

Chapter 01

AMERICAN SAMOA POWER AUTHORITY

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Reviser's Comment: Section 1 of PL 17-56 created chapter 01 in Title 15. PL 17-56 became effective 10 November 1982 upon approval by the Governor due to the emergency need to establish, by law, a power authority for the operation of the electric power system in the Territory” (preamble).

15.0101 Establishment of the American Samoa power authority.

(a) There is established a governmental agency within the executive branch of the government known as the American Samoa power authority.

(b) There is established a division within the American Samoa power authority known as the water and wastewater utility division.

History: 1982, PL 17-56 § 2.

15.0102 Powers and duties of the authority.

The American Samoa power authority:

- (1) may sue and be sued as set forth in 43.1203 and 43.1205;
- (2) may adopt and use a seal;
- (3) may make contracts, as authorized in this chapter;
- (4) may adopt, amend, and repeal bylaws;
- (5) may purchase or lease and hold personal property it considers necessary or convenient in the transaction of its business, and may dispose of personal property held by it;
- (6) has the power in the name of the government to purchase, lease, or sell real estate, and to accept title to that real estate in the name of the government, to accomplish the purposes of this chapter;
- (7) shall make all arrangements for the generation, purchase, transmission, distribution, and sale or other disposition of electric energy generated by facilities of the authority or purchased by the authority within the Territory;
- (8) shall develop and publish tariffs and schedules of rates, charges, and services and other rules for providing electric energy in accordance with the Administrative Procedure Act, 4.1001 et seq.; these rates and charges carry into effect, as near as may be, the standards prescribed for ratemaking in PL 95-6 I 7, the Public Utility Regulatory Policies Act, effective 9 November 1978,

16 U.S.C. 2621 et seq.;

(9) shall, through its water and wastewater utility division, make all arrangements for the production, distribution, and sale of potable water, and the collection and disposal of wastewater, and the operations and maintenance of the water and wastewater systems within the Territory of American Samoa;

(10) shall develop and publish tariffs and schedule of rates, charges, and services and other rules of providing potable water and for wastewater disposal in accordance with the Administrative Procedures Act, 4.1001 et seq.;

(11) may borrow money and incur indebtedness for capital improvements, and may mortgage, assign, hypothecate and give security interests in authority property and earned revenue to secure such indebtedness; provided that no mortgage of or security interest in real property of the authority or of the government may be given; provided that any indebtedness so created shall be that of the authority alone, and shall not be an obligation or debt of the government, unless otherwise provided by law and provided that total indebtedness shall not exceed 50% of the authority's equity unless approved by the Fono;

(12) may contract for the procurement of supplies, equipment, materials, personal services other than by employees, and construction with any public or private entity upon terms and conditions as it finds necessary to the full and convenient exercise of its purposes and powers, subject to all applicable laws and rules of American Samoa; the authority shall receive and account for its inventory of materials, supplies and equipment; and

(13) may do other things needful and necessary to the full and convenient exercise of the above powers, including but not limited to the construction of facilities on property owned by the government.

History: 1982, PL 11-56 § 3.

15.0103 Board of directors of the authority.

(a) The authority is governed by a board of 5 directors, appointed by the Governor and confirmed by the Legislature. At least 2 of the directors shall be experienced in the management of electric utilities, at least one shall have a financial background, and at least one shall have a legal background. No fewer than 2 directors shall be from outside American Samoa.

(b) The first director appointed is appointed to a term expiring on 30 June 1 982. The second director is appointed to a term expiring on 30 June 1983. The third director is appointed to a term expiring on 30 June 1984. The fourth and fifth directors are appointed to terms expiring on 30 June 1985. All subsequent appointments are for 4-year terms, or for the unexpired portion of a term. Recess appointments may be made to fill vacancies caused by death, resignation, or removal for cause if the vacancy occurs while the Legislature is not in session. Recess appointments expire at the conclusion of the next following regular or special session of the Legislature if they are not confirmed during that session. Incumbents may continue to serve after the expiration of a term until a successor is appointed and confirmed. The Governor designates the chairman annually from among the membership of the board of directors, and the board selects its vice-chairman. Currently incumbent directors under the executive ordered authority may be reappointed.

(c) The board of directors shall meet at least 4 times per year. A quorum is 3 directors, at least one of whom is experienced in the management of electric utilities and one of whom is from outside American Samoa.

(d) Compensation is at a rate of \$5,000 per year for directors and \$6,000 per year for the chairman. Travel, lodging and meal expenses will be provided for outside directors.

History: 1982, PL 17-56 § 4.

15.0104 Board of directors—Powers—Duties.

All powers and duties vested in the authority are exercised by the board of directors. In carrying out this function, the board shall also:

(1) elect at its first meeting a vice-chairman, who shall preside at all meetings in the absence of the chairman, and other officers as it may deem desirable from among its members: elect its officers annually thereafter at its first meeting in October;

(2) appoint and prescribe the compensation for the executive director, who is the chief operating officer of the authority and exercises all executive functions, and the business and finance manager, operations manager, and plant managers, who perform duties assigned by the executive director, subject to all applicable laws and rules. the bylaws of the authority, and directions of the board:

(3) adopt, amend and repeal bylaws;

(4) develop policies and programs for the administration, management and operation of the authority;

(5) approve the annual budget of the authority;

(6) review the monthly operating statements of the authority, and such other financial reports as it deems necessary;

(7) submit monthly operating statements to the Governor not later than the twentieth working day after the end of the previous month, and such other financial statements as he directs from time to time;

(8) exercise all other powers and not inconsistent with the laws and rules of American Samoa which are reasonably necessary to the administration, management, and operation of the authority and the board.

History: 1982, PL 17-56 § 5.

15.0105 Personnel.

All officers and employees of the authority other than executive director, business and finance manager, operations manager and plant managers are appointed and compensated in accordance with the requirements of the government employee laws, 7.0101 et seq. except the board may adopt administrative rules, pursuant to 4.1001 ASCA et seq. to supplant government employee laws and rules in the specific categories of personnel recruitment, employment, termination of employee services, disciplinary actions, and compensation at levels comparable to prevailing utility levels.

History: 1982, PL 17-56 § 6.

15.0106 Transfers of existing systems.

(a) Electric utility. At a date fixed by the board of directors, the government shall transfer to the authority the right to operate all items of property, including construction in progress, equipment and machinery used in connection with the then existing electric utility operation of the government. Property jointly used for electric utility and governmental non-utility functions must be equitably allocated between the government and the authority; provided that the allocation assures the continuing efficient functioning of the electrical generations, transmission, and distribution functions of the government. In the event of dispute, the allocation is determined by the Governor. The property accounts for the authority are valued for rate-making purposes at the depreciated acquisition cost of the property as of the date of transfer, and are included in the rate base of the authority. Future capital contributions in the authority from the government must be by separate authorization and appropriation. The Legislature has the exclusive power to provide supplemental funding by appropriation for the operations of the authority. These appropriations may be designated as loans and not as part of the permanent capital. The appropriations may require repayment to the government at rates of interest specified in the appropriations bills.

(b) Water and wastewater utility. At a date fixed by the Governor and the board of directors of the power authority, the government shall transfer to the authority the right to operate all items of property, including construction in progress, equipment and machinery used in connection with the then-existing water and wastewater operations of the government. Property jointly used for water, wastewater and governmental non-utility functions shall be equitably allocated between the government and the authority, provided that the allocation assures the continuing efficient functioning of water production and distribution, and wastewater collection and disposal. In the event of dispute, the allocation shall be determined by the Governor. The property accounts for the water and wastewater utility are valued for ratemaking purposes at the depreciated acquisition cost of the property as of the date of transfer, and shall be included in the rate base of the water and wastewater utility. Future capital contributions to the authority from the government shall be by separate authorization and appropriation. The Legislature has the exclusive power to provide supplemental funding by appropriation for operations of the water and wastewater systems of the authority. Appropriations made to the authority after October 1, 1988 for the operation of the water system may be designated as loans and may require repayment to the government at rates of interest specified in the appropriations acts. Appropriations made to the authority after October 1, 1988 for the operation of the wastewater system shall be designated as subsidies for fiscal year 1989 and thereafter in the amount of \$600,000 annually. The wastewater operation subsidy shall be adjusted annually on September 30 of each year, beginning in 1992, in proportion to the change in number of wastewater

customers compared to the number of such customers on June 30, 1991 and in proportion to the annual increase in the American Samoa Consumer Price Index.

History: 1982, PL 17-56 § 7.

15.0107 Accounting and budget.

The authority shall assume responsibility for the accounting and financial management of the electric utility, and water and wastewater system, and shall administer or contract with the government for the administration of all accounting systems, including general ledger, fixed assets, accounts receivable, accounts payable, payroll, and cash. It shall establish proper internal accounting controls and procedures, and it shall prepare an annual budget as a part of the Governor's budget process.

History: 1982, PL 17-56 § 8.

15.0108 Independent audit reports—Utility consultants—Annual reports.

(a) The authority shall employ a firm of independent certified public accountants with electric utility experience to examine and report upon the status of financial records and accounts, and may renew that employment annually. Copies of those reports must be furnished to the Governor and the Legislature.

(b) The authority may make intergovernmental or contractual arrangements for expert consultants to advise and consult with it in all matters related to the operations of the authority, including ratemaking, system design, planning, budgeting and legal matters.

(c) The authority shall provide an annual report for each fiscal year to the Governor, the Legislature, and the people of American Samoa, not later than 31 December.

History: 1982, PL 17-56 § 9.

15.0109 Transition period.

All rates, charges, and classifications of the authority in effect during the transfer of property and facilities, and management thereof, to its control and jurisdiction are considered properly adopted and continue in effect until duly changed.

History: 1982, PL 17-56 § 10.

15.0110 Implementation.

(a) Electric utility. This chapter must be implemented according to the schedule prepared initially by the authority task force and carried forward, as supplemented, by the board of directors when appointed, and in no case later than 60 days after 10 November 1982, the effective date.

(b) Water and wastewater utility. The transfer of the water and wastewater utility shall be implemented immediately and the provisions herein shall serve to confirm and ratify the transfer of the water and wastewater utility effected by Executive Order Nos. 06-1988 and 10-1990.