

The Code of Alabama 1975

Title 22 HEALTH, MENTAL HEALTH, AND ENVIRONMENTAL CONTROL.

Chapter 34 WATER POLLUTION CONTROL AUTHORITY.

Section 22-34-1

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 Pollution Control 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 or by a public body.
- (3) **BOARD OF DIRECTORS.** The board of directors of the Alabama Water Pollution Control Authority.
- (4) **BONDS.** The "Water Pollution Control Bonds," notes or obligations or other evidence 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) **DEPARTMENT.** The Department of Environmental Management or any successor.
- (7) **FEDERAL CLEAN WATER ACT.** The Act of Congress so designated (P.L. 92-500) approved October 18, 1972 (33 U.S.C. §1251 et seq.), as amended from time to time.
- (8) **PROJECT.** The wastewater treatment facilities of a public body to consist of one or more treatment facilities designed to prevent the discharge of untreated or inadequately treated sewage, industrial wastes or other wastes, for purposes of compliance with requirements of the Federal Clean Water Act.
- (9) **PUBLIC BODY.** Includes each county, state agency, incorporated city or town, or their instrumentality created by or pursuant to state law and having jurisdiction over the disposal of sewage, industrial wastes, or other wastes. It includes also a combination of two or more of the foregoing having such jurisdiction.

(Acts 1987, No. 87-226, p. 317, §1.)

Section 22-34-2

Legislative intent.

It is the intent of the Legislature by the passage of this chapter to enable the state acting by and through the authority and the department to aid in the prevention and control of water pollution, to provide state

financial aid to public bodies for the prevention and control of water pollution, and to these ends to authorize the incorporation of a state authority with power to issue Water Pollution Control Bonds; and to agree to pay and to pay such portion of the estimated reasonable cost of the projects of each public body as may be required to meet the water quality goals of the Federal Clean Water Act, as amended.

(Acts, 1987, No. 87-226, p. 317, §2.)

Section 22-34-3

Revolving fund established; use of funds; administration of fund; annual report.

(a) There is hereby established the Water Pollution Control Revolving Loan Fund, which shall be maintained in perpetuity and operated by the department as agent for the authority for the purposes stated herein. Grants from the federal government or its agencies allotted to the state for capitalization of the revolving loan fund, state matching funds where required, and loan principal, interest, and penalties shall be deposited as required by the terms of the federal grant directly in the revolving loan fund. Money in the revolving loan fund shall be expended in a manner consistent with terms and conditions of the federal capitalization grants and may be used to provide loans for the construction or rehabilitation of public wastewater treatment facilities; to secure principal and interest on bonds issued by the authority if the proceeds of such bonds are deposited in the revolving loan fund to the extent provided in the terms of the federal grant; to purchase debt incurred by public bodies for wastewater treatment projects; to fund other programs which the federal government may allow in the future through its grants; to fund the administrative expenses of the department relating to the responsibilities and requirements of this chapter; and to provide for any other expenditure consistent with the federal grant program and state law. Money not currently needed for the operation of the revolving loan fund or otherwise dedicated may be invested and all interest earned on such investments shall be credited to the revolving loan fund.

(b) The revolving loan fund shall be administered by the department, as agent for the authority, which is authorized to establish procedures and adopt such regulations as may be required to administer the revolving loan fund program in accordance with the Federal Clean Water Act and state law and to enter into contracts and other agreements in connection with the operation of the revolving loan fund, including but not limited to, contracts and agreements with federal agencies, public bodies, the authority, and other parties to the extent necessary or convenient for the implementation of the revolving loan fund program. Acting as agent for the authority, the department shall maintain full authority for the operation of the revolving loan fund in accordance with applicable federal and state law and loan recipients will be on the state needs list or otherwise satisfy Clean Water Act requirements. The department shall provide an annual report on the revolving loan fund program to the United States Environmental Protection Agency as required by the Clean Water Act and to the Governor.

(Acts 1987, No. 87-226, p. 317, §3.)

Section 22-34-4

Water pollution control authority established; membership.

The Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Director of the Department of Environmental Management, and the Director of Finance may become a public

corporation to be known as the Alabama Water Pollution Control Authority with the power and authority hereinafter provided, by proceeding according to the provisions of this chapter.

(Acts 1987, No. 87-226, p. 317, §4.)

Section 22-34-5

Application for corporation; contents; officers; board of directors; record of proceedings.

(a) To become a corporation, the Governor, the Lieutenant Governor, the Speaker of the House, the director of the department and the Director of Finance 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 Pollution Control 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 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 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 1987, No. 87-226, p. 317, §5.)

Section 22-34-6

General powers.

(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 an 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 acquire in any manner and to hold title to or leasehold interests in real and personal property and to sell, convey or lease the same for purpose of carrying out its functions and duties hereunder;

(6) To construct and operate or lease to or from any public body and project;

(7) 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 public body as may be required to meet the water quality goals of the Clean Water Act and the state;

(8) To issue bonds or other obligations provided such proceeds are deposited in the revolving loan fund;

(9) 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; and

(10) To appoint and employ such attorneys, financial advisors, agents and employees as the business of the authority may require.

(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 1987, No. 87-226, p. 317, §6.)

Section 22-34-7

Authority authorized to issue bonds.

For the purpose of providing funds for the authority to make loans to public bodies for a project or projects, 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 25 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 public body, payable to the authority and the security for such obligation.

(Acts 1987, No. 87-226, p. 317, §7.)

Section 22-34-8

Sale of bonds.

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 may be sold at private or public sale. Bonds sold at public sale shall be awarded to the bidder whose bid reflects the lowest net 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 1987, No. 87-226, p. 317, §8.)

Section 22-34-9

Certificates or notes in anticipation of bonds.

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, the public body may, with the approval of the authority, obligate such public body 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 public body.

(Acts 1987, No. 87-226, p. 317, §9.)

Section 22-34-10

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 1987, No. 87-226, p. 317, §10.)

Section 22-34-11

Dedicated source of revenue to repay moneys; default; accounting standards.

(a) In order to provide for the funding of the loan by the authority for a project to the public body, such public body shall establish a dedicated source of revenue to repay the moneys received from the authority and to provide for operation, maintenance and equipment replacement expenses. Such public body 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 revolving loan 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 sewer or waste disposal service fee or charge;

b. Any licenses, permits, taxes and fees;

c. Any special assessment on the property drained, served or benefitted by the project; and

d. Other revenue available to the public body.

(3) To undertake and obligate itself to pay its contractual obligation 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 to the authority additionally secured by a pledge of any one or more of such sources;

(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 public body 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 begin not later than one year after completion of construction of the project for which such loan was made and shall be repaid in full no later than 20 years after completion of such construction.

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

(Acts 1987, No. 87-226, p. 317, §11.)

Section 22-34-12

Investment in authority bonds.

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 1987, No. 87-226, p. 317, §12.)

Section 22-34-13

Tax exempt.

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 1987, No. 87-226, p. 317, §15.)

Section 22-34-14

Exempt from usury laws.

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 1987, No. 87-226, p. 317, §16.)

Section 22-34-15

No proceeding, notice or approval required.

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 public body, the issuance of any bonds, or the exercise of any other of its powers by the authority.

(Acts 1987, No. 87-226, p. 317, §17.)

Section 22-34-16

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 1987, No. 87-226, p. 317, §18.)

Section 22-34-17

Obligations solely of authority.

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. Provided, however, that an agreement by the authority to make a loan to a public body for a project shall impose an obligation on the state to make such loan from any funds which are then or may thereafter become available regardless of the funding of the loan by the public body and subject only to any terms and conditions set forth in such agreement.

(Acts 1987, No. 87-226, p. 317, §19.)