

The Code of Alabama 1975

Title 22 HEALTH, MENTAL HEALTH, AND ENVIRONMENTAL CONTROL.

Chapter 23A ALABAMA WATER SYSTEM ASSISTANCE AUTHORITY.

Section 22-23A-1

Definitions.

The following words and phrases, whenever used in this chapter, shall have the following respective meanings unless the context clearly indicates otherwise:

(1) **AUTHORITY.** The corporation organized pursuant to the provisions of this chapter as a public corporation, agency and instrumentality of the state and known as the "Alabama Water System Assistance Authority."

(2) **AUTHORIZING RESOLUTION.** A resolution or order adopted by the board of directors of the authority authorizing the issuance of bonds by the authority pursuant to this chapter.

(3) **BOARD OF DIRECTORS.** The board of directors of the Alabama Water System Assistance Authority.

(4) **BONDS.** The "Water System Assistance Bonds," notes or obligations or other evidences of indebtedness issued by the authority under the provisions of this chapter.

(5) **BOND PROCEEDS.** The direct proceeds of sale of bonds or notes, and the income derived from the investment of such proceeds.

(6) **COMMUNITY WATER SYSTEM.** A public water system as defined in Section 22-23-31(12).

(7) **DEPARTMENT.** The Department of Economic and Community Affairs or any successor.

(8) **PROJECT(S).** Research and development, site purchase and preparation, initial construction, expansion or renovation of water supply facilities.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §1.)

Section 22-23A-2

Legislative intent.

It is the intent of the Legislature acting by and through the authority and the department to aid, assist and coordinate existing community water systems in locating, developing and sustaining adequate potable water supplies for the citizens of this state and to this end to authorize the incorporation of a state authority with power and authority to issue water system assistance bonds, as may be necessary, from time to time, to finance community water system projects. Further it is the intent of the Legislature that community water systems shall not be required to participate in programs authorized by this chapter.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §2.)

Section 22-23A-3

Alabama Water System Assistance Authority; how created; members; Water Assistance Legislative Oversight Committee.

THIS SECTION WAS AMENDED BY ACT 2018-152 IN THE 2018 REGULAR SESSION, EFFECTIVE JUNE 1, 2018. THIS IS NOT IN THE CURRENT CODE SUPPLEMENT.

The Governor, the Director of the Department of Economic and Community Affairs, the Director of Finance, one member of the House of Representatives appointed by the Speaker, and one member of the Senate appointed by the Lieutenant Governor may become a public corporation to be known as the Alabama Water System Assistance Authority with the power and authority hereinafter provided, by proceeding according to the provisions of this chapter.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §3; Act 2018-152, §3.)

Section 22-23A-4

Water Supply Assistance Fund established; deposits; expenditures; investments.

There is hereby established a special fund within the State Treasury to be known as the "Water Supply Assistance Fund." Proceeds from the sale of bonds issued by the authority shall be deposited in this special "Water Supply Assistance Fund." Money in such fund shall be expended in accordance with adopted regulations and policies of the authority and may be used to provide a loan or loans for community water system supply projects or to refinance debt of community water systems or to secure principal and interest on bonds issued by the authority. Money not currently needed for the operation of the Water Supply Assistance Fund may be invested, from time to time, by the board and all interest earned on such investments shall be credited to the Water Supply Assistance Fund.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §4.)

Section 22-23A-5

Application to become corporation; filing and recordation; certificate of incorporation; officers; board of directors; record of proceedings.

(a) To become a corporation, the Governor, the director of the department, the Director of Finance, and the two legislators appointed to the authority in Section 22-23A-3 shall present to the Secretary of State of Alabama 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 commission evidencing each applicant's right to office;
- (2) The date on which each applicant was inducted into office and the term of office of each of the applicants;
- (3) The name of the proposed corporation, which shall be the "Alabama Water System Assistance Authority";

- (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 any other laws of the state. 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.

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, 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 work done in connection with the incorporation or dissolution of the authority.

(b) 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 director of the department shall be the vice-president thereof, and the Director of Finance shall be the secretary thereof. The members of the authority shall constitute all the members of the board of directors of the authority, and any three members of the said 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 such office by reasons of death, resignation, expiration of his term of office or for any other reasons, 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 draw any salary, in addition to that now authorized by law, for any service he may render or for any duty he may perform in connection with the authority.

(c) All proceedings had and done by the board of directors shall be reduced to writing by the secretary of the authority, shall be signed by at least three members of the authority 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, under the seal of the authority, shall be received in all courts as prima facie evidence of the matters and things therein certified.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §5.)

Section 22-23A-6

Powers of authority.

- (a) The authority shall have the following powers, among others specified by this chapter:
 - (1) To have succession in its corporate name until the principal of and interest on all bonds issued by it shall have been fully paid;
 - (2) To sue and be sued and to prosecute and defend, at law and in equity, in any court having jurisdiction of the subject matter and of the parties thereto;
 - (3) To have and to use a corporate seal and to alter such seal at pleasure;

- (4) To establish a fiscal year;
 - (5) To construct and operate or lease to or from any community water system;
 - (6) To execute agreements effectively obligating the authority to agree to pay and to pay such portion of the estimated reasonable cost of the project of each community water system as may be required to meet the water supply goals of the state;
 - (7) To issue bonds or other obligations provided such proceeds are deposited in a special "Water Supply Assistance Fund" within the State Treasury;
 - (8) To enter into such agreements in connection with the sale of its bonds as the board shall determine, including arrangements for letters of credit, bond insurance or other credit enhancement devices, provided that no such arrangement shall obligate funds of the authority other than as provided in this chapter;
 - (9) To appoint and employ such attorneys, financial advisors, agents and employees as the business of the authority may require; and
 - (10) To promulgate and establish guidelines and procedures relating to loans or grants by the authority including but not necessarily limited to limits on the amounts of such loans or grants and eligibility requirements for such loans or grants.
- (b) The authority shall use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards.
- (c) The Governor shall deliver an annual report of the authority to the Legislature.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §6.)

Section 22-23A-7

Bonds - Authorization to issue and sell; security for payment.

For the purpose of providing funds for the authority to make loans to community water systems for a project or projects, or to refinance debt of community water systems or for the payment of obligations incurred or temporary loans made for any of said purposes, the authority is hereby authorized, from time to time, to issue and sell its bonds or other evidences of indebtedness. Such bonds may be issued in one or more series; shall be in such form and denominations and of such terms and maturities, not exceeding 35 years from the date of issue of each series; shall bear such rate or rates of interest, payable and evidenced in such manner; may contain such provisions for registration or for redemption prior to maturity; and may contain such other provisions not inconsistent herewith, all as may be provided by the authorizing resolution. As security for the payment of the principal of and interest on its bonds, the authority is authorized to pledge, transfer and assign any obligations of each community water system, payable to the authority and the security for such obligation.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §7.)

Section 22-23A-8

Bonds - Procedure for sale.

The bonds and other evidences of indebtedness of the authority may be sold at such time or times as the board of directors may deem advantageous. The bonds shall be sold by competitive sale unless because of market conditions and/or credit structures such a sale would be disadvantageous to the state. In the event such a determination is made by the board of directors, the bonds shall be sold through a negotiated sale and the managing underwriter(s) shall be selected based on criteria, which shall include but not be limited to, experience, ability, responsiveness, and fee structure. Said criteria shall be established by the board of directors and shall be included in a request for proposals for the managing underwriter(s). Bonds sold at public sale shall be awarded to the bidder whose bid reflects the lowest true interest cost to the authority for the bonds being sold, computed to their respective absolute maturities; provided, that if no bid acceptable to the authority is received, it may reject all bids and readvertise. Notice of any public sale shall be given by such publication or by such distribution of notices of sale or both, as the board of directors may determine subject to state law. The authority may pay from the proceeds of the sale of its bonds all expenses, including publication and printing charges, attorney's fees, financial advisory fees, and other expenses which the board of directors may deem necessary or advantageous in connection with the authorization, advertisement, sale, execution and issuance thereof.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §8.)

Section 22-23A-9

Loans in anticipation of bond issuance; refund of local funds provided by community water system.

In anticipation of the issuance of bonds, the authority may borrow such sums as may be needed for any of the aforesaid purposes and to obligate itself by certificate or promissory note, bearing interest at a rate or rates to be specified by the authority, and maturing within 18 months from the date of such certificate or promissory note. Such certificates or promissory notes shall be payable solely from the proceeds of the bonds of the authority and from the funds from which such bonds are payable. In the event that authority funds are not available for a loan for a project when application is made, in order to accelerate the completion of any project, a community water system may, with the approval of the authority, obligate such community water system to provide local funds to pay that portion of the cost of the project which the authority will make available by loan, and the authority shall refund the amount expended on its behalf by such water system.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §9.)

Section 22-23A-10

Refunding bonds.

The authority may, from time to time, issue and sell its refunding bonds for the purpose of refunding any matured or unmatured bonds of the authority at the time outstanding and any premiums necessary to be paid to redeem any bonds so to be refunded. The holders of such refunding bonds shall be subrogated and entitled to all priorities, rights and pledges to which the bonds refunded thereby were entitled.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §10.)

Section 22-23A-11

Establishment of dedicated source of revenue by community water system for funding of loan by authority; powers of water system; default; repayment guidelines; project accounts.

(a) In order to provide for the funding of the loan by the authority for a project to a community water system, such water system shall establish a dedicated source of revenue to repay only the monies received from the authority and to provide for operation, maintenance and equipment replacement expenses. Such water system is hereby authorized and empowered, any existing statute to the contrary notwithstanding, to do and perform any one or more of the following:

(1) To obligate itself to pay to the authority at periodic intervals a sum sufficient to provide bond debt service with respect to the bonds of the authority issued to fund the loan for such project and to pay over such debt service to the account of the project for deposit to the Water Supply Assistance Fund;

(2) To levy, collect and pay over to the authority and to obligate itself to continue to levy, collect and pay over to the authority the proceeds of any one or more of the following:

a. Any water supply service fee or charge; and

b. Other revenue available to the community water system;

(3) To undertake and obligate itself to pay its contractual obligation to the authority solely from the proceeds from any one or more of the sources specified in subdivision (2) above, or to impose upon itself a general obligation pledge, if appropriate, to the authority additionally secured by a pledge of any one or more of such sources; provided, however, that all members of said community water system shall be notified of the proposed contract with the authority, specifically stating the obligations and pledge of revenue and other terms and conditions of said contract, and provided further that a formal meeting of the community water system be held and a vote be taken prior to the final agreement with the authority being made;

(4) To obligate itself to continue to levy and collect such revenues, fees and charges as shall equal not less than 110 percent nor more than 125 percent, as determined by the authority of the maximum principal and interest maturing and coming due in any one year on the bonds issued by the authority to fund a loan for the project; and

(5) To enter into such agreements, to perform such acts and to delegate such functions and duties as its governing body shall determine to be necessary or desirable to enable the authority to fund a loan to the community water system to aid it in the construction or acquisition of a project.

(b) In the event of default, the authority may utilize all available remedies under state law.

(c) All loans made by the authority shall provide that repayment of such loans shall be made in accordance with guidelines for such repayment made by the authority.

(d) The recipients of loans shall maintain project accounts in accordance with generally accepted government accounting standards.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §11.)

Section 22-23A-12

Investment in bonds of authority.

The State Treasurer may invest any idle or surplus moneys of the state in bonds of the authority. The governing body of any county or municipality is authorized in its discretion to invest any idle or surplus money held in its treasury in bonds of the authority. Such bonds shall be legal investments for executors, administrators, trustees and other fiduciaries, unless otherwise directed by the court having jurisdiction of the fiduciary relation or by the document that is the source of the fiduciary's authority, and for savings banks and insurance companies organized under the laws of the state.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §12.)

Section 22-23A-13

Taxation exemption.

All bonds or other indebtedness of the authority and the coupons applicable thereto and the income therefrom and all projects or parts thereof and all assets of the authority shall be forever exempt from any and all taxation in the state.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §13.)

Section 22-23A-14

Interest exemption.

All securities issued by the authority shall be exempt from the laws of the state governing usury or prescribing or limiting interest rates, including, but without limitation, the provisions of Chapter 8 of Title 8.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §14.)

Section 22-23A-15

Purpose of chapter.

This chapter is intended to aid the state through the furtherance of its purposes by providing an appropriate and independent instrumentality of the state with full and adequate powers to fulfill its functions. Except as expressly provided in this chapter, no proceeding, notice or approval shall be required for the incorporation of the authority, the purchase of any loans or the making of any loan to a community water system, the issuance of any bonds, or the exercise of any other of its powers by the authority.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §15.)

Section 22-23A-16

Bonds and coupons deemed negotiable instruments.

All bonds issued by the authority, while registered, shall be construed to be negotiable instruments even though they are payable from a limited source. All coupons applicable to any bonds issued by the authority, while the applicable bonds are registered as to both principal and interest, shall likewise be construed to be negotiable instruments although payable from a limited source.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §16.)

Section 22-23A-17

Bonds, notes and certificates not debt of state.

All bonds, notes and certificates issued by the authority shall be solely and exclusively obligations of the authority, payable solely from the revenues, income, fees or charges which may pursuant to the provisions of this chapter, be pledged to the payment thereof, and no such bonds, notes or certificates shall create an obligation or debt of the state.

(Acts 1988, 1st Ex. Sess., No. 88-857, p. 338, §17.)