

CHAPTER 279

LOWER FOX RIVER REMEDIATION AUTHORITY

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279.01 Definitions. In this chapter:

(1) “Affected property” means real property in this state that is owned by a person who, with respect to the property, is responsible for waterway improvement costs due to discharges from the property into the Fox River extending from Lake Winnebago to the mouth of the river in Lake Michigan and any portion of Green Bay in Lake Michigan containing sediments affected by discharges into the Fox River.

(2) “Authority” means the Lower Fox River Remediation Authority.

(3) “Board” means the board of directors of the authority.

(4) “Bond” means, except in s. 279.19 (1) (a), a bond, note, or other obligation of the authority issued under this chapter, including a refunding bond.

(5) “Bond resolution” means a resolution of the board authorizing the issuance of, or providing terms and conditions related to, bonds and includes, when appropriate, any trust agreement or trust indenture providing terms and conditions for the bonds.

(6) “Consenting landowner” means a person who owns affected property, or a parent or subsidiary of such a person, who requests the authority to issue bonds for waterway improvement costs, and who consents to the levy of an assessment on the affected property.

(7) “Waterway improvement” means any of the following actions, taken under an administrative or judicial order or decree or an administratively or judicially approved agreement, related to discharges into the Fox River:

(a) Determining whether a discharge occurred, whether the discharge poses a significant threat to human health and the environment, or whether additional remedial actions may be required with respect to a discharge.

(b) Conducting a feasibility study.

(c) Planning for remedial action or removal.

(d) Conducting remedial action or removal.

(8) “Waterway improvement costs” means the costs of waterway improvements and any of the following:

(a) The reasonable costs of financing provided by the authority and associated administrative costs incurred by the authority.

(b) The fees and charges imposed by the authority or by others in connection with the financing.

(c) A reserve for payment of the principal and interest on bonds issued by the authority.

History: 2007 a. 20.

279.02 Creation and organization. (1) There is created a public body politic and corporate to be known as the “Lower Fox River Remediation Authority.” The board shall consist of 7 members nominated by the governor, and with the advice and consent of the senate appointed, for 7–year terms. Members of the board shall be residents of the state, and not more than 4 of the members may be members of the same political party. The terms of the members expire on June 30. Each member’s appointment remains in effect until a successor is appointed. Annually, the governor

shall appoint one member as chairperson and the board shall elect one member as vice chairperson.

(2) The board shall appoint an executive director and may appoint an associate executive director who may not be members of the board and who shall serve at the pleasure of the board. The board shall determine the compensation of the executive director and any associate executive director, except that the compensation of the executive director may not exceed the maximum of the salary range established under s. 20.923 (1) for positions assigned to executive salary group 4 and the compensation of each other employee of the authority may not exceed the maximum of the salary range established under s. 20.923 (1) for positions assigned to executive salary group 3. The executive director, associate executive director, or other person designated by resolution of the board shall keep a record of the proceedings of the authority and shall be custodian of all books, documents, and papers filed with the authority, the minute book or journal of the authority, and its official seal. The executive director, associate executive director, or other person may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that the copies are true copies, and all persons dealing with the authority may rely upon the certificates.

(3) Four members of the board constitute a quorum. The affirmative vote of a majority of all of the members of the board is necessary for any action taken by the authority. A vacancy in the membership of the board does not impair the right of a quorum to exercise all of the rights and perform all of the duties of the authority. Each meeting of the board shall be open to the public. Notice of meetings, or waivers thereof, shall be as provided in the bylaws of the authority. Resolutions of the authority need not be published or posted. The board may delegate by resolution to one or more of its members or the executive director the powers and duties that it considers proper.

(4) The members of the board shall receive no compensation for the performance of their duties as members, but each member shall be reimbursed for the member’s actual and necessary expenses while engaged in the performance of the member’s duties.

(5) (a) It is not a conflict of interest or violation of this chapter for a trustee, director, officer, or employee of a consenting landowner to serve as a member of the board if the trustee, director, officer, or employee of the consenting landowner abstains from discussion, deliberation, action, and vote by the board in specific respect to any undertaking under this chapter in which the consenting landowner has an interest.

(b) It is not a conflict of interest or violation of this chapter for a person having the required favorable reputation for skill, knowledge, and experience in state and municipal finance to serve as a member of the board if the person having the required favorable reputation for skill, knowledge, and experience in state and municipal finance abstains from discussion, deliberation, action, and vote by the board in specific respect to any sale, purchase, or ownership of bonds of the authority in which any business of

which the person is a participant, owner, officer, or employee has a past, current, or future interest.

(c) It is not a conflict of interest or violation of this chapter for a person having the required favorable reputation for skill, knowledge, and experience in the field of environmental remediation to serve as a member of the board if the person having the required favorable reputation for skill, knowledge, and experience in the field of environmental remediation abstains from discussion, deliberation, action, and vote by the board in specific respect to a waterway improvement in which any business of which the person is a participant, owner, officer, or employee has a past, current, or future interest.

(6) Chapter 230 does not apply to the employees of the authority, except that s. 230.40 does apply to the employees of the authority.

History: 2007 a. 20.

279.03 Powers of authority. The authority has all of the powers necessary or convenient to carry out the purposes and provisions of this chapter. In addition, the authority may do any of the following:

(1) Adopt bylaws, policies, and procedures for the regulation of its affairs and the conduct of its business.

(2) Adopt an official seal and alter the seal at pleasure.

(3) Maintain an office.

(4) Sue and be sued in its own name, plead and be impleaded.

(5) Enter into any contracts that are necessary or useful for the conduct of its business.

(6) Employ or contract with attorneys, accountants, and financial experts and any other necessary employees or agents, and fix the compensation of employees, subject to s. 279.02 (2).

(7) Appoint any technical or professional advisory committee that the authority finds necessary, define the duties of any committee, and provide reimbursement for the expenses of any committee.

(8) Accept contributions or grants in money, property, labor, or other things of value and comply with any restrictions on the use of the contributions or grants.

(9) Obtain or aid in obtaining, from any department or agency of the United States or of this state or from any private company, any insurance or guaranty concerning the payment or repayment of all or part of the interest or principal, or both, on any bond issued under this chapter; and enter into any agreement, contract, or other instrument with respect to that insurance or guaranty, accept payment in the manner and form provided in such an agreement in case of default in payment of the bonds, and assign the insurance or guaranty as security for the authority's bonds.

History: 2007 a. 20; s. 35.17 correction in (6).

279.04 Expenses. (1) All expenses of the authority are payable solely from funds obtained under the authority of this chapter, and no liability may be incurred by the authority beyond the extent to which moneys are obtained under this chapter. For the purposes of meeting the necessary expenses of initial organization and operation of the authority until the authority derives moneys from funds provided to it under the authority of this chapter, other than this section, the authority may use the funds appropriated under s. 20.375 (1) (a).

(2) The authority shall apportion among and assess to consenting landowners, in an equitable manner, an amount equal to the amount expended from the appropriation under s. 20.375 (1) (a) and pay that amount to the department of administration for deposit in the general fund.

History: 2007 a. 20.

279.05 Application for bond issuance. (1) One or more owners of affected property may submit an application requesting the authority to issue bonds to finance all or a portion of the waterway improvement costs associated with the affected property. An

application under this subsection shall include all of the following:

(a) A copy of an administrative or judicial order or decree or an administratively or judicially approved agreement that imposes financial responsibility for a waterway improvement on the applicant or applicants.

(b) An acknowledgement by the applicant or applicants that the waterway improvement will confer a benefit on the affected property.

(c) The consent of the applicant or applicants to the levy of an assessment by the authority on the affected property at the times and in the amounts that the authority determines.

(d) A waiver by the applicant or applicants of any requirement for notice and hearing and of any right to oppose the levy of the assessment.

(2) A consenting land owner who submits an application under sub. (1) may recommend to the authority an underwriter for the bonds that the owner of affected property requests the authority to issue.

History: 2007 a. 20.

279.06 Approval of application and issuance of bonds.

(1) The board may approve an application under s. 279.05 (1) if the application complies with s. 279.05 (1) and if the authority makes a determination that the waterway improvement will last for many years and will result in long-term benefits to this state. The authority may issue bonds as provided in this section and s. 279.07 to finance all or a portion of the waterway improvement to which an approved application relates.

(2) The authority shall notify the department of natural resources of its action on an application under s. 279.05 (1) at the same time that it notifies the applicant or applicants.

(3) All of the authority's bonds are negotiable for all purposes, notwithstanding their payment from a limited source.

(4) The authority shall use the building commission as its financial consultant to assist in and coordinate the issuance of bonds under this chapter.

(5) The bonds of each issue shall be payable solely out of a special fund into which the authority deposits the assessments imposed by the authority against the affected property with respect to which the bonds are issued.

(6) The authority may not issue bonds unless the issuance is authorized by a bond resolution. The bonds shall bear the dates; mature at the times not exceeding 30 years from their dates of issue; bear interest at the rates, fixed or variable; be payable at the times; be in the denominations; be in fully registered form; carry the registration and conversion privileges; be executed in the manner; be payable in money of the United States at the places; and be subject to the terms of redemption that the bond resolution provides. The bonds shall be executed by the manual or facsimile signatures of the officers of the authority designated by the board. The bonds may be sold at public or private sale at the price, in the manner, and at the time determined by the board. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination of both types.

(7) Any bond resolution may contain provisions, that shall be a part of the contract with the holders of the bonds, regarding any of the following:

(a) Setting aside reserves or sinking funds, and the regulation, investment, and disposition of the reserves or sinking funds.

(b) Limitations on the purpose to which, or the investments in which, the proceeds of the sale of any issue of bonds may be applied.

(c) Refunding of outstanding bonds.

(d) Procedures by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to the amendment or abrogation, and the manner in which this consent may be given.

(e) Defining the acts or omissions to act that constitute a default in the duties of the authority to the bondholders, and providing the rights and remedies of the bondholders in the event of a default.

(f) Any other matter relating to the bonds that the board considers desirable.

(8) Neither the members of the board nor any person executing the bonds of the authority is liable personally on the bonds or subject to any personal liability or accountability by reason of the issuance of the bonds.

(9) (a) The authority shall pay the net proceeds of bonds issued under this section to the entity to which moneys for waterway improvements are required to be paid by the administrative or judicial order or decree or administratively or judicially approved agreement described in s. 279.05 (1) (a).

(b) An entity that receives moneys under par. (a) may use those moneys only for the waterway improvement costs for which the bonds are issued. If the actual waterway improvement costs to be paid from the authority's bonds are less than the assessments levied by the authority, the entity shall return the excess to the authority.

History: 2007 a. 20.

279.07 Assessments. (1) Before it issues bonds, the authority shall follow the procedures in this section for levying an assessment on the affected property of any consenting landowner whose application for issuance of the bonds is approved under s. 279.06 (1). The consenting landowner shall pay the assessment to the authority. An assessment under this section is a lien against the affected property. The authority shall provide notice of the lien of assessment to the register of deeds of the county in which the affected property is located for recording.

(2) The assessment levied with respect to a bond issue shall be sufficient to do all of the following:

(a) Pay the share of the administrative costs of the authority that is allocated to the bond issue.

(b) Pay the costs of any financial and legal services incurred by the authority and any other item of direct or indirect cost that may reasonably be attributed to processing the application under s. 279.05 (1), issuing the bonds, and imposing the assessment on the affected property.

(c) Pay the principal of and the premium, if any, and interest on the bonds as they become due and payable.

(d) Create and maintain any reserve that is required or provided for in the bond resolution.

(3) If the authority assesses more than one consenting landowner in connection with a bond issue, it shall determine the amount to be assessed on the affected property of each consenting landowner in a manner that is consistent with the administrative or judicial order or decree or administratively or judicially approved agreement described in s. 279.05 (1) (a) and that considers such factors as present and past capacity for discharges; estimates of actual discharges; the degree of toxicity and water quality characteristics of past and present discharges; involvement in the generation, treatment, transportation, storage, or disposal of discharged substances; the degree of care exercised in reducing discharges; and the amount of impervious surface on each affected property.

(4) Before finalizing its determination of the amount of the assessment to be levied on affected property under this section, the board shall pass a preliminary resolution declaring its intent with respect to the assessment. In the resolution, the board shall include all of the following:

(a) A general description of the contemplated purpose of the assessment.

(b) A description of the affected property proposed to be assessed.

(c) The number of installments in which the assessments may be paid or a statement that the number of payments will be determined at the hearing required under sub. (8).

(d) A direction to an officer or employee of the authority to make a report on the proposed assessment.

(5) The officer or employee directed to make a report under sub. (4) (d) shall include all of the following in the report:

(a) A reference to the administrative or judicial order or decree or administratively or judicially approved agreement described in s. 279.05 (1) (a).

(b) A schedule of the proposed assessments.

(c) An estimate, as to each affected property, of the assessment to be levied.

(6) The officer or employee making the report under sub. (5) shall file a copy of the report with the authority for public inspection.

(7) After the report has been filed under sub. (6), the authority shall publish a class 1 notice, under ch. 985, that describes all of the following:

(a) The affected property that is proposed to be assessed.

(b) The place and time at which the report may be inspected.

(c) The place and time at which all interested persons or their agents or attorneys may appear before the authority and be heard concerning the matters contained in the preliminary resolution and the report.

(8) The authority shall conduct a hearing concerning the levying of a proposed assessment not less than 10 days and not more than 40 days after publishing the notice under sub. (7).

(9) After the hearing under sub. (8), the board may approve, disapprove, or modify the report under sub. (6) or it may refer the report to the designated officer or employee of the authority with directions to change the proposal to accomplish a fair and equitable assessment.

(10) After approving a report under sub. (9), the authority shall adopt a resolution specifying the amount of the assessments, authorizing the issuance of bonds, and directing that the net proceeds of the bonds be paid as provided in s. 279.06 (9) (a). The authority shall publish the resolution as a class 1 notice, under ch. 985. After publication of the resolution, the authority shall levy the assessments and issue the bonds.

(11) If the actual waterway improvement costs to be paid from a bond issue vary materially from the estimates, if any assessment is invalid, or if the board decides to reopen and reconsider any assessment, it may, after publishing a class 1 notice, under ch. 985, that describes its proposed action and after a public hearing, adopt a resolution amending, canceling, or confirming the prior assessment. If an assessment is amended to provide for the refunding of bonds, all of the direct and indirect costs reasonably attributable to the refunding of the bonds may be included in the amended assessment. If moneys are returned to the authority under s. 279.06 (9) (b), the authority may pay a portion of the outstanding bonds and reduce each assessment proportionately. The authority shall publish a class 1 notice, under ch. 985, describing the resolution amending, canceling, or confirming the prior assessment.

(12) After the 90th day after the day on which a bond is issued under this chapter, the bond is conclusive evidence of the legality of all proceedings up to and including the issuance of the bond and is prima facie evidence of the proper application of the proceeds of the bond.

History: 2007 a. 20.

279.08 Bond security. (1) The authority may enter into a trust agreement or trust indenture between the authority and one or more corporate trustees for any bonds issued under this chapter. Any trust company or bank having the powers of a trust company may be a trustee.

(2) The bond resolution providing for the issuance of bonds shall pledge the assessments to be received by the authority with respect to the bonds referred to in the bond resolution. The pledge is valid and binding from the time that the resolution is adopted. The revenues pledged are immediately subject to the lien of the pledge without any physical delivery or any further act. The lien is valid and binding as against all persons having claims in tort, contract, or otherwise against the authority, irrespective of whether the persons have notice of the lien. Neither the bond resolution nor any financing statement, continuation statement, or other instrument by which a pledge is created or by which the authority's interest in revenues is assigned need be filed or recorded in any public records in order to perfect the lien of the pledge as against 3rd parties, except that the authority shall file a copy of the instrument in the records of the authority and with the department of financial institutions.

(3) A bond resolution may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law. A bond resolution may restrict the individual right of action by bondholders. A bond resolution may contain any other provisions that are determined by the board to be reasonable and proper for the security of the bondholders.

History: 2007 a. 20.

279.09 Refunding bonds. (1) The authority may issue bonds to refund any outstanding bond, including the payment of any redemption premium on the outstanding bond and any interest accrued or to accrue to the earliest or any subsequent date of redemption, purchase, or maturity.

(2) The authority may apply the proceeds of any bond issued to refund any outstanding bond to the purchase, retirement at maturity, or redemption of the outstanding bond on the earliest or any subsequent redemption date, upon purchase, or at the maturity of the bond. The authority may, pending application of the proceeds, place the proceeds in escrow to be applied to the purchase, retirement at maturity, or redemption of any outstanding bond at any time.

(3) If the authority determines that it is necessary to amend the prior assessments in connection with the issuance of refunding bonds under this section, it may reconsider and reopen the assessments as provided in s. 279.07 (11). If the assessments are amended, the refunding bonds shall be secured by, and be payable from, the assessments as amended. If the assessments are amended, all direct and indirect costs reasonably attributable to the refunding of the bonds may be included in the cost of the waterway improvements being financed.

(4) All refunding bonds are subject to this chapter in the same manner and to the same extent as other bonds issued under this chapter.

History: 2007 a. 20.

279.10 Bonds not public debt. (1) The state is not liable on bonds of the authority and the bonds are not debt of the state. Each bond of the authority shall contain a statement to this effect on the face of the bond. The issuance of bonds under this chapter does not, directly, indirectly, or contingently, obligate the state or any political subdivision of the state to levy any tax or to make any appropriation for payment of the bonds. The authority may not pledge its full faith and credit to the payment of bonds issued under this chapter.

(2) Nothing in this chapter authorizes the authority to create a debt of the state, and all bonds issued by the authority under this chapter are payable, and shall state that they are payable, solely from the special fund containing the assessments and other moneys pledged for their payment in accordance with the bond resolution authorizing their issuance or in any trust agreement or trust indenture entered into to provide terms and conditions for the bonds. The state is not liable for the payment of the principal or interest on any bonds of the authority or for the performance of any pledge, obligation, or agreement that is undertaken by the

authority. The breach of any pledge, obligation, or agreement undertaken by the authority does not impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.

History: 2007 a. 20.

279.11 State pledge. The state pledges to and agrees with the holders of bonds issued under this chapter, and with persons that enter into contracts with the authority under this chapter, that the state will not limit or alter the rights vested in the authority before the authority has fully met and discharged the bonds, including any interest due on the bonds, and has fully performed its contracts, unless adequate provision is made by law for the protection of the bondholders or persons entering into contracts with the authority.

History: 2007 a. 20.

279.17 Trust funds. All moneys received by the authority, whether as proceeds from the sale of bonds or as assessments or fees, shall be considered to be trust funds to be held and applied solely as provided in this chapter. Any officer with whom, or any bank or trust company with which, those moneys are deposited shall act as trustee of the moneys and shall hold and apply the moneys for the purposes of this chapter, subject to any regulations that this chapter and the bond resolution authorizing the bonds of any issue provide.

History: 2007 a. 20.

279.18 Rights of bondholders. Any holder of bonds issued under this chapter or trustee under a trust agreement, trust indenture, or deed of trust entered into under this chapter may, by any suitable form of legal proceedings, protect and enforce any rights under the laws of this state or granted by the bond resolution, except to the extent that the rights of the bondholder or trustee are restricted by the bond resolution. These rights include the right to compel the performance of all duties of the authority required by this chapter or the bond resolution; to enjoin unlawful activities; and in the event of default with respect to the payment of any principal of and the premium, if any, and interest on any bond or in the performance of any covenant or agreement on the part of the authority in the bond resolution, to apply to a court to appoint a receiver with full power to pay, and to provide for payment of, principal of and premium, if any, and interest on the bonds, and with the powers, subject to the direction of the court, as are permitted by law and are accorded receivers, excluding any power to pledge additional revenues of the authority to the payment of the principal, premium, and interest.

History: 2007 a. 20.

279.19 Investment of funds. (1) The authority may invest any funds in any of the following:

(a) Bonds, notes, certificates of indebtedness, treasury bills, or other securities constituting direct obligations of the United States or obligations the principal and interest of which are guaranteed by the United States.

(b) Certificates of deposit or time deposits constituting direct obligations of any bank that are insured by the federal deposit insurance corporation.

(c) Certificates of deposit constituting direct obligations of any credit union that are insured by the national board, as defined in s. 186.01 (3m).

(d) Certificates of deposit constituting direct obligations of any savings and loan association or savings bank that are insured by the federal deposit insurance corporation.

(e) Short-term discount obligations of the federal national mortgage association.

(f) Any of the investments provided under s. 66.0603 (1m) (a).

(2) Any securities described in sub. (1) may be purchased at the offering or market price of the securities at the time of purchase.

History: 2007 a. 20.

279.20 Investment authorization. The bonds of the authority are securities in which all public officers and bodies of this state; all political subdivisions and their public officers; all banks, trust companies, savings banks and institutions, savings and loan associations, and investment companies; and all personal representatives, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control.

History: 2007 a. 20.

279.21 Reports and records. (1) The authority shall keep an accurate account of all of its activities and of all of its receipts and expenditures, and shall annually in January make a report of its activities, receipts, and expenditures to the governor and to the chief clerk of each house of the legislature, for distribution to the

legislature under s. 13.172 (2). The reports shall be in a form approved by the state auditor. The state auditor may investigate the affairs of the authority, may examine the property and records of the authority, and may prescribe methods of accounting and the rendering of periodical reports in relation to activities undertaken by the authority.

(2) The authority, annually on January 15, shall file with the department of administration and the joint legislative council a complete and current listing of all forms, reports, and papers required by the authority to be completed by any person, other than a governmental body, as a condition of obtaining the approval of the authority or for any other reason. The authority shall attach a blank copy of each such form, report, or paper to the listing.

History: 2007 a. 20.