

CHAPTER 7
Bushy Park Authority

Code Commissioner's Note

SECTION 9 of Act 1178 of 1964 provides:

“Dissolution of Authority. — The Commissioners [Commissioners of Public Works of the City of Charleston] shall within due course effect the recordation in the office of the Clerk of Court for Berkeley County, of the deed of the Authority provided by Section 3, supra, and thereupon the Authority [Bushy Park Authority] shall stand dissolved and shall cease to function, and the provisions of law developing functions upon the Authority and empowering it to act shall no longer have force or effect.”

SECTION 49-7-10. Bushy Park Authority created; functions generally; “Project” defined.

There is hereby created a body corporate and politic to be known as the Bushy Park Authority, hereinafter sometimes referred to as the “Authority.” It shall be the function of the Authority to cause the construction of the necessary reservoir or reservoirs to impound the fresh water flowing down the Cooper River, and to distribute such water, in the manner provided in this chapter, for industrial and domestic use within its service area. Such reservoir or reservoirs, their intakes, their impounding dams or dikes, the canals, conduits, aqueducts and tunnels connecting them with the Cooper River, all distribution facilities, including mains, conduits, and lines, all land, all rights of way, all easements, and all machinery, apparatus and equipment, acquired by the Authority for the construction, operation or maintenance of the project, whose undertaking is hereby authorized, shall be collectively referred to in this chapter as the “Project.”

HISTORY: 1962 Code Section 70-391; 1953 (48) 464; 1954 (48) 1821; 1955 (49) 61; 1956 (49) 2108.

SECTION 49-7-20. Members of Authority; appointment, qualifications, terms, vacancies.

The Authority shall be composed of eight members, as follows:

(1) The mayor of the city of Charleston, ex officio, shall serve as a member of the Authority, and shall hold office for a term corresponding with his term of office as mayor of the city of Charleston;

(2) The mayor of the city of Charleston shall designate a member of the commissioners of public works of the city of Charleston, to hold office as a member of the Authority, and who shall serve ex officio, and shall hold office for a term corresponding to his term as a member of the commissioners of public works of the city of Charleston;

(3) The supervisor of Berkeley County, ex officio, shall serve as a member of the Authority and shall hold office for a term corresponding with his term of office as supervisor of Berkeley County;

(4) The chairman of the Berkeley County Waterworks Commission (created by Act No. 823 of 1952, 1952 (47) 2030), ex officio, shall serve as a member of the Authority and shall hold office for a term corresponding with his term as chairman of the Berkeley County Waterworks Commission; and

(5) The remaining four members of the Authority shall be appointed by the Governor in the manner provided for below, each for a term of four years from the date of his appointment and until his successor shall have been appointed and shall have qualified. Of the four members of the Authority to be appointed by the Governor, two shall be resident electors of Charleston County, appointed upon the recommendation of the Senator from Charleston County, and the other two shall be resident electors of Berkeley County, appointed upon the recommendation of the Senator from Berkeley County.

Should vacancies in office occur, the successors shall hold office for the remainder of the unexpired terms, and successors for such partial terms shall take office, or be appointed to office, in the same manner as the members whom they succeed, originally acquired the full terms.

In making the ex officio designations set forth in this section, the General Assembly finds that the successful operation of the Project has a distinct relation to the welfare of the city of Charleston and to the county of Berkeley. It has, therefore, determined that officers of the city of Charleston and of the county of Berkeley should participate in the operation of the Authority.

HISTORY: 1962 Code Section 70-392; 1953 (48) 464.

SECTION 49-7-30. Members of Authority; per diem and mileage.

The members of the Authority shall receive such per diem and mileage as is provided by law for members of boards, commissions and committees.

HISTORY: 1962 Code Section 70-393; 1953 (48) 464.

SECTION 49-7-40. Officers of Authority.

The Authority shall convene at a place to be designated by the mayor of Charleston, in his capacity as a member of the Authority, and shall organize by electing one of their number as chairman, a second as vice-chairman, a third as secretary, and a fourth as treasurer. The terms of office of the foregoing officers of the Authority shall be for such period as the Authority shall determine in its bylaws.

HISTORY: 1962 Code Section 70-394; 1953 (48) 464.

SECTION 49-7-50. Secretary shall file certificates with clerks of court.

The secretary of the Authority shall from time to time file in the offices of the clerks of court for Charleston and Berkeley Counties appropriate certificates, showing the personnel of the Authority and the duration of the terms of the respective members.

HISTORY: 1962 Code Section 70-395; 1953 (48) 464.

SECTION 49-7-60. Sale of water in Charleston County regulated; sale of water other than in Berkeley and Charleston Counties prohibited.

To the end that the Authority shall not unduly compete with the existing publicly operated water system of the city of Charleston, operated by the commissioners of public works of the city of Charleston, and furnishing water in the city of Charleston and in a considerable portion of Charleston County and in a small part of Berkeley County, the Authority shall not sell water to be used by persons or private corporations in Charleston County, for either industrial or domestic use, without the consent of the commissioners of public works of the city of Charleston, nor shall it sell water elsewhere than in Berkeley or Charleston Counties, such counties being hereby expressly declared to be the service area of the Authority.

HISTORY: 1962 Code Section 70-396; 1953 (48) 464.

SECTION 49-7-70. Powers of Authority.

In order that the Authority shall be fully empowered to construct the Project, to operate it, and to enlarge and extend it, within the limits of the service area, it shall have the following powers:

- (1) To have perpetual succession.
- (2) To sue and be sued.
- (3) To adopt, use and alter a corporate seal.
- (4) To define a quorum for its meetings.
- (5) To maintain a principal office, which shall be located at Moncks Corner.
- (6) To make bylaws for the management and regulation of its affairs.
- (7) To build, construct, maintain and operate canals, aqueducts, ditches, tunnels, culverts, flumes, conduits, mains, pipes, dikes and dams.
- (8) To divert such quantities of available fresh water from the Cooper River to the Back River as the Authority shall determine, and to construct dams or dikes for the purpose of impounding such water in the Back River.
- (9) To build, construct, maintain and operate distribution systems for the distribution of water for domestic or industrial use.

(10) To acquire and operate any type of machinery, appliances or appurtenances, necessary or useful in constructing, operating and maintaining the Project.

(11) Subject to the provisions of Section 49-7-60, to sell water for industrial or domestic use.

(12) To prescribe rates and regulations under which such water shall be sold for domestic and industrial use.

(13) Subject to the provisions of Section 49-7-60, to enter into contracts of long duration for the sale of water with persons, private corporations, municipal corporations or public bodies or agencies.

(14) To prescribe such regulations as it shall deem necessary to protect from pollution all water in its canals, aqueducts, reservoirs, distribution systems or elsewhere within its Project.

(15) To make contracts of all sorts and to execute all instruments necessary or convenient for the carrying on of the business of the Authority.

(16) To lease or sell and convey lands, or interests therein.

(17) To make use of county and State highway rights of way in which to lay pipes and lines, in such manner and under such conditions as the appropriate officials in charge of such rights of way shall approve.

(18) To alter and change county and State highways wherever necessary to construct the Project, under such conditions as the appropriate officials in charge of such highways shall approve.

(19) To acquire, by purchase, gift, or through the exercise of eminent domain, all land, interests therein, easements, rights of way, which the Authority shall deem necessary to enable it to fully and adequately discharge all functions committed to it. The power herein granted shall be deemed to include the power to acquire protective areas of land adjacent to its Project, in order that discharges into and withdrawals from its Project shall be fully controlled.

(20) To exercise the power of eminent domain for any corporate function. The power of eminent domain may be exercised through any procedure prescribed by Chapter 5, Title 28, or by following the procedure for the exercise of eminent domain by the State Highway Department, prescribed by Article 3, Chapter 5, Title 57, as such statutes are now constituted or as they may afterwards be constituted following any amendments thereto.

(21) To appoint officers, agents, employees and servants, to prescribe the duties of such, to fix their compensation, and to determine if and to what extent they shall be bonded for the faithful performance of their duties.

(22) To make contracts for construction, engineering, legal and other services, with or without competitive bidding.

(23) To borrow money and to make and issue negotiable bonds, notes and other evidences of indebtedness, payable from all or any part of the revenues derived from the operation of the Project. The sums borrowed may be those needed to pay all costs incident to the construction and establishment of the Project, and any extension, addition, and improvement thereto, including engineering costs, construction costs, the sum needed to pay interest during the period prior to which the Project, or any extension, addition or improvement thereto shall be fully in operation, such sum as is needed to supply working capital to place the Project in operation, and all other expenses of any sort that the Authority may incur in establishing, extending and enlarging the Project. Neither the faith and credit of the State, nor of any county, municipality or political subdivision of the State shall be pledged for the payment of the principal and interest of the obligations, and there shall be on the face of each obligation a statement, plainly worded, to that effect. Neither the members of the Authority nor any person signing the obligations shall be personally liable thereon. To the end that a convenient procedure for borrowing money may be prescribed, the Authority shall be fully empowered to avail itself of all power granted by Chapter 21, Title 6, and by Chapter 17, Title 6, as now or hereafter constituted, it being the intent of this provision that further amendments and modifications of these Code provisions shall be deemed to amend and revise correspondingly the powers granted by this section. In exercising the power conferred upon the Authority by such Code provisions, the Authority may make all pledges and covenants authorized by any provision thereof, and may confer upon the holders of its securities all rights and liens authorized by such Code provisions. Specifically, and notwithstanding contrary provisions in any of such Code provisions, if contrary provisions there be, the Authority may:

(a) Covenant and agree that upon it being adjudged in default as to the payment of any installment of principal or interest upon any obligation issued by it or in default as to the performance of any covenant or undertaking made by it, that in such event, the principal of all obligations of such issue may be declared forthwith due and payable, notwithstanding that any of them may not have then matured;

(b) Confer upon a corporate trustee the power to make disposition of the proceeds from all borrowings and of all revenues derived from the operation of the Project, in accordance with and in the order of priority prescribed by the resolutions adopted by the Authority as an incident to the issuance of any notes, bonds or other types of securities;

(c) Dispose of its obligations at public or private sale, and upon such terms and conditions as it shall approve;

(d) Make such provision for the redemption of any obligations issued by it prior to their stated maturity, with or without premium, and on such terms and conditions as the Authority shall approve;

(e) Covenant and agree that any cushion fund established to further secure the payment of the principal and interest of any obligations shall be in a fixed amount;

(f) Limit or prohibit free service to any person, firm, corporation, municipal corporation, or any subdivision or division of the State;

(g) Prescribe the procedure, if any, by which the terms of the contract with the holders of its obligations may be amended, the number of obligations whose holders must consent thereto, and the manner in which such consent shall be given;

(h) Prescribe the events of default and the terms and conditions upon which all or any obligations shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;

(24) To do all other acts and things necessary or convenient to carry out any function or power committed or granted to the Authority.

(25) To acquire, by purchase, protective areas of land adjacent to the Project site already acquired, and in the case of the acquisition of any such adjacent protective areas by purchase, to secure any unpaid portion of the purchase price of such lands by executing purchase money obligations for any unpaid portion of the purchase price, and to secure such purchase money obligations by purchase money mortgages on the lands so purchased. No such purchase money mortgage shall include any provision which might enable the holder, or any person claiming by, through or under such mortgage, or any person acquiring the property at any judicial sale, to obtain any rights to or rights in any property of the Authority other than the protective area lands in connection with the purchase of which any purchase money mortgages may be executed. Permission is given to the holder or holders of purchase money obligations and purchase money mortgages executed by the Authority, if and when the same shall be in default, to bring suits against the Authority for the enforcement of such obligations and for the foreclosure of such mortgages in the form and manner of foreclosure suits between individual citizens, and in such suits, to have the mortgaged lands sold under proper judicial decree. The principal and interest of all obligations given by the Authority secured by purchase money mortgages upon real property acquired by the Authority, pursuant to this section, shall have the tax exempt status prescribed by Section 12-1-60, and all such obligations shall have endorsed on the face thereof the following: "The principal of and interest on these bonds are exempted from all and any State, county, municipal and other taxes whatsoever under the laws of the State of South Carolina." The protective areas of land, herein authorized to be acquired by the Authority, are not confined to the watershed of Back River but shall include adjacent lands beyond the watershed of Back River when needed by the Authority, in its discretion, to fully control orderly withdrawals from its Project, and the Authority is expressly authorized to dispose of portions of such protective areas for use as industrial sites, by sale or lease, upon terms, conditions and restrictions consistent with the orderly and economical construction, development and operation of the Project.

(26) To borrow money and to secure such indebtedness or any portions thereof by a real estate mortgage or mortgages on lands consisting of four hundred ten and eight-tenths acres, or any part thereof, as shown on a plat on file with the Authority by Joseph Henry Moore, C. E., Consulting Engineer, dated

the eighteenth day of March 1957. The powers conferred in this subsection are in addition to all other powers granted to the Authority.

(27) If the Authority shall become entitled to moneys by virtue of any contract between itself and any county, municipal corporation, or political subdivision of this State, then it shall be empowered to borrow from time to time in anticipation of the receipt of such money. Such loans shall be evidenced by notes of the Authority to become due in not exceeding twelve months from their date. They shall bear such rate of interest and shall be of such tenor and effect as the Authority shall prescribe. Such loans may be privately negotiated in the discretion of the Authority. They shall be payable solely from the moneys in anticipation of the receipt of which they shall be borrowed. The aggregate indebtedness at any one time outstanding, exclusive of interest, shall never exceed three hundred thousand dollars.

HISTORY: 1962 Code Section 70-397; 1953 (48) 464; 1954 (48) 1821; 1955 (49) 61, 143; 1956 (49) 1662; 1957 (50) 266.

SECTION 49-7-80. Sale of electricity or electric power prohibited.

To the end that the Authority shall not compete with the Santee Cooper Project of the South Carolina Public Service Authority, or private electric utilities, it shall not be permitted to sell or distribute electricity or electric power for any purpose whatsoever.

HISTORY: 1962 Code Section 70-398; 1953 (48) 464.

SECTION 49-7-90. Chapter does not affect Santee Cooper Project.

Nothing in this chapter contained shall in anywise affect the operation of the Santee Cooper Project by the South Carolina Public Service Authority.

HISTORY: 1962 Code Section 70-399; 1953 (48) 464.

SECTION 49-7-100. Rates not subject to state supervision or regulation.

The rates charged for services furnished by the Project, as constructed, improved, enlarged and extended, shall not be subject to supervision or regulation by any State bureau, board, commission or like instrumentality or agency thereof.

HISTORY: 1962 Code Section 70-400; 1953 (48) 464.

SECTION 49-7-110. Property exempt from taxes.

All property of the Authority located in Berkeley County shall be exempt from all ad valorem taxes levied by the State, county or any municipality, division, subdivision or agency thereof, direct or indirect.

HISTORY: 1962 Code Section 70-401; 1953 (48) 464; 1969 (56) 859.

SECTION 49-7-120. Fiscal year; audits; annual reports.

The Authority shall conduct its affairs on the fiscal year basis employed by the State, viz., its fiscal year shall begin on July first of each year and shall end on June thirtieth of the succeeding year. As shortly after the close of its fiscal year as may be practicable, an audit of its affairs shall be made by certified public accountants of good standing, to be designated by the Authority. Copies of such audits, incorporated into an annual report of the Authority, shall be filed with the treasurer of Berkeley County, the clerk of the city council of Charleston, in the offices of the clerks of court for Berkeley and Charleston Counties, and with the Secretary of State.

HISTORY: 1962 Code Section 70-402; 1953 (48) 464.

SECTION 49-7-130. Unlawful acts; penalties.

It shall be unlawful for any person to wilfully injure or destroy, or in any manner hurt, damage, tamper with, or impair the Project of the Authority, or any part of the same, or any machinery, apparatus or equipment of the Authority, or to pollute the water in any part of its Project, or to obtain water therefrom except in accordance with the regulations promulgated by the Authority. Any person so offending shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars nor more than one hundred dollars, or shall be imprisoned for not more than thirty days at the discretion of the court, and shall be further liable to pay all damages suffered by the Authority.

HISTORY: 1962 Code Section 70-403; 1953 (48) 464.

SECTION 49-7-140. Disposition of revenues.

All net revenues derived from the Project, whose disposition the Authority shall not have covenanted to otherwise dispose of, or which it shall not need for repairs, improvements, additions or extensions, shall be disposed of as follows:

(1) Fifty per cent shall be paid to the treasurer of Berkeley County and applied by him to corporate purposes of Berkeley County; and

(2) Fifty per cent shall be paid to the treasurer of the city of Charleston and applied by him to corporate purposes of the city of Charleston.

HISTORY: 1962 Code Section 70-404; 1953 (48) 464.

SECTION 49-7-150. Contracts with municipalities, public bodies and public agencies operating water district systems.

All municipalities, public bodies and public agencies operating water district systems, in either Berkeley or Charleston County, shall be fully empowered to enter into contracts to buy water from the Authority. Such contracts shall extend over such period of time and shall contain such terms and conditions as shall be mutually agreeable to the Authority and to the contracting municipality, public body or public agency.

HISTORY: 1962 Code Section 70-405; 1953 (48) 464.