

VIRGINIA ACTS OF ASSEMBLY -- 1999 RECONVENED SESSION

CHAPTER 1012

An Act to amend and reenact §§ 62.1-224, 62.1-225, 62.1-228 and 62.1-229 of the Code of Virginia, relating to the Virginia Water Facilities Revolving Fund.

[H 2432]

Approved April 7, 1999

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-224, 62.1-225, 62.1-228 and 62.1-229 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-224. 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 Title 62.1.

"Board" means the State Water Control Board.

"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 Facilities 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. The term "local government" includes any authority, commission, district, sanitary board or governmental entity issuing bonds on behalf of an authority, commission, district or sanitary board of an adjoining state that operates a wastewater treatment facility located in Virginia.

"Other entities" means owners of private wastewater treatment facilities.

"Project" means any small water facility project as defined in § 62.1-229 and any wastewater treatment facility located or to be located in the Commonwealth ~~by any local government~~, all or part of which facility serves the citizens of the Commonwealth. The term includes, without limitation, sewage and wastewater (including surface and ground water) collection, treatment and disposal facilities; drainage facilities and projects; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto.

§ 62.1-225. Creation and management of Fund.

There shall be set apart as a permanent and perpetual fund, to be known as the "Virginia Water Facilities Revolving Fund," sums appropriated to the Fund by the General Assembly, sums allocated to the Commonwealth expressly for the purposes of establishing a revolving fund concept through the Clean Water Act (33 U.S.C. § 1251 et seq.), as amended from time to time, all receipts by the Fund from loans made by it to local governments *or other entities as permitted by federal law*, 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 or grants from the Fund to particular local governments *or other entities* and to establish the interest rates and repayment terms of such loans 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.

§ 62.1-228. 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 § 15.2-2659 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.

§ 62.1-229. Loans to local governments or other entities.

Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans to local governments *or other entities as permitted by federal law* to finance or refinance the cost of any project. The local governments *or other entities* to which loans are to be made, the purposes of the loan, the amount of each such loan, the interest rate thereon and the repayment terms 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 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. Loans may also be made from the Fund, in the Board's discretion, to a local government which has developed a low-interest loan program to provide loans or other incentives to facilitate the correction of onsite sewage disposal problems (small water facility projects), provided that the moneys may be used only for the program and that the onsite sewage disposal systems to be repaired or upgraded are owned by individual citizens of the Commonwealth where (i) public health or water quality concerns are present and (ii) connection to a public sewer system is not feasible because of location or cost.

Except as set forth above, the Authority shall determine the terms and conditions of any loan from the Fund, which may vary between ~~local governments~~ *loan recipients*. Each loan shall be evidenced by appropriate bonds or notes 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 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 from the Fund, that the local government *or other entity* receiving the loan 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. *With respect to local governments*, 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 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 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 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 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 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, 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 from any source, public or private, and the payment thereof 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 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~~ subject to guidelines adopted by the Board.