

Senate File 477 - Enrolled

SENATE FILE 477

AN ACT

AUTHORIZING THE TREASURER OF STATE TO ISSUE ANNUAL APPROPRIATION BONDS, AND CREATING AN ANNUAL APPROPRIATION BONDS DEBT SERVICE FUND, AN APPROPRIATION BONDS CAPITALS FUND, A VERTICAL INFRASTRUCTURE RESTRICTED CAPITALS FUND, MAKING APPROPRIATIONS, AND INCLUDING AN APPLICABILITY PROVISION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I APPROPRIATION BONDS

Section 1. NEW SECTION. 12.90A ANNUAL APPROPRIATION BONDS.

1. As used in this section, unless the context otherwise requires:

a. "Annual appropriation bonds" means bonds, notes, or other evidences of obligations of the state which may be payable during a fiscal year from one or more of the following sources, subject to the limitations contained in this section:

(1) Moneys appropriated by law for the payment of debt service due with respect to the annual appropriation bonds during that fiscal year.

(2) Proceeds of the sale of the annual appropriation bonds.

(3) Payments received under authorizing documents and other agreements and ancillary arrangements entered into with respect to the annual appropriation bonds.

(4) Investment earnings on amounts described in subparagraphs (1) through (3).

b. "Appropriation" means an act of appropriation by the general assembly which has become law by approval of the governor or otherwise.

c. "Authorizing documents" means a trust indenture, resolution, or other instrument pursuant to which annual appropriation bonds are issued in accordance with the provisions of this section and setting forth the terms and conditions thereof.

2. The treasurer of state is authorized to issue and sell annual appropriation bonds on behalf of the state to provide funds for certain infrastructure projects and other purposes as provided in subsection 4 and to refund any annual appropriation bonds previously issued, and shall have all powers necessary and convenient to carry out the treasurer of state's duties, and exercise the treasurer of state's authority, under this section.

3. Annual appropriation bonds may be issued and sold in one or more series on the terms and conditions the treasurer of state determines to be in the best interest of the state, in accordance with this section in such amounts as the treasurer of state determines to be necessary to fund the purposes for which such annual appropriation bonds are issued. The treasurer of state may issue annual appropriation bonds in amounts which provide aggregate net proceeds of not more than one hundred five million dollars for purposes of alternative energy projects and for purposes of the vertical infrastructure restricted capitals fund created in section 8.57D.

4. The treasurer of state may issue annual appropriation bonds as the treasurer of state determines necessary or desirable to pay for expenditures for certain infrastructure projects and other purposes as provided in subsection 3, to the extent practicable in any fiscal year and without limiting other qualifying capital expenditures considered and approved by a constitutional majority of each house of the general assembly and the governor and to provide sufficient funds for the payment of interest on the annual appropriation bonds, the establishment of reserves with respect to the annual appropriation bonds, the payment of costs of issuance of the annual appropriation bonds, the payment of other expenditures of the treasurer of state incident to and necessary or convenient in connection with the issuance of the annual appropriation bonds, and the payment of all other expenditures

necessary or convenient to carry out the purposes for which the annual appropriation bonds are issued. The treasurer of state may enter into or obtain authorizing documents and other agreements and ancillary arrangements with respect to annual appropriation bonds as the treasurer of state determines to be in the best interests of the state, including but not limited to trust indentures, liquidity facilities, remarketing or dealer agreements, letter of credit agreements, insurance policies, guaranty agreements, reimbursement agreements, indexing agreements, investment agreements, or interest exchange agreements. Any authorizing document or other agreement or ancillary arrangements by which any moneys are pledged to the payment of annual appropriation bonds shall not be required to be recorded or filed under the uniform commercial code, chapter 554, to be valid, binding, or effective.

5. Annual appropriation bonds shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other terms and conditions as prescribed in their authorizing documents.

b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the treasurer of state. Chapters 73A, 74, 74A, and 75 do not apply to the sale or issuance of the annual appropriation bonds.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this section and as determined by their authorizing documents.

d. Securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

6. Proceeds of annual appropriation bonds not required for immediate disbursement may be deposited with the treasurer of state or a trustee, paying agent, escrow agent, or depository as provided in the authorizing documents and may be invested or reinvested in any investment as directed by the treasurer of state and specified in such authorizing documents without regard to any limitation otherwise provided by law.

7. Annual appropriation bonds are payable in any fiscal year solely and only out of the moneys, assets, or revenues appropriated for such purposes by law for that fiscal year, all of which amounts, once appropriated, shall be deposited into the annual appropriation bonds debt service fund and used or transferred as provided in this section to pay debt service due with respect to annual appropriation bonds during the fiscal year for which such amounts are appropriated. Annual appropriation bonds are not an obligation, indebtedness, or debt of the state, or a charge against the general credit or general fund of the state, and the state shall not be liable for the payment of any amounts due under any annual appropriation bonds except from moneys appropriated by law for the payment thereof as provided under this section. The annual appropriation bonds are not secured by any pledge of the faith and credit or the taxing powers of the state. Annual appropriation bonds shall not directly or indirectly obligate the state to make payments thereon beyond any fiscal year for which sufficient funds have been appropriated by law for such purpose.

8. In the event that funds are not appropriated for any fiscal year in an amount sufficient to make the payments of principal and interest and any other amounts due under the annual appropriation bonds during such fiscal year all of the following shall apply:

a. The state's obligations under the annual appropriation bonds shall terminate and become null and void on the last day of the fiscal year for which funds were appropriated in an amount sufficient to make the payments of principal and interest and any other amounts due under the annual appropriation bonds for such fiscal year.

b. The state shall not be obligated to make payment from

any source of any amounts due under the annual appropriation bonds beyond those amounts for which an appropriation has previously been made.

c. The state shall not be liable to the holders of the annual appropriation bonds or any other person for any remaining amounts due under the annual appropriation bonds or for any costs, damages, or expenses incurred by the holders of the annual appropriation bonds or any other person as a result of such failure to appropriate. Annual appropriation bonds, the repayment thereof and any reserve and debt service funds established with respect thereto shall be subject to nonappropriation. Annual appropriation bonds issued under this section shall contain a conspicuous statement of the limitations established in this subsection.

9. Annual appropriation bonds issued under this section are declared to be issued for an essential public and governmental purpose and all annual appropriation bonds issued under this section shall be exempt from taxation by the state of Iowa and the interest on the annual appropriation bonds shall be exempt from the state income tax and the state inheritance tax.

10. In order to better provide for the budgeting and appropriation of sufficient amounts to make the payments due with respect to annual appropriation bonds in any fiscal year and to fund or restore reserve funds established with respect to annual appropriation bonds, if any, the treasurer of state shall, on or before January 1 of each calendar year, make and deliver to the governor and to both houses of the general assembly the treasurer of state's certificate that includes all of the following:

a. A statement of the amount required to make the payments due with respect to annual appropriation bonds in the next succeeding fiscal year and the amount, if any, required to fund or restore any reserve fund to the reserve fund requirement for that reserve fund.

b. A request that budget and appropriation bills approved for such fiscal year include amounts sufficient to make the payments due with respect to annual appropriation bonds during that fiscal year and to fund or restore any reserve fund to the reserve fund requirement for that reserve fund.

11. If, after amounts have been appropriated for a fiscal year to make payment of principal and interest and any other amounts due with respect to the annual appropriation bonds for such fiscal year and to fund or restore any reserve fund to the reserve fund requirement for that reserve fund, the treasurer of state determines that the amounts appropriated for such purposes are insufficient for any reason, the treasurer of state shall make and deliver to the governor and to both houses of the general assembly the treasurer of state's certificate that includes a statement of the amount of the deficiency and a request for an additional appropriation for such fiscal year to make up such deficiency.

12. Any amounts appropriated by law from the general fund of the state or any other legally available funds to make the payments due with respect to annual appropriation bonds for a fiscal year shall be paid to the treasurer of state on or after the first business day of such fiscal year in as many installments as are needed to accumulate the total amount so appropriated as soon as funds become legally available and such amounts, as received, shall be deposited by the treasurer of state in the annual appropriation bonds debt service fund.

13. Any amounts appropriated by law to fund or restore any reserve fund shall be paid to the treasurer of state as soon as funds become legally available and shall be deposited by the treasurer of state in the applicable reserve fund. For any fiscal year for which amounts have been lawfully appropriated in an amount sufficient to make payment of principal and interest and any other amounts due with respect to annual appropriation bonds for such fiscal year, to the extent that appropriated funds have not become fully available so that amounts deposited into the annual appropriation bonds debt service fund are not sufficient to make such payment when due, any moneys on deposit in a reserve fund established with respect to the annual appropriation bonds may be transferred to the annual appropriation bonds debt service fund and used to make such payments, subject to the provisions of this section.

14. The treasurer of state may from time to time issue annual appropriation bonds for the purpose of refunding any annual appropriation bonds then outstanding, including the payment of any redemption premiums thereon and any interest

accrued or to accrue to the date of redemption of the outstanding annual appropriation bonds. Until the proceeds of annual appropriation bonds issued for the purpose of refunding outstanding annual appropriation bonds are applied to the purchase or retirement of outstanding annual appropriation bonds or the redemption of outstanding annual appropriation bonds, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this section, the authorizing documents, and any applicable escrow. The interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding annual appropriation bonds to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments shall be returned to the general fund of the state. All refunding annual appropriation bonds shall be issued and subject to the provisions of this section in the same manner and to the same extent as other annual appropriation bonds issued pursuant to this section.

15. a. It is the intent of the general assembly that the general assembly make timely appropriations from moneys in the general fund of the state or any other legally available funds that are sufficient to make payment of principal and interest and any other amounts due with respect to annual appropriation bonds in a fiscal year and to fund or restore any reserve fund established with respect to the annual appropriation bonds to the reserve fund requirement for that reserve fund.

b. This section does not create and shall not be construed as creating a general, legal, or enforceable obligation of the general assembly to appropriate any moneys for any fiscal year for any of the foregoing purposes and the decision to appropriate such moneys for any fiscal year shall be at the complete discretion of the then current general assembly and governor who shall have the final responsibility for making such decisions.

16. Neither the treasurer of state nor any person acting on behalf of the treasurer of state, while acting within the scope of their employment or agency, is subject to personal liability resulting from carrying out the powers and duties conferred by this section.

17. Amounts appropriated pursuant to this section are not subject to a uniform reduction in accordance with section 8.31.

Sec. 2. NEW SECTION. 12.90B ANNUAL APPROPRIATION BONDS DEBT SERVICE FUND AND RESERVE FUNDS.

1. An annual appropriation bonds debt service fund is created and established as a separate and distinct fund in the state treasury. Any amounts lawfully appropriated to make payments due with respect to annual appropriation bonds for a fiscal year shall be deposited into the annual appropriation bonds debt service fund and used by the treasurer of state or transferred to a trustee, paying agent, escrow agent, or depository as provided in the authorizing documents to make payments due with respect to the annual appropriation bonds for that fiscal year. Payments due with respect to annual appropriation bonds include but are not limited to the following:

a. Principal payments, interest payments, sinking fund payments, purchase price, redemption price, redemption premiums, and payments under interest exchange agreements.

b. Fees and expenses of trustees, paying agents, remarketing agents, financial advisors, underwriters, depositories, guarantors, bond insurers, liquidity or credit facility providers, interest rate indexing agents, and other professional and financial services providers.

c. Costs and expenses of the treasurer of state incident to and necessary and convenient to carry out the issuance and sale of the annual appropriation bonds and the administration of the appropriations bonds capitals fund, the annual appropriation bonds debt service fund, and any reserve funds.

2. The treasurer of state may create and establish one or more reserve funds with respect to the annual appropriation bonds to be used as provided in section 12.90A and the authorizing documents. The treasurer of state shall pay into any reserve fund any moneys appropriated by law to fund or restore the reserve fund, any proceeds of the sale of the annual appropriation bonds to the extent provided in the authorizing documents, and any other moneys which may be legally available to the treasurer of state for the purpose of the reserve fund. Moneys in any reserve fund established with

respect to annual appropriation bonds, excluding the annual appropriations debt service fund, are not subject to section 8.33.

3. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in any funds or accounts established with respect to annual appropriation bonds shall be credited to the applicable fund or reserve fund.

Sec. 3. NEW SECTION. 12.90C APPROPRIATION BONDS CAPITALS FUND.

1. An appropriation bonds capitals fund is created as a separate fund in the state treasury. Moneys in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes of the appropriation bonds capitals fund.

2. Revenue for the appropriation bonds capitals fund shall include but is not limited to the following, which shall be deposited with the treasurer of state or the treasurer of state's designee as provided by any bond or security documents and credited to the fund:

a. The net proceeds of bonds issued pursuant to section 12.90A and investment earnings on the net proceeds.

b. Interest attributable to investment of moneys in the fund or an account of the fund.

c. Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the fund.

3. Moneys in the fund in a fiscal year shall be used as appropriated by the general assembly for certain infrastructure projects and other purposes set out in section 12.90A, subsection 3, to the extent practicable in any fiscal year and without limiting other qualifying capital expenditures considered and approved by a constitutional majority of each house of the general assembly and the governor.

4. Moneys credited to the fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

5. Annually, on or before January 15 of each year, a state agency that received an appropriation from the appropriation bonds capitals fund shall report to the legislative services agency and the department of management the status of all projects completed or in progress. The report shall include a description of the project, the work completed, the total estimated cost of the project, a list of all revenue sources being used to fund the project, the amount of funds expended, the amount of funds obligated, and the date the project was completed or an estimated completion date of the project, where applicable.

6. Annually, on or before December 31 of each year, a recipient of moneys from the appropriation bonds capitals fund for any purpose shall report to the state agency to which the moneys are appropriated the status of all projects completed or in progress. The report shall include a description of the project, the progress of work completed, the total estimated cost of the project, a list of all revenue sources being used to fund the project, the amount of funds expended, the amount of funds obligated, and the date the project was completed or an estimated completion date of the project, where applicable.

Sec. 4. APPLICABILITY. The authority of the treasurer of state to issue one or more series of annual appropriation bonds under section 12.90A, subsection 3, as enacted in this division of this Act, applies to bonds issued on or after July 1, 2010.

DIVISION II MISCELLANEOUS CODE CHANGES

Sec. 5. NEW SECTION. 8.57D VERTICAL INFRASTRUCTURE RESTRICTED CAPITALS FUND.

1. A vertical infrastructure restricted capitals fund is created in the state treasury under the authority of the department of management. The fund shall consist of appropriations made to the fund. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. However, the fund shall be considered a special account for the purposes of section 8.53, relating to generally accepted accounting principles.

2. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the vertical infrastructure restricted capitals fund shall be credited to the rebuild Iowa

infrastructure fund.

3. Moneys in the fund in a fiscal year shall be used as appropriated by the general assembly for public vertical infrastructure projects. For the purposes of this section, "vertical infrastructure" includes only land acquisition and construction, major renovation, and major repair of buildings, all appurtenant structures, utilities, and site development. "Vertical infrastructure" does not include routine, recurring maintenance, debt service, or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

4. There is appropriated from the appropriation bonds capitals fund created in section 12.90C to the vertical infrastructure restricted capitals fund one hundred million dollars for the fiscal year beginning July 1, 2010, and ending June 30, 2011.

5. Annually, on or before January 15 of each year, a state agency that received an appropriation from the vertical infrastructure restricted capitals fund shall report to the legislative services agency and the department of management the status of all projects completed or in progress. The report shall include a description of the project, the progress of work completed, the total estimated cost of the project, a list of all revenue sources being used to fund the project, the amount of funds expended, the amount of funds obligated, and the date the project was completed or an estimated completion date of the project, where applicable.

6. Annually, on or before December 31 of each year, a recipient of moneys from the vertical infrastructure restricted capitals fund for any purpose shall report to the state agency to which the moneys are appropriated the status of all projects completed or in progress. The report shall include a description of the project, the progress of work completed, the total estimated cost of the project, a list of all revenue sources being used to fund the project, the amount of funds expended, the amount of funds obligated, and the date the project was completed or an estimated completion date of the project, where applicable.

7. Payment of moneys appropriated from the fund shall be made in a manner that does not adversely affect the tax-exempt status of any outstanding bonds issued by the treasurer of state.

DIVISION III
ANNUAL APPROPRIATION BONDS CAPITALS
FUND == APPROPRIATION

Sec. 6. There is appropriated from the appropriation bonds capitals fund created in section 12.90C to the Iowa energy center for the fiscal year beginning July 1, 2010, and ending June 30, 2011, the following amount, or so much thereof as is necessary, to be used for the purposes designated:

For deposit into the alternate energy revolving loan fund created in section 476.46 to encourage the development of alternate energy production facilities and small hydro facilities, as defined in section 476.42, within the state:
..... \$ 5,000,000

Any award of loans to private individuals or organizations must be for the public purposes of encouraging the development of alternate energy production facilities and small hydro facilities within the state in order to conserve finite and expensive energy resources and to provide for their most efficient use. Funds from bond proceeds shall not be used for administration or planning purposes. These moneys, and any loan repayments, shall be maintained in separate accounts and shall only be used for these public purposes.

JOHN P. KIBBIE
President of the Senate

PATRICK J. MURPHY
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 477, Eighty-third General Assembly.

MICHAEL E. MARSHALL

Approved _____, 2009 Secretary of the Senate

CHESTER J. CULVER
Governor