

**The Code of Alabama 1975**

Title 33 NAVIGATION AND WATERCOURSES.

Chapter 12 ELK RIVER DEVELOPMENT AGENCY.

**Section 33-12-1**

**Establishment.**

In the interest of the unified development of the Alabama portion of the Elk River watershed and for purposes of cooperation with the Tennessee Elk River Area Development Agency, there is hereby authorized, and shall be established as hereinafter provided, a state development agency for the Alabama portion of the Elk River Watershed. The agency, when incorporated in accordance herewith, shall be an instrumentality of the State of Alabama.

*(Acts 1965, No. 627, p. 1142, §1.)*

**Section 33-12-2**

**Organization; appointment, qualifications, terms, etc., of directors.**

The organization and establishment of the agency shall be as follows:

(1) The respective county commission of the Counties of Lauderdale and Limestone shall each nominate by majority vote three candidates for each of two memberships on the board of directors of the agency. Candidates shall be selected from persons residing in these counties and active in municipal, industrial, agricultural, commercial or citizen organizations engaged in promoting comprehensive and unified development of the resources of the watershed as a basis for its general economic growth. The probate judge of each county shall certify the nominations for the two directorships from his county to the Governor, who shall, upon receipt thereof, appoint from the nominees from each county two directors, one from each group of three nominated for each directorship. One member from each county shall be appointed for a two-year term, one member from Lauderdale County for a four-year term, and one member from Limestone County for a six-year term. However, such terms shall continue in all events until successors are appointed. Successors shall be appointed for terms of six years. In the event of a vacancy on the board, the Governor shall appoint a successor for the unexpired term.

(2) The Governor shall appoint an additional director from his cabinet or staff to serve during the Governor's term of office, and succeeding Governors shall similarly appoint such a director.

(3) The respective county commissions of the Counties of Lauderdale and Limestone shall each nominate by majority vote three incumbent mayors of the incorporated cities and towns within the county and submit such nominations to the Governor, who shall appoint one mayor from each county to serve as a director, for a term of four years, or during his continuance in office as mayor, if his incumbency in such office be less than four years.

*(Acts 1965, No. 627, p. 1142, §2.)*

### **Section 33-12-3**

#### **Procedure for incorporation.**

To become a corporation, the members of the board of the agency shall present to the Secretary of State an application signed by them which shall set forth:

- (1) The name, official designation and official residence of each of the applicants, together with a certified copy of the resolution, order or commission evidencing his right to office;
- (2) The term of office of each of the applicants;
- (3) The name of the proposed corporation;
- (4) The location of the principal office of the proposed corporation; and
- (5) Any other matter relating to the incorporation which the applicants may choose to insert and which is not inconsistent with this chapter or the laws of the State of Alabama.

The applications shall be subscribed and sworn to by each of the applicants before an officer authorized by the laws of this state to take acknowledgements to deeds. The Secretary of State shall examine the application presented to him, and, if he finds that it substantially complies with the requirements of this section, he shall receive and file it and record it in an appropriate book of records in his office. When the application has been made, filed and recorded as herein provided, the applicants shall constitute a corporation under the name proposed in the application, and the secretary of state shall make and issue to the applicants a certificate of incorporation pursuant to this chapter, and shall record the certificate with the application. There shall be no fees paid to the Secretary of State for any work done in connection with the incorporation above provided for.

*(Acts 1965, No. 627, p. 1142, §3.)*

### **Section 33-12-4**

#### **Election of officers; designating time and place for meetings; compensation and expenses of directors.**

(a) Upon completion of the membership of the board and incorporation as provided in Sections 33-12-2 and 33-12-3, the appointees and ex officio members shall meet and organize at Athens, Alabama, elect a chairman, vice-chairman and secretary-treasurer, and set a regular time and place for meetings of the board.

(b) Directors shall serve without compensation, except reimbursement for actual traveling expenses and other necessary expenses incurred in the performance of their official duties, such expenses to be reimbursed from such funds as may be available to the agency.

*(Acts 1965, No. 627, p. 1142, §4.)*

## **Section 33-12-5**

### **Powers, duties and functions.**

The powers, duties and functions of the agency shall be as follows:

(1) GENERALLY. The agency

- a. Shall have perpetual succession in its corporate name.
- b. May sue and be sued in its corporate name.
- c. May adopt, use and alter a corporate seal, which shall be judicially noticed.
- d. May enter into such contracts and cooperative agreements with the federal, state and local governments, with agencies of such governments, with private individuals, corporations, associations, trusts and other organizations as the board may deem necessary or convenient to enable it to carry out the purposes of this chapter, including the planned, orderly residential development of the area.
- e. May adopt, amend and repeal bylaws.
- f. May appoint such managers, officers, employees, attorneys and agents as the board deems necessary for the transaction of its business, fix their compensation, define their duties, require bonds of such of them as the board may determine. The salaries of any such employees may be paid out of such funds as may be available to the agency from any source. The employees of the corporation shall not be subject to the state Merit System, but they shall be members of the Employees' Retirement System of Alabama the same as other employees in the state service.

(2) FORMULATION AND EXECUTION OF DEVELOPMENT PLANS. The agency is authorized to:

- a. Investigate the resources of the Alabama portion of the Elk River Watershed and determine the requirements for its full development and for control and development of its stream system as an integral part of the economy of the area.
- b. Develop and carry out a unified, comprehensive program of resource development designed to encourage and assist the economic growth of the area. This program may include the active participation of the Elk River Development Agency in land development programs which have as their objective the provision of housing and related facilities for a full range of social, economic and racial groups while maintaining the natural beauty and openness of the area. This program shall be consistent with plans and requirements for statewide economic development and with plans and requirements of federal agencies for the development of the entire Elk River Watershed and with plans of Tennessee Agencies for the development of the Tennessee portion thereof.
- c. In making such investigations and in formulating development plans, seek and utilize the assistance of appropriate federal, state and local agencies and of private citizens and citizen organizations interested in the conservation and development of the resources of the area.
- d. Plan and provide for the construction of water control structures, channel improvements and facilities for navigation, drainage, irrigation, industrial development, water conservation and supply and water

distribution for residential, commercial and industrial users. Such distribution facilities may include sewage disposal and related facilities necessary for residential, commercial or industrial developments.

e. Provide for financing comprehensive development and related activities necessary to effect the design and construction of the facilities described in paragraph d of this subdivision by accepting loans, grants or other assistance from federal, state and local governments or from agencies of such governments and by issuing in its own name revenue bonds pledging a portion of the revenues from such facilities.

f. Arrange with any city, county, municipality or supplier of utilities for the abandonment, relocation or other adjustment of roads, highways, bridges and utility lines.

(3) LAND ACQUISITION. The agency may acquire by purchase, lease, gift or condemnation property of any kind, real, personal or mixed, or any interest therein, that the board deems necessary or convenient to the exercise of its powers or functions; provided, that acquisition by condemnation shall be limited to land, rights in land, including leaseholds and easements, and water rights in the Alabama portion of the Elk River Watershed that the board determines to be necessary to the control and optimum development of the Elk River. The amount and character of the interests in land, rights in land and water rights to be acquired in such area shall be determined by the board of directors, and its determination shall be conclusive. The agency's power of eminent domain may be exercised under Title 18 and any amendments thereto, or pursuant to any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain. The agency is expressly authorized to acquire by condemnation or otherwise lands or interests in lands in the Alabama portion of the Elk River Watershed that it determines to be needed for developments authorized by paragraph d of subdivision (4) of this section. The condemnation of land for industrial uses is hereby declared to be for the public purpose of the state's industrial development and for the increase of industrial employment opportunities. The condemnation of land for residential or commercial development is hereby declared to be for the additional public purposes of preserving desirable aspects of natural and urban environment, preventing unplanned urban sprawl and improving the general and economic conditions of the Elk River area. Nothing herein shall be construed to authorize the acquisition by eminent domain of any real property or rights owned or controlled by railroads or utilities, both public or private.

(4) MANAGEMENT AND OPERATION. The agency may:

a. Enter into contracts with municipalities, homeowners' associations, corporations, other public agencies or political subdivisions of any kind, or with others for the sale of water for municipal, domestic, agricultural or industrial use, or of any other services, facilities or commodities that the agency may be in a position to supply.

b. Provide water, sewage or other utility services for residential, commercial or industrial consumption at developments created by the agency either directly by constructing, operating and maintaining the plant facilities or by contracting with one or more public or private entities to procure all or any part of the plant and/or services necessary for the provision of water, sewage or other utility services. The authority to contract for the procurement of such plants and/or services shall include authority to transfer publicly-owned interests in land and facilities to contractors selected to provide plant facilities and/or services.

- c. Develop reservoirs and shoreline lands for recreational use and provide for their operation for this purpose directly or by concessionaires, licensees, lessees or vendees of shoreline lands.
- d. Develop or contract for the development and resale for private residential, commercial or industrial purposes land or interests in land acquired under subdivision (3) of this section. Such development and resale shall be made in accordance with plans and subject to restrictions prescribed by the agency to assure preservation of a comprehensive plan for the appropriate and complementary use of property in the developed area.
- e. Sell or lease shoreline lands acquired in connection with development of the stream system for uses consistent with the agency's development plan and subject to such restriction as the agency deems necessary for reservoir protection and to such requirements as to
  - 1. Character of improvements or activities, and
  - 2. Time within which such improvements or activities shall be undertaken, as the agency deems appropriate to its overall development plan.
- f. Acquire or operate shoreline lands of reservoirs owned by the United States of America as the agent of the federal agency having custody and control thereof under appropriate agreements with such agencies.
- g. Acquire, construct or operate such other facilities or works of improvements as are necessary to effectuate plans for comprehensive development of the area.
- h. Provide police and fire protection, pending the establishment of rural village public bodies to perform these functions, either under its own auspices or by arrangement with another public or private agency.
- i. Insure against tort liability arising in the construction or operation of the rural village or assure injured parties of compensation irrespective of possible governmental immunity.

(5) FINANCING. The agency may:

- a. Issue its bonds from time to time for the purpose of paying in whole or in part the cost of the acquisition of necessary land or interests therein and for improvements thereon for the development of any residential, commercial or industrial properties or utility facilities as authorized herein and the development of the resources of the watershed for which it is created, and expenses incidental thereto;
- b. Secure such bonds by a pledge of all or any of the revenues which may now or hereafter come to the agency from any source, by a mortgage or deed of trust of the agency's land or any part thereof, or by a combination of the two.
- c. Make such contracts in the issuance of such bonds as may seem necessary or desirable to assure the marketability thereof.
- d. All bonds issued by the agency shall be signed by the chairman of its board or other chief executive officer and attested by its secretary, and the seal of the agency shall be affixed thereto, and any interest coupons applicable to the bonds of the agency shall be signed by the chairman of its board or other chief executive officer; provided, that a facsimile of the signature of one, but not both, of said officers may be

printed or otherwise reproduced on any such bonds in lieu of manually signing the same, a facsimile of the seal of the agency may be printed or otherwise reproduced on any such bonds in lieu of being manually affixed thereto, and a facsimile of the signature of the chairman of its board or other chief executive officer may be printed or otherwise reproduced on any such interest coupons in lieu of his manually signing the same. Any such bonds may be executed and delivered by the agency at any time and from time to time, shall be in such form and denominations and of such tenor and maturities, shall contain such provisions not inconsistent with the provisions of this chapter, and shall bear such rate or rates of interest, payable and evidenced in such manner, as may be provided by resolution of its board. Bonds of the agency may be sold at either public or private sale in such manner and at such price or prices and at such time or times as may be determined by the board to be most advantageous. The principal of and interest on any bonds issued by the agency may thereafter at any time (whether before, at or after maturity of any such principal and whether at, after or not exceeding six months prior to the maturity of any such principal and whether at, after or not exceeding six months prior to the maturity of any such interest) and from time to time be refunded by the issuance of refunding bonds of the agency, which may be sold by the agency at public or private sale at such price or prices as may be determined by its board to be most advantageous, or which may be exchanged for the bonds or other obligations to be refunded. The agency may pay all expenses, premiums and commissions which its board may deem necessary and advantageous in connection with any financing done by it. All bonds issued by the agency shall be construed to be negotiable instruments although payable solely from a specified source. All obligations and bonds issued by the agency shall be solely and exclusively an obligation of the agency, and shall not create an obligation or debt of the state or of any county or municipality. Any bonds issued by the agency shall be limited or special obligations of the agency payable solely out of the revenues of the agency specified in the proceedings authorizing those bonds; provided, however, that bonds the proceeds of which are used to repay money loaned, directly or indirectly, by the United States government and used to acquire or construct water supply facilities, sewage disposal facilities or other utility facilities may be secured by pledge of facilities so acquired or constructed as well as the revenues produced by their operation. Any such proceedings may provide that the bonds therein authorized shall be payable solely out of the revenues derived from the operation and sale of property and facilities owned by the agency, or solely out of the revenues from the sale and operation of any one or more of such properties and facilities or parts thereof, regardless of the fact that those bonds may have been issued with respect to or for the benefit only of certain particular systems or facilities of the agency. The agency may pledge for the payment of any of its bonds the revenues from which such bonds are payable, and may execute and deliver a trust indenture evidencing any such pledge or a mortgage and deed of trust conveying as security for such bonds the property and facilities, or any part thereof, the revenues or any part of the revenues from which payments are so pledged. Any mortgage and deed of trust or trust indenture made by the agency may contain such agreements as the board may deem advisable respecting the sale, operation and maintenance of the property and the use of the revenues subject to such mortgage and deed of trust or affected by such trust indenture, and respecting the rights, duties and remedies of the parties to any such instrument and the parties for the benefit of whom such instrument is made; provided, that no such instrument shall be subject to foreclosure.

e. As security for payment of the principal of and interest on bonds issued by it, the agency may enter into a contract or contracts binding itself for the proper application of the proceeds of bonds and other funds, for the continued operation and maintenance of any property and facility owned by it, or any part or parts

thereof, for the imposition and collection of reasonable rates for and the promulgation of reasonable regulations respecting any service furnished from such facility, for the disposition and application of its gross revenues or any part thereof, and for any other act or series of acts not inconsistent with the provisions of this chapter for the protection of the bonds and other obligations being secured and the assurance that the revenues from such facility will be sufficient to operate such facility, maintain the same in good repair and in good operating condition, pay the principal of and interest on any bonds payable from such revenues, and maintain such reserves as may be deemed appropriate for the protection of the bonds, the efficient operation of such property or facility, and the making of replacements thereof and capital improvements thereto. Any contract pursuant to the provisions of this section may be set forth in any resolution of the board authorizing the issuance of bonds or in any mortgage and deed of trust, or trust indenture made by the agency hereunder.

f. Any resolution of the board or trust indenture, under which bonds may be issued pursuant to the provisions of this chapter may contain provisions creating a statutory mortgage lien, in favor of the holders of such bonds and of the interest coupons applicable thereto, on the property and facilities, or either (including any after-acquired property) out of the revenues from which such bonds are made payable. The said resolution of the board or the said trust indenture may provide for the filing for record in the office of the probate judge of each county in which any part of such property and facilities, or either, may be located of a notice containing a brief description of such property and facilities, or either, a brief description of such bonds, and a declaration that said statutory mortgage lien has been created for the benefit of the holders of such bonds and the interest coupons applicable thereto, upon such property and facilities, or either, including any additions thereto and extensions thereof. Each probate judge shall receive, record and index any such notice filed for record in his office. The recording of such notice, as herein provided, shall operate as constructive notice of the contents thereof.

g. All moneys derived from the sale of any bonds issued by the agency shall be used solely for the purpose or purposes for which the same are authorized and any costs and expenses incidental thereto. Such costs and expenses may include but shall not be limited to:

1. The fiscal, engineering, legal and other expenses incurred in connection with the issuance of the bonds,
2. In the case of bonds issued to pay costs of construction, interest on such bonds (or, if a part only of any series of bonds is issued for construction purposes, interest on that portion of the bonds of that series that is issued to pay construction costs) prior to and during such construction and for not exceeding one year after completion of such construction, and
3. In the case of bonds issued for the purpose of refunding principal and interest, or either, with respect to bonds issued by the agency, any premium that it may be necessary to pay in order to redeem or retire the bonds or other obligations to be refunded.

(6) EXEMPTION FROM TAXATION, ETC. The agency, the property and income of the agency, all bonds issued by the agency, the income from such bonds, conveyances by or to the agency and leases, mortgages and deeds of trust by or to the agency shall be exempt from all taxation in the State of Alabama. The agency shall not be obligated to pay or allow any fees, taxes or costs to the probate judge of any county in respect of its incorporation, the amendment of its certification of incorporation, or the

recording of any document. No license or excise tax may be imposed on any agency in respect of the privilege of engaging in any of the activities authorized by this chapter.

*(Acts 1965, No. 627, p. 1142, §5; Acts 1976, No. 243, p. 273.)*

**Section 33-12-6**

**Contributions to work of agency; tax levy by governing bodies.**

Lauderdale and Limestone Counties and the municipalities located in the Alabama portion of the Elk River Watershed are hereby authorized and empowered to contribute to the work of the agency any amount or amounts of money that their respective governing bodies, acting in their sole discretion, shall approve to be paid from the general fund of the respective county or municipality. Governing bodies of such counties or municipalities are hereby empowered to levy and collect ad valorem taxes within constitutional limits for such purposes, which are hereby declared to be for municipal and county public purposes.

*(Acts 1965, No. 627, p. 1142, §6.)*

**Section 33-12-7**

**Annual reports.**

The board of directors of the agency shall report annually to the Governor of the State of Alabama and shall likewise report annually to the governing bodies of Lauderdale and Limestone Counties and the incorporated municipalities of the watershed. Such reports shall include a statement of financial receipts and expenditures, and a summary of all activities and accomplishments for the period and proposed plans for the next year.

*(Acts 1965, No. 627, p. 1142, §7.)*

**Section 33-12-8**

**Cooperation and assistance of other agencies.**

All agencies of the State of Alabama are hereby authorized and directed to extend their cooperation and lend assistance to the agency in the formulation and implementation of a development program.

*(Acts 1965, No. 627, p. 1142, §8.)*

**Section 33-12-9**

**Advisory board.**

For the purpose of coordinating its activities with the needs and undertakings of other local organizations and groups, the board of directors may establish an advisory board consisting of the chairman of the board of directors of the agency (who shall be chairman of the advisory board), and of sufficient members to represent adequately so far as possible industry, commerce, agriculture, the general public, any official

planning and developmental bodies in the locality and organized citizens groups working for the development of the Elk River area.

*(Acts 1965, No. 627, p. 1142, §9.)*

**Section 33-12-10**

**Construction of chapter.**

This chapter shall be considered supplemental and additional to any and all other laws and confers sufficient authority in and of itself for the purposes set forth herein. This chapter shall be liberally construed to effectuate its purpose of facilitating the development of the resources of the watersheds affected.

*(Acts 1965, No. 627, p. 1142, §10.)*