

The Code of Alabama 1975

Title 33 NAVIGATION AND WATERCOURSES.

Chapter 13 ALABAMA PORT AUTHORITY.

Section 33-13-1

Definitions.

The following words and phrases, wherever used in this chapter, and others evidently intended as the equivalent thereof, shall, in the absence of clear implication otherwise, be given the following respective interpretations herein:

(1) **AUTHORITY.** The public corporation organized pursuant to the provisions of this chapter under the name Alabama Port Authority.

(2) **BOARD.** The board of directors of the authority.

(3) **BONDS.** The bonds issued under the provisions of this chapter.

(4) **PERSON.** Unless limited to a natural person by the context in which it is used, such term includes a public or private corporation organized under the laws of Alabama or of another state, a municipality, a county or an agency, department or instrumentality of a county or municipality of one or more of the several states or of the United States.

(5) **PROPERTY.** Such term means and includes real and personal property and interests therein.

(6) **STATE.** The State of Alabama.

(7) **STATE DOCKS FACILITIES.** Docks and all kinds of docks facilities, including elevators, warehouses, water and rail terminals, wharves, piles, quays, compresses, cold storage facilities, loading and unloading facilities and other related structures, facilities and equipment and property used or held for use or development of or in connection with any thereof, now or hereafter owned by the State of Alabama at the Port of Mobile.

(8) **STATE DOCKS DEPARTMENT.** The Alabama State Docks Department, an agency of the state.

(9) **STATE DOCKS DIRECTOR.** The Director of State Docks or other chief executive officer of the State Docks Department.

(Acts 1975, 2nd Ex. Sess., No. 78, p. 206, §2.)

Section 33-13-2

Legislative intent; construction of chapter.

It is the intention of the Legislature by the passage of this chapter to implement Constitutional Amendment No. 338 by:

- (1) Authorizing the issuance of the interest-bearing general obligation bonds of the state provided for in the said constitutional amendment;
- (2) Providing for the incorporation of a public corporation to act as the agency of the state in the authorization, sale, issuance and approval of disbursement of proceeds of the said bonds and to perform the other functions hereinafter specified; and
- (3) Providing for the expenditure of the proceeds from the said bonds. It is also the intention of the Legislature that, to the extent deemed feasible, in the sole discretion of the Alabama State Docks Department with the approval of the Alabama Port Authority, the proceeds from the said bonds will be used in preparation for and in anticipation of the demands that will be made upon and the opportunities that will be available to the department as a result of the opening of the Tennessee-Tombigbee Waterway System.

This chapter is to be liberally construed in conformity with its purposes.

(Acts 1975, 2nd Ex. Sess., No. 78, p. 206, §1.)

Section 33-13-3

Authorization to form public corporation.

The Governor, the Director of Finance, one member of the Senate, appointed by the president of the Senate, one member of the House of Representatives, appointed by the Speaker of the House, and the director of the State Docks Department shall become a public corporation with the powers hereinafter provided, by proceeding according to the provisions of this chapter.

(Acts 1975, 2nd Ex. Sess., No. 78, p. 206, §3.)

Section 33-13-4

Procedure for incorporation.

To become a corporation, the Governor, the Director of Finance, one member of the Senate, appointed by the president of the Senate, one member of the House of Representatives, appointed by the Speaker of the House and the Director of the State Docks Department shall present to the Secretary of State of the State of Alabama an application which shall set forth:

- (1) The name, official designation and official residence of each of the applicants, together with certificates respecting the due election of those who are elected to the offices respectively held by them and certified copies of the commissions evidencing the due appointment of those who are appointed to the offices respectively held by them;
- (2) The date on which each applicant was inducted into office and the term of office of each applicant;
- (3) The name of the proposed public corporation, which shall be Alabama Port Authority;
- (4) The location of a principal office of the proposed public corporation; and

(5) Any other matter relating to the proposed public corporation which the applicants may choose to insert and which is not inconsistent with this chapter or the laws of the State of Alabama.

The application shall be subscribed and sworn to by each of the applicants before an officer authorized by the laws of this state to take acknowledgments to deeds. The Secretary of State shall examine the application 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.

(Acts 1975, 2nd Ex. Sess., No. 78, p. 206, §4.)

Section 33-13-5

Certificate of incorporation; no fees to be paid to Secretary of State.

When the application has been made, filed and recorded, as herein provided, the applicants shall constitute a public corporation under the name submitted in the application, and the Secretary of State shall make and issue to the applicants a certificate of incorporation under the Great Seal of the State and shall record such certificate with the application. There shall be no fees paid to the Secretary of State for any service rendered or work performed in connection with the authority thus formed, its incorporation, dissolution or records.

(Acts 1975, 2nd Ex. Sess., No. 78, p. 206, §5.)

Section 33-13-6

Members, officers and directors; meetings; record of proceedings.

The authority shall be composed of the Governor, the Director of Finance, one member of the Senate, appointed by the President of the Senate, one member of the House of Representatives, appointed by the Speaker of the House, and the Director of the State Docks Department.

The Governor shall be the president of the authority, and the Director of Finance shall be its secretary. The Director of the State Docks Department shall be the treasurer of the authority and shall act as custodian of the proceeds from the sale of the bonds. The members of the authority shall constitute all the members of the board of directors of the authority. Should any person holding any state office named in this section cease to hold such office by reason of death, resignation, expiration of his term of office or for any other reason, then his successor in office shall take his place as a member, officer or director of the authority. No member, officer or director of the authority shall receive any compensation for any service he may render or for any duty he may perform in connection with the authority.

The board of directors shall meet on call of the president of the authority. All proceedings had and done by the board of directors shall be signed by the Governor and shall be recorded in a substantially bound book and filed in the office of the secretary. Copies of such proceedings, when certified by the secretary of the authority, shall be received in all courts as prima facie evidence of the matters and things therein certified.

(Acts 1975, 2nd Ex. Sess., No. 78, p. 206, §6.)

Section 33-13-7

Powers enumerated.

The authority shall have the following powers:

- (1) To have succession by its corporate name without time limit;
- (2) To bring civil actions against others, to have civil actions brought against it, but only for breach of contract and to prosecute and defend in any court having jurisdiction of the subject matter and of the parties;
- (3) To have and to use a corporate seal and to alter the same at its pleasure;
- (4) To act as the agency of the state in authorizing, selling, issuing and approving disbursement of the proceeds of said general obligation bonds of the state subject to the provisions of this chapter;
- (5) To provide for and specify the details of and to supervise and make sale of general obligation bonds of the state subject to the provisions of this chapter;
- (6) To make studies and analyses of the operations of the state docks facilities and to make the reports and recommendations provided for in Section 33-13-8;
- (7) To appoint and employ such attorneys and agents as the business of the authority may require; provided, that the authority shall not employ fiscal agents or financial advisers in connection with the sale of bonds.

(Acts 1975, 2nd Ex. Sess., No. 78, p. 206, §7.)

Section 33-13-8

Fiscal year; reports and recommendations.

The authority shall have the same fiscal year as the state. The authority shall during each fiscal year submit a report of its activities and development plans to the Legislature. It may from time to time make recommendations to the Legislature, based upon study and analysis, for the better handling of commerce passing in and through the state docks facilities, for the increase and improvement of transportation facilities, for the more economical and expeditious handling of such commerce and for the development and promotion of both domestic and foreign trade.

(Acts 1975, 2nd Ex. Sess., No. 78, p. 206, §8.)

Section 33-13-9

Bonds - Generally.

There are hereby authorized to be issued bonds of the state in aggregate principal amount not exceeding \$45,000,000.00 for the purpose of paying costs of the development, construction, improvements, expansion and modernization (or any of them) of the State Docks Department at the Port of Mobile. The

bonds hereby authorized shall be general obligations of the state, and the full faith, credit and taxing powers of the state are hereby irrevocably pledged for the prompt and faithful payment of the principal thereof and the interest thereon.

The bonds may be sold from time to time as the board of directors may deem advantageous; provided, that no bonds (other than refunding bonds) may be sold or issued unless the Governor shall have first determined that the issuance of the bonds proposed to be issued will be necessary to enable the authority to promote, develop, construct, improve, expand and modernize the state docks facilities. Except as hereinafter limited, the bonds may be executed and delivered at any time and from time to time, may be in such forms, denominations, series and numbers, may be of such tenor and maturities, may bear such date or dates, may be in registered or bearer form either as to principal or interest, or both, may be payable in such installments and at such time or times, may be payable at such place or places within or without the state, may bear interest at such rate or rates not exceeding eight percent per annum payable and evidenced in such manner, may contain provisions for redemption at the option of the authority at such date or dates prior to their maturity and upon payment of such redemption price or prices and may contain such other provisions, not inconsistent with the provisions of this chapter, all as shall be provided by the board of directors in the resolution or resolutions whereunder the bonds are issued. The principal of each series of the bonds shall mature in annual installments in such amounts as shall be specified in the resolution or resolutions of the board of directors under which they are issued, the first of which installments shall mature not later than three years after the date of the bonds of the same series and the last of which installments shall mature not later than 30 years after the date of the bonds of the same series. Any redemption price required to be paid in order to effect any redemption of bonds prior to maturity shall not exceed the face value of each bond redeemed plus accrued interest thereon to the date fixed for redemption and a premium equal to one year's interest on such bond. Each series of bonds having an installment of principal maturing more than 10 years after the date thereof shall be made subject to redemption prior to maturity, at the option of the state, at the end of the tenth year following their date and semiannually thereafter in such manner as may be specified in the resolution authorizing such series.

None of the bonds shall be sold for less than its face value plus accrued interest thereon to the date of their delivery, and all of the bonds shall be sold only at public sale, either on sealed bids or at public auction, to the bidder whose bid reflects the lowest net interest cost to the state computed to the respective maturities of the bonds sold; provided, that if no bid deemed acceptable by the authority is received, all bids may be rejected. Notice of each bond sale shall be given by the authority by publication in either a financial journal or a financial newspaper published in New York, New York, at least one time not less than 10 days prior to the date fixed for the sale. The authority shall cause such other publicity to be given of each bond sale as it may deem advisable, and it shall fix the terms and conditions under which each sale of bonds may be held; provided, that such terms and conditions shall not conflict with any of the requirements of this chapter. The authority is authorized to provide terms and conditions under which any of the bonds may be exchanged for like bonds of other denominations and may be converted from bearer bonds into registered bonds, either as to principal or interest or both as the authority may prescribe, and again converted into bearer bonds, all without the payment of any fee by the holder of any such bonds.

The bonds shall not be valid unless the Governor shall approve the terms and conditions under which they were authorized by the board to be issued. Such approval shall be entered on the minutes of the meeting of the board of directors at which the bonds are authorized and shall be signed by the Governor. Such

approval by the Governor may, but need not, be shown on any such bonds by a facsimile of his signature printed or otherwise reproduced thereon when authorization hereof is contained in the said approval signed by him.

The bonds shall be executed in the name of the state by the Governor or by the Director of Finance, and the Great Seal of the State, or a facsimile thereof, shall be impressed, printed or otherwise reproduced thereon and attested by the Secretary of State. If the bonds are executed by the Director of Finance, such execution shall be approved on the face of the bonds by the Governor. A facsimile of the signature of any of said officials may be printed or otherwise reproduced on any of the bonds in lieu of being manually signed thereon; provided, that the signature of at least one of the said officials shall be manually signed thereon. The coupons evidencing any installments of interest on the bonds shall be executed with a facsimile of the signature of the State Treasurer printed or otherwise reproduced thereon. Each such facsimile of a signature shall be valid in all respects as if the officials the facsimiles of whose signatures are so used had signed the bonds in person. Any signature, whether manual or facsimile, which appears on any of the bonds and which purports to be the signature of the person acting as one of the officials hereinabove specified shall be treated in all respects as if it were the signature (whether manual or facsimile, as the case may be) of that official. The Great Seal of the State so used shall be valid in all respects as if the Great Seal of the State had been manually affixed to the bonds. In the event any official who shall sign the bonds or the facsimile of whose signature shall appear thereon shall thereafter cease to hold office before the bonds are delivered and paid for, the bonds and the coupons applicable thereto shall nevertheless be valid for all purposes to the same extent as if the official who signed the bonds or the facsimile of whose signature appears thereon had remained in office until all of the bonds bearing such signature or facsimile thereof shall have been delivered and paid for.

The bonds and the income therefrom shall be exempt from all taxation in the state.

(Acts 1975, 2nd Ex. Sess., No. 78, p. 206, §9.)

Section 33-13-10

Bonds - State Docks Facilities Reserve Fund.

There is hereby created a special fund to be designated the State Docks Facilities Reserve Fund, which shall be held in and constitute a part of the State Treasury and which shall be maintained until the principal of and interest on the bonds (or any refunding bonds that may hereafter be issued to refund any of the bonds) shall have been paid in full.

As promptly as may be practicable following each fiscal year of the state, commencing with the fiscal year ending September 30, 1976, the state docks director shall determine the number of tons (each ton to be deemed to constitute 2,000 pounds) of general cargo that was handled by the State Docks Department during the said fiscal year. Not later than 90 days after the end of each such fiscal year, the State Docks Department shall pay into the said special fund whichever is the smaller of the following:

(1) An amount equal to \$.03 for each ton (i.e., 2,000 pounds) of general cargo handled by the State Docks Department at or in connection with the state docks facilities during the fiscal year with respect to which such determination was made, or

(2) The entire revenues derived by the State Docks Department from operation of the state docks facilities remaining at the end of the said fiscal year after

a. Payment of all expenses of operation and maintenance of the state docks facilities that became payable on or prior to the last day of said fiscal year,

b. Payment of all principal and interest that matured on or prior to the said last day of the said fiscal year with respect to obligations which were heretofore issued and for payment of which revenues from the state docks facilities have been heretofore pledged (or any bonds that may hereafter be issued to refund any such obligations) and

c. The making of all payments into any special funds that are required to have been made, prior to the end of the said fiscal year, in any proceedings authorizing any such obligations (or any such refunding obligations); provided, that the foregoing provisions of this section are and shall be subject to all pledges heretofore made of the revenues from the state docks facilities and all agreements set forth in any documents or proceedings wherein the said pledges were made.

The term "general cargo" as used in this section shall be deemed to include all cargo handled by the State Docks Department at or in connection with the state docks facilities except

(1) Cargo of the class generally known as proprietary cargo handled by the owners of such cargo (or their agents) at the state docks facilities under special arrangements between such owners and the State Docks Department, and

(2) Export coal handled at or in connection with that portion of the state docks facilities known as the McDuffie Terminal.

The moneys on deposit in the said special fund shall be applied for payment of the principal of and interest on the bonds; and moneys in the said special fund shall be exhausted for payment of the said principal and interest prior to the use for such purpose of any moneys in the general fund of the state.

(Acts 1975, 2nd Ex. Sess., No. 78, p. 206, §10.)

Section 33-13-11

Bonds - Refunding Bonds.

The authority may from time to time sell and issue refunding bonds for the purpose of refunding any matured or unmatured bonds then outstanding that were originally issued under this chapter. To the extent they may be applicable, the provisions of this chapter pertaining to the authorization, sale, execution, redemption, maximum interest rate, maturities, issuance and other details of the bonds, shall apply to such refunding bonds. The total principal amount of bonds that may be initially issued hereunder under the provisions of the first sentence of Section 33-13-9 is hereby expressly limited to \$45,000,000.00; and the total amount of refunding bonds that may be issued hereunder is hereby expressly limited to the principal amount of the bonds that are to be refunded by any such refunding bonds.

(Acts 1975, 2nd Ex. Sess., No. 78, p. 206, §11.)

Section 33-13-12

Bonds - Disposition of proceeds; investments.

The authority shall pay out of the proceeds from the sale of any of the bonds (other than refunding bonds) those expenses which the board of directors may deem necessary or advantageous in connection with the sale or issuance thereof. The proceeds from the sale of all bonds, other than refunding bonds, remaining after paying the expenses of their sale and issuance shall be turned in to the treasury of the State Docks Department, shall be carried in a special fund therein and shall be subject to be drawn on by the State Docks Department, upon the approval of the authority, but solely for the respective purposes for which they were authorized to be issued, viz., payment of costs incurred in the development, construction, improvement, expansion and modernization (or any of them) of the state docks facilities at the Port of Mobile, as the state facilities may from time to time exist. The proceeds from the sale of any refunding bonds shall be paid into the State Treasury, shall be carried in a special fund therein and shall be subject to withdrawal by the authority for the purpose of refunding the principal of the outstanding bonds for the refunding of which they were authorized to be issued. The expenses incurred in issuing any such refunding bonds shall be paid out of the State Treasury upon approval by the authority.

Any portion of the proceeds derived from the sale of any of the bonds which the State Docks Director may determine is not then needed for any of the purposes for which the bonds are authorized to be issued shall, on order of the State Docks Director, be invested in time deposits in banks in Alabama qualified and designated as state depositories or in any securities that are direct general obligations of the United States or the principal of and interest on which are unconditionally and irrevocably guaranteed by the United States. Any such securities may, at any time and from time to time, on order of the State Docks Director, be sold or otherwise converted into cash. The income derived from any such investments shall be added to and treated as a part of the proceeds so invested.

(Acts 1975, 2nd Ex. Sess., No. 78, p. 206, §12.)

Section 33-13-13

Bonds - State Treasurer to pay principal and interest of bonds; records.

The State Treasurer is authorized and directed to pay the principal of and interest on the bonds (or any bonds issued to refund any of the bonds) at the respective maturities of the said principal and interest, out of the special fund created in Section 33-13-10, and to such extent, if any, as the moneys in the said special fund may be insufficient for such purpose, out of any other funds in the State Treasury. The State Treasurer is further authorized and directed to set up and maintain appropriate records pertaining to payment of the said principal and interest.

(Acts 1975, 2nd Ex Sess., No. 78, p. 206, §13.)