

## Chapter 48 - Environmental Protection and Conservation

### CHAPTER 5

#### South Carolina Water Quality Revolving Fund Authority Act

##### **SECTION 48-5-10.** Short title.

This chapter may be cited as the "South Carolina Water Quality Revolving Fund Authority Act".

HISTORY: 1992 Act No. 513, Section 3.

##### **SECTION 48-5-20.** Definitions.

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

- (1) "Agency" means the United States Environmental Protection Agency.
- (2) "Authority" means the South Carolina Water Quality Revolving Fund Authority.
- (3) "Bonds" means bonds, notes, debentures, interim certificates, commercial paper, bond, grant, or revenue anticipation notes, or any other evidence of indebtedness of the authority.
- (4) "Clean Water Act" means the Federal Water Pollution Control Act, Chapter 26, Title 33, United States Code, as modified or amended, and any successor, substitute, or replacement provisions of law, and the rules and regulations promulgated under it.
- (5) "Clean water fund" means the water pollution control revolving loan fund originally established pursuant to Section 48-6-20 and comprising monies derived from capitalization grants pursuant to the Clean Water Act and associated state match money, as well as repayments of all principal and interest on loans made from the clean water fund, investment earnings, and any other money committed to the clean water fund.
- (6) "Department" means the South Carolina Department of Health and Environmental Control.
- (7) "Drinking water fund" means the drinking water revolving loan fund established pursuant to Section 48-5-55, and comprising monies derived from capitalization grants pursuant to the Safe Drinking Water Act and associated state match money, as well as repayments of all principal and interest on loans made from the drinking water fund, investment earnings, and any other money committed to the drinking water fund.
- (8) "Loan" means a loan from the authority to a project sponsor for the purpose of financing all or a portion of the cost of a project.
- (9) "Loan agreement" means a written agreement between the authority and a project sponsor with respect to a loan.
- (10) "Loan obligation" means a bond, note, or other evidence of obligation issued by a project sponsor to evidence its indebtedness under a loan agreement with respect to a loan.
- (11) "Project" means:
  - (a) publicly-owned treatment works, or the capacity or rights to the capacity of a publicly-owned treatment work,

including any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems before land application), or is used for ultimate disposal of residues resulting from the treatment and any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including stormwater runoff and waste in combined stormwater and sanitary sewer systems;

(b) management programs authorized under the Clean Water Act;

(c) development and implementation of a conservation and management plan authorized under the Clean Water Act;

(d) construction or improvements to drinking water supply, storage, treatment, and distribution facilities and associated costs authorized by the Safe Drinking Water Act; and

(e) other projects as the authority and the department determine are permissible uses of the clean water fund and the drinking water fund under the terms of the Clean Water Act and Safe Drinking Water Act, respectively, to the extent then applicable.

(12) "Project sponsor" means a county, municipality, special purpose or special service district, commissioners of public works, or any other public body or agency of the State which may own or operate a project; this term includes any combination of two or more of these entities acting jointly to construct, own, or operate a project. With respect to the drinking water fund, project sponsor also means a nonprofit corporation established under Title 33, Chapter 35.

(13) "Safe Drinking Water Act" means Title XIV of the Public Health Service Act, Title 42, United States Code, as modified or amended, and any successor, substitute, or replacement provisions of law, and the rules and regulations promulgated under it.

HISTORY: 1992 Act No. 513, Section 3; 1997 Act No. 41, Section 3.

**SECTION 48-5-30.** South Carolina Water Quality Revolving Fund Authority created; membership of authority.

There is created the South Carolina Water Quality Revolving Fund Authority. The authority is a public instrumentality of this State and the exercise by it of a power conferred in this chapter is the performance of an essential public function. The members of the State Fiscal Accountability Authority comprise the authority.

HISTORY: 1992 Act No. 513, Section 3; 2014 Act No. 121 (S.22), Pt VII, Section 20.P, eff July 1, 2015.

Effect of Amendment

2014 Act No. 121, Section 20.P, substituted "Fiscal Accountability Authority" for "Budget and Control Board".

**SECTION 48-5-40.** Powers of authority.

The authority has all powers necessary, useful, or appropriate to fund, invest, use, and administer the clean water fund, the drinking water fund, and other authorized activities permitted by the Safe Drinking Water Act

including, but not limited to, the power to:

- (1) have perpetual succession as a public body corporate and as a political subdivision of the State;
- (2) adopt, promulgate, amend, and repeal bylaws and regulations not inconsistent with this chapter for the administration of its affairs and the implementation of its functions in accordance with the provisions of Chapter 23 of Title 1;
- (3) sue and be sued in its own name;
- (4) have an official seal and alter it at will although the failure to affix the seal does not affect the validity of an instrument executed on behalf of the authority;
- (5) make and service loans, enter into loan agreements, accept and enforce loan obligations, and provide other forms of financial assistance permitted by this chapter;
- (6) make and execute contracts and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its powers and functions;
- (7) establish (a) policies and procedures for the making and administration of loans and (b) fiscal controls and accounting procedures to ensure proper accounting and reporting by the authority and project sponsors;
- (8) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its properties and assets;
- (9) hire staff and employ agents, advisers, consultants, and other employees, including attorneys, financial advisers, engineers, and other technical advisers and public accountants and determine their duties and compensation;
- (10) procure insurance against a loss in connection with its property, assets, or activities including insurance against liability for its acts or the acts of its employees or agents;
- (11) procure insurance, guarantees, letters of credit, and other forms of collateral or security or credit support from a public or private entity, including a department, agency, or instrumentality of the United States or of this State, for the payment of bonds issued by it, including the power to pay premiums or fees on insurance, guarantees, letters of credit, and other forms of collateral or security or credit support;
- (12) receive and accept from any source aid, grants, and contributions of money, property, labor, or other things of value to be used to carry out the purposes of this chapter subject to the conditions upon which the aid, grants, or contributions are made;
- (13) enter into agreements with a department, agency, or instrumentality of the United States or of this State for the purpose of planning and providing for the financing of projects;
- (14) collect, or authorize the trustee under a trust indenture securing bonds to collect, amounts due under the loan agreement or loan obligation, including taking the action required to obtain payment of sums in default;
- (15) enter into contracts or agreements for the servicing and processing of loan agreements or loan obligations;
- (16) invest or reinvest its funds as permitted by applicable law;

(17) unless restricted under an agreement with holders of bonds, consent to a modification with respect to the rate of interest, time, and payment of an installment of principal or interest, or other term of a loan agreement or loan obligation;

(18) establish and revise, amend and repeal, and collect fees and charges in connection with activities or services rendered by the authority;

(19) perform an act necessary or convenient to the exercise of the powers granted or reasonably implied by this chapter;

(20) disburse monies from the fund to the department and the authority for program, project, loan and fund management; and

(21) establish accounts for the deposit of portions of the federal capitalization grants, as authorized by the Safe Drinking Water Act, for purposes of certain other authorized activities.

HISTORY: 1992 Act No. 513, Section 3; 1997 Act No. 41, Sections 4, 5.

**SECTION 48-5-50.** Continuation of existing fund; deposits to fund; use of funds.

(A) The clean water fund established pursuant to the former provisions of Chapter 6 of Title 48 is continued in existence and held and administered by the authority in accordance with the provisions of this chapter and policies, rules, regulations, directives, and agreements as may be promulgated or entered into by the authority pursuant to this chapter. Earnings on balances in the clean water fund must be credited to the clean water fund. Amounts remaining in the clean water fund at the end of a fiscal year accrue only to the credit of the clean water fund. Amounts in the clean water fund must be available in perpetuity for the purpose of providing financial assistance in accordance with the provisions of this chapter and the Clean Water Act.

(B) There must be deposited in the clean water fund:

(1) federal capitalization grants and awards or other federal assistance received by the department under authority of the Clean Water Act for purposes of the clean water fund;

(2) funds appropriated by the General Assembly for deposit to the clean water fund;

(3) payments received from a project sponsor in repayment of a loan, including amounts withheld by the State Treasurer and paid to the authority pursuant to Section 48-5-170;

(4) net proceeds of bonds issued by the authority;

(5) interest or other income earned on the investment of monies in the clean water fund; and

(6) additional monies made available from public or private sources for the purposes for which the clean water fund has been established.

(C) Amounts in the clean water fund may be used only:

(1) to make loans to project sponsors in accordance with provisions of this chapter and the Clean Water Act;

(2) to buy or refinance debt obligations of project sponsors at or below market rates, if the debt obligations were incurred after March 7, 1985;

(3) to guarantee or purchase insurance for bonds, notes, or other evidences of obligation issued by a project sponsor for the purpose of financing all or a portion of the cost of a project, if the action improves credit market access or reduces interest rates;

(4) as a source of revenue or security for the payment of principal and interest on bonds issued by the authority if the proceeds of the sale of the bonds are deposited in the clean water fund;

(5) to earn interest on clean water fund accounts;

(6) for the reasonable costs of administering the clean water fund and conducting activities under the Clean Water Act; and

(7) for any other purpose authorized by the Clean Water Act or any other federal law governing or appropriating funds for the clean water fund.

(D) The authority may establish accounts and subaccounts within the clean water fund as considered desirable to effectuate the purposes of this chapter, to comply with the provisions of a bond resolution, or to meet a requirement of the Clean Water Act.

HISTORY: 1992 Act No. 513, Section 3; 1997 Act No. 41, Section 6; 2010 Act No. 185, Section 1, eff May 28, 2010.

#### Effect of Amendment

The 2010 amendment in subsection (C)(7) added the text following the reference to the Safe Drinking Water Act.

#### **SECTION 48-5-55.** Drinking Water Revolving Loan Fund; deposits; use of funds.

(A) There is established the Drinking Water Revolving Loan Fund, which must be held and administered by the authority in accordance with the provisions of this chapter and policies, rules, regulations, directives, and agreements as may be promulgated or entered into by the authority pursuant to this chapter. Earnings on balances in the drinking water fund must be credited to the drinking water fund. Amounts remaining in the drinking water fund at the end of a fiscal year accrue only to the credit of the drinking water fund. Amounts in the drinking water fund must be available in perpetuity for the purpose of providing financial assistance in accordance with the provisions of this chapter and the Safe Drinking Water Act.

(B) There must be deposited in the drinking water fund:

(1) federal capitalization grants, awards, or other federal assistance received by the department under authority of the Safe Drinking Water Act for purposes of the drinking water fund;

(2) funds appropriated by the General Assembly for deposit to the drinking water fund;

(3) payments received from a project sponsor in repayment of a loan, including amounts withheld by the State Treasurer and paid to the authority pursuant to Section 48-5-170;

(4) net proceeds of bonds issued by the authority;

(5) interest or other income earned on the investment of monies in the drinking water fund; and

(6) additional monies made available from public or private sources for the purposes for which the drinking water fund has been established.

(C) Amounts in the drinking water fund may be used only:

(1) to make loans to project sponsors in accordance with provisions of this chapter and the Safe Drinking Water Act;

(2) to buy or refinance debt obligations of project sponsors at or below market rates, if the debt obligations were incurred after July 1, 1993;

(3) to guarantee, or purchase insurance for, bonds, notes, or other evidences of obligation issued by a project sponsor for the purpose of financing all or a portion of the cost of a project, if the action improves credit market access or reduces interest rates;

(4) as a source of revenue or security for the payment of principal and interest on bonds issued by the authority if the proceeds of the sale of the bonds are deposited in the drinking water fund;

(5) to earn interest on drinking water fund accounts; and

(6) for any other purposes authorized by the Safe Drinking Water Act or any other federal law governing or appropriating funds for the drinking water fund.

(D) The authority may establish accounts and subaccounts within the drinking water fund as considered desirable to effectuate the purposes of this chapter, to comply with the provisions of a bond resolution, or to meet a requirement of the Safe Drinking Water Act.

HISTORY: 1997 Act No. 41, Section 1; 2010 Act No. 185, Section 2, eff May 28, 2010.

#### Effect of Amendment

The 2010 amendment in subsection (C)(6) added the text following the reference to the Safe Drinking Water Act..

**SECTION 48-5-60.** Authority of Department of Health and Environmental Control.

The department may:

(1) promulgate regulations with authority input to effectuate the provisions of this chapter and the Clean Water Act and the Safe Drinking Water Act;

(2) develop priority systems with authority input which ensure consistency with the Clean Water Act and Safe Drinking Water Act for the clean water fund and drinking water fund, respectively;

(3) prepare annual plans in accordance with the Clean Water Act and Safe Drinking Water Act after providing for input from the authority and public comment and review;

(4) receive monies from the clean water fund for program and project management activities of the clean water fund;

(5) establish accounts and deposit portions of the federal capitalization grants, as authorized by the Safe Drinking Water Act, for the purposes of administering the drinking water fund and other authorized activities; and

(6) enter into binding agreements with the agency as necessary to effect the implementation of this chapter.

HISTORY: Act No. 513, Section 3; 1997 Act No. 41, Section 7.

**SECTION 48-5-70.** Project sponsors authorized to borrow money from authority through loan agreements and loan obligations; contracts need not be identical among projects; application of other statutes permitting project sponsors to borrow money and issue obligations.

(A) All project sponsors may borrow money from the authority through loan agreements and the issuance of loan obligations in favor of the authority. Project sponsors may enter into and issue the agreements and evidences of indebtedness comprising the loan agreements and loan obligations in accordance with the provisions of this chapter, and no further statutory authorization is required for the issuance and delivery by project sponsors of their loan obligations. All project sponsors entering into loan agreements and issuing loan obligations to the authority may perform any acts, take any action, adopt any proceedings, and make and carry out any contracts with the authority which are contemplated by this chapter. The contracts need not be identical among all project sponsors but may be structured as determined by the authority according to the needs of the contracting project sponsors and the authority.

(B) In addition to the authorizations contained in this chapter, all other statutes permitting project sponsors to borrow money and issue obligations, including both general obligation and revenue bonds, may be utilized by project sponsors borrowing money from the authority to the extent considered necessary or useful by the project sponsor in connection with a loan agreement and the issuance, securing, or sale of its loan obligation to the authority.

HISTORY: 1992 Act No. 513, Section 3.

**SECTION 48-5-80.** Authority authorized to borrow money and issue bonds; requirements for issuing bonds.

(A) Subject to the requirements of subsections (B) and (C) of this section, the authority may borrow money and issue its bonds, including refunding bonds, in amounts it determines necessary or convenient to provide funds to carry out its purposes and powers and to pay all costs and expenses incurred in connection with the issuance of bonds.

(B) At or before the delivery of bonds by the authority, the authority shall, by resolution of the authority, certificate of an officer or employee of the authority or other manner as the authority determines, establish with respect to all bonds of the authority then outstanding and then proposed to be delivered that, following the period during which interest on bonds or loan obligations is capitalized, either:

(1) the ratio of all assets, including, without limitation, loan obligations, reserves, and any amounts to be received pursuant to an agreement with the agency held, or to be held, as security for all the bonds to the principal amount of all the bonds is not less than 1.10 to 1; or

(2) the ratio of anticipated annual receipts to be derived from assets described in (1), above, to debt service on all the bonds is estimated to be not less than 1.10 to 1.

(C) With respect to bonds, or that portion of an issue of bonds, issued to refund outstanding bonds of the authority, in lieu of the requirements of subsection (B) of this section, the bonds may be issued if the authority

establishes with respect to the issuing of the bonds that debt service with respect to the refunding bonds is not expected to exceed debt service with respect to the refunded bonds in a year in which the refunded bonds were outstanding.

HISTORY: 1992 Act No. 513, Section 3.

**SECTION 48-5-90.** Authority authorized to pledge its revenues or funds to payment of bonds; other security for payment of bonds.

The authority may pledge its revenues or funds to the payment of its bonds, subject only to prior agreement with the holders of particular bonds which may have pledged specific money or revenue. Bonds may be secured by a pledge of a loan obligation owned by the authority, a grant, contribution, or guaranty from the United States, the State, or a corporation, association, institution or person, other property or assets of the authority, or a pledge of money, income, or revenue of the authority from any source.

HISTORY: 1992 Act No. 513, Section 3.

**SECTION 48-5-100.** Bonds payable solely from revenue, money, or property of authority; liability on bonds; statements required on face of bonds.

Bonds issued by the authority do not constitute a debt or a pledge of the faith and credit of this State or its political subdivisions other than the authority, but are payable solely from the revenue, money, or property of the authority as provided for in this chapter. The bonds issued do not constitute an indebtedness of this State within the meaning of a constitutional or statutory limitation. No members of the authority or a person executing bonds of the authority is liable personally on the bonds by reason of their issuance or execution. Each bond issued under this chapter must contain on its face a statement to the effect that:

- (1) neither this State, nor its political subdivisions, nor the authority is obligated to pay the principal of or interest on the bond or other costs incident to the bond except from the revenue, money, or property of the authority pledged;
- (2) neither the faith and credit nor the taxing power of this State, or its political subdivisions, is pledged to the payment of the principal of or interest on the bonds;
- (3) the authority does not have taxing power.

HISTORY: 1992 Act No. 513, Section 3.

**SECTION 48-5-110.** Requirements for bonds; security for bonds.

(A) The bonds of the authority must be authorized by a resolution of the authority and must be in the form and executed in the manner provided in the resolution. The bonds must bear the date and mature at the time which the resolution provides, except that no bond may mature more than thirty years from its date of issue. The bonds may be in the denominations, be executed in the manner, be payable in the medium of payment, be payable at the place and at the time, and be subject to redemption or repurchase and contain other provisions determined by the authority before their issuance. The bonds may bear interest payable at a time and at a rate as determined by the authority, including the determination of interest rates by agents designated by the authority under guidelines established by it. Bonds may be sold by the authority at public or private sale at the price it determines and approves.

(B) Bonds may be secured by a trust indenture between the authority and a corporate trustee, which may be



the State Treasurer or a bank having trust powers or a trust company, designated by the State Treasurer doing business in South Carolina. A trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders which are reasonable and proper, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safekeeping, and application of its money. The authority may provide by the trust indenture for the payment of the proceeds of the bonds and all or any part of the revenues of the authority to the trustee under the trust indenture or to some other depository, and for the method of its disbursement with safeguards and restrictions prescribed by it.

(C) A resolution or trust indenture pursuant to which bonds are issued may contain provisions which are part of the contract with the holders of the bonds as to such matters relating to the terms of the bonds or the security or protection of the holders of the bonds which the authority considers appropriate.

HISTORY: 1992 Act No. 513, Section 3.

**SECTION 48-5-120.** Pledge as valid and binding; lien of pledge; record of proceedings relative to issuance of bonds to be filed.

A pledge made by the authority is valid and binding from the time the pledge is made. The revenue, money, or property pledged and thereafter received by the authority is immediately subject to the lien of the pledge without physical delivery or further act. The lien of a pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice of the pledge. No recording or filing of the resolution authorizing the issuance of bonds, the trust indenture securing bonds, or other instrument including filings under the Uniform Commercial Code is necessary to create or perfect a pledge or security interest granted by the authority to secure bonds, but the record of the proceedings relative to the issuance of any bonds must be filed as prescribed by Section 11-15-20.

HISTORY: 1992 Act No. 513, Section 3.

**SECTION 48-5-130.** Subsequent amendments not to affect prior agreements or vested rights.

Subsequent amendments to this chapter may not limit the rights vested in the authority with respect to agreements made with, or remedies available to, the holders of bonds issued under this chapter before the enactment of the amendments until the bonds, with all premiums and interest on them, and all costs and expenses in connection with the proceeding by or on behalf of the holders, are fully met and discharged.

HISTORY: 1992 Act No. 513, Section 3.

**SECTION 48-5-140.** Authority exempt from taxes and assessments; bonds issued by authority free from taxation and assessments of every kind.

The authority in performing an essential governmental function in the exercise of the powers conferred upon it is not required to pay taxes or assessments upon property or upon its operations or the income from them, or taxes or assessments upon property or loan obligation acquired or used by the authority or upon the income from them. Bonds issued by the authority, the transfer of bonds, and the income from them, are free from taxation and assessment of every kind by this State, and by the project sponsors and other political subdivisions of this State.

HISTORY: 1992 Act No. 513, Section 3.

**SECTION 48-5-150.** Bonds as legal investments; bonds as securities.

The bonds issued by the authority are legal investments in which all public officers or public bodies of the State, its political subdivisions, all municipalities and political subdivisions, all insurance companies and associations and other persons carrying on insurance business, all banks, bankers, banking associations, trust companies, savings banks, savings associations, including savings and loan association investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all other persons who are now or may be authorized in the future to invest in bonds or other obligations of this State, may invest funds in their control or belonging to them. The bonds of the authority are also securities which may be deposited with and received by all public officers and bodies of this State or an agency or political subdivision of this State and all municipalities and public corporations for a purpose for which the deposit of bonds or other obligations of this State is now or may later be required by law.

HISTORY: 1992 Act No. 513, Section 3.

**SECTION 48-5-160.** Annual report by the authority.

The authority shall submit, following the close of each fiscal year, an annual report of its activities for the preceding year to the Governor and to the Members of the General Assembly. The authority in cooperation with the department also shall submit to the agency an annual report in accordance with requirements of the Clean Water Act and a biennial report in accordance with requirements of the Safe Drinking Water Act.

HISTORY: 1992 Act No. 513, Section 3; 1997 Act No. 41, Section 8; 2005 Act No. 164, Section 24.

**SECTION 48-5-170.** Failure of project sponsor to make payment to authority; section not applicable to certain counties.

If at any time a project sponsor fails to effect the punctual payment of an amount payable by the project sponsor to the authority pursuant to a loan agreement or other agreement between the project sponsor and the authority, the State Treasurer shall, upon notification by the authority of the failure by the project sponsor to make the payment, and subject to the withholding of amounts pursuant to Article X, Section 14, Paragraph (5) of the Constitution of this State, withhold from the project sponsor sufficient monies from a state appropriation to the project sponsor and apply so much as necessary to the payment of the amount. All appropriations for project sponsors are subject to the provisions of this section.

This section shall not apply to a county which, prior to July 15, 1992, has adopted a referendum pursuant to Article VIII, Section 16 of the Constitution, that contains specific restrictions which would prevent the county from receiving a loan from the fund due solely to the foregoing provisions of this section.

HISTORY: 1992 Act No. 513, Section 3; 1994 Act No. 305, Section 1.

**SECTION 48-5-180.** Liberal construction of chapter; chapter contains all notice and security requirements; provisions of chapter controlling.

The provisions of this chapter must be liberally construed to the end that its beneficial purposes may be effectuated. No proceeding, notice, or approval is required for the issuance of bonds of the authority or loan obligations by a project sponsor or instruments or the security for the bonds or loan obligation, except as provided in this chapter. If the provisions of this chapter are inconsistent with the provisions of any other law, general, special, or local, the provisions of this chapter are controlling.

HISTORY: 1992 Act No. 513, Section 3.

**SECTION 48-5-190.** Severability.

If any provision of the South Carolina Water Quality Revolving Fund Authority Act is held or determined to be unconstitutional, invalid, or otherwise unenforceable by a court of competent jurisdiction, it is the intention of the General Assembly that the provision is, or is deemed to be, severable from the remaining provisions of the act and that the holding does not invalidate or render unenforceable any other provision of the act.

HISTORY: 1992 Act No. 513, Section 5.