

## YSC, Title 18. Conservation & Resources

### Chapter 6: Gagil-Tomil Water Authority

[Subchapter I:](#) §601-602

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#### Subchapter I: General Provisions

[§601.](#) Short title.

[§602.](#) Purpose.

##### **§601. Short title.**

This chapter shall be known and may be cited as the "Gagil-Tomil Water Authority Act of 1984".

**Source:** YSL 1-183 §1.

**Cross-reference:** The statutory provisions of the Southern Yap Water Authority are found in chapter 7 of this title.

##### **§602. Purpose.**

The purpose of this chapter is to create an authority to provide services in the operation and maintenance of the Gagil-Tomil Water Authority.

**Source:** YSL 1-183 §2.

#### Subchapter II: The Authority

[§621.](#) Gagil-Tomil Water Authority.

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##### **§621. Gagil-Tomil Water Authority.**

There is hereby created an authority to be designated and known as the Gagil-Tomil Water Authority, hereinafter referred to as the Authority. The Authority's functions shall be governmental and public and it shall have the right to sue and be sued in its own name.

**Source:** YSL 1-183 §3.

**Cross-reference:** The statutory provisions on Civil Proceedings are found in Title 31 of this Code.

##### **§622. Powers.**

The Authority, in addition to the powers and duties elsewhere conferred and imposed, shall have the following duties and powers:

(a) The Authority shall have the power to adopt and enforce rules and regulations concerning its operations.

(b) The Authority shall carry on the business of establishing, developing, maintaining, operating and managing the Gagil-Tomil Water System with all powers incident thereto.

(c) The Authority shall be authorized to purchase, lease, and sell real or personal property, supplies, goods, materials, and commodities and to furnish and supply services as incident to its operations. It may procure insurance against liability or loss in connection with its operations hereunder in such amounts and from such insurers as it deems advisable.

(d) The Authority, in operating facilities and properties owned, leased, or controlled by it, may enter into contracts, leases, and other arrangements with any persons for terms not exceeding 15 years, granting the privilege of using or improving such facilities and properties or a portion thereof or space therein for any connected purposes; may confer the privilege of supplying goods, commodities, things, or facilities at such facilities or properties or of making available services to be furnished by the Authority or its agents at such facilities or properties. It shall determine the charges or rentals for the use of any facility or property under its management and control, and the terms and conditions under which the facility or property may be used. Charges shall be reasonable and uniform for the same class of service, and established with due regard to the value of the facility or property and improvements used and the expense of the operation of the Authority. The Authority shall have and may enforce liens to enforce the payment of any such charges through appropriate judicial proceedings. The right to levy charges or rental for the use of the facility or property under its management shall be exclusively that of the Authority and all such charges and rentals as well as other revenues of the Authority to be applied as herein set forth.

(e) The Authority may contract with any person, firm or corporation for the planning, supervision, financing, construction, operation and maintenance of, or may itself construct or otherwise acquire, operate and maintain all structures or improvements which, in its judgment are useful, desirable or convenient in efficiently operating and maintaining facilities and properties. The Authority may also enter into agreements with the Governments of the Trust Territory and the Federated States of Micronesia and their departments and agencies, for the rendering of services performed by such departments and agencies to the Authority.

(f) The Authority shall have the free use of the State Government pouch mails.

(g) The Authority, including but not limited to its franchise, capital, obligations, including interest thereon, reserves, surplus, loans, income, assets, and property of any kind shall be exempt from all licensing and taxation now or hereafter required or imposed by the State, or any political subdivision or taxing authority of the State.

(h) The Authority is authorized to apply for, accept, expend and repay the Government of the United States, Trust Territory, Federated States of Micronesia, or State for all monies made available by grant, loan, or both, to plan or accomplish in whole or in part, any of the purposes of this chapter. Unless otherwise prescribed by the agency from which such monies are received, the chief financial officer of the Authority shall deposit all monies pursuant to this subsection in a separate denominated account.

(i) The Authority shall maintain such records, libraries, research materials, administrative or office materials and other property, real or personal, deemed to be necessary to enable the Authority to carry out the purposes of this chapter. Upon the request of the Manager, employees of the State Government may be assigned by the Governor to assist the Authority to carry out activities of the

Authority as set forth herein.

(j) The fiscal year of the Authority shall correspond to that of the State.

(k) The Authority may employ agents and employees, and contract for the services of qualified managers, specialists or experts, as individuals or as organizations, to advise and assist the Authority and its employees. The Authority may set its own compensation, wage and salary scales.

(l) The enumeration of specific powers and duties under this section shall not be deemed to be exclusive.

**Source:** YSL 1-183 §4, modified.

**Cross-reference:** The statutory provisions on Public Property, Purchasing and Contracts are found in Title 9 of this Code.

### **§623. Authority exempt from taxation.**

As an instrumentality of the State Government, the Authority and all property acquired by or for it or used by it, and all revenues and income therefrom, are exempt from taxation and business regulation by the State or by any political subdivision or public corporation thereof.

**Source:** YSL 1-183 §11, section title and section modified.

**Cross-reference:** Section 3 of Article IX of the Yap Constitution states: "The property of the State Government or its political subdivisions shall be exempt from taxation".

**Commission Comment:** "Attorney" in the title to this section is changed to "Authority" to correct a typographical error.

### **§624. Insurance policies and sovereign immunity.**

To the extent that any liability of the State or of the Authority is covered by policy or policies of insurance, the Government waives its limitation of liability.

(a) All claims made against any policy of insurance purchased by the Authority shall be made in accordance with the procedures and time limitations set forth in the policy or policies of insurance, except that all claims shall be presented to the Manager of the Authority, who shall promptly present the same to the Attorney General of the State for review and to the carriers, or to their designated agents for processing at the advice of the Attorney General, and no policy shall place a time limit on filing claims of less than six months.

(b) In the event of any dispute, the Attorney General shall represent the interest of the Authority, unless the Attorney General cannot legitimately represent the Authority, at which time the Authority may hire an independent attorney to present the interests of the Authority.

(c) Each policy of insurance written covering the Authority on its interest shall contain a clause waiving any defense of sovereign immunity which may be raised against the payment of the claim by carrier up to the limits of the policy.

**Source:** YSL 1-183 §15.

**Cross-reference:** The statutory provision on the Office of the Attorney General is found in section 128 of Title 3 (Executive) of this Code.

### **§625. No financial interest by members.**

No director, officer, or employee of the Authority, either for himself or as agent for anyone else, shall benefit directly or indirectly by reason of sale, purchase, contract or transaction entered into by the Authority except as otherwise provided by this chapter. Any person who shall directly or indirectly become interested in any such sale, purchase, contract or transaction while serving as a Director,

officer, or employee of the Authority shall be guilty of a misdemeanor. Immediately upon conviction of a violation thereof, said person shall forfeit his office or position. Upon the filing of a complaint of such misdemeanor, the Board in its judgment may suspend the services of the charged person pending final determination thereof. Upon conviction thereof, he shall be punished by a fine not to exceed \$2,000.00 or by imprisonment not to exceed one year, or both.

**Source:** YSL 1-183 §16, modified.

**Cross-reference:** The constitutional provision on the prohibition of use of government revenue, property, or service for personal benefit or gain is found in Yap Const., Art. XIV, Sect. 4. That section states: "No person may receive, use, or benefit from any government revenue, property, or service for personal benefit or gain, except as may be permitted by law".

### **§626. State may assist Authority in carrying out its functions.**

For the purpose of aiding in the planning, undertaking or carrying out of the provisions of this chapter and of the project contemplated herein, and the subsequent operation of the Authority, the State or any agency of the State may, if the Governor determines that such project will benefit and further the public purposes of the State shall:

- (a) Dedicate, sell, convey, or lease any of its interest in any real or personal properties, rights, or privileges that it may have, to the Authority;
- (b) Incur expenses on behalf of the Authority subject to reimbursement under such terms and conditions as may be agreed upon with the Authority;
- (c) Do any and all things necessary to aid or cooperate in the planning or carrying out of the duties, powers and obligations of the Authority;
- (d) Lend or advance, grant or contribute funds to the Authority and provide for or waive the repayment of any such loan or advance;
- (e) Contract with or furnish services to the Authority upon the terms and conditions as may be agreed upon; and
- (f) Enter into any agreements which may extend over any period of time.

**Source:** YSL 1-183 §18.

### **§627. Intervention.**

The Governor may intervene in the affairs of the Authority if it is in the interest of the public.

**Source:** YSL 1-183 §19.

**Cross-reference:** The constitutional provisions on the Executive are found in Yap Const., Art. VI. The statutory provisions on the Executive are found in Title 3 of this Code.

## **Subchapter III: The Board**

- §651.** Composition of the Board.
- §652.** Meetings of the Board.
- §653.** Organization of the Board.
- §654.** Appointment of Managers; duties.
- §655.** Powers and duties of Manager.

- §656.** Appointment of Treasurer and attorneys; duties.
- §657.** Contract letting by the Board.
- §658.** Accounting and reporting; establishment of fund.
- §659.** Authority exempt from execution and bond requirements.
- §660.** Designation of depository for Authority.
- §661.** Employee rights.

**§651. Composition of the Board.**

All powers vested in the Authority shall be exercised by the Board, which shall consist of nine members, called Directors. One member shall be appointed by the Governor for a term of four years and shall not be from either Gagil or Tomil Municipality. Four members shall be appointed by the member of the Council of Pilung representing Gagil Municipality after consultation with the village chiefs of Gagil Municipality, and the other four members shall be appointed by the member of the Council of Pilung representing Tomil Municipality after consultation with Tomil Municipal Council. Except for the member appointed by the Governor, the members of the Board shall serve for three years; provided, however, that when the Board is first appointed, two members from Gagil Municipality shall serve for a term of two years and two for a term of three years from the date of their appointment, and two members from Tomil Municipality shall serve for a term of two years and two for a term of three years from the date of their appointment. The terms of the respective members shall be determined by drawing lots at the initial meeting of the Board.

**Source:** YSL 1-183 §5.

**Cross-reference:** The statutory provisions on Traditional Leaders and Traditions are found in Title 5 of this Code. The statutory provisions on Local Government are found in Title 6 of this Code.

**§652. Meetings of the Board.**

Within 30 days after the appointment of initial Board, and annually thereafter, the Board shall hold a meeting for the purpose of electing its officers for the ensuing year. The Board shall meet at least very three months and shall hold public meetings as it may deem necessary for the transaction of its general business. All vacancies occurring in the Office of the Director shall be filled by the appropriate nominating and appointing entity for the unexpired term of the Director whose vacancy is being filled.

**Source:** YSL 1-183 §6, modified.

**§653. Organization of the Board.**

The Board shall organize by electing one of its members as Chairman and the Chairman shall appoint a Vice-Chairman, a Secretary to keep the minutes and records of the Board, who shall be a member of the Board itself. Any five members of the Board shall constitute a quorum, and a concurrence of five members shall be necessary for any official action taken by the Board unless otherwise provided herein. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all of the rights and perform all of the duties of the Board.

**Source:** YSL 1-183 §7.

**§654. Appointment of Managers; duties.**

The Board shall appoint a Manager and an Assistant Manager who shall work at the direction and pleasures of the Board. These officers shall not be from the same municipality. The Board shall fix their compensations.

**Source:** YSL 1-183 §8.

**§655. Powers and duties of Manager.**

The Manager shall have the following duties and powers:

- (a) To ensure that all rules and regulations of the Authority are enforced;

- (b) To attend all meetings of the Board to submit a general report on all the affairs of the Authority;
- (c) To keep the Board advised on the needs of the Authority;
- (d) To approve demands for payment of obligations within the purposes and amounts authorized by the Board;
- (e) To prepare or cause to be prepared all plans and specifications for the operation and maintenance of works and facilities operated by the Authority;
- (f) To devote his entire time to the business of the Authority;
- (g) To cause to be published within sixty days after the end of each fiscal year a financial status of the Authority on the last day thereof, publication shall be made in the manner provided by the Board;
- (h) To perform such other and additional duties as the Board may require; and
- (i) To be an ex-officio nonvoting member of the Board.

**Source:** YSL 1-183 §9, modified.

**§656. Appointment of Treasurer and attorneys; duties.**

The Board may also appoint a Treasurer who shall serve at the pleasure of the Board and whose duties and compensation shall be fixed by the Board.

(a) The Treasurer shall have custody of all monies of the Authority, and shall pay out such money only in accordance with the direction of the Board or as otherwise provided by this chapter. The Board shall appoint any designated agent as its trustee for payment of bonds issued by it and for related purposes as the Board may provide.

(b) The Authority shall use the services of the attorneys for the State to serve as attorneys for the Authority. In cases of conflict, the Board may appoint such attorney or attorneys as it may deem necessary and provide for payment of legal services rendered. All official documents, contracts, bonds and other instruments in writing shall be approved as to form and legality by the attorneys advising the Authority. Such approval may be conclusively evidenced by the signature thereon of one of said attorneys.

**Source:** YSL 1-183 §10, modified.

**Cross-reference:** The statutory provision on the Office of the Attorney General are found in section 128 of Title 3 of this Code.

**§657. Contract letting by the Board.**

The purchase of all supplies and materials, and the construction of all works, when the expenditure exceeds \$2,500.00, shall be by contract let to the lowest responsible bidder. Notice requesting bids shall be published at least ten days before bids are received. The Board may reject any and all bids and readvertise at its direction.

(a) If, after rejection, bids for materials and supplies the Board determines that, in its opinion, the materials may be purchased at a lower price in the open market, the Board may authorize such purchases without further observance of the provisions requiring contracts, bids or notices. The Authority, as an instrumentality of the State Government, may utilize the services of State purchasing agencies wherever practical.

(b) No Director shall have any financial interest, direct or indirect, in any contract awarded by the Board. This provision shall not apply to contracts awarded to a corporation in which such Director owns less than five percent (5%) of the entire stock. The Board shall establish procedures for the timely verification of this restriction by its attorney.

**Source:** YSL 1-183 §12, modified.

**Cross-reference:** The statutory provisions on Public Property, Purchasing and Contracts are found in Title 9 of this Code.

**§658. Accounting and reporting; establishment of fund.**

The Board shall adopt and maintain a system of accounting principles.

(a) The Board shall use the State certified public accountants who shall examine and report to the Board, at least annually, upon the status of the financial records and accounts maintained by the Authority. The Board may employ a firm of independent certified public accountants for this purpose if it cannot utilize the State's accountants. Copies of any such reports shall be furnished to the Governor and the Legislature.

(b) The Board shall report to the Governor and the Legislature of the affairs of the Authority. It shall present an annual report within sixty days after the end of each fiscal year. If requested by the Governor or the Legislature, it shall also present special reports within thirty days after any such request.

(c) There is hereby established a fund that shall be known as the "Gagil-Tomil Water Authority Fund" which shall be maintained separate and apart from other funds of the State by the Authority, and independent records and accounts shall be maintained in connection therewith.

(d) All monies received by the Authority from whatever source derived shall be deposited in said fund, or in such funds as may be established pursuant to this chapter, in eligible banks as defined in this chapter.

(e) All expenditures, except as otherwise provided by law, shall be made from said Gagil-Tomil Water Authority Fund.

**Source:** YSL 1-183 §13, as amended by YSL 2-58 §1, modified.

**Cross-reference:** The statutory provisions on Taxation and Finance are found in Title 13 of this Code.

**§659. Authority exempt from execution and bond requirements.**

No execution shall be issued or levied by virtue of any judgment that may be recovered against the Authority, but the Board may provide for the payment of judgments from future revenues of the Authority after final recovery of any judgment or by the payment of any funds on hand and uncommitted. Land, improvements, monies, or debts due the Authority, personal and real property, and assets of every description, belonging to the same, shall be exempted from execution and sale, and from involuntary liens. No writ of garnishment or attachment shall issue against the Authority or the Directors thereof, or its officers or employees, to subject or cause any debts due, or which may hereafter become due from the Authority, to be paid to any person or corporation, or any claim or demand upon any funds in the hands of the Authority or any of its officers, nor shall the Authority, or the Board or any of its officers or agents be required to answer any writ of garnishment. The Authority shall not be required to give any bond as security for cost, supersedeas, or any security in any suit or action brought by or against it, or in proceedings to which it may be a party in any court in the State, and the Authority shall have the remedies of appeal and writ of error to all courts without bonds, supersedeas, or security of any kind. No builder's, materialman's, contractor's, laborer's or mechanic's lien of any kind or character shall ever attach to or become a lien upon any property, real or personal, belonging

to the Authority. No assignment of wages shall be binding upon or be recognized by the Board.

**Source:** YSL 1-183 §17, section title and section modified.

**Commission Comment:** "Executive" in the section title is changed to "execution" to correct a typographical error.

#### **§660. Designation of depository for Authority.**

The Board shall designate one or more banks within the State to serve as depository for the funds of the Authority. All funds of the Authority shall be deposited in such depository bank or banks.

**Source:** YSL 1-183 §20.

#### **§661. Employee rights.**

The Board may establish rules and regulations governing the selection, promotion, performance evaluation, demotion, suspension, dismissal, and other disciplinary rules for employees of the Authority.

**Source:** YSL 1-183 §14, modified.

**Cross-reference:** The statutory provisions on Public Officers and Employment are found in Title 8 of this Code.

### **Subchapter IV: Miscellaneous Provisions**

#### **§681.** Severability.

##### **§681. Severability.**

If any provision of this chapter or any rule, regulation, or order promulgated, or the application of any such provision, rule, regulation, or order to any person or circumstances shall be held invalid, the remainder of this chapter, or any rules, regulations, or order promulgated pursuant thereto, or the application of such provisions, regulations, rules or orders to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

**Source:** YSL 1-183 §21.