be expended in a manner consistent with terms and conditions of the federal capitalization grants and may be used to provide loans to public bodies to pay costs of projects; to secure principal and interest on bonds issued by the authority; to purchase debt incurred by public bodies for projects; to fund other programs which the federal government may allow in the future through its grants; to fund the administrative expenses of the department relating to the responsibilities and requirements of this chapter; and to provide for any other expenditure consistent with the federal grant program and state law. Amounts on deposit in the revolving loan fund may be invested in permitted investments and all interest earned on such investments shall be credited to the revolving loan fund and to one or more accounts or sub-accounts therein established by the authority.

The revolving loan fund shall be administered by the department, as agent for the authority, and the department is authorized to establish procedures and adopt such regulations as may be required to administer the revolving loan fund program in accordance with applicable law and to enter into contracts and other agreements in connection with the operation of the revolving loan fund, including but not limited to, contracts and agreements with federal agencies, public bodies, the authority, and other parties to the extent necessary or convenient for the implementation of the revolving loan fund program. Acting as agent for the authority, the department shall maintain full authority for the operation of the revolving loan fund in accordance with applicable federal and state law. The department shall provide an annual report on the revolving loan fund program to the United States Environmental Protection Agency as required by the federal act and to the Governor.

(Acts 1997, No. 97-415, p. 687, §3.)

Section 22-23B-4

Alabama Drinking Water Finance Authority.

The Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the director of the department and the Director of Finance may become a public corporation to be known as the Alabama Drinking Water Finance Authority with the power and authority hereinafter provided, by proceeding according to the provisions of this chapter.

(Acts 1997, No. 97-415, p. 687, §4.)

Section 22-23B-5

Alabama Drinking Water Finance Authority - Incorporation.

(a) To become a corporation, the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the director of the department and the Director of Finance shall present to the Secretary of State of Alabama an application signed by them which shall set forth:

(1) The name and official designation of each of the applicants, together with a certified copy of the commission evidencing each applicant's right to office;

(2) The date on which each applicant was inducted into office and the term of office of each of the applicants;

(3) The name of the proposed corporation, which shall be the "Alabama Drinking Water Finance Authority";

(4) The location of the principal office of the proposed corporation; and

(5) Any other matter relating to the incorporation which the applicants may choose to insert and which is not inconsistent with this chapter.

The application shall be subscribed and sworn to by each of the applicants before an officer authorized by the laws of this state to take acknowledgments to deeds. The Secretary of State shall examine the application; and, if he or she finds that it substantially complies with the requirements of this section, he or she shall receive and file it and record it in an appropriate book of records in his office.

When the application has been made, filed and recorded as herein provided, the applicants shall constitute a corporation under the name proposed in the application, and the Secretary of State shall make and issue to the applicants a certificate of incorporation pursuant to this chapter, under the Great Seal of the State, and shall record the certificate with the application. There shall be no fees paid to the Secretary of State for any work done in connection with the incorporation or dissolution of the authority.

(b) The applicants named in the application and their respective successors in office shall constitute the members of the authority. The Governor shall be the president of the authority, the director of the department shall be the vice-president thereof and the Director of Finance shall be the secretary thereof. The members of the authority shall constitute all the members of the board of directors of the authority, and any three members of the said board of directors shall constitute a quorum for the transaction of business. Should any person holding any state office named in this section cease to hold such office by reasons of death, resignation, expiration of term of office or for any other reason, then the successor in office to such director shall take his or her place as a member, officer or director of the authority. No member, officer or director of the authority shall draw any salary, in addition to that now authorized by law, for any service rendered or for any duty performed in connection with the authority.

(c) All proceedings had and done by the board of directors shall be reduced to writing by the secretary of the authority and shall be recorded in a substantially bound book and filed in the office of the secretary.

Copies of such proceedings, when certified by the secretary of the authority, under the seal of the authority, shall be received in all courts as prima facie evidence of the matters and things therein certified.

(Acts 1997, No. 97-415, p. 687, §5.)

Section 22-23B-6

Alabama Drinking Water Finance Authority - Powers.

(a) The authority shall have the following powers, among others specified by or required to implement the provisions of this chapter:

To have succession in its corporate name until the principal of and interest on all bonds issued by it shall have been fully paid;

To sue and be sued and to prosecute and defend, at law and in equity, in any court having jurisdiction of the subject matter and of the parties thereto;

To have and to use a corporate seal and to alter such seal at pleasure;

To establish a fiscal year;

To acquire in any manner and to hold title to or leasehold interests in real and personal property and to sell, convey or lease the same for purpose of carrying out its functions and duties hereunder;

To construct and operate or lease to or from any public body any one or more projects;

To execute agreements obligating the authority to agree to pay and to pay such portion of the estimated reasonable cost of the project of each public body as may be required to meet the requirements of the federal act and the state;

To make loans to public bodies and to enter into agreements with public bodies deemed necessary by the authority;

To issue bonds or other obligations;

To enter into such agreements in connection with the sale of its bonds as the board shall determine, including arrangements for letters of credit, bond insurance or other credit enhancement devices, provided that no such arrangement shall obligate funds of the authority other than as provided in this chapter;

To appoint and employ such banks, attorneys, financial advisors, agents and employees as the business of the authority may require; and

To obligate the authority to make payments to the United States of America necessary to cause bonds of the authority to be and remain exempt from federal income taxation.

(b) The authority shall use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards.

(Acts 1997, No. 97-415, p. 687, §6.)

Section 22-23B-7

Purpose; issuing, selling and refunding of bonds.

For the purpose of providing funds for the authority to make loans to public bodies for a project or projects, or for the payment of obligations incurred or temporary loans made for any of said purposes, the authority is hereby authorized, from time to time, to issue and sell its bonds or other evidences of indebtedness. Such bonds may be issued in one or more series; shall be in such form and denominations and of such terms and maturities, not exceeding 30 years from the date of issue of each series; shall bear such rate or rates of interest, payable and evidenced in such manner; may contain such provisions for registration or for redemption prior to maturity; and may contain such other provisions not inconsistent herewith, all as may be provided by the authorizing resolution. As security for the payment of the principal of and interest on its bonds, the authority is authorized to pledge, transfer and assign any obligations of each public body payable to the authority and the security for such obligation, all or any portions of the amounts on deposit in the revolving loan fund and the interest income therefrom, and any other funds available to the authority under the provisions of this chapter.

The bonds and other evidences of indebtedness of the authority may be sold at such time or times as the board of directors may deem advantageous. The bonds may be sold at private or public sale. Bonds sold at public sale may be offered on a basis determined by the authority to enable it to effect the sale of the bonds being sold at the lowest effective borrowing cost to the authority; provided, that if no bid acceptable to the authority is received, it may reject all bids and reoffer the bonds for sale. Notice of any public sale shall be given by publication in one or more newspapers published in the state or by distribution of summary notices of sale or both, in such form and published in such manner and at such times as the board of directors may determine. The authority may pay from the proceeds of the sale of its bonds all expenses, including publication and printing charges, attorney's fees, paying agent and trustee fees, financial advisory fees, bond insurance premiums, letter of credit and other credit enhancement fees, and other expenses which the board of directors may deem necessary or advantageous in connection with the authorization, advertisement, sale, execution, issuance and delivery thereof.

Any bonds issued by the authority may from time to time be refunded by the issuance, by sale or exchange, of refunding bonds payable from the same or different sources for the purpose of paying all or any part of the principal of the bonds to be refunded, any redemption premium required to be paid as a condition to the redemption prior to maturity of any such bonds that are to be so redeemed in connection with such refunding, any accrued and unpaid interest on the bonds to be refunded, any interest to accrue on each bond to be refunded to the date on which it is to be paid, whether at maturity or by redemption prior to maturity, and the expenses incurred in connection with such refunding.

All bonds issued by the authority shall be solely and exclusively obligations of the authority, payable solely from the revenues, income, fees or charges pledged to the payment thereof. No bonds issued under the provisions of this chapter shall constitute a debt or liability of the state or any political subdivision thereof other than the authority or a pledge of the faith and credit of the state or of any political subdivision thereof, but such bonds shall be payable solely from the sources pledged or available for such payment as authorized in this chapter.

(Acts 1997, No. 97-415, p. 687, §7.)

Section 22-23B-8

Funding of a loan.

(a) In order to provide for the funding of a loan by the authority for a project to the public body, such public body shall, to the extent required by the authority as a condition precedent to the making of a loan, establish a dedicated source of revenue to repay the moneys received from the authority and to provide for operation, maintenance and equipment replacement expenses. Such public body is hereby authorized and empowered, any existing statute to the contrary notwithstanding, to do and perform any one or more of the following:

To obligate itself to pay to the authority at periodic intervals a sum sufficient to provide bond debt service with respect to the bonds of the authority issued to fund the loan for such project;

To levy, collect and pay over to the authority and to obligate itself to continue to levy, collect and pay over to the authority the proceeds of any one or more of the following:

Any fee or charge for services from any one or more utility systems owned by such public body;

Any licenses, permits, taxes and fees;

Any special assessment on the property drained, served or benefitted by the project; and

Other revenue available to the public body;

To undertake and obligate itself to pay its contractual obligation to the authority solely from the proceeds from any one or more of the sources specified in subparagraph (2) above, or to impose upon itself a general obligation pledge to the authority additionally secured by a pledge of any one or more of such sources;

To obligate itself to continue to levy and collect such revenues, fees and charges in such amounts as shall be required by the authority;

As evidence of its obligation to repay any loan made by the authority, to issue its bonds, warrants or other obligations; and

To enter into such agreements, to perform such acts and to delegate such functions and duties as its governing body shall determine to be necessary or desirable to enable the authority to fund a loan to the public body to aid it in the construction or acquisition of a project.

(b) In the event of default, the authority may cause all principal and interest on any loan to be immediately due and payable and utilize all available remedies under state law.

(c) All loans made by the authority shall provide that repayment of such loans shall begin not later than one year after completion of construction of the project for which such loan was made and shall be repaid in full no later than 20 years after completion of such construction. The repayment period may be extended as required or permitted by the federal act so long as such extended repayment period does not exceed the expected design life of the project.

(d) The recipients of loans shall maintain project accounts in accordance with generally accepted government accounting standards.

(Acts 1997, No. 97-415, p. 687, §8.)

Section 22-23B-9

Signature; seal.

The bonds of the authority shall be signed by its president or vice-president and attested by its secretary, and the seal of the authority shall be affixed thereto; provided, that a facsimile of the signatures of said officers may be printed or otherwise reproduced on any such bonds in lieu of manual signatures thereon, and a facsimile of the seal of the authority may be printed or otherwise reproduced on any such bonds in lieu of being manually affixed thereto.

(Acts 1997, No. 97-415, p. 687, §9.)

Section 22-23B-10

Usury exemption.

All notes, bonds or other securities issued by the authority shall be exempt from the laws of the state governing usury or prescribing or limiting interest rates, including, but without limitation, the provisions of Chapter 8 of Title 8.

(Acts 1997, No. 97-415, §10.)

Section 22-23B-11

Taxation exemption.

All bonds at any time issued by the authority and the income therefrom shall be exempt from all taxation in the state.

(Acts 1997, No. 97-415, p. 687, §11.)

Section 22-23B-12

Capitalization grant agreements, operating agreements, etc.

The department is hereby authorized to enter into capitalization grant agreements, operating agreements and other arrangements required by the federal act as a condition precedent to the receipt of funds under the federal act. The department shall have full and continuing power to do all things necessary to be and remain in compliance with the provisions of the federal act necessary to cause the state to receive assistance under the federal act.

(Acts 1997, No. 97-415, p. 687, §12.)

Section 22-23B-13

Legislative intent.

This chapter is intended to aid the state through the furtherance of its purposes by providing an appropriate and independent instrumentality of the state with full and adequate powers to fulfill its functions. No proceeding, notice or approval shall be required for the incorporation of the authority, the purchase or making of any loan, the issuance of any bonds, or the exercise of any other power by the authority.

(Acts 1997, No. 97-415, p. 687, §13.)

Section 22-23B-14

Construction.

This chapter is remedial in nature and shall be liberally construed to effect its purposes.

(Acts 1997, No. 97-415, p. 687, §14.)