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HOUSE BILL NO. 2739

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Conservation and Natural Resources

on January 29, 1997)

(Patrons Prior to Substitute—Delegates Phillips and Dudley [HB2659])

A BILL to amend and reenact §§ 62.1-233, 62.1-234, and 62.1-237 through 62.1-239.1 of the Code of Virginia, relating to Virginia Water Supply Revolving Fund.

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-233, 62.1-234, and 62.1-237 through 62.1-239.1 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-233. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) of this title.

"Board" means the Board of Health.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred ~~by the local government~~ as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred ~~by the local government~~ in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary.

"Fund" means the Virginia Water Supply Revolving Fund created by this chapter.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision created by the General Assembly or pursuant to the Constitution or laws of the Commonwealth or any combination of any two or more of the foregoing.

"Noncommunity waterworks" means a waterworks that serves an average of at least twenty-five individuals for at least sixty days out of the year and such individuals are not year-round residents.

"Other entities" means owners of waterworks; however, this term does not include the federal government or owners of noncommunity waterworks operated for profit.

"Project" means any water supply facility which serves primarily residents of the Commonwealth or which is located or to be located in the Commonwealth ~~by any local government~~. The term includes, without limitation, water supply and intake facilities; water treatment and filtration facilities; water storage facilities; water distribution facilities; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto.

"Waterworks" means a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least fifteen connections or (iii) an average of twenty-five individuals for at least sixty days out of the year. The term includes all structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered.

§ 62.1-234. Creation and management of Fund.

There shall be set apart as a permanent and perpetual fund, to be known as the "Virginia Water Supply Revolving Fund," sums appropriated to the Fund by the General Assembly, all receipts by the Fund from loans made by it to local governments *or other entities*, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source public or private. The Fund shall be administered and managed by the Authority as prescribed in this chapter, subject to the right of the Board, following consultation with the Authority, to direct the distribution of loans, *loan subsidies (including principal forgiveness)* or grants from the Fund to particular local governments *or other entities* and to establish the interest rates and repayment terms *and those public health conditions deemed necessary by the Board* of such loans, *loan subsidies or grants* as provided in this chapter. In order to carry out the administration and management of the Fund, the Authority is granted the power to employ officers, employees, agents, advisers and consultants, including, without limitation, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality. ~~The Authority may disburse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund and a reasonable fee to be approved by the Board for its management services.~~ *However, the Authority shall adopt policies and procedures that minimize the costs of professional services associated with the processing of a loan application and the financing or refinancing of a project, especially in those instances in which the Board has identified the applicant as "disadvantaged."*

The Board shall reimburse the Authority for its reasonable costs and expenses incurred in the administration and management of the Fund, and the Board may disburse a reasonable fee, to be approved by the Board, for the Authority's management services. The Board may require status reports on the Fund from the Authority

§ 62.1-237. Collection of money due Fund.

The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan to a local government *or other entity*, including, if appropriate, taking the action required by § 15.1-227.61 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.

§ 62.1-238. Loans to local governments or other entities.

~~Except as otherwise provided in this chapter, money~~ *Money* in the Fund shall be used solely to make loans *or loan subsidies* to local governments *or other entities* to finance or refinance the cost of any project *or to establish or fund an endowment fund to assist in the cost of any project*. The local governments *or other entities* to which loans *or loan subsidies* are to be made, the purposes of the loan *or loan subsidy*, and the amount of each such loan *or loan subsidy*, the interest rate thereon and the repayment terms *and those public health conditions deemed necessary by the Board* thereof, which may vary between ~~local governments~~ *loan recipients*, shall be designated in writing by the Board to the Authority following consultation with the Authority. No loan *or loan subsidy* from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses.

Except as set forth above, the Authority shall determine the terms and conditions of any loan *or loan subsidy* from the Fund, which may vary between local governments *or other entities*. Each loan shall be evidenced by appropriate bonds ~~or~~, notes, *or agreements* of the local government *or other entity* payable to the Fund. The bonds or notes shall have been duly authorized by the local government *or other entity* and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan *or loan subsidy* from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions which the Authority may establish, the Authority may require, as a condition to making any loan *or loan subsidy* from the Fund, that the local government *or other entity* receiving the loan *or loan subsidy* covenant to perform any of the following:

A. Establish and collect rents, rates, fees and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and premium, if any, and interest on the loan from the Fund to the local government *or other entity*; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees or charges;

B. ~~Levy~~ *With respect to a local government, levy* and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan *or loan subsidy* from the Fund to the local government;

C. Create and maintain a special fund or funds for the payment of the principal of and premium, if any, and interest on the loan *or loan subsidy* from the Fund to the local government *or other entity* and any other amounts becoming due under any agreement entered into in connection with the loan *or loan subsidy*, or for the operation, maintenance, repair or replacement of the project or any portions thereof or other property of the local government *or other entity*, and deposit into any fund or funds amounts sufficient to make any payments on the loan *or loan subsidy* as they become due and payable;

D. Create and maintain other special funds as required by the Authority; and

E. Perform other acts, including the conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title and interest therein, to the Fund, or take other actions as may be deemed necessary or desirable by the Authority to secure payment of the principal of and premium, if any, and interest on the loan *or loan subsidy* from the Fund ~~to the local government~~ and to provide for the remedies of the Fund in the event of any default ~~by the local government~~ in the payment of the loan *or loan subsidy*, including, without limitation, any of the following:

1. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan *or loan subsidy* from any source, public or private, and the payment therefor of premiums, fees or other charges;

2. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems to secure the loan *or loan subsidy* from the Fund ~~to the local government~~ made in connection with such combination or any part or parts thereof;

3. The maintenance, replacement, renewal and repair of the project; and

4. The procurement of casualty and liability insurance.

All local governments *or other entities* borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments *or other entities*, but may be structured as determined by the Authority according to the needs of the contracting local governments *or other entities* and the Fund.

Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan ~~to any local government~~ *or loan subsidy* subject to guidelines adopted by the Board.

§ 62.1-239. Grants.

Subject to any restrictions which may apply to the use of money in the Fund, the Board in its discretion may approve the use of money in the Fund to make grants or appropriations to local governments *or other entities* to pay the cost of any project. The Board may establish such terms and conditions on any grant as it deems appropriate. Grants shall be disbursed from the Fund by the Authority in accordance with the written direction of the Board.

§ 62.1-239.1. Loans, loan subsidies, and grants for regional projects, etc.

In approving loans and grants, the Board shall give preference to loans, *loan subsidies* and grants for projects that will (i) utilize private industry in operation and maintenance of such projects where a material savings in cost can be shown over public operation and maintenance or (ii) serve two or more local governments *or other entities* to encourage regional cooperation or (iii) both.

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