

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

A Bill

Act 548 of 2003
SENATE BILL 389

5 By: Senator J. Bookout
6 By: Representative P. Bookout
7

For An Act To Be Entitled

10 AN ACT PERTAINING TO CONSTRUCTION BONDS FOR WATER
11 QUALITY IMPROVEMENTS; TO TRANSFER ALL DUTIES,
12 POWERS, FUNCTIONS, ASSETS, PROPERTIES, AND
13 APPROPRIATIONS OF THE CONSTRUCTION ASSISTANCE
14 REVOLVING LOAN FUND OF THE ARKANSAS DEVELOPMENT
15 FINANCE AUTHORITY TO THE ARKANSAS SOIL AND WATER
16 CONSERVATION COMMISSION; TO REPEAL ARKANSAS CODE
17 §§ 8-5-301 THROUGH 8-5-319; TO REPEAL THE WATER
18 POLLUTION CONTROL STATE GRANT ACT OF 1972, § 8-5-
19 401, ET SEQ.; TO AMEND ARKANSAS CODE §§ 15-5-901
20 THROUGH 15-5-906; AND FOR OTHER PURPOSES.
21

Subtitle

22 AN ACT TO PERTAINING TO CONSTRUCTION
23 BONDS FOR WATER QUALITY IMPROVEMENTS.
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

SECTION 1. TRANSFER OF FUND.

30 (a) The Construction Assistance Revolving Loan Fund established by Act
31 718 of 1991, as amended, except the remedial action account established under
32 Arkansas Code § 15-5-901(d), concerning the Arkansas Development Finance
33 Authority and its powers, duties, functions, assets, records, properties,
34 funds, and appropriations are transferred by a Type 2 transfer as provided in
35 Arkansas Code § 25-2-105 to the Arkansas Soil and Water Conservation
36



1 Commission.

2 (b) For the purposes of this act, the Arkansas Soil and Water
 3 Conservation Commission shall be considered a principal department
 4 established by Act 38 of 1971.

5

6 SECTION 2. Arkansas Code §§ 15-5-901 through 15-5-906 are amended to
 7 read as follows:

8 15-5-901. Fund - Establishment - Uses - Accounts.

9 (a)(1) There is ~~hereby~~ established on the books of the ~~Arkansas~~
 10 ~~Development Finance Authority~~ Arkansas Soil and Water Conservation Commission
 11 a special restricted fund to be known as the "Construction Assistance
 12 Revolving Loan Fund", which shall be maintained in perpetuity ~~by the~~
 13 ~~authority~~ and administered by the ~~Arkansas Department of Environmental~~
 14 ~~Quality~~ commission for the purposes stated herein.

15 (2) Grants from the federal government or its agencies allotted
 16 to the state for capitalization of the fund, state matching grants where
 17 required, proceeds of bonds issued by the ~~authority~~ commission or the
 18 Arkansas Development Finance Authority for such purpose, and ~~loan~~ principal,
 19 interest, and premiums on loans provided and bonds, notes, and other
 20 evidences of indebtedness purchased with moneys in the fund shall be
 21 deposited ~~directly~~ in the fund.

22 (3) The commission may deposit loans, bonds, notes, and other
 23 evidences of indebtedness issued by local governmental entities and other
 24 owners of environmental projects to finance or refinance wastewater system
 25 projects, water systems, solid and hazardous waste facilities, recycling
 26 facilities, nonpoint source management facilities, wetlands conservation and
 27 management facilities, and other environmental projects or parts of
 28 environmental projects in the fund.

29 (b) Moneys in the fund shall be expended in a manner consistent with
 30 the terms and conditions of applicable federal and state capitalization
 31 grants and may be used:

32 (1) To provide loans for the planning, design, acquisition,
 33 construction, expansion, equipping, ~~or~~ rehabilitation, consolidation, or
 34 refinancing of public wastewater systems, water systems, solid and hazardous
 35 waste facilities, recycling facilities, nonpoint source management
 36 facilities, wetlands conservation and management facilities, and other

1 environmental ~~infrastructure~~ projects or parts of environmental projects in
 2 the fund;

3 (2) Subject to the provisions of subsection (c) of this section
 4 and subject to the approval of the commission, to secure the payment of the
 5 principal of and premium, if any, and interest on and to pay costs incurred
 6 in connection with bonds issued by the commission or the authority, if ~~the~~
 7 ~~net~~ proceeds of ~~such~~ the bonds are deposited into the ~~fund~~ Construction
 8 Assistance Revolving Loan Fund Account;

9 (3) To purchase bonds, notes, or other evidences of indebtedness
 10 issued by local governmental entities ~~for~~ to finance or refinance wastewater
 11 system projects, water systems, solid and hazardous waste facilities,
 12 recycling facilities, nonpoint source management facilities, wetlands
 13 conservation and management facilities, and other environmental
 14 ~~infrastructure~~ projects or parts of environmental projects;

15 (4) To fund other wastewater system programs, water system
 16 programs, solid and hazardous waste facilities programs, recycling programs,
 17 nonpoint source management facilities, wetlands conservation and management
 18 facilities, and other environmental ~~infrastructure~~ programs which the federal
 19 or state government may allow in the future ~~through grants;~~

20 (5) To fund the administrative expenses of the ~~department~~
 21 commission relating to the responsibilities and requirements of this
 22 subchapter;

23 (6) To provide for any other expenditures consistent with
 24 applicable federal and state law; ~~or~~

25 (7) To provide loans to prospective and actual purchasers of
 26 abandoned industrial, commercial, or agricultural sites for assessments,
 27 investigations, and remedial actions pursuant to § 8-7-1101, as amended from
 28 time to time~~;~~;

29 (8) To pay the principal of and premium, if any, and interest on
 30 and to pay costs incurred in connection with bonds issued by the commission
 31 or the authority, if proceeds of the bonds are deposited in the revolving
 32 loan account;

33 (9) To make grants or loans to the safe drinking water fund
 34 established by § 15-22-1102 in such amounts as may be approved by the
 35 commission, consistent with applicable federal law; or

36 (10) Subject to the provisions of subsection (c) of this section

1 and subject to the approval of the commission, to secure the payment of the
 2 principal of and premium, if any, and interest on bonds issued by the
 3 commission or the authority, if proceeds of the bonds are deposited into the
 4 Drinking Water State Revolving Loan Fund Account established by § 15-22-1102,
 5 consistent with applicable federal law.

6 (c)(1) There is ~~hereby~~ established a separate account within the fund
 7 designated the "State Grants Account", into which moneys appropriated ~~to the~~
 8 ~~authority~~ by the state ~~for such purpose~~ shall be deposited.

9 (2)(A) Moneys in the State Grants Account may be expended for
 10 the same purposes as other moneys in the fund.

11 (B) ~~Provided, however, that~~ However, moneys in the State
 12 Grants Account shall never be pledged to the payment of or as security for
 13 any bonds issued by the commission or the authority pursuant to this
 14 ~~subchapter.~~

15 (d)(1) There is ~~hereby~~ established a separate account within the fund
 16 designated the "Remedial Action Account", into which moneys identified in §
 17 8-7-504(c) and any other moneys as designated by the Director of the Arkansas
 18 Department of Environmental Quality shall be deposited.

19 (2) Moneys in the Remedial Action Account may be expended as
 20 authorized in § 8-7-1101 and for the same purposes as other moneys in the
 21 fund.

22 (e)(1) There is established a separate account within the
 23 fund, designated the "Construction Assistance Administrative Account", into
 24 which moneys provided by the federal government pursuant to the federal
 25 environmental acts for the purpose of administering programs funded by the
 26 federal environmental acts and fees pursuant to § 15-5-904 shall be
 27 deposited.

28 (2) Moneys in the administrative account may be
 29 expended by the commission for administrative costs of programs funded by the
 30 federal environmental acts.

31 (3) Moneys in the administrative account shall never
 32 be pledged to the payment of or as security for any bonds issued by the
 33 authority or the commission.

34 (f)(1) There is established a separate account within the
 35 fund, designated the "Construction Assistance Revolving Loan Fund Account,"
 36 into which shall be deposited moneys provided by:

1 (A) The federal government pursuant to the
2 federal environmental acts;

3 (B) Proceeds of bonds issued by the commission
4 or the authority; and

5 (C) Other amounts, excluding state
6 appropriations, received under § 15-5-903 for the purpose of providing
7 financial assistance to local governmental entities and other owners of
8 environmental projects in connection with the planning, design, acquisition,
9 construction, expansion, equipping, or rehabilitation of wastewater systems
10 projects, water systems, solid and hazardous waste facilities, recycling
11 facilities, nonpoint source management facilities, wetlands conservation and
12 management facilities, and other environmental projects or parts of
13 environmental projects.

14 (2) Moneys in the revolving loan account may also be
15 expended for the purposes set forth in subdivisions (b)(1) through (5), and
16 (b)(7) through (10) of this section.

17 (g) The commission may establish and maintain additional accounts
18 within the fund or subaccounts within the accounts established in this
19 section.

20 (h) The commission shall maintain the fund at the authority or at one
21 (1) or more financial institutions within or without the state.

22
23 15-5-902. Fund - Administration.

24 (a) The Construction Assistance Revolving Loan Fund shall be
25 administered by the ~~Arkansas Department of Environmental Quality, as agent~~
26 ~~for the Arkansas Development Finance Authority,~~ Arkansas Soil and Water
27 Conservation Commission and the ~~department~~ commission is authorized to
28 establish procedures and adopt ~~such~~ regulations as may be required to
29 administer the fund and programs financed in whole or in part with moneys in
30 the fund in accordance with federal or state law providing for ~~public~~
31 wastewater systems, water systems, solid and hazardous waste facilities,
32 recycling facilities, nonpoint source management facilities, wetlands
33 conservation and management facilities, and other environmental
34 ~~infrastructure~~ projects and for assessments, investigations, and remedial
35 actions with respect to abandoned industrial, commercial, or agricultural
36 sites, including, without limitation, the ~~Water Pollution Control Act,~~ also

1 known as the Clean Water Act, the Safe Drinking Water Act, the Resource
2 Conservation and Recovery Act, the Clean Air Act, and the Comprehensive
3 Environmental Response, Compensation, and Liability Act, as each may be
4 amended from time to time, and otherwise from the Environmental Protection
5 Agency, and federal environmental acts.

6 (b) The commission is authorized to enter into contracts and other
7 agreements in connection with the operation of the fund, including, but not
8 limited to, contracts and agreements with federal agencies, local
9 governmental entities, the authority Arkansas Development Finance Authority,
10 the Arkansas Department of Environmental Quality, and other persons to the
11 extent necessary or convenient for the implementation of the fund ~~program~~ and
12 programs financed in whole or in part with moneys in the fund.

13 ~~(b)(c) Acting as agent for the authority, the department~~ The
14 commission shall maintain full authority for the operation of the fund in
15 accordance with applicable federal and state law, including withdrawals
16 necessary to achieve the intended purposes of the fund.

17 (d) To the extent that moneys received from the federal government
18 under the federal environmental acts and nonappropriated state matches do not
19 designate the account into which the moneys shall be deposited, the moneys
20 shall be deposited into the accounts within the fund designated by the
21 commission.

22
23 15-5-903. Fund - Grants - Deposits - Cash funds.

24 (a) The Arkansas Soil and Water Conservation Commission and the
25 Arkansas Development Finance Authority, as agent for the commission, ~~is~~ are
26 authorized to accept grants for the use of the Construction Assistance
27 Revolving Loan Fund from any state or federal agencies, municipalities,
28 corporations, foundations, individual ~~donees~~ donors, or authorities,
29 specifically including, but not limited to, appropriations from the State
30 Treasury ~~as heretofore or hereafter provided.~~

31 (b) All moneys received by the commission or the authority under and
32 pursuant to the provisions of this subchapter shall be deposited as and when
33 received in the fund, except as otherwise specifically provided by federal or
34 state law.

35 (c)(1) Except for moneys hereafter deposited in or paid to the
36 commission or the authority for deposit in the Construction Assistance State

1 Grants Account, all moneys now or hereafter received for, deposited in, or
 2 paid to the commission or the authority for deposit in the fund are
 3 specifically declared to be cash funds, restricted in their use, and which
 4 shall not be deposited in the State Treasury or deemed to be a part of the
 5 State Treasury for the purposes of Arkansas Constitution, Article 5, § 29;
 6 Arkansas Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20;
 7 or any other constitutional or statutory provisions, but shall be held and
 8 applied by the commission or the authority, as agent for the commission,
 9 solely for the uses set forth in this subchapter.

10 (2) Interest and other moneys received from the investment of
 11 moneys, the purchase of bonds, notes, or other evidences of indebtedness
 12 issued by local governmental entities, or the making of loans with moneys in
 13 the fund, including in each case moneys in the state grants account, are
 14 declared to be cash funds, restricted in their use, and shall not be
 15 deposited in the State Treasury, but shall be held and applied by the
 16 commission or the authority solely for the uses set forth in this subchapter.

17
 18 15-5-904. Fees for technical and administrative services.

19 (a)(1) ~~The Arkansas Department of Environmental Quality~~ Arkansas Soil
 20 and Water Conservation Commission is hereby authorized to establish and
 21 collect fees for its technical and administrative services in connection with
 22 the planning, design, acquisition, construction, expansion, equipping, or
 23 rehabilitation of ~~public~~ wastewater systems, water systems, solid and
 24 hazardous waste facilities, recycling facilities, nonpoint source management
 25 facilities, wetlands conservation and management facilities, and other
 26 environmental ~~infrastructure~~ projects or parts of environmental projects and
 27 in connection with assessments, investigations, and remedial actions with
 28 respect to abandoned industrial, commercial, or agricultural sites, financed
 29 in whole or in part with moneys in the Construction Assistance Revolving Loan
 30 Fund.

31 (2) The authority granted in this section shall be supplemental
 32 to the authority granted to the ~~department~~ commission under other laws to
 33 establish and collect fees for its services.

34 (b) ~~Such~~ The fees shall be payable in any one (1) or more of the
 35 following methods:

36 (1) From ~~the~~ proceeds of bonds, notes, or other evidences of

1 indebtedness of a local governmental entity or other owner of an
2 environmental project purchased from moneys in the fund;

3 (2) From ~~the~~ proceeds of bonds issued by the commission or the
4 Arkansas Development Finance Authority in connection with the fund; or

5 (3) From periodic payments due on the bonds, notes, or other
6 evidences of indebtedness of a local governmental entity or other owner of an
7 environmental project purchased with moneys in the fund.

8
9 15-5-905. ~~Collection of fees—Allocation from Treasurer of State~~
10 Federal grants deposited into fund.

11 ~~(a) The Arkansas Development Finance Authority is hereby authorized,~~
12 ~~if requested by the Arkansas Department of Environmental Quality, to collect~~
13 ~~the fees from local governmental entities and to remit the fees directly to~~
14 ~~the department within fifteen (15) days after each periodic payment is made,~~
15 ~~and such fees shall not be deposited in the Construction Assistance Revolving~~
16 ~~Loan Fund.~~

17 ~~(b)(1)(a)~~ The commission and the authority ~~is~~ are authorized to accept
18 moneys for deposit into the fund from allocations from the Treasurer of State
19 as provided in this section.

20 ~~(2)(A) After providing for the exclusion of the interest income~~
21 ~~classified as special revenues authorized by §§ 15-41-110 and 27-70-204 and~~
22 ~~otherwise allocated to the authority by § 15-5-422, the first three million~~
23 ~~nine hundred thousand dollars (\$3,900,000) of interest income during the~~
24 ~~fiscal year ending June 30, 1991, the first two million three hundred eighty~~
25 ~~thousand dollars (\$2,380,000) of interest income during the fiscal year~~
26 ~~ending June 30, 1992, and the first one million five hundred eighty thousand~~
27 ~~dollars (\$1,580,000) of interest income during the fiscal year ending June~~
28 ~~30, 1993, or such lesser amounts in any such fiscal year as the Chief Fiscal~~
29 ~~Officer of the State shall certify to be available for the purposes hereof,~~
30 ~~received by the Treasurer of State from the investment of state funds~~
31 ~~invested as authorized by the State Treasury Management Law, § 19-3-201 et~~
32 ~~seq. [repealed], are declared to be cash funds restricted in their use and~~
33 ~~dedicated and are to be used solely as authorized in this subchapter.~~

34 ~~(B) The cash funds, when received by the Treasurer of~~
35 ~~State, shall not be deposited or deemed to be a part of the State Treasury~~
36 ~~for the purposes of Arkansas Constitution, Article 5, § 29; Arkansas~~

1 ~~Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20; or any~~
2 ~~other constitutional or statutory provision.~~

3 ~~(C)(i) The Treasurer of State shall pay the cash funds to~~
4 ~~the authority for deposit in the fund to be used for the purposes authorized~~
5 ~~by this subchapter.~~

6 ~~(ii) Such interest earnings transferred directly to~~
7 ~~the authority are declared to be cash funds restricted in their use and~~
8 ~~dedicated and to be used solely as authorized in this subchapter.~~

9 ~~(3)(A)(b) Notwithstanding the provisions of §§ 19-6-108 and 19-~~
10 ~~6-601, grants to the state under the Water Pollution Control Act, also known~~
11 ~~as the Clean Water Act, the Safe Drinking Water Act, the Resource~~
12 ~~Conservation and Recovery Act of 1976, and the Clean Air Act, as each may be~~
13 ~~amended from time to time, and otherwise from the Environmental Protection~~
14 ~~Agency received by the Treasurer of State from the federal government for~~
15 ~~deposit into the Construction Assistance Revolving Loan Fund are declared to~~
16 ~~be cash funds restricted in their use and dedicated and are to be used solely~~
17 ~~as authorized in this subchapter.~~

18 ~~(B) The cash funds, when received by the Treasurer of~~
19 ~~State, shall not be deposited or deemed to be a part of the State Treasury~~
20 ~~for the purposes of Arkansas Constitution, Article 5, § 29; Arkansas~~
21 ~~Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20; or any~~
22 ~~other constitutional or statutory provision.~~

23 ~~(C)(i) The Treasurer of State shall pay the cash funds to~~
24 ~~the authority for deposit in the fund to be used for the purposes authorized~~
25 ~~by this subchapter.~~

26 ~~(ii) Such federal grants transferred directly to the~~
27 ~~authority are declared to be cash funds restricted in their use and dedicated~~
28 ~~and to be used solely as authorized in this subchapter.~~

29
30 15-5-906. Security for bonds.

31 ~~(a) Except for moneys in the State Grants Account, The Arkansas Soil~~
32 ~~and Water Conservation Commission and, with the approval of the commission,~~
33 ~~the Arkansas Development Finance Authority ~~is~~ are authorized to use the~~
34 ~~moneys in the Construction Assistance Revolving Loan Fund, excluding the~~
35 ~~Construction Assistance State Grants Account, and the assets acquired with~~
36 ~~moneys in the fund to secure the payment of the principal of and premium, if~~

1 any, and interest on bonds issued by the commission or the authority if the
 2 net proceeds of such the bonds are deposited into the fund Construction
 3 Assistance Revolving Loan Fund Account.

4 (b) The commission and, with the approval of the commission, the
 5 authority are authorized to pledge the revolving loan account, excluding the
 6 state grants account, and the assets acquired with moneys in the revolving
 7 loan account to secure the payment of the principal of and premium, if any,
 8 and interest on bonds issued by the commission or the authority if proceeds
 9 of the bonds are deposited into the drinking water state revolving loan fund
 10 account established by § 15-22-1102, consistent with applicable federal law.

11 (c) Nothing in subsections (a) and (b) shall be deemed to adversely
 12 affect pledges made by the authority to secure the payment of the principal
 13 of and premium, if any, and interest on bonds issued by the authority before
 14 the effective date of this act so long as the bonds are outstanding.

15 (d) All accounts within the fund or subaccounts within the accounts
 16 established in § 15-5-901 pledged to secure the payment of the principal of
 17 and premium, if any, and interest on bonds issued by the authority before
 18 July 1, 2003 shall be maintained at the authority so long as the bonds are
 19 outstanding.

20
 21 SECTION 3. Arkansas Code Title 15, Chapter 5, Subchapter 9 is amended
 22 to add the following additional sections:

23 15-5-907. Substitution of loans.

24 The Arkansas Soil and Water Conservation Commission may remove any
 25 loan, bond, note, or other evidence of indebtedness purchased with moneys in
 26 the Construction Assistance Revolving Loan Fund from the Construction
 27 Assistance Revolving Loan Fund Account and substitute another loan, bond,
 28 note, or other evidence of indebtedness not then in default as to payment of
 29 any installment of principal, interest, or financing fee, and having an equal
 30 or greater outstanding principal balance, made by the commission for a
 31 purpose authorized by this subchapter.

32
 33 15-5-908. Withholding general revenue turnback.

34 (a) Should any city, town, county, or political subdivision receiving
 35 general revenue turnback funds, as defined in the Revenue Stabilization Law,
 36 § 19-5-101 et seq., fail, neglect, or refuse to pay any installment of

1 principal, interest, or financing fee for a period of more than ninety (90)
 2 calendar days past the due date in accordance with the written instrument for
 3 the repayment of its bonds, notes, or other evidences of indebtedness
 4 purchased with moneys in the Construction Assistance Revolving Loan Fund
 5 Account, the Arkansas Soil and Water Conservation Commission may, after
 6 notification to the city, town, county, or political subdivision, certify to
 7 the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of
 8 the State, the name of the city, town, county, or political subdivision, the
 9 amount of deficiencies ninety (90) days or more past due.

10 (b) Upon certification, the Treasurer of State, the Auditor of State,
 11 and the Chief Fiscal Officer of the State are directed to withhold from the
 12 city's, town's, county's, or other political subdivision's share of general
 13 revenue turnback, as the share is defined in the Revenue Stabilization Law, §
 14 19-5-101 et seq., as the same may be amended from time to time, the amount
 15 certified as due and to transfer the amount to the revolving loan account and
 16 the Construction Assistance Administrative Account as follows:

17 (1) Amounts withheld as fees shall be transferred to the
 18 administrative account; and

19 (2) Amounts withheld as principal and interest shall be
 20 transferred to the revolving loan account.

21
 22 15-5-909. Definitions.

23 As used in this subchapter:

24 (1) "Administrative account" means the Construction Assistance
 25 Administrative Account established by this subchapter within the fund;

26 (2) "Authority" means the Arkansas Development Finance Authority or any
 27 successor agency or commission of the state;

28 (3) "Clean Water Act" means the federal Water Pollution Control Act of
 29 1972, as amended by the Federal Water Quality Act of 1987;

30 (4) "Commission" means the Arkansas Soil and Water Conservation
 31 Commission or its successor agency or commission of the state;

32 (5) "Department" means the Arkansas Department of Environmental Quality
 33 or its successor agency of the state;

34 (6) "Federal environmental acts" means the Clean Water Act, the federal
 35 Safe Drinking Water Act, the federal Resource Conservation and Recovery Act,
 36 the federal Clean Air Act, and the federal Comprehensive Environmental

1 Response, Compensation, and Liability Act;

2 (7) "Fund" means the Construction Assistance Revolving Loan Fund
3 established by this subchapter;

4 (8) "Owner" means the owner or prospective owner of an environmental
5 project, excluding any federal agencies;

6 (9) "Revolving loan account" means the Construction Assistance
7 Revolving Loan Fund Account established by this subchapter within the fund;

8 (10) "State" means the State of Arkansas; and

9 (11) "State grants account" means the Construction Assistance State
10 Grants Account established by this subchapter within the fund.

11
12 SECTION 4. Arkansas Code Title 8, Chapter 5, Subchapters 3 and 4 are
13 repealed.

14 ~~8-5-301. Definitions.~~

15 ~~As used in this subchapter, unless the context otherwise requires:~~

16 ~~(1) "Commission" means the Arkansas Pollution Control and Ecology~~
17 ~~Commission;~~

18 ~~(2) "Political subdivision" means any city of the first class, city of~~
19 ~~the second class, incorporated town, county, improvement district, or other~~
20 ~~political subdivision of the State of Arkansas, or any combination of them;~~
21 ~~and~~

22 ~~(3) "Water pollution control project" means any waste treatment~~
23 ~~facility or any plants or other works which accomplish the treating,~~
24 ~~stabilizing, or holding of untreated or inadequately treated sewage or other~~
25 ~~waste.~~

26
27 ~~8-5-302. Authority to make grants.~~

28 ~~The Arkansas Pollution Control and Ecology Commission is authorized to~~
29 ~~make grants, as funds are available from the proceeds of bonds issued by the~~
30 ~~commission pursuant to the authority conferred by this subchapter to any~~
31 ~~political subdivision, to assist the political subdivision in the~~
32 ~~construction of those portions of water pollution control projects which~~
33 ~~qualify for federal aid and assistance under the provisions of the Federal~~
34 ~~Water Pollution Control Act.~~

35
36 ~~8-5-303. Application for state grant.~~

1 ~~(a) When a political subdivision makes application for federal~~
 2 ~~assistance under the Federal Water Pollution Control Act for a portion of the~~
 3 ~~cost of construction of a water pollution control project, it may apply to~~
 4 ~~the Arkansas Pollution Control and Ecology Commission for a state grant.~~

5 ~~(b) The application shall state:~~

6 ~~(1) The total estimated cost of the project;~~

7 ~~(2) The amount anticipated to be paid by federal assistance~~
 8 ~~under the federal act or any other federal assistance program;~~

9 ~~(3) The amount which the applicant will contribute to the~~
 10 ~~project; and~~

11 ~~(4) That the request is made for a state grant for the balance~~
 12 ~~of the estimated cost of the project.~~

13
 14 ~~8-5-304. Authority to issue revenue bonds.~~

15 ~~(a) The Arkansas Development Finance Authority is authorized to issue~~
 16 ~~revenue bonds to provide funds to be used for the purpose of making state~~
 17 ~~grants to political subdivisions as authorized in this subchapter.~~

18 ~~(b) The bonds shall be issued as funds are needed to pay a state grant~~
 19 ~~or to refund to the municipality any funds it has provided for a water~~
 20 ~~pollution control project in anticipation of a state grant, as provided in~~
 21 ~~this subchapter.~~

22 ~~(c) The amount of bonds issued shall be sufficient to:~~

23 ~~(1) Provide necessary funds for the state grant;~~

24 ~~(2) Pay the costs of issuing the bonds;~~

25 ~~(3) Provide the amount necessary for a reserve, if desirable;~~

26 ~~(4) Provide for debt service on the bonds until revenues for the~~
 27 ~~payment thereof are available; and~~

28 ~~(5) Pay any other costs and expenditures of whatever nature~~
 29 ~~incidental to the accomplishment of the specified purposes.~~

30
 31 ~~8-5-305. Revenue bond provisions.~~

32 ~~(a) The issuance of revenue bonds shall be by resolution of the~~
 33 ~~Arkansas Development Finance Authority.~~

34 ~~(b) The bonds may:~~

35 ~~(1) Be coupon bonds payable to bearer or may be made registrable~~
 36 ~~as to principal only or as to both principal and interest;~~

- 1 ~~(2) Be made exchangeable for bonds of another denomination;~~
- 2 ~~(3) Be in such form and denominations;~~
- 3 ~~(4) Be made payable at such places within or without the state;~~
- 4 ~~(5) Be issued in one (1) or more series;~~
- 5 ~~(6) Bear such date or dates;~~
- 6 ~~(7) Mature at such time or times, not exceeding forty (40) years~~
- 7 ~~from their respective dates;~~
- 8 ~~(8) Bear interest at such rate or rates;~~
- 9 ~~(9) Be payable in such medium of payment;~~
- 10 ~~(10) Be subject to such terms of redemption; and~~
- 11 ~~(11) Contain such terms, covenants, and conditions as the~~
- 12 ~~resolution authorizing their issuance may provide, including, without~~
- 13 ~~limitation, those pertaining to:~~
- 14 ~~(A) The custody and application of the proceeds of the~~
- 15 ~~bonds;~~
- 16 ~~(B) The collection and disposition of revenues;~~
- 17 ~~(C) The maintenance and investment of various funds and~~
- 18 ~~reserves;~~
- 19 ~~(D) The nature and extent of the security, including~~
- 20 ~~revenue pledges;~~
- 21 ~~(E) The rights, duties, and obligations of the Arkansas~~
- 22 ~~Development Finance Authority, the political subdivision, and the trustee for~~
- 23 ~~the holders and registered owners of the bonds; and~~
- 24 ~~(F) The rights of the holders and registered owners of the~~
- 25 ~~bonds.~~
- 26 ~~(c) The bonds shall have all the qualities of negotiable instruments~~
- 27 ~~under the laws of the State of Arkansas.~~

28
29 ~~8-5-306. Use of indenture.~~

- 30 ~~(a) The revenue bonds issuance resolution of the Arkansas Development~~
- 31 ~~Finance Authority may provide for the execution by the authority of an~~
- 32 ~~indenture which defines the rights of the bondholders and provides for the~~
- 33 ~~appointment of a trustee for the bondholders.~~
- 34 ~~(b) The indenture may control the priority between successive issues~~
- 35 ~~and may contain any other terms, covenants, and conditions that are deemed~~
- 36 ~~desirable, including, without limitation, those pertaining to:~~

- 1 ~~(1) The custody and application of the proceeds of the bonds;~~
- 2 ~~(2) The collection and disposition of revenues;~~
- 3 ~~(3) The maintenance of various funds and reserves;~~
- 4 ~~(4) The nature and extent of the security, including revenue~~
- 5 ~~pledges;~~
- 6 ~~(5) The rights, duties, and obligations of the authority,~~
- 7 ~~political subdivision, and trustee; and~~
- 8 ~~(6) The rights of the holders and registered owners of the~~
- 9 ~~bonds.~~

10
11 ~~8-5-307. Sale of bonds.~~

12 ~~The bonds may be sold for such price, including, without limitation,~~
13 ~~sale at a discount, and in such manner as the Arkansas Development Finance~~
14 ~~Authority may determine by resolution.~~

15
16 ~~8-5-308. Execution of bonds and coupons.~~

17 ~~The bonds shall be executed by the Chairman of the Board of Directors~~
18 ~~of the Arkansas Development Finance Authority and the President of the~~
19 ~~Arkansas Development Finance Authority, with the manual or facsimile~~
20 ~~signature of the chairman but with the manual signature of the president. In~~
21 ~~ease any of the officers whose signatures appear on the bonds or coupons~~
22 ~~shall cease to be officers before the delivery of the bonds or coupons, their~~
23 ~~signatures shall, nevertheless, be valid and sufficient for all purposes.~~
24 ~~Coupons attached to the bonds may be executed by the facsimile signature of~~
25 ~~the chairman.~~

26
27 ~~8-5-309. Repayment of bonds.~~

28 ~~(a) The bonds issued under this subchapter shall not constitute an~~
29 ~~indebtedness of the Arkansas Development Finance Authority or of the State of~~
30 ~~Arkansas within the meaning of any constitutional or statutory limitation.~~
31 ~~This fact shall be so stated on the face of each bond. It shall also be~~
32 ~~stated on the face of each bond that it is issued under the provisions of~~
33 ~~this subchapter.~~

34 ~~(b) The principal of and interest on the bonds and the paying agent's~~
35 ~~fees shall be payable from the special fees or charges collected by the~~
36 ~~political subdivision and payable to the authority as provided in this~~

1 ~~subchapter.~~

2

3 ~~8-5-310. Refunding revenue bonds.~~

4 ~~(a) Revenue bonds may be issued under this subchapter for the purpose~~
5 ~~of refunding any obligations issued under this subchapter.~~

6 ~~(b) Refunding bonds may be combined with other bonds issued under the~~
7 ~~provisions of this subchapter into a single issue.~~

8 ~~(c) When bonds are issued under this section for refunding purposes,~~
9 ~~the bonds may either be sold or delivered in exchange for the outstanding~~
10 ~~obligations. If sold, the proceeds shall be applied to the payment of the~~
11 ~~obligations refunded.~~

12 ~~(d) All bonds issued under this section shall, in all respects, be~~
13 ~~authorized, issued, and secured in the manner provided for other bonds issued~~
14 ~~under this subchapter and shall have all the attributes of such bonds.~~

15 ~~(e) The resolution under which these refunding bonds are issued may~~
16 ~~provide that any of the refunding bonds shall have the same priority of lien~~
17 ~~on the revenues pledged for their payment as was enjoyed by the obligations~~
18 ~~refunded thereby.~~

19

20 ~~8-5-311. Tax exemption for bonds.~~

21 ~~Bonds issued under this subchapter shall be exempt from all state,~~
22 ~~county, and municipal taxes. This exemption includes income taxes.~~

23

24 ~~8-5-312. Bonds as legal investments.~~

25 ~~(a) Any political subdivision or any board, commission, or other~~
26 ~~authority duly established by ordinance of any political subdivision, the~~
27 ~~boards of trustees, respectively, of the firemen's relief and pension fund~~
28 ~~and the policemen's pension and relief fund of any municipality, or the board~~
29 ~~of trustees of any retirement system created by the General Assembly may, in~~
30 ~~its discretion, invest any of its funds not immediately needed for its~~
31 ~~purposes in revenue bonds issued under the provisions of this subchapter.~~

32 ~~(b) Revenue bonds issued under the provisions of this subchapter shall~~
33 ~~be eligible to secure the deposit of public funds.~~

34

35 ~~8-5-313. Conditions for bonds and grants.~~

36 ~~(a) The Arkansas Development Finance Authority shall apply the~~

1 proceeds derived from the sale and issuance of the bonds, less the cost of
 2 issuing the bonds and the amounts, if any, necessary for a reserve and to
 3 provide for debt service on the bonds until revenues for the payment thereof
 4 are available, to pay the state grant for which the bonds were issued.

5 (b) ~~The state grant for any water pollution control project shall not~~
 6 ~~exceed twenty five percent (25%) of the cost thereof as the cost is approved~~
 7 ~~under the Federal Water Pollution Control Act and used as the basis for~~
 8 ~~determining federal participation in the project. However, no contract shall~~
 9 ~~be awarded for the construction of any such project without the approval of~~
 10 ~~the Arkansas Pollution Control and Ecology Commission.~~

11 (c) ~~In the establishment of the priority of projects, relative need,~~
 12 ~~and standards of construction, the commission shall work in conjunction with~~
 13 ~~the appropriate federal agencies and shall apply regulations consistent with~~
 14 ~~the provisions of the federal act. However, it shall have the power to adopt~~
 15 ~~such rules, regulations, and procedures as shall be necessary for the~~
 16 ~~effective administration thereof.~~

17 (d) ~~Each political subdivision seeking a state grant must file an~~
 18 ~~application for a federal grant and meet all other conditions and~~
 19 ~~requirements for a federal grant, particularly the provisions of § 8(b)(7) of~~
 20 ~~the federal act. Any political subdivision so qualifying for federal grant~~
 21 ~~funds shall be eligible for state grant funds upon compliance with the~~
 22 ~~provisions of this subchapter.~~

23
 24 ~~8-5-314. Water quality control charge.~~

25 (a) ~~Each political subdivision applying for a state grant must submit~~
 26 ~~with its application a certificate of the chief executive officer of the~~
 27 ~~political subdivision that the political subdivision has obligated itself to~~
 28 ~~levy and collect, in addition to all other fees and charges levied and~~
 29 ~~collected by such political subdivision, a charge, the "water quality control~~
 30 ~~charge", sufficient to produce in each year revenues at least equal to one~~
 31 ~~hundred twenty five percent (125%) of the maximum annual amount required to~~
 32 ~~meet the debt service requirements on any bonds to be issued by the Arkansas~~
 33 ~~Development Finance Authority for the purpose of providing funds for the~~
 34 ~~state grant for that particular water pollution control project.~~

35 (b) ~~The charge may be levied and collected by the political~~
 36 ~~subdivision at the same time and in the same manner as other fees and charges~~

1 are levied and collected for water services or sewer services furnished to
2 its customers or may be any other type of levy or charge that it is
3 authorized to levy or collect under the Arkansas Constitution and laws of
4 this state for such purpose.

5 (c) All moneys derived by the political subdivision from the charge
6 shall be remitted monthly to the authority, which shall deposit the moneys in
7 a special fund designated the "Arkansas Water Quality Control Revenue Bond
8 Redemption Fund" or "bond fund" to the credit of that political subdivision
9 for the payment of bonds issued by the authority to fund the state grant for
10 the water pollution control project for that political subdivision.

11 (d)(1) The charge shall not be decreased or discontinued so long as
12 any bonds issued by the authority for the purpose of providing funds for the
13 state grant for the particular project remain outstanding and unpaid.

14 (2) Upon retirement of the bonds issued for the purpose of
15 providing funds for the state grant for the particular project, any surplus
16 moneys remaining in the bond fund to the credit of the political subdivision
17 shall be refunded to the political subdivision.

18 (e) All moneys received by the authority from political subdivisions
19 pursuant to this subchapter are specifically declared to be cash funds,
20 restricted in their use and dedicated to be used solely as provided in this
21 subchapter. Such moneys shall not be deposited in the State Treasury but
22 shall be deposited by the authority as and when received in such bank as the
23 authority may select and shall be disbursed as authorized in this subchapter.

24
25 8-5-315. Redemption of revenue bonds.

26 The moneys paid into the bond fund by a political subdivision shall be
27 dedicated solely to and used solely for the payment of the bonds issued by
28 the Arkansas Development Finance Authority for the purpose of providing funds
29 for the state grant for the water pollution control project of such political
30 subdivision. After the required reserve as specified in the agreement
31 provided for in § 8-5-318 has been established, the authority may use surplus
32 moneys in the bond fund for the purpose of calling such bonds for redemption
33 prior to maturity or may remit the surplus moneys to the political
34 subdivision for use by the political subdivision for any purpose for which
35 the political subdivision is authorized by law and existing ordinances to
36 expend revenues derived from comparable sources, all of which may be

1 ~~controlled by the agreement provided for in § 8-5-318.~~

2
3 ~~8-5-316. Restriction on bond proceeds.~~

4 ~~The authority granted in this subchapter to issue revenue bonds and to~~
5 ~~levy and collect charges is for the specific object and purpose of providing~~
6 ~~state grants to supplement grants made pursuant to the Federal Water~~
7 ~~Pollution Control Act and regulations thereunder, to any political~~
8 ~~subdivision of this state that provides sanitary sewer collection or~~
9 ~~treatment facilities to its citizens. The revenues accruing to the Arkansas~~
10 ~~Pollution Control and Ecology Commission under the provisions of this~~
11 ~~subchapter are dedicated solely for the purpose of supplementing such grant~~
12 ~~offers, either through the funding thereof as provided in this subchapter or~~
13 ~~through cash expenditures.~~

14
15 ~~8-5-317. Accelerating project funding.~~

16 ~~In order to accelerate the completion of water quality control~~
17 ~~projects, any political subdivision making application for a Federal Water~~
18 ~~Pollution Control Act grant may, with the approval of the Arkansas Pollution~~
19 ~~Control and Ecology Commission, obligate the political subdivision to provide~~
20 ~~local funds to pay that portion of the cost of the project that is~~
21 ~~anticipated to be borne by the state. The Arkansas Development Finance~~
22 ~~Authority shall refund the amount so expended on its behalf by the political~~
23 ~~subdivision from the first funds available from the sale of revenue bonds by~~
24 ~~the authority under the provisions of this subchapter for the project.~~

25
26 ~~8-5-318. Agreements by political subdivisions.~~

27 ~~(a)(1) Each political subdivision applying for a state grant is~~
28 ~~authorized to enter into an agreement with the Arkansas Pollution Control and~~
29 ~~Ecology Commission.~~

30 ~~(2) The agreement may provide for:~~

31 ~~(A) The conditions of the grant, the revenue source and~~
32 ~~amount, and the manner of collecting and remitting the water quality control~~
33 ~~charge;~~

34 ~~(B) The establishment and maintenance of necessary~~
35 ~~reserves;~~

36 ~~(C) The conditions and manner of remitting surplus water~~

1 ~~quality control charge revenues to the political subdivision; and~~

2 ~~(D) Such other terms and conditions as are necessary to~~
 3 ~~assure the commission, the trustee for the bondholders, and the bondholders~~
 4 ~~that a water quality control charge sufficient to pay the principal of,~~
 5 ~~interest on, and paying agent's fees for the bonds to be issued by the~~
 6 ~~Arkansas Development Finance Authority to fund the state grant shall, at all~~
 7 ~~times while any of the bonds are outstanding, be levied, collected, and~~
 8 ~~remitted to the authority.~~

9 ~~(b) The obligations of the political subdivision under the agreement~~
 10 ~~may be enforced by mandamus or other appropriate remedy in a proceeding~~
 11 ~~brought by the commission, the trustee for the bondholders, or the~~
 12 ~~bondholders in a court of competent jurisdiction.~~

13 ~~(c) The obligation of the political subdivision under the agreement to~~
 14 ~~collect and remit the water quality control charge shall not be a general~~
 15 ~~obligation but shall be a special obligation payable from revenues derived~~
 16 ~~from the specific fees or charges the political subdivision has obligated~~
 17 ~~itself to levy and collect for such purpose.~~

18 ~~(d) Priority between and among issues and successive issues of bonds~~
 19 ~~of the authority or the political subdivision as to the security of the~~
 20 ~~pledge of revenues derived from water service charges, sewer service charges,~~
 21 ~~and other revenue sources involved may be controlled by the agreement.~~

22 ~~(e) Subject to any prior contracts with the holders of outstanding~~
 23 ~~bonds of the authority or the political subdivision, the agreement with the~~
 24 ~~commission may provide that the pledge of water quality control charge~~
 25 ~~revenues shall rank on a parity of pledge with the pledge of revenues of the~~
 26 ~~political subdivision to the payment of principal of, interest on, and paying~~
 27 ~~agent's fees for any bonds issued by the political subdivision for the~~
 28 ~~purpose of funding the political subdivision's share of the cost of the water~~
 29 ~~pollution control project.~~

30
 31 ~~8-5-319. Failure, neglect, or refusal to pay.~~

32 ~~(a) In the event any municipality shall fail, neglect, or refuse to~~
 33 ~~pay any installment of principal or interest found to be ninety (90) or more~~
 34 ~~days legally past due in accordance with the written instrument for the~~
 35 ~~repayment of its bonds, notes, or other evidences of indebtedness purchased~~
 36 ~~with moneys in the Construction Assistance Revolving Loan Fund established by~~

1 ~~§ 15-5-901 or its successor fund, the Arkansas Department of Environmental~~
 2 ~~Quality, after first notifying the municipality of such facts, is hereby~~
 3 ~~authorized to certify such facts to the Treasurer of State, the Auditor of~~
 4 ~~State, and the Chief Fiscal Officer of the State.~~

5 ~~(b)(1) Upon certification of the name of the municipality and the~~
 6 ~~amount which is ninety (90) or more days past due, the Treasurer of State,~~
 7 ~~the Auditor of State, and the Chief Fiscal Officer of the State are hereby~~
 8 ~~directed to withhold from the municipality's share of general revenue~~
 9 ~~turnback, as such share is defined in the Revenue Stabilization Law, § 19-5-~~
 10 ~~101 et seq., as the same may be amended from time to time, the amount so~~
 11 ~~certified and to transfer such amount to the fund.~~

12 ~~(2) Such amount so transferred shall be treated as a credit~~
 13 ~~against the amount past due under the bonds, notes, or other evidences of~~
 14 ~~indebtedness for which payment has not been made to the extent of the amount~~
 15 ~~transferred.~~

16
 17 ~~8-5-401. Title.~~

18 ~~This subchapter shall be known and may be cited as the "Water Pollution~~
 19 ~~Control State Grant Act of 1972".~~

20
 21 ~~8-5-402. Purpose.~~

22 ~~The purpose of this subchapter is to provide for state grants to~~
 23 ~~political subdivisions of the State of Arkansas so that they may obtain the~~
 24 ~~maximum available federal financial assistance for wastewater treatment~~
 25 ~~facilities designed to eliminate, in whole or in part, or control water~~
 26 ~~pollution, referred to as "waste treatment facilities", when applicable~~
 27 ~~federal legislation providing for federal grant funds, referred to as~~
 28 ~~"federal financial assistance", requires a state grant as distinguished from~~
 29 ~~local matching funds, referred to as a "state grant", as a condition or~~
 30 ~~prerequisite to the obtaining of federal assistance, or provides that in the~~
 31 ~~event of a state grant a greater amount of federal financial assistance will~~
 32 ~~be available than would otherwise be the case.~~

33
 34 ~~8-5-403. Administration.~~

35 ~~The Arkansas Department of Environmental Quality is authorized to~~
 36 ~~administer the state grant program authorized by this subchapter and, to that~~

1 ~~end, is authorized to take all action, provide for, negotiate, execute, and~~
 2 ~~perform all agreements and instruments with the United States of America or~~
 3 ~~any agency thereof and with political subdivisions of this state necessary to~~
 4 ~~implement the authority conferred by this subchapter.~~

5
 6 ~~8-5-404. Conditions for disbursement of grants.~~

7 ~~(a)(1) When moneys are made available to it pursuant to the provisions~~
 8 ~~of this subchapter or from any other source provided by law for such purpose,~~
 9 ~~the Arkansas Department of Environmental Quality is authorized to make a~~
 10 ~~state grant to any public agency, county, municipality that is a city of the~~
 11 ~~first class, city of the second class, or incorporated town, school district,~~
 12 ~~improvement district, or other political subdivision which is authorized~~
 13 ~~under the laws of the State of Arkansas to construct, acquire, own, or~~
 14 ~~operate waste treatment facilities, referred to as "political subdivisions",~~
 15 ~~for the purpose of furnishing a portion of the total cost of constructing or~~
 16 ~~acquiring and equipping waste treatment facilities in all instances in which~~
 17 ~~a state grant is a condition or prerequisite to the obtaining of federal~~
 18 ~~financial assistance or to obtaining a greater amount of federal financial~~
 19 ~~assistance.~~

20 ~~(2) However, each state grant shall not exceed fifteen percent (15%)~~
 21 ~~of the total cost of the waste treatment facilities involved and shall be~~
 22 ~~made only where federal legislation specifically requires state grants as a~~
 23 ~~condition of obtaining federal financial assistance not otherwise available.~~

24 ~~(b) No state grant shall be made to any political subdivision until~~
 25 ~~the political subdivision shall certify to the department that it has made~~
 26 ~~provision for the local portion, which is the portion to be furnished by it,~~
 27 ~~of the total cost of the waste treatment facilities involved. When state~~
 28 ~~grants are made available to political subdivisions under the terms of this~~
 29 ~~subchapter, no funds derived by the political subdivision from any federal~~
 30 ~~source may be used for such local portion. No state grant may be authorized~~
 31 ~~unless at least ten percent (10%) of the total project cost is from local~~
 32 ~~funding sources.~~

33
 34 SECTION 5. EMERGENCY CLAUSE. It is hereby found and determined by the
 35 General Assembly of the State of Arkansas that administration of the clean
 36 water fund is of critical importance to the citizens of Arkansas, that the

1 fund may be administered more efficiently by an agency that specializes in
2 the administration of numerous other revolving loan programs associated with
3 environmental projects, and that the provisions of this act are necessary to
4 preserve and improve the efficient administration of these programs.
5 Therefore, an emergency is declared to exist and this act being immediately
6 necessary for the preservation of the public peace, health, and safety shall
7 be in full force and effect from and after July 1, 2003.

8
9
10 **APPROVED: 3/20/2003**
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