

The Code of Alabama 1975

Title 33 NAVIGATION AND WATERCOURSES.

Chapter 17 TOMBIGBEE VALLEY DEVELOPMENT AUTHORITY.

Section 33-17-1

Definitions.

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

- (1) **AUTHORITY.** The public corporation organized pursuant to the provisions of this chapter.
- (2) **BOARD.** The board of directors of the authority.
- (3) **BONDS.** The bonds issued under the provisions of this chapter.
- (4) **COUNTY.** A county in the state.
- (5) **DIRECTOR.** A member of the board of directors of the authority.
- (6) **FLOOD CONTROL PROJECT.** The project for the construction and maintenance of improvements in the channels of tributary streams of the Tombigbee River in order to prevent or abate the flooding of such streams, as authorized by the Flood Control Act of 1958, 72 Statutes at Large 297, 85th Congress, 2nd Session (1958), in accordance with House Document No. 167, 84th Congress, 1st Session (1955).
- (7) **MUNICIPALITY.** An incorporated city or town of the state.
- (8) **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.
- (9) **PROPERTY.** Such term means and includes real and personal property, and interests therein.
- (10) **STATE.** In the absence of clear implication herein otherwise, such term means the State of Alabama.
- (11) **WATERWAY.** A navigable waterway, utilizing the channel of the Tombigbee River, between Demopolis, Alabama and the Tennessee River, as authorized by the River and Harbor Act of 1946, 60 Statutes at Large 634, 79th Congress, 2nd Session (1946), in accordance with House Document No. 486, 79th Congress, 2nd Session (1946).
- (12) **HEREIN, HEREBY, HEREUNDER and HEREOF.** These and other equivalent words refer to this chapter as an entirety and not solely to the particular section or portion thereof in which any such word is used.

(Acts 1967, No. 264, p. 746, §1.)

Section 33-17-2

Legislative intent; construction of chapter.

The Legislature hereby makes the findings of facts and declaration of intent hereinafter set forth in this section. The construction of a navigable waterway between Demopolis, Alabama and the Tennessee River, utilizing the channel of the Tombigbee River, would provide a new transportation route of great importance and would stimulate the development of commerce, agriculture and industry in many sections of the state. Local flooding along the tributary streams of the Tombigbee River occurs frequently in the growing and harvesting season and causes considerable damage to agriculture in the affected sections of the state. Improvements in the channels of the tributary streams will eliminate much of the damage caused by flooding and will also permit improved farming practices and better land use.

It is the intention of the Legislature by the passage of this chapter to implement the provisions of Amendment No. 270 of the Constitution of Alabama. In order to further the developments herein found to be beneficial, it is the intention of the Legislature to authorize the formation of a public corporation for the following purposes:

- (1) To cooperate with the United States, the State of Alabama, other participating states, counties and municipalities, with all agencies, departments and instrumentalities of such political entities, with the Tennessee-Tombigbee Waterway Development Authority, and with private individuals, corporations, associations and other persons in furthering the development of the waterway and the flood control project;
- (2) To undertake all obligations and perform all actions that shall be necessary to fulfill the requirements of local contribution, participation and cooperation now established by the United States in connection with the waterway and the flood control project; and
- (3) To cooperate generally with the United States, the State of Alabama, other participating states, counties and municipalities, with all agencies, departments and instrumentalities of such political entities, and with the Tennessee-Tombigbee Waterway Development Authority in promoting projects in the basin of the Tombigbee River for navigation, water conservation and supply, flood control, irrigation, industrial development, public recreation and related purposes.

It is further the intention of the Legislature to authorize the issuance of general obligation bonds of the state herein provided for and to empower the said public corporation to supervise the sale of the said bonds and to expend the proceeds of the said bonds in discharging the duties and obligations which the said public corporation is authorized by this chapter to undertake.

This chapter shall be liberally construed in conformity with its purpose.

(Acts 1967, No. 264, p. 746, §2.)

Section 33-17-3

Authorization to form public corporation.

The Governor, the Lieutenant Governor, the Speaker of the House of Representatives of the State Legislature, the Director of Finance, the Highway Director and the Director of the State Docks Department may become a public corporation, with the powers hereinafter provided, by proceeding according to the provisions of Section 33-17-4.

(Acts 1967, No. 264, p. 746, §3.)

Section 33-17-4

Procedure for incorporation.

To become a corporation, the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Director of Finance, the Highway Director and the Director of the State Docks Department shall present to the Secretary of State of Alabama an application signed by each of them 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 corporation, which shall be Tombigbee Valley Development Authority;
- (4) The location of the principal office of the proposed corporation; and
- (5) Any other matter relating to the proposed 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 the State of Alabama 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 1967, No. 264, p. 746, §4.)

Section 33-17-5

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 the 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 1967, No. 264, p. 746, §5.)

Section 33-17-6

Members, officers and directors; records of proceedings.

The applicants named in the application and their respective successors in office shall constitute the members of the authority. The Governor shall be the president of the authority, the Lieutenant Governor shall be its vice-president, and the Director of Finance shall be its secretary. The State Treasurer shall be the treasurer of the authority and shall act as custodian of its funds, but he shall not be a member of the authority. The members of the authority shall constitute all the members of the board of directors of the authority, and any four members of the board of directors shall constitute a quorum for the transaction of business. Should any person holding any state office named in this section cease to hold office by reason of death, resignation of his term of office, or for any other reason, then his successor in office shall take his place as a member and officer of the authority.

Except as hereinafter provided, no member, officer or director of the authority shall receive any compensation in addition to that now authorized by law for any service they may render or for any duty they may perform in connection with the authority; provided, that the Lieutenant Governor and the Speaker of the House of Representatives shall receive for each day devoted to the business of the authority the same per diem compensation and allowance that would be paid to them for attending legislative sessions, but this special compensation and allowance shall not be allowed on days when the Lieutenant Governor and the Speaker of the House of Representatives are paid per diem compensation and allowance for attending legislative sessions. The herein provided for special compensation and allowance of the Lieutenant Governor and the Speaker of the House of Representatives shall be paid out of the moneys appropriated for the expenses of the Legislature in the same manner that the per diem compensation and allowance of legislators serving on interim committees are paid.

All proceedings had and done by the board of directors shall be reduced to writing by the secretary of the authority and recorded in a substantially bound book, which shall be kept in the office of the Secretary of State. Copies of such proceedings, when certified by the secretary of the authority, under the seal of the authority, shall be received in all courts as prima facie evidence of the matters and things therein certified.

(Acts 1967, No. 264, p. 746, §6.)

Section 33-17-7

Duties and obligations which may be undertaken.

The authority may undertake and discharge the duties and obligations set forth in this section as follows:

- (1) In connection with the waterway, the authority may do or cause to be done the following:
 - a. Construct, maintain and operate all highway bridges necessitated by the waterway and construct and maintain all highway relocations and alterations necessitated by the waterway;
 - b. Construct and maintain all alterations in sewer, water supply and drainage facilities necessitated by the waterway;

c. Assume any increased cost necessitated by the waterway in connection with maintaining and operating utility crossings.

It is the intention of the Legislature to make the scope of foregoing duties and obligations which may be undertaken by the authority commensurate with the corresponding requirements of local contribution and participation established by the River and Harbor Act of 1946, 60 Statutes at Large 634, 79th Congress, 2nd Session (1946), in accordance with House Document No. 486, 79th Congress, 2nd Session (1946).

(2) In connection with the flood control project, the authority may do or cause to be done the following:

- a. Provide all lands, easements and rights-of-way necessary for construction of the proposed improvements;
- b. Make all changes, additions and relocations in roads, highway bridges and utilities necessitated by the flood control project;
- c. Hold and save the United States free from all tort claims arising out of the construction of the proposed improvements;
- d. Undertake all proceedings, prosecutions and civil actions necessary to prevent encroachments in the improved channels of streams involved in the flood control project;
- e. Maintain all of the proposed improvements in accordance with regulations prescribed by the Secretary of the Army;
- f. Contribute in cash or equivalent work, in addition to the foregoing items, an amount to be determined by the Chief of Engineers of the United States Army as the cash contribution required of local interests for improvements made in Alabama; provided, that the amount contributed shall not exceed \$750,000.00.

It is the intention of the Legislature to make the scope of foregoing duties and obligations which may be undertaken by the authority commensurate with the corresponding requirements of local contribution and participation established by the Flood Control Act of 1958, 72 Statutes at Large 297, 85th Congress, 2nd Session (1958), in accordance with House Document No. 167, 84th Congress, 1st Session (1955).

(Acts 1967, No. 264, p. 746, §7.)

Section 33-17-8

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 and have civil actions brought against it 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 pleasure;

(4) To receive, take and hold by sale, gift, lease, devise or otherwise real and personal property of every kind and description, and to manage the same;

(5) To acquire by purchase, gift or the exercise of the power of eminent domain, or by any other lawful means, any property, whether real, personal or mixed, the acquisition of which is found by the board to be necessary or convenient to the authority in the carrying out of the purposes for which the authority is authorized to be organized, and to lease or convey any such property or to cause any such property to be leased or conveyed to the United States, the state, any county or municipality in the state, or to any agency, department or instrumentality of any of such political entities, or to any public or private corporation, individual or other private entity, or to grant to any of the aforesaid entities an option to lease or purchase any such property for specified rentals or for a specified purchase price, (i) for any purpose for which the authority is authorized to be organized or (ii) for the purpose of disposing of such property because such property is not needed in the direct operations of the authority or because such property, in the judgment of the board, can be developed or utilized to the greater benefit of the state and its citizens if it is so leased or conveyed by the authority to another entity or if an option to lease or purchase the same is granted by the authority to another entity; provided, that any lease or sale (or any option respecting the lease or sale) of any property of the authority to any entity other than the state or a public corporation that is an agency or instrumentality of the state shall be made or granted only for fair value and pursuant to a resolution of the board containing findings as to such fair value and as to the absence of the authority's need for the property or as to the public benefits to be achieved by disposition of the property; provided further, that any such leasing, sale or granting of an option to any county or municipality or any agency, department or instrumentality of any such political entity may be made at a private or public sale or by private negotiation as the board deems to be in the best interests of the state and its citizens; and provided further, however, that, unless the terms of any such lease provide that the net monetary proceeds therefrom must be applied for the improvement of the property to be leased, the net monetary proceeds received by the authority from any lease or sale of any such property and the net monetary proceeds received by the authority from the granting of an option to lease or purchase the same shall be paid into the State Treasury (i) to be used toward retirement of any bonds that may have been issued by the state or any instrumentality of the state and proceeds of which were used to pay for the acquisition of such property by the authority or for improvements to such property, or (ii) if no such bonds are outstanding, then for deposit into the general funds;

(6) To exercise the right of eminent domain as freely and completely as, and in the same manner that, the State of Alabama is empowered to exercise such right;

(7) To enter into contracts with the United States, the State of Alabama, counties and municipalities, with all agencies, departments and instrumentalities of such political entities, and with private individuals, firms, corporations and other persons for any purpose related to the authority's duties and obligations in connection with the waterway and the flood control project;

(8) To supervise the sale of general obligation bonds of the state subject to the provisions of Section 33-17-12 and to expend the proceeds of the said bonds in discharging its duties and obligations in connection with the waterway and the flood control project;

(9) 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 in connection with the sale of bonds;

(10) To appoint and employ an administrator and supporting staff with such duties and powers, for such terms, and at such salaries as the board of directors shall deem advisable;

(11) To enter into agreements with the Tennessee-Tombigbee Waterway Development authority for the performance by the administrative staff of that agency of administrative functions of the authority for such periods and on such terms as the board of directors shall deem advisable; and

(12) To delegate, subject to the provisions of Section 33-17-10, the performance of the authority's duties and obligations to the Highway Department, the State Docks Department, and any other public corporations, agencies and departments of the state, in such part, to such extent, and on such terms as the board of directors shall deem advisable and to turn over to such other public corporations, agencies and departments of the state any and all funds of the authority necessary to enable such other public corporations, agencies and departments to perform the duties and obligations of the authority delegated to them.

(Acts 1967, No. 264, p. 746, §8; Acts 1986, No. 86-393, p. 579, §1.)

Section 33-17-9

Contracts.

The aggregate monetary obligation that the authority may incur in connection with its contracts shall not at any time exceed the sum of

- (1) Any uncommitted or unencumbered moneys then appropriated to the authority by the Legislature, and
- (2) Any uncommitted or unencumbered proceeds of bonds available or to become available from bonds then authorized by the authority and approved by the Governor pursuant to Section 33-17-12.

No contract involving the expenditure of money, whether now or later, shall be approved or ratified by the board of directors unless the resolution approving or ratifying the same shall include a determination that there will be compliance with the preceding limitation when the amount of the obligation of the contract in question has been added to the already existing obligations of the authority. This determination by the board of directors shall be conclusive of the question of compliance.

All contracts of the authority for the construction, reconstruction, relocation, maintenance and operation of highways, roads and bridges, and work incidental or related thereto, and the acquisition of property necessary therefor, shall be in writing, shall be subject to the rules and regulations and shall be let under the supervision of the Highway Department, and shall be subject to approval by the Governor and by the Highway Department. All work provided for in any such contract shall be supervised by the Highway Department. All persons engaging in the supervision or performance of any work involving highways, roads and bridges that may be done by the authority without the award of a contract therefor shall be employees of the Highway Department.

All contracts of the authority for the construction, reconstruction or relocation of any facilities or structures and all purchases of equipment by the authority shall be made on the basis of competitive bidding in the manner and according to the procedures provided in Sections 39-2-1 through 39-2-13 and 41-16-20 through 41-16-32, and any other applicable statutes.

(Acts 1967, No. 264, p. 746, §9.)

Section 33-17-10

Delegation of duties, etc., to other public corporations, agencies and departments of state.

Any duties and obligations of the authority which shall be delegated by the board of directors of the authority to the Highway Department, the State Docks Department or any other public corporation, agency or department of the state shall be undertaken and discharged by the public corporation, agency or department to which such duties and obligations shall have been delegated; provided, that such a delegation shall not be effective and shall not release the authority from the duties and obligations proposed to be delegated nor impose any duties or obligations on the public corporations, agencies and departments to which a delegation shall have been made unless the Governor and the director, head or governing body of the public corporation, agency or department to which a delegation shall have been made shall approve such delegation in all respects; and, provided further, that the public corporation, agency or department shall at the time of such delegation be empowered by laws other than this chapter to perform duties and discharge obligations of the kind delegated and that this section shall not be construed to change the lawfully established nature and functions of public corporations, agencies and departments of the state.

(Acts 1967, No. 264, p. 746, §10.)

Section 33-17-11

Authority of State Docks Department.

In connection with the navigational use of the waterway, the State Docks Department is hereby authorized to provide and maintain suitable and adequate river and canal terminals in accordance with plans approved by the Secretary of the Army of the United States and the Chief of Engineers of the United States Army.

(Acts 1967, No. 264, p. 746, §11.)

Section 33-17-12

Bonds - Generally.

There are hereby authorized to be issued bonds of the state in aggregate principal amount not exceeding \$10,000,000.00. The bonds hereby authorized shall be general obligations of the state, and the full faith and credit of the state are hereby irrevocably pledged for the prompt and faithful payment of the principal of and the interest on the bonds.

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 fulfill the requirements of local contribution, participation and cooperation established by the United States in connection with the waterway and the flood control project. 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 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 one year after the date of the bonds of such series and the last of which installments shall mature not later than 20 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, as a whole or in part in the inverse order of the numbers of the bonds of that series. When each series of the bonds is issued, the maturities of the bonds of that series shall, to such extent as may be practicable, be so arranged that during each then succeeding fiscal year of the state the aggregate installments of principal and interest that will mature on all bonds that will be outstanding hereunder, immediately following the issuance of the bonds of that series, will be substantially equal; provided, that the determination by the authority that the requirements of this sentence have been complied with shall be conclusive of such compliance and the purchasers of any of the bonds and all subsequent holders thereof shall be fully protected by such determination.

None of the bonds shall be sold for less than their 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 commission 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, and also by publication in a newspaper published in the State of Alabama, each of which notices must be published 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. Subject to the provisions of this chapter, the authority may from time to time sell and issue refunding bonds for the purpose of refunding any matured or unmatured bonds of the authority then outstanding.

The bonds shall not be valid unless the Governor shall approve the terms and conditions under which the bonds were authorized to be issued by the board of directors of the authority. 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 be shown on any such bonds by a facsimile of his signature printed or otherwise reproduced thereon when authorization thereof is contained in the said approval signed by him.

The bonds shall be executed in the name of the state by the Governor, and the Great Seal of the State, or a facsimile thereof, shall be affixed, printed or otherwise reproduced thereon and attested by the Secretary of State. A facsimile of the signature of either, but not of both, of said officials may be printed or otherwise reproduced on any of the bonds in lieu of being manually inscribed 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 facsimile of 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 they 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 1967, No. 264, p. 746, §12.)

Section 33-17-13

Bonds - Disposition of proceeds; investments.

The authority shall pay out of the proceeds from the sale of any of the bonds all expenses which the board of directors may deem necessary or advantageous in connection with the sale and issuance of the bonds. 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 state treasury, shall be carried in a special fund to be designated the Tombigbee Valley Development Authority Fund, and shall be subject to be drawn on by the authority, upon approval by the Governor, but solely for the purpose of discharging the duties and obligations undertaken by the authority in connection with the waterway and the flood control project. The proceeds from the sale of any refunding bonds remaining after the expense of their issuance shall be used only for the purpose of refunding the principal of outstanding bonds issued hereunder and of paying any premium that may be necessary to be paid in order to redeem or retire the bonds to be refunded.

Any portion of the proceeds derived from the sale of any of the bonds which the board of directors of the authority 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 authority, be invested by the State Treasurer 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 authority, be sold or otherwise converted by the state treasurer into cash. The income derived from any such investments shall be added to and treated as a part of the Tombigbee Valley Development Authority Fund.

(Acts 1967, No. 264, p. 746, §13.)

Section 33-17-14

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

Out of any funds in the State Treasury that may be available for such purpose, the State Treasurer is authorized and directed to pay the principal of and interest on the bonds at the respective maturities of the said principal and interest, and he is further authorized and directed to set up and maintain appropriate records pertaining thereto.

(Acts 1967, No. 264, p. 746, §14.)

Section 33-17-15

Dissolution of authority.

At any time when no duties or obligations of the authority shall remain to be discharged, or when all duties and obligations remaining to be discharged shall have been effectively delegated to public corporations, agencies and departments of the state in accordance with Section 33-17-10, the authority may be dissolved upon the filing with the Secretary of State of an application for dissolution, which shall be subscribed by each of the members of the authority and which shall be sworn to by each such member before an officer authorized to take acknowledgments to deeds. Upon the filing of said application for dissolution, the authority shall cease and any property owned by it at the time of its dissolution shall pass to the state. The Secretary of State shall file and record the application for dissolution in an appropriate book of record in his office, and shall make and issue, under the Great Seal of the State, a certificate that the authority is dissolved, and shall record the said certificate with the application of dissolution.

(Acts 1967, No. 264, p. 746, §15.)