

CHAPTER 33

WATER AND IRRIGATION

HOUSE BILL 02-1118

BY REPRESENTATIVE(S) Scott, Hoppe, and Rippy;
also SENATOR(S) Reeves, Hernandez, and Tate.

AN ACT**CONCERNING THE DISCRETION OF THE COLORADO WATER RESOURCES AND POWER DEVELOPMENT
AUTHORITY IN FINANCING PROJECTS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 37-95-103 (12.5) (a) and (13), Colorado Revised Statutes, are amended to read:

37-95-103. Definitions. As used in this article:

(12.5) (a) (I) "Small water resources project" means any water management facility or hydroelectric facility THAT IS OR WILL BE financed in whole or in part by the authority ~~the construction cost of which is estimated by the authority, on or prior to the date of issuance of the first series of bonds or notes therefor, to be no more than twenty-five million dollars~~ AND IN WHICH THE TOTAL AMOUNT OF FINANCING PROVIDED BY THE AUTHORITY TO ANY PARTICIPATING GOVERNMENTAL AGENCY DOES NOT EXCEED ONE HUNDRED MILLION DOLLARS.

(II) ~~For the purpose of this subsection (12.5), "construction cost" means all costs related to and incurred in connection with the project, including, without limitation, all costs of:~~

- ~~(A) Planning, design, and engineering;~~
- ~~(B) Environmental review, documentation, and mitigation;~~
- ~~(C) Physical construction;~~
- ~~(D) Financing;~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~(E) Financing reserves;~~

~~(F) Interest during construction;~~

~~(G) Acquisition of land and water rights; and~~

~~(H) All direct and indirect expenses of the authority and other governmental agencies involved in the project.~~

(13) "Water management facilities" means facilities for the purpose of the development, use, and protection of water resources, including, without limiting the generality of the foregoing, facilities for water supply and treatment, facilities for streamflow improvement, dams, reservoirs, and other impoundments, water transmission lines, SEWERAGE FACILITIES, water wells and well fields, pumping stations and works for underground water recharge, stream-monitoring systems, facilities for the stabilization of stream and river banks.

SECTION 2. 37-95-107.6 (4) (c), Colorado Revised Statutes, is amended, and the said 37-95-107.6 (4) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

37-95-107.6. Creation and administration of water pollution control revolving fund. (4) (c) No funds may be expended from the water pollution control revolving fund or bonds issued by the authority pursuant to subsection (6) of this section for any wastewater treatment system project unless the wastewater treatment system project is on the project eligibility list approved by the general assembly OR IS AN EMERGENCY PROJECT IN ACCORDANCE WITH PARAGRAPH (d) OF THIS SUBSECTION (4). Financial assistance for a project pursuant to this section may be provided regardless of the rank of such project on the eligibility list.

(d) THE COLORADO WATER QUALITY CONTROL COMMISSION MAY AMEND THE PROJECT ELIGIBILITY LIST AT ANY TIME, IN ACCORDANCE WITH ITS REGULAR PROCEDURES, TO INCLUDE WASTEWATER TREATMENT SYSTEM PROJECTS THAT IT DETERMINES AND DECLARES TO BE EMERGENCY PROJECTS NEEDED TO PREVENT OR ADDRESS THREATS TO THE PUBLIC HEALTH OR ENVIRONMENT. NO LATER THAN JANUARY 15 OF EACH YEAR, THE AUTHORITY SHALL PROVIDE TO THE GENERAL ASSEMBLY A LISTING OF ALL EMERGENCY PROJECTS FOR WHICH MONEYS FROM THE WATER POLLUTION CONTROL REVOLVING FUND HAVE BEEN EXPENDED IN THE PRECEDING CALENDAR YEAR.

SECTION 3. 37-95-107.6, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

37-95-107.6. Creation and administration of water pollution control revolving fund. (10) THE AUTHORITY MAY, ACTING IN ITS DISCRETION AND WITH THE APPROVAL OF THE GOVERNOR, TRANSFER MONEYS FROM THE WATER POLLUTION CONTROL REVOLVING FUND TO THE DRINKING WATER REVOLVING FUND CREATED AND ADMINISTERED PURSUANT TO SECTION 37-95-107.8, IF THE TRANSFER OF SUCH MONEYS IS PERMITTED BY APPLICABLE FEDERAL LAW AND THE TERMS OF ANY AGREEMENT BETWEEN THE STATE AND THE UNITED STATES RELATING TO THE WATER

POLLUTION CONTROL REVOLVING FUND.

SECTION 4. 37-95-107.8 (4) (c), Colorado Revised Statutes, is amended, and the said 37-95-107.8 (4) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

37-95-107.8. Creation and administration of drinking water revolving fund.

(4) (c) Moneys shall not be spent from the drinking water revolving fund or bonds issued by the authority pursuant to subsection (6) of this section for any project unless the project is on the drinking water project eligibility list approved in accordance with this subsection (4) OR IS AN EMERGENCY PROJECT IN ACCORDANCE WITH PARAGRAPH (d) OF THIS SUBSECTION (4). Financial assistance for a project pursuant to this section may be provided regardless of the rank, if any, of the project on the eligibility list; except that any priority for eligible projects established or required by the safe drinking water act shall apply in the issuance of financial assistance if the source of the financial assistance is grant moneys from the federal government.

(d) THE BOARD OF HEALTH MAY AMEND THE DRINKING WATER PROJECT ELIGIBILITY LIST AT ANY TIME PURSUANT TO ITS REGULAR PROCEDURES, TO INCLUDE DRINKING WATER PROJECTS THAT IT DETERMINES AND DECLARES TO BE EMERGENCY PROJECTS NEEDED TO PREVENT OR ADDRESS THREATS TO THE PUBLIC HEALTH OR ENVIRONMENT. NO LATER THAN JANUARY 15 OF EACH YEAR, THE AUTHORITY SHALL PROVIDE TO THE GENERAL ASSEMBLY A LISTING OF ALL EMERGENCY PROJECTS FOR WHICH MONEYS FROM THE DRINKING WATER REVOLVING FUND HAVE BEEN EXPENDED IN THE PRECEDING CALENDAR YEAR.

SECTION 5. 37-95-107.8, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

37-95-107.8. Creation and administration of drinking water revolving fund.

(9) THE AUTHORITY MAY, ACTING IN ITS DISCRETION AND WITH THE APPROVAL OF THE GOVERNOR, TRANSFER MONEYS FROM THE DRINKING WATER REVOLVING FUND TO THE WATER POLLUTION CONTROL REVOLVING FUND CREATED AND ADMINISTERED PURSUANT TO SECTION 37-95-107.6, IF THE TRANSFER OF SUCH MONEYS IS PERMITTED BY APPLICABLE FEDERAL LAW AND THE TERMS OF ANY AGREEMENT BETWEEN THE STATE AND THE UNITED STATES RELATING TO THE DRINKING WATER REVOLVING FUND.

SECTION 6. Repeal. 37-95-113, Colorado Revised Statutes, is repealed as follows:

37-95-113. Debt service reserve funds. ~~(1) In addition to any other funds it may establish, the board may, by resolution, establish one or more special funds pursuant to this section, referred to in this section as "debt service reserve funds", and may pay into such debt service reserve funds:~~

~~(a) Any moneys appropriated and made available by the state for the purposes of such debt service reserve funds;~~

~~(b) Any proceeds from the sale of notes or bonds to the extent provided in the resolutions of the board authorizing the issuance thereof; and~~

~~(c) Any moneys which may be made available to the authority from any other sources for the purposes of such debt service reserve funds.~~

~~(2) So long as there are bonds outstanding secured by a debt service reserve fund created by this section, all moneys held in any debt service reserve fund, except as otherwise required in this section, shall be used solely for the payment of the principal of the bonds or of the sinking fund payments mentioned in this section with respect to such bonds, the purchase or redemption of such bonds, the payment of interest on such bonds, or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; except that moneys in any such fund shall not be withdrawn at any time in such amount as would reduce such fund to less than the debt service reserve fund requirement, except for the purpose of making with respect to such bonds principal, interest, redemption premium, and sinking fund payments for the payment of which other moneys of the authority are not available. So long as there are no bonds issued and outstanding secured by a debt service reserve fund created by this section, the amounts on deposit in such debt service reserve fund shall be used for any corporate purposes of the authority.~~

~~(3) Any income or interest earned by, or increment to, any debt service reserve fund due to the investment thereof may be transferred to other funds or accounts of the authority to the extent it does not reduce the amount of such debt service reserve fund below the debt service reserve fund requirement.~~

~~(4) The authority may provide by resolution for the establishment of a debt service reserve fund requirement for any debt service reserve fund established pursuant to this section.~~

~~(5) and (6) Repeated.~~

~~(7) The chairman of the authority shall, on or before January 1 of each year, make and deliver to the governor his certificate, stating the sum, if any, required to restore each debt service reserve fund to the debt service reserve fund requirement. The governor may transmit to the general assembly a request for the amount, if any, required to restore each debt service reserve fund to the debt service reserve fund requirement. The general assembly may, but shall not be required to, make any such appropriations so requested. All sums appropriated by the general assembly for such restoration and paid shall be deposited by the authority in each such debt service reserve fund. Nothing provided in this section shall create or constitute a debt or liability of the state.~~

~~(8) The authority may create such other funds as may be necessary or desirable for the corporate purposes of the authority including debt service reserve funds not established pursuant to subsection (2) of this section.~~

~~(9) Any moneys appropriated by the general assembly for the purposes of any of the debt service reserve funds established pursuant to this section shall not revert to the general fund of the state at the end of any fiscal year.~~

~~(10) If, by virtue of a decision of the Colorado supreme court or any federal court, portions of this article are held unconstitutional and the authority is thereby rendered incapable of performing all of the purposes for which it is hereby created, then,~~

~~subject to the provisions of section 37-95-114, any moneys appropriated by the general assembly for the purposes of any of the debt service reserve funds established by the authority remaining on deposit therein shall be transferred to the Colorado water conservation board construction fund established pursuant to section 37-60-121, such transfer to take effect on the day after such decision becomes final and no longer appealable.~~

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 22, 2002