

1992 Regular Session
Of The
Seventy-Fourth General Assembly
Of The
State Of Iowa

CHAPTER 1001
MUNICIPAL INVESTMENT RECOVERY PROGRAM
S.F. 2064

AN ACT establishing a municipal investment recovery program and authorizing an appropriation to the department of management and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 220.171 **LEGISLATIVE FINDINGS.**

The general assembly finds and declares that:

1. Certain Iowa municipalities and other public bodies within the state have experienced the temporary or permanent loss of public funds invested or held for investment for public purposes or projects, including those held in a common investment pool organized under chapter 28E.
2. The loss of such funds and the resulting cashflow difficulties have placed severe financial burdens on such municipalities and other public bodies.
3. There currently exists a shortage of means by which such municipalities and other public bodies can borrow or otherwise acquire replacement funds until the lost funds are recovered or replaced.
4. The availability of loan funds from the authority will reduce the short-term operating difficulties faced by such municipalities and other public bodies and permit them to continue operations and projects currently in progress.
5. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted.

Sec. 2. NEW SECTION. 220.172 **ESTABLISHMENT OF MUNICIPAL INVESTMENT RECOVERY PROGRAM – DEFINITIONS.**

1. The authority shall establish a municipal investment recovery program to make loans to municipalities in anticipation of their recovery of lost, stolen, or converted funds invested or held for investment in a common investment pool organized under chapter 28E or separately. The authority may issue its bonds or notes, or series of bonds or notes, for the purpose of funding such loans and may make secured loans to municipalities for such purposes on terms the authority determines.

2. For purposes of section 220.171, this section, and sections 220.173 through 220.176:

a. "Investment loss" means any funds of a municipality invested or held for investment by others, including funds held in a common investment pool organized under chapter 28E or held separately by a municipality, the recovery of which has been delayed, suspended, or impaired, and which are not returned to the municipality within ten days after demand, including any accrued interest or interest that would have accrued on such funds. The amount of any funds of a municipality held in a common investment pool or held separately by the municipality

in another investment vehicle that are not returned to the municipality upon its request shall represent the amount of the investment loss of the municipality.

b. "Municipality" means any public body that has invested public funds in a common investment pool organized under chapter 28E or otherwise, and includes, but is not limited to, cities, counties, school corporations, entities created under chapter 28E, municipal utility boards, and judicial district departments of correctional services of this state.

c. "Program" means the municipal investment recovery program established by the authority pursuant to this section.

Sec. 3. NEW SECTION. 220.173 LOAN AGREEMENTS — BONDS AND NOTES.

1. The authority may enter into loan agreements with a municipality to enable the municipality to recover investment losses. The principal amount of the loan agreement may include the amount of the investment loss incurred by the municipality as of the date of approval of the loan agreement, plus such amounts as the municipality shall deem necessary or desirable for capitalized interest, costs of issuance, financing costs, credit enhancements, and reserves. The repayment obligation of the municipality may be secured by a pledge of debt service taxes, enterprise revenues or income, or revenues of the municipality from any source, or secured by such other security as the authority deems advisable. Without limiting the foregoing, a judicial district department of correctional services may pledge any appropriation or other grant in aid made by the general assembly as security for its repayment obligation. However, the appropriation or other grant in aid is only subject to the pledge upon receipt of the appropriation or grant in aid by the judicial district department of correctional services. The repayment obligation may be evidenced by one or more notes of the municipality. The plan of repayment by the municipality shall not take into consideration any potential recovery of investment loss. If the municipality recovers any portion of an investment loss for which it has a loan agreement, the amount recovered shall be immediately paid to the authority to be applied by it against the municipality's obligation in accordance with the terms of the loan agreement. The loan agreements may contain other terms and conditions the authority deems advisable.

2. The authority may issue its bonds and notes for the purpose of establishing a loan fund for the program and making loans from the fund to municipalities under the program. The authority may enter into one or more lending agreements or purchase agreements with one or more bondholders or noteholders containing the terms and conditions of the repayment of and the security for the bonds or notes. The authority and the bondholders or noteholders or a trustee agent designated by the authority may enter into agreements to provide for any of the following:

a. That the proceeds of the bonds and notes and the investments of the proceeds may be received, held, and disbursed by the authority or by a trustee or agent designated by the authority.

b. That the bondholders or noteholders or a trustee or agent designated by the authority may collect, invest, and apply the amount payable under the loan agreements or any other instruments securing the debt obligations under the loan agreements.

c. That the bondholders or noteholders may enforce the remedies provided in the loan agreements or other instruments on their own behalf. If there is a default in the principal of or interest on the bonds or notes or in the performance of any agreement contained in the loan agreements or other instruments, the payment or performance may be enforced in accordance with the loan agreements or other instruments.

d. Other terms and conditions as deemed necessary or appropriate by the authority.

3. The powers granted the authority under this section are in addition to other powers contained in this chapter. All other provisions of this chapter, except section 220.28, subsection 4, apply to bonds or notes issued and powers granted to the authority under this section except to the extent they are inconsistent with this section.

4. All bonds or notes issued by the authority in connection with the program are exempt from taxation by this state and the interest on the bonds or notes is exempt from state income tax.

Sec. 4. NEW SECTION. 220.174 SECURITY — RESERVE FUNDS — PLEDGES — NONLIABILITY — IRREVOCABLE CONTRACTS.

1. The authority may provide in the resolution, trust agreement, or other instrument authorizing the issuance of its bonds or notes pursuant to section 220.173 that the principal of, premium, and interest on the bonds or notes are payable solely out of the pledged receipts as designated in the resolution, trust agreement, or other instrument authorizing the issuance of the bonds or notes.

For purposes of this section, unless the context otherwise requires, "pledged receipts" means the revenues and receipts received or to be received by the authority from grants, appropriations, gifts, or payments on guarantees made to the authority by any person; from accrued interest received from the sale of obligations; from income accruing from the investment of special funds of the authority, including the loan fund established by the authority for purposes of the program; from the revenues and receipts deposited in the loan fund; from the amounts payable to the authority by municipalities pursuant to loan agreements with municipalities; and from any other moneys which are available for the payment of principal, premium, if any, or interest on the bonds or notes.

2. The authority may establish reserve funds to secure one or more issues of its bonds or notes. The authority may deposit in a reserve fund established under this section the proceeds of the sale of its bonds or notes and other moneys which are made available from any other source.

3. It is the intention of the general assembly that a pledge made in respect of bonds or notes shall be valid and binding from the time the pledge is made, that the money or property so pledged and received after the pledge by the authority shall immediately be subject to the lien of the pledge without physical delivery or further act, and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority whether or not the parties have notice of the lien. The resolution, trust agreement, or any other instrument by which a pledge is created need not be recorded or filed under the Iowa uniform commercial code to be valid, binding, or effective against the parties.

4. The members of the authority and a person executing the bonds or notes are not liable personally on the bonds or notes and are not subject to personal liability or accountability by reason of the issuance of the bonds or notes.

5. The bonds or notes issued by the authority are not an indebtedness or other liability of the state or of a political subdivision of the state within the meaning of any constitutional or statutory debt limitations but are special obligations of the authority, and are payable solely out of the pledged receipts to the extent that the pledged receipts are designated in the resolution, trust agreement, or other instrument of the authority authorizing the issuance of the bonds or notes as being available as security for such bonds or notes. The authority shall not pledge the faith or credit of the state to the payment of any bonds or notes. The authority shall not pledge the faith or credit of a municipality to the payment of any bonds or notes except as agreed to by the municipality in the loan agreement referred to in section 220.173, subsection 1. The issuance of any bonds or notes by the authority does not directly, indirectly, or contingently obligate the state to apply moneys from, or levy or pledge any form of taxation whatever to the payment of the bonds or notes. The issuance of any bonds or notes by the authority does not directly, indirectly, or contingently obligate a municipality to apply moneys from, or levy or pledge any form of taxation whatever to the payment of the bonds or notes, except as agreed to by the municipality in the loan agreement referred to in section 220.173, subsection 1.

6. The state pledges to and agrees with the holders of bonds or notes issued under the program, that the state will not limit or alter the rights and powers vested in the authority to fulfill the terms of a contract made by the authority with respect to the bonds or notes, or in any way impair the rights and remedies of the holders until the bonds and notes, together with the interest on them including interest on unpaid installments of interest, and all costs

and expenses in connection with an action or proceeding by or on behalf of the holders, are fully met and discharged. The authority may include this pledge and agreement of the state, as it refers to holders of bonds or notes of the authority, in a contract with the holders.

Sec. 5. NEW SECTION. 220.175 POWERS OF MUNICIPALITIES.

1. A municipality may enter into loan agreements and issue any type of obligations payable from any security which it is authorized by law to issue for any purpose for the restoration or replacement on a permanent or temporary basis of its investment loss. For the purpose of this program, the restoration or replacement on a permanent or temporary basis of an investment loss through the program is an essential purpose under chapter 331 or 384.

2. To approve a loan agreement under section 220.173 for this purpose, a municipality shall follow the authorization procedures required for the issuance of general obligation bonds by cities as set out in section 384.25. Chapter 75 is not applicable.

Sec. 6. NEW SECTION. 220.176 OTHER LAWS NOT APPLICABLE.

All other laws governing the authorization and issuance of obligations by municipalities shall not apply to loan agreements entered into by municipalities with the authority for purposes of the program.

Sec. 7. Sections 220.171 through 220.176 are repealed on August 1, 1993. The repeal of sections 220.171 through 220.176 shall not affect the operation or enforceability of any action taken or agreement entered into pursuant to sections 220.171 through 220.176 prior to August 1, 1993, by the authority, a municipality, or a bondholder or noteholder, and section 4.13 shall apply.

Sec. 8. APPROPRIATION. For purposes of securing one or more loan agreements with the authority as provided in this Act, and if the investment losses to the first and third judicial district departments of correctional services are not recovered, there is appropriated from the general fund of the state to the department of management for the appropriate fiscal year or years, moneys in the amount of the remaining investment losses, plus the amount of any capitalized interest, costs of issuance, and reserve expenses, of the first and third judicial district departments of correctional services. The contingent appropriations made in this section do not obligate the general assembly to maintain any such appropriation and any pledge of these appropriations by the judicial district department of correctional services shall only apply to moneys when received. The moneys shall be allocated pursuant to a requisition submitted to the director of the department of management in the manner provided in section 8.31. Any and all amounts subsequently recovered by or on behalf of the first and third judicial district departments of correctional services as a result of actions taken to recover their investment losses shall be repaid to the general fund of the state.

Sec. 9. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved February 7, 1992