

## Chesapeake Water Authority

Created: 1970 Acts of Assembly, c. 743.

§ 1. This may be cited as the "Chesapeake Water Authority Act." (1970, c. 743)

§ 2. There is hereby created and constituted a political subdivision of the Commonwealth to be known as the Chesapeake Water Authority. The exercise by the Authority of the powers conferred by this act in the construction, operation and maintenance of a project authorized by this act shall be deemed and held to be in the performance of an essential governmental function. The Authority shall consist of three members, unless increased as provided in § 2.1 hereof, elected by the governing body of his city, but not from the membership thereof, and shall serve for the term of four years.

The initial terms of office shall extend from the organizational meeting of the Authority, until its annual meetings quadrennially thereafter. All vacancies in the membership of the Authority, whether caused by expiration of term of office, death, resignation or otherwise, shall be filled by the governing body of the city. Any member of the Authority may be elected to succeed himself. Each member, duly appointed shall hold office until his successor shall be appointed and duly qualified. Any member, appointed to fill an unexpired term, shall serve only for the term of the member he or she replaced.

The Authority shall elect one of its members as chairman and another member as vice-chairman, both of whom shall be elected for a term of one year, the first chairman and vice-chairman to serve from the organizational meeting of the Authority until the next annual meeting or until their successors are elected and qualified. Subsequent chairmen and vice-chairmen shall be elected at the annual meeting of the Authority for a term of one year. It shall also elect a secretary and treasurer who does not necessarily have to be a member of the Authority and, if not a member, he or she shall have no voting rights and shall be elected to serve for such term as may be determined by the Authority. If a member of the Authority is elected to serve as secretary and treasurer, he or she shall be elected in the same manner and for the same term as the chairman and vice-chairman. No member of the Authority shall hold more than one office except that of secretary and treasurer. Two members of the Authority eligible to vote shall constitute a quorum, unless the membership of the Authority is increased as provided in § 2.1 hereof, in which case a quorum shall constitute a majority of the members of the Authority. A majority of the quorum is empowered to exercise all the rights and perform all the duties of the Authority and no vacancy on the Authority shall impair the right of the quorum to act. The members of the Authority shall serve without compensation except that they shall be reimbursed for actual expenses incurred in the performance of their duties. The Authority shall make rules and regulations for its own government. It shall have perpetual existence. (1970, c. 743)

§ 2.1. Any county or city may, with the approval of its governing body, and with the approval of the governing body of the city in which the Authority is created, join and participate in the Authority in the exercise of the powers and duties conferred by this act. In such event, the membership of the Authority shall be increased so that such county or city shall elect three members of the Authority in the same manner and for the same terms as provided in § 2. (1970, c. 743)

§ 3. As used in this act, the following words and terms shall have the following meanings:

(a) The word "Authority" shall mean the Chesapeake Water Authority created in § 2 of this act.

(b) The word "project" shall be deemed to mean and include the acquisition, construction, equipping, maintenance and operation of a water system, water mains and the usual facilities related thereto, and extensions and improvements of such facilities, acquiring the necessary property therefor, both real and personal, and the lease and sale of any part or all of such facilities, including real and personal property, so as to assure the efficient and proper development, maintenance and operation of such facilities and areas, deemed by the Authority to be necessary, convenient or desirable.

(c) The term "cost of the project" shall embrace the cost of construction, the cost of all lands, properties, rights, easements and franchises acquired and the cost of all conveyances in fee simple of the Authority's title thereto and leases thereof, the cost of preparing the land, including the installation of storm and sanitary sewers, the cost of all machinery, equipment and furnishings related to the operation of any project, financing charges, interest prior to and during construction, and for six months after completion of construction, cost of engineering, fiscal and legal expenses, and other expenses necessary or incident to determining the feasibility or practicability of the project, administrative expenses and such other expenses as may be necessary or incident to the financing herein authorized, and the cost of placing any project in operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the "cost of the project" and may be paid or reimbursed as such out of any funds of the Authority, including the proceeds of any revenue bonds issued under the provisions of this act for any such project or projects.

(d) The word "bonds" or the words "revenue bonds" shall mean revenue bonds or revenue refunding bonds of the Authority issued under the provisions of this act.

(e) The word "owner" shall include all individuals, copartnerships, associations or corporations and also municipalities, political subdivisions and all public agencies and instrumentalities having any title or interest in any property, rights, easements and interests authorized to be acquired by this act.

(f) Any project shall be deemed "self-liquidating" if, in the judgment of the Authority, the revenues and earnings to be derived by the Authority therefrom and all properties used, leased and sold in connection therewith will be sufficient to pay the principal and interest of the revenue bonds which may be issued to finance, in whole or in part, the cost of such project or projects. (1970, c. 743)

§ 4. The Authority shall have powers:

(a) To have a seal and alter the same at pleasure;

(b) To acquire by gift, purchase, lease or otherwise, and to hold, lease and dispose of real and personal property of every kind and character for its corporate purposes;

(c) To appoint, select and employ officers, agents and employees, including engineering and construction experts, fiscal agents and attorneys, and fix their respective compensations;

(d) To make contracts, leases and to execute all instruments necessary or convenient, including contracts for construction of projects and leases of projects or contracts with respect to the use of projects which it causes to be erected or acquired, and to dispose by conveyance of its title in fee simple of real and personal property of every kind and character, and any and all persons, firms and corporations, all cities, towns and counties, and any and all political subdivisions,

departments, institutions or agencies of the State are hereby authorized to enter into contracts, leases or agreements with the Authority upon such terms and for such purposes as they deem advisable;

(e) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, furnish, operate and manage projects, as hereinabove defined, the cost of any such project to be paid in whole or in part from the proceeds of revenue bonds or other funds of the Authority or from such proceeds or other funds made available to the Authority;

(f) To accept loans and/or grants of money or materials or property of any kind from the United States of America or any agency or instrumentality thereof, upon such terms and conditions as the United States of America or such agency or instrumentality, may impose;

(g) To accept loans and/or grants of money or materials or property of any kind from the State of Virginia or any agency or instrumentality or political subdivision thereof, upon such terms and conditions as the State of Virginia or such agency or instrumentality or political subdivision may impose;

(h) To borrow money for any of its corporate purposes and to execute evidences of such indebtedness and to secure the same and to issue negotiable revenue bonds payable solely from funds pledged for that purpose, and to provide for the payment of the same and for the rights of the holders thereof;

(i) To exercise any power usually possessed by private corporations performing similar functions, which is not in conflict with the Constitution and laws of this State;

(j) The Authority and any trustee acting under any trust indenture, are specifically authorized from time to time to sell, lease, grant, exchange or otherwise dispose of any surplus property, both real and personal, or interest therein not required in the normal operation of and usable in the furtherance of the purpose for which the Authority was created, except as such right and power may be limited as provided in § 10 hereof;

(k) To do all things necessary or convenient to carry out the powers expressly given in this act. (1970, c. 743)

§ 5. (a) The Authority is hereby authorized and empowered to acquire by purchase solely from funds provided under the provisions of this act, such lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands as it may deem necessary or convenient for the construction and operation of the project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof.

All public agencies and the commissions of the Commonwealth, with the approval of the Governor, notwithstanding any contrary provisions of law, are hereby authorized and empowered to lease, lend, grant or convey to the Authority at its request upon such terms and conditions as may be mutually agreed upon, without the necessity for any advertisement, order of court or other action or formality, any real property which may be necessary or convenient to the effectuation of the authorized purposes of the Authority, including public highways and other real property already devoted to public use.

(b) The Authority is authorized and empowered to acquire by the exercise of the power of eminent domain limited to the definition of "project" as set forth herein, any lands, property, rights, rights-of-way, franchises, easements and other property, including parts thereof or rights therein, located in any city or county participating in the Authority and not owned by any city or county not participating in the Authority, of any person, copartnership, association, public service, public utility or other corporation, or of the

county, deemed necessary or convenient for the construction or the efficient operation of the project or necessary in the restoration, replacement or relocation of public or private property damaged or destroyed, whenever a reasonable price cannot be agreed upon or whenever the Authority cannot agree on the terms of purchase or settlement with the owner or owners because of the incapacity of such owner or owners or because of the inability to agree on the compensation to be paid or other terms of settlement or purchase, or because such owner or owners are nonresidents of the Commonwealth, or are unknown, or are unable to convey valid title to such property. Such proceedings shall be in accordance with and subject to the provisions of any and all laws of the Commonwealth applicable to the exercise of the power of eminent domain in the same manner as provided in Chapter 1.1 of Title 25, and the provisions of such chapter shall apply to proceedings brought hereunder mutatis mutandis. This Authority shall not have the power of eminent domain as to any property owned by the cities of Norfolk and Portsmouth.

The acquisition of any such property by condemnation or by the exercise of the power of eminent domain shall be and is hereby declared to be a public use of such property.

(c) Title to any property acquired by the Authority shall be taken in the name of the Authority.

(d) In any eminent domain proceedings the court having jurisdiction of the suit, action or proceeding may make such orders as may be just to the Authority and to the owners of the property to be condemned and may require an undertaking or other security to secure such owners against any loss or damage by reason of the failure of the Authority to accept and pay for the property, or by reason of the taking of property occupied by such owners, but neither such undertaking or security nor any act or obligation of the Authority shall impose any liability upon the Commonwealth or upon any county, or other political subdivision of the Commonwealth.

(e) If the owner, lessee or occupier of any property condemned or otherwise acquired shall refuse to remove his property therefrom or give up possession thereof, the Authority may proceed to obtain possession in any manner provided by law. (1970, c. 743)

§ 6. The Authority is hereby authorized to provide by resolution for the issuance, at one time or from time to time, of revenue bonds of the Authority for the purpose of paying all or any part of the cost of the project. The principal of and the interest on such bonds shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at such rate or rates as shall be fixed by the Authority, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority; at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bond and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any other provision of this act or any recitals in any bonds issued under the provisions of this act,

all such bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or negotiated sale, and for such price, as it may determine will best effect the purposes of this act.

The proceeds of the bonds shall be used solely for the payment of the cost of the project, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this act without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this act. (1970, c. 743)

§ 7. In the discretion of the Authority any bonds issued under the provisions of this act may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the tolls and other revenues to be received, but shall not convey or mortgage the project or any part thereof. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the project, the rates of toll or other charges to be charged, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the

provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the project. (1970, c. 743)

§ 8. The Authority is hereby authorized to fix, revise and charge for the use of the services furnished by the project and to contract with any person, partnership, association or corporation desiring the use of any part thereof, including the right-of-way adjoining the project for placing thereon telephone, telegraph, electric light or power lines, and to fix the terms, conditions, rents and rates of charges for such use. Such charges shall be so fixed and adjusted in respect of the aggregate of the charges from the project as to provide a fund sufficient with other revenues, if any, to pay (a) the cost of maintaining, repairing and operating such project and (b) the principal of and interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. The revenues derived from the project, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution or any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or 1 of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another. (1970, c. 743)

§ 9. All moneys received pursuant to the provisions of this act, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this act. The Authority shall, in the resolution authorizing the bonds or in the trust agreement securing such bonds, provide for the payment of the proceeds of the sale of the bonds and the revenues to be received by a trustee, which shall be any trust company or bank having the powers of a trust company within or without the Commonwealth, which shall act as trustee of the funds, and hold and apply the same to the purposes of this act, subject to such regulations as this act and such resolution or trust agreement may provide. The trustee may invest and reinvest such funds in such securities as may be provided in the resolution authorizing the bonds or in the trust agreement securing such bonds. (1970, c. 743)

§ 10. Any holder of bonds issued under the provisions of this act or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given, may be restricted by such trust agreement, may either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce, any and all rights under the laws of the Commonwealth or granted by this act or under such trust agreement or the resolution authorizing the issuance of such bonds and may enforce and compel the performance of all duties required by this act or by such

agreement or resolution to be performed by the Authority or by any officer or agent thereof including the fixing, charging and collection of such charges. (1970, c. 743)

§ 11. The exercise of the powers granted by this act shall be in all respects for the benefit of the inhabitants of the Commonwealth, for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience and prosperity, and as the operation and maintenance of the project by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon the project or any property acquired or used by the Authority under the provisions of this act or upon the income therefrom; and the bonds issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any municipality, county or other political subdivision thereof. (1970, c. 743)

§ 12. The Authority is hereby authorized to provide by resolution for the issuance of its revenue refunding bonds for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Authority, for the additional purpose of constructing improvements, extensions or enlargements of the project. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same, shall be governed by the provisions of this act insofar as the same may be applicable. (1970, c. 743)

§ 13. Without limiting the generality of any provisions of this act, the general purpose of the Authority is declared to be that of acquiring, constructing, equipping, maintaining and operating a water system, water mains incident thereto and the usual facilities appertaining to such undertakings; the extension and improvement of such facilities; acquiring the necessary property therefor, both real and personal, with the right to contract for the use of or to lease or sell any or all of such facilities, including real property, and to do any and all things deemed by the Authority necessary, convenient and desirable for and incident to the efficient and proper development and operation of such types of undertakings. (1970, c. 743)

§ 14. It shall be the duty of the Authority to prescribe rules and regulations for the operation of the project or projects constructed under the provisions of this act. (1970, c. 743)

§ 15. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing. (1970, c. 743)

§ 16. This act, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes thereof. (1970, c. 743)

§ 17. The provisions of this act are severable and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included therein. (1970, c. 743)

§ 18. All other general or special laws inconsistent with any provision of this act are hereby declared to be inapplicable to the provisions of this act. (1970, c. 743)