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CHAPTER 23.

JOINT MUNICIPAL ELECTRIC POWER AND ENERGY ACT

**SECTION 6‑23‑10.** Short title.

This chapter may be cited as the "Joint Municipal Electric Power and Energy Act".

HISTORY: 1978 Act No. 473, Section 2.

**SECTION 6‑23‑20.** Definitions.

The terms used in this chapter have the following meaning unless a different meaning clearly appears from the context:

(1) "Area generally served by the same electric supplier" means that area located in any county or counties of this State and assigned to an electric supplier by the Public Service Commission pursuant to the provisions of Section 58‑27‑640 and to the Public Service Authority by Article 3 of Title 58.

(2) "Bonds" mean electric revenue bonds, notes, certificates, or other obligations of indebtedness of a joint agency issued pursuant to the provisions of this chapter and include refunding bonds.

(3) "Cost" or "cost of a project" means, but is not limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, or extension of a project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating to it; the cost of land, land rights, rights‑of‑way and easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing these; administrative, legal, engineering, and inspection expenses; financing fees, expenses, and costs; working capital; initial fuel costs; interest on the bonds during construction and for a reasonable time after that is determined by the joint agency; establishment of reserves; and other expenditure of the joint agency incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, or extension of any project and the placing of them in operation.

(4) "Governing body" means, with respect to a municipality, the board, council, commission, or other legislative body charged by law with governing the municipality.

(5) "Electric supplier" means an electric utility regulated by the Public Service Commission, electric cooperative, or municipal electric system authorized to do business within the State or the Public Service Authority.

(6) "Joint agency" means a public body and body corporate and politic organized pursuant to the provisions of this chapter.

(7) "Municipality" means a city or town created pursuant to the laws of the State, or agency, board, commission, or council of it, that has owned for at least ten years a system or facilities for the generation, transmission, or distribution of electric power and energy for public and private uses.

(8) "Project" means a system or facilities for the generation, transmission, and transformation, not distribution, of electric power and energy by any means including, but not limited to, any one or more electric generating units situated at a particular site or any interest in any of them or any right to the output, capacity, use, or services of it.

(9) "State" means the State of South Carolina.

HISTORY: 1978 Act No. 473, Section 3; 1996 Act No. 358, Sections 7 and 8; 2007 Act No. 32, Section 1, eff May 22, 2007.

**SECTION 6‑23‑30.** Planning, construction, and ownership of electric distribution facilities.

In addition and supplemental to the powers granted to municipalities of the State, and in order to accomplish the purpose of this chapter, a municipality may plan, finance, develop, acquire, purchase, construct, reconstruct, improve, enlarge, own, operate, and maintain an undivided interest as a tenant‑in‑common in a project situated within or without the State jointly with one or more municipalities in this State or any other state, owning electric distribution facilities, or with any political subdivisions or agencies of any other state, and may make these plans and enter into these contracts in connection with them, not inconsistent with the provisions of this chapter, as are necessary or appropriate; provided, all municipal tenants‑in‑common must be located within the area generally served by the same electric supplier. The acquisition of a project or projects by municipalities as tenants‑in‑common by purchase is limited to a project or projects under construction on the date of approval of this chapter, or a project or projects on which construction will commence subsequent to the date of approval of this chapter. The amount of capacity and output of a project purchased by municipal tenants‑in‑common may not be less than ten percent of the rated capacity of the project.

Municipal tenants‑in‑common pursuant to the provisions of this section, by contract, may waive their right of partition either in kind or by sale. The power and right to enter into agreements to waive the right of judicial partition authorized by this section are in addition to these powers and rights already authorized by the laws of South Carolina.

Nothing contained in this section prevents a municipality or municipalities from undertaking studies to determine whether there is a need for a project or whether the project is feasible.

HISTORY: 1978 Act No. 473, Section 4; 1979 Act No. 176, Section 1; 2007 Act No. 32, Section 1, eff May 22, 2007.

**SECTION 6‑23‑40.** Determination by municipalities that joint agency is in their best interests; factors; publication; challenge in court.

The procedure before formation of a joint agency must be as follows:

(1) The governing body of two or more municipalities may determine, by resolution or ordinance, that it is in the best interests of the respective municipalities and their electric customers in accomplishing the purposes of this chapter to create a joint agency for the purpose of undertaking the planning, financing, development, acquisition, purchase, construction, reconstruction, improvement, enlargement, ownership, operation, and maintenance of a project or projects to supply electric power and energy for the municipalities' present and future needs as an alternative or supplemental method of obtaining the benefits and assuming the responsibilities of ownership in a project; provided, membership of municipalities in a joint agency shall consist only of municipalities located within the area generally served by the same electric supplier as of the date of issuance of a corporate certificate for such joint agency pursuant to Section 6‑23‑80. This resolution or ordinance must be approved by a majority of the members of the governing body of the municipality.

(2) In determining whether or not the creation of a joint agency for this purpose is in the best interests of the municipalities and their electric customers, the governing body shall take into consideration, but is not limited to, the following:

(a) whether or not a separate entity may be able to finance the costs of a project or projects in a more efficient and economical manner;

(b) whether or not a better financial market acceptance may result if one entity is responsible for issuing all of the bonds required for a project or projects in a timely and orderly manner;

(c) whether or not savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, purchase, construction, ownership, and operation of a project or projects.

(3) If the proposed creation of a joint agency is found to be in the best interests of a municipality, the governing body of the municipality shall give notice of its action publishing once a week for two consecutive weeks in a newspaper of general circulation within the municipality. A person affected by the action of the governing body of the municipality may challenge the action of the municipality, by action de novo, instituted in the court of common pleas for the county in which the municipality is located, within twenty days following the last publication of the notice prescribed in this section.

HISTORY: 1978 Act No. 473, Section 5; 1979 Act No. 176, Section 2; 2007 Act No. 32, Section 1, eff May 22, 2007.

**SECTION 6‑23‑50.** Formation of joint agency; certificate as proof of existence.

Upon fulfilling the requirements set forth in Section 6‑23‑40 hereof, the governing body of each municipality which determines that its participation in the proposed joint agency is in its best interest shall by resolution appoint one representative of the proposed joint agency. Any two or more representatives so appointed shall file with the Secretary of State an application signed by a representative of each proposed member municipality setting forth:

(a) The names of all the proposed member municipalities and their respective appointed representatives;

(b) A certified copy of the resolution or ordinance of each member municipality determining it is in its best interest to participate in the proposed joint agency and the resolution appointing such representative;

(c) The desire that the joint agency be organized as a public body and a body corporate and politic under this chapter; and

(d) The name which is proposed for the joint agency. The Secretary of State shall examine the application and, before filing such application, shall determine that the application complies with the requirements set forth above and, in addition, that the proposed name of the joint agency is not identical with that of any other corporation of the State or any agency or instrumentality thereof or so nearly similar as to lead to confusion and uncertainty. Thereupon, the Secretary of State shall receive and file the application.

When the application has been made and filed as provided herein, the Secretary of State shall make and issue a corporate certificate which shall be filed with the application, and the joint agency shall thereupon be and constitute a public body corporate and politic under the name proposed in the application. The corporate certificate shall set forth the names of the member municipalities and the name of the joint agency. The existence of the joint agency shall begin when the corporate certificate is issued by the Secretary of State. Notice of the issuance of such corporate certificate shall be given to all member municipalities of the joint agency by the Secretary of State. The joint agency shall give notice of the issuance of such corporate certificate to the Public Service Commission.

In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the joint agency, the joint agency, in the absence of establishing fraud, shall be conclusively deemed to have been established in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

HISTORY: 1978 Act No. 473, Section 6.

**SECTION 6‑23‑60.** Filing of petition prior to acquisition of project; action by Commission; appeal.

(A) Prior to the proposed acquisition of a project for the generation or transmission of electric power and energy by a joint agency, a petition must be filed with the Public Service Commission setting forth the material necessary to permit the Public Service Commission to make the determination required by this section. Notice of the filing of the petition must be given by the Public Service Commission once a week for three consecutive weeks in a newspaper of general circulation in the State. A hearing on the petition is to be conducted as provided by law.

(B) The Public Service Commission is authorized to approve or disapprove the proposed acquisition by a joint agency of a project or projects which consist of an electric generating plant or plants and associated facilities designed for, or capable of, operation at a capacity of more than seventy‑five megawatts, or which consist of electric transmission lines and associated facilities of a designed operating voltage of one hundred twenty‑five kilovolts or more. There is no requirement for approval by the Public Service Commission for a project or projects for other transmission or generating facilities, or for facilities for distribution or transformation, or any of them, of electric power and energy. However, the joint agency may not acquire or purchase projects or capacity if, after the purchase or acquisition, the joint power agency would own, contract for, or control generating resources exceeding one hundred eighty‑five percent of the member municipalities historical territorial peak. In determining whether it is beneficial to the joint agency, the Public Service Commission shall take into consideration, but is not limited to, the following:

(1) the economies and efficiencies to be achieved in constructing on a large scale, facilities for the generation and transmission of electric power and energy;

(2) the municipalities' needs for reserve and peaking capacity and to meet obligations under pooling and reserve‑sharing agreements reasonably related to its needs for power and energy to which it is or may become a party;

(3) the estimated useful life of the project;

(4) the estimated time necessary for the planning, development, acquisition, or construction of the project and the length of time required in advance to obtain, acquire, or construct additional power supplies;

(5) the reliability and availability of existing or alternative power supply sources and the costs of the existing or alternative power supply sources;

(6) the load forecast of capacity of a project and the utilization of the capacity by the joint agency for a reasonable period of time subsequent to the date of commercial operation of the project; and

(7) the effect of the proposed acquisition on the ability of the joint agency to satisfy existing financial and contractual obligations that it may have incurred in the acquisition of any previously acquired projects.

(C) Any party in interest may appeal the commission's action pursuant to Sections 58‑27‑2310 to 58‑27‑2340 of the 1976 Code.

HISTORY: 1978 Act No. 473, Section 7; 1979 Act No. 176, Section 3; 1996 Act No. 358,Section 1; 2007 Act No. 32, Section 2, eff May 22, 2007.

**SECTION 6‑23‑70.** Board of directors; new members of joint agency; withdrawal from and dissolution of joint agency.

(a) The management and control of a joint agency shall be vested in a board of directors. The governing body of each member municipality of a joint agency shall appoint a representative, as provided in Section 6‑23‑80 who shall be a director of the joint agency. The representative, at the discretion of the municipality, may be an officer or employee of the municipality and may also serve ex officio as a member of the board of directors of the joint agency. Each director shall have not less than one vote and may have, in addition thereto, such additional votes as a majority of the members of the joint agency shall determine. Each director shall serve at the pleasure of the governing body by which he was appointed. Each appointed director, before entering upon his duties, shall take and subscribe to an oath before a person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of each such oath shall be filed with the governing body of the appointing municipality.

The board of directors of the joint agency shall annually elect, with each representative of member municipalities having one vote, one of the directors as chairman, another as vice chairman and another person or persons who may but need not be directors as treasurer, secretary, and, if desired, assistant secretary. The office of treasurer may be held by the secretary or assistant secretary. The board of directors may also appoint such additional officers as it deems necessary. The secretary or assistant secretary of the joint agency shall keep a record of the proceedings of the joint agency, and the secretary shall be the custodian of all books, records, documents and papers filed with the joint agency, the minute book or journal of the joint agency and its official seal.

A majority of the directors of the joint agency then in office shall constitute a quorum. A vacancy on the board of directors of the joint agency shall not impair the right of a quorum to exercise all rights and perform all the duties of a joint agency. Any action taken by the joint agency under the provisions of this chapter may be authorized by resolution at any regular or special meeting held pursuant to notice in accordance with bylaws of the joint agency, and each such resolution shall take effect immediately and need not be published or posted. Except as is otherwise provided in this act or in the bylaws of the joint agency, a majority of the votes which the directors present are entitled to cast, with a quorum present, shall be necessary and sufficient to take any action or to pass any resolution. No director of a joint agency shall receive any compensation for the performance of duties hereunder, provided, however, that each director may be paid per diem and subsistence expenses incurred while engaged in the performance of such duties.

(b) After the creation of a joint agency, any other municipality may become a member thereof (1) upon application to such joint agency; (2) upon compliance with the provisions of Section 6‑23‑20; and (3) with the unanimous consent of the members of the joint agency evidenced by the resolutions of their respective governing bodies. Notice of additional members shall be given to the Public Service Commission.

(c) Any municipality may withdraw from the joint agency, provided, however, that all contractual rights acquired and contractual obligation incurred by a municipality while such municipality was a member shall remain in full force and effect.

Whenever the board of directors of a joint agency and the governing body of each of its member municipalities shall by resolution or ordinance determine that the purposes for which the joint agency was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the joint agency have been fully paid or satisfied, such board of directors and governing bodies may declare the joint agency to be dissolved. On the effective date of such resolution or ordinance, the title to all funds and other property owned by the joint agency at the time of such dissolution shall vest in the member municipalities of the joint agency as provided in this chapter and the bylaws of the joint agency.

HISTORY: 1978 Act No. 473, Section 8; 1979 Act No. 176, Sections 4, 5.

**SECTION 6‑23‑80.** Executive committee.

The board of directors of a joint agency may create an executive committee the composition of which shall be set forth in the bylaws of the joint agency. The composition of the executive committee shall afford a fair representation of the member municipalities. The executive committee shall have and shall exercise such of the powers and authority of the board of directors during the intervals between the board's meetings in accordance with the board's bylaws, rules, motions or resolutions. The terms of office of the members of the executive committee and the method of filling vacancies therein shall be fixed by the bylaws of the joint agency.

HISTORY: 1978 Act No. 473, Section 9; 1979 Act No. 176, Section 6.

**SECTION 6‑23‑90.** Rights and powers of joint agency.

Each joint agency shall have all the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but not limited to, the rights and powers:

(a) To adopt bylaws for the regulation of the affairs and the conduct of its business, and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(b) To adopt an official seal and alter the same at pleasure;

(c) To maintain an office at such place or places as it may determine;

(d) To sue and be sued in its own name, and to plead and be impleaded;

(e) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

(f) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than the fee thereof in conformity with state law;

(g) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein in conformity with state law;

(h) To pledge or assign any money, rents, charges, or other revenues and any proceeds derived by the joint agency from the sales of property, insurance or condemnation awards;

(i) To issue bonds of the joint agency for the purpose of providing funds for any of its corporate purposes;

(j)(1) To acquire by negotiated purchase or lease from an electric supplier any portion of a project or projects under construction on the date of approval of this chapter, or on which construction will commence subsequent to the date of approval of this chapter, either individually or jointly with one or more municipalities in any other state, owning electric generation, transmission, or distribution facilities, or with any political subdivisions or agencies of any other state and to pay all or any part of the cost of it from the proceeds of bonds of the joint agency or from any other funds available to the joint agency;

(2) To, prior to and in connection with such acquisition of a project or projects, study, plan, finance, own, operate, and maintain such project or projects and after such acquisition, to study, plan, finance, acquire, construct, reconstruct, improve, enlarge, extend, own, operate and maintain one or more additional projects;

(k) To authorize the construction, operation or maintenance of any project or projects by any person, firm or corporation, including political subdivisions and agencies of any state, of the United States;

(l) a project under construction, or other property, either individually or jointly, with one or more municipalities in this State or any other state owning electric distribution facilities or with any political subdivisions or agencies of any other state or with other joint agencies created pursuant to this chapter;

(m) To dispose of by negotiated sale or lease, an existing project, a project under construction, or other property either individually or jointly with one or more municipalities in this State or any other state owning electric distribution facilities or with any political subdivisions or agencies of any other state or with other joint agencies created pursuant to this chapter;

(n) To fix, charge and collect rents, rates, fees and charges for electric power or energy and other services, facilities and commodities sold, furnished or supplied through any project;

(o) To generate, produce, transmit, deliver, exchange, purchase, or sell for resale only, electric power or energy, and to enter into contracts for any or all such purposes;

(p) To negotiate and enter into contracts for the purchase, exchange, interchange, wheeling, pooling, transmission, marketing, sale, or use, for resale only, of electric power and energy with any electric supplier within the State, or with any person, firm, or corporation, public or private, outside this State;

(q) to negotiate and enter into contracts for the purchase, exchange, interchange, wheeling, pooling, transmission, marketing, sale, or use, for resale only, of electric power and energy, with any electric supplier within the State, or with any person, firm, or corporation, public or private, outside this State, and the contract may provide that the joint agency is to be obligated to make the payments required by the contract whether the facilities from which the contracted services are provided, are completed, operable or operating, notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of the facilities, or the power and energy contracted for, and that the payments under the contract must not be subject to any reductions, whether by offset or otherwise, and are not conditioned upon the performance or nonperformance of any party to the contract;

(r) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint agency under this chapter, including contracts with persons, firms, corporations and others;

(s) To apply to the appropriate agencies of the State, the United States or any state thereof, and to any other proper agency for such permits, licenses, certificates or approvals as may be necessary, and to construct, maintain and operate projects in accordance with such licenses, permits, certificates or approvals, and to obtain, hold and use any license, permits, certificates or approvals, in the same manner as any other person or operating unit of any other person, previously obtained by such person;

(t) To employ engineers, architects, attorneys, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the joint agency and to fix and pay their compensation from funds available to the joint agency therefor.

HISTORY: 1978 Act No. 473, Section 10; 1979 Act No. 176, Sections 7‑9; 1996 Act No. 358, Sections 2‑5.

**SECTION 6‑23‑100.** Electric generating facilities as interrelated; responsibility for dispatching capacity and output and scheduling maintenance of project.

Because of pooling and reserve‑sharing agreements between electric suppliers, public and private electric utilities and electric cooperatives, the General Assembly determines that electric generating facilities within the State are interrelated; therefore, it is necessary that the electric supplier generally serving the area in which the members of the joint agency are located be responsible for the dispatching of capacity and output and the scheduling of maintenance of a project owned by a joint agency in keeping with established utility practice, subject to contracts entered into for such capacity and output.

HISTORY: 1978 Act No. 473, Section 11.

**SECTION 6‑23‑110.** Municipalities may contract to buy power; terms of contract; sources of payment; advances.

Any municipality which is a member of the joint agency may contract to buy from the joint agency power and energy required for its present or future requirements, including the capacity and output of one or more specified projects. As the creation of a joint agency is an alternative method whereby a municipality may obtain the benefits and assume the responsibilities of ownership in a project, any such contract may provide that the municipality so contracting shall be obligated to make the payments required by the contract whether or not a project is completed, operable or operating notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint agency or any other member of the joint agency under the contract or any other instrument. Any contract with respect to the sale or purchase of capacity or output of a project entered into between a joint agency and its member municipalities may also provide that if one or more of such municipalities shall default in the payment of its or their obligations with respect to the purchase of said capacity or output, then in that event the remaining member municipalities which are purchasing capacity and output under the contract shall be required to accept and pay for and shall be entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting municipality.

Notwithstanding the provisions of any other law to the contrary, any such contracts with respect to the sale or purchase of capacity, output, power, or energy from a project may extend for a period not exceeding fifty years from the date a project is estimated to be placed in normal continuous operation. Upon approval of an extension of the date of operation of the project by all agencies having jurisdiction over such an extension, the term of the contract is extended for the same period unless either the joint agency or the member municipality seasonably determines otherwise. The execution and effectiveness of those contracts or extensions of those contracts are not subject to any authorizations or approvals by the State or any agency, commission, or instrumentality, or political subdivision thereof.

Payments by a municipality under any contract for the purchase of capacity and output from a joint agency shall be made from the revenues derived from the ownership and operation of the electric system of said municipality and any obligation under such contract shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its income, receipts, or revenues, except the revenues of its electric system, and neither the faith and credit nor the taxing power of the municipality are, or may be, pledged for the payment of any obligation under any such contract. A municipality shall be obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through its electric system sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on general obligation bonds, if any, heretofore or hereafter issued by the municipality for purposes related to its electric system.

Any municipality which is a member of a joint agency may furnish the joint agency with money derived from the ownership and operation of its electric system or facilities and provide the joint agency with personnel, equipment and property, both real and personal. Any municipality may also provide any services to a joint agency.

Any member of a joint agency may contract for, advance or contribute funds derived solely from the ownership and operation of its electric system or facilities to a joint agency as may be agreed upon by the joint agency and the member, and the joint agency shall repay such advances or contributions from proceeds of bonds, from operating revenues or from any other funds of the joint agency, together with interest thereon as may be agreed upon by the member and the joint agency.

HISTORY: 1978 Act No. 473, Section 12; 2004 Act No. 210, Section 1, eff April 26, 2004.

**SECTION 6‑23‑130.** Issuance of bonds authorized.

A joint agency may issue bonds pledging to the payment thereof as to both principal and interest the revenues, or any portion thereof, derived or to be derived from all or any of its projects, and any additions and betterments thereto or extensions thereof, or contributions or advances from its members. Bonds of a joint agency shall be authorized by resolution adopted by its board of directors.

HISTORY: 1978 Act No. 473, Section 14.

**SECTION 6‑23‑140.** Approval of projects financed by bonds; terms of bonds; proceeds; replacement of lost or destroyed bonds.

(a) A joint agency is hereby authorized to issue at one time or from time to time its bonds for the purpose of paying all or any part of the cost of any of the purposes herein authorized. The principal of, premium, if any, and the interest on such bonds shall be payable solely from the respective funds herein provided for such payment. The bonds of each issue may be sold at public or private sale. Notwithstanding any provision of law to the contrary, the bonds may be sold at such price, and shall bear interest at such rate or rates, as may be determined by the board of directors of the joint agency. The bonds of each issue shall be dated and shall mature in such amounts and at such time or times, not exceeding fifty years from their respective date or dates, as may be determined by the board of directors of the joint agency, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the board of directors of the joint agency prior to the issuance of the bonds. The board of directors of the joint agency 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 bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. 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 of such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The board of directors of the joint agency may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the governing body of the issuer may determine, and provisions may be made for the registration of any coupon bonds as to the principal alone and also as to both principal and interest; and 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.

(b) The proceeds of the bonds of each issue shall be used solely for the purposes for which such bonds have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the board of directors of the joint agency may provide in the resolution authorizing the issuance of such bonds or in any trust agreement securing the same. The joint agency may 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 joint agency may also provide for the replacement of any bonds which shall have become mutilated or shall have been destroyed or lost.

(c) Bonds may be issued under provisions of this chapter without obtaining the consent or approval of the State or any political subdivision or any agency, commission or instrumentality thereof.

HISTORY: 1978 Act No. 473, Section 15; 1979 Act No. 176, Section 11.

**SECTION 6‑23‑150.** Trust agreements.

In the discretion of the board of directors of the joint agency, any bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the joint agency and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee as may be reasonable and proper and not in violation of law, and may restrict the individual right of action by bondholders. The trust agreement or the resolution providing for the issuance of such bonds may contain covenants including, but not limited to, the following:

(a) The pledge of all or any part of the revenues derived or to be derived from the project or projects to be financed by the bonds or from the electric system or facilities of a joint agency.

(b) The rents, rates, fees and charges to be established, maintained, and collected, and the use and disposal of revenues, gifts, grants and funds received or to be received by the joint agency.

(c) The setting aside of reserves and the investment, regulation and disposition thereof.

(d) The custody, collection, securing, investment, and payment of any moneys held for the payment of bonds.

(e) Limitations or restrictions on the purposes to which the proceeds of sale of bonds then or thereafter to be issued may be applied.

(f) Limitations or restrictions on the issuance of additional bonds; the terms upon which additional bonds may be issued and secured; or the refunding of outstanding or other bonds.

(g) The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the bondholders of which must consent thereto, and the manner in which such consent may be given.

(h) Events of default and the rights and liabilities arising thereupon, the terms and conditions upon which bonds issued under this chapter shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived.

(i) The preparation and maintenance of a budget.

(j) The retention or employment of conducting engineers, independent auditors and other technical consultants.

(k) Limitations on or the prohibition of free service to any person, firm or corporation, public or private.

(l) The acquisition and disposal of property, provided that no project or part thereof shall be mortgaged by such trust agreement or resolution.

(m) Provisions for insurance and for accounting reports and the inspection and audit thereof.

(n) The continuing operation and maintenance of the project.

HISTORY: 1978 Act No. 473, Section 16.

**SECTION 6‑23‑160.** Rents, rates, fees and charges; validity and lien of pledge.

The joint agency is hereby authorized to fix, charge, and collect rents, rates, fees and charges for electric power and energy and other services, related to the generation, transmission and sale of electric energy. For so long as any bonds of a joint agency are outstanding and unpaid, the rents, rates, fees and charges shall be so fixed as to provide revenues at least sufficient, together with other available funds, to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects, and all necessary repairs, replacements or renewals thereof, to pay when due the principal of, premium, if any, and interest on all bonds payable from said revenues, to create and maintain reserves and comply with such covenants as may be required by any resolution or trust agreement authorizing and securing bonds, and to pay any and all amounts which the joint agency may be obligated to pay from said revenues by law or contract.

Any pledge made by a joint agency pursuant to this chapter shall be valid and binding from the date the pledge is made. The revenues, securities and other moneys so pledged and then held or thereafter received by the joint agency or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the municipality or joint agency without regard to whether such parties have notice thereof.

HISTORY: 1978 Act No. 473, Section 17; 1979 Act No. 176, Section 12.

**SECTION 6‑23‑170.** Investment of moneys pending disbursement.

Notwithstanding any provision of law to the contrary, the board of directors of joint agencies or persons authorized to make investment decisions on behalf of joint agencies investing public funds are considered to be trustees and subject to the prudent investor standard. When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character. When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing funds of a joint agency, the primary objective of a trustee is to safeguard the principal of the funds under its control. The secondary objective is to meet the liquidity needs of the joint agency. The third objective is to achieve a return on the funds under its control. Monies of joint agencies not required for the immediate necessities of the joint agency may be invested and reinvested in securities and other investments as the board of directors of joint agencies shall determine in accordance with the objectives enumerated above. The securities and other investments which may be used by the trustee is to be listed in a formal, written investment policy approved by the board of directors of joint agencies.

HISTORY: 1978 Act No. 473, Section 18; 1996 Act No. 358, Section 6.

**SECTION 6‑23‑180.** Legal action by bond holder and trustee.

Any holder of bonds issued under the provisions of this chapter or 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 or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder, or, to the extent permitted by law, under such trust agreement or resolution authorizing the issuance of such bonds or under any agreement or other contract executed by the joint agency pursuant to this chapter, and may enforce and compel the performance of all duties required by this chapter or by such trust agreement or resolution to be performed by any joint agency or municipality or by any officer thereof, including the fixing, charging and collecting of rents, rates, fees and charges.

HISTORY: 1978 Act No. 473, Section 19.

**SECTION 6‑23‑190.** Bonds and interest coupons designated investment securities.

Whether or not the bonds and interest coupons appertaining hereto are of such form and character as to be investment securities under Chapter 8, of Title 36 of the 1976 Code, all bonds and interest coupons appertaining thereto issued under this chapter are hereby made investment securities within the meaning of and for all the purposes of Chapter 8, of Title 36 of the 1976 Code, subject only to the provisions of the bonds, pertaining to registration.

HISTORY: 1978 Act No. 473, Section 20.

**SECTION 6‑23‑200.** Investment in bonds lawful.

It shall be lawful for all executors, administrators, guardians, committees and other fiduciaries to invest any moneys in their hands in bonds issued under the provisions of this chapter.

HISTORY: 1978 Act No. 473, Section 21.

**SECTION 6‑23‑210.** Bonds to be special obligations; payment thereof.

The bonds shall be special obligations of the joint agency issuing them. The principal of, premium, if any, and interest on the bonds shall not be payable from the general funds of the joint agency, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the funds which are pledged under the resolution authorizing the bonds or the trust agreement securing the bonds. Neither the faith and credit nor the taxing power of the State or any municipality is, or may be, pledged for the payment of the principal of or interest on the bonds, and no holder of the bonds shall have the right to compel the exercise of the taxing power by the State or any municipality or the forfeiture of any of its property in connection with any default thereon. Every bond shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the joint agency is not obligated to pay the principal or interest except from such revenues.

HISTORY: 1978 Act No. 473, Section 22.

**SECTION 6‑23‑220.** Issuance of refunding bonds authorized.

A joint agency is hereby authorized to provide by resolution for the issuance of refunding bonds of the joint agency for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. 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 joint agency in respect to the same shall be governed by the provisions of this chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate therefor.

HISTORY: 1978 Act No. 473, Section 23.

**SECTION 6‑23‑230.** Bonds tax exempt.

The principal of and interest on the bonds issued pursuant to this act shall have the tax exempt status prescribed by Section 12‑1‑60 of the 1976 Code.

HISTORY: 1978 Act No. 473, Section 24.

**SECTION 6‑23‑235.** Applicability of franchise and permit requirements.

That portion of Section 6‑21‑400 which states that it shall not be necessary for any borrower operating under the provisions of this chapter to obtain any franchise or other permit from any state bureau, board, commission, or other instrumentality of the State in order to construct, improve, enlarge, extend, or repair any system, project, or combined system named in Chapter 21, Article 6, shall not be applicable to a joint agency issuing bonds pursuant to the Revenue Bond Act for Utilities, Section 6‑21‑10, et seq.

HISTORY: 1996 Act No. 358, Section 9.

**SECTION 6‑23‑240.** Certification required.

The joint agency shall be required to obtain the necessary certification as appropriate under the "Utility Facility Siting and Environmental Protection Act", Sections 58‑33‑10 to 58‑33‑430 of the 1976 Code.

HISTORY: 1978 Act No. 473, Section 25.

**SECTION 6‑23‑250.** Projects and power as subject to taxation.

A project owned by a joint agency shall not be exempt from property taxes or other taxes if applied to the sale of energy; provided, however, that if all or any portion of the joint agency is declared exempt from property taxation then the joint agency shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of a project if such project were subject to valuation and assessment by the respective governmental body authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of a project if such project were subject to valuation and assessment by the respective governmental body. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as are added to taxes on taxable property in the governmental body. Payments in lieu of taxes if made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law.

Power and energy sold by a joint agency shall be subject to taxes.

Joint agencies are exempt from the tax imposed pursuant to Section 12‑23‑10.

HISTORY: 1978 Act No. 473, Section 26; 1991 Act No. 171, Part II, Section 57A.

**SECTION 6‑23‑260.** Rights and privileges of personnel.

Personnel employed or appointed by a municipality to work for a joint agency shall have the same authority, rights, privileges and immunities (including coverage under the workmen's compensation laws) which the officers, agents and employees of the appointing municipality enjoy within the territory of that municipality, whether within or without the territory of the appointing municipality, when they are acting within the scope of their authority or in the course of their employment.

Personnel employed or appointed directly by a joint agency shall be qualified for participation in the South Carolina Retirement System with the same rights, privileges, obligations and responsibilities as they would have if they were employees of a municipality; provided, that personnel participating in the South Carolina Retirement Systems shall be residents of this State.

HISTORY: 1978 Act No. 473, Section 27.

**SECTION 6‑23‑270.** Annual reports; audits.

Each joint agency shall, following the closing of each fiscal year, submit an annual report of its activities for the preceding year to the governing bodies of its member municipalities. Each such report shall set forth a complete operating and financial statement covering the operations of the joint agency during such year. The joint agency shall cause an audit of its books of record and accounts to be made at least once in each year by a certified public accountant and the cost thereof may be treated as a part of the cost of construction of a project or projects, or otherwise as part of the expense of administration of a project covered by such audit.

HISTORY: 1978 Act No. 473, Section 28.

**SECTION 6‑23‑280.** Participation of joint agency in grant‑in‑aid and loan programs.

The board of directors of a joint agency is hereby authorized to make application and to enter into contracts for and to accept grants‑in‑aid and loans from the federal and State governments and their agencies for planning, acquiring, constructing, expanding, maintaining and operating any project or facility, or participating in any research or development program, or performing any function which such municipality or joint agency may be authorized by general or local law to provide or perform.

In order to exercise the authority granted by this section, the board of directors of a joint agency may:

(a) Enter into and carry out contracts with the State or federal government or any agency or institution thereof under which government, agency or institution grants financial or other assistance to the municipality or joint agency;

(b) Accept such assistance or funds as may be granted or loaned by the state or federal government with or without such a contract;

(c) Agree to and comply with any reasonable conditions which are imposed upon such grants or loans;

(d) Make expenditures from any funds so granted.

HISTORY: 1978 Act No. 473, Section 29.

**SECTION 6‑23‑290.** Eminent domain.

In order to effectuate the purposes of this chapter, joint agencies may exercise the power of eminent domain in any county of this State. A joint agency exercising the power of eminent domain for the purpose authorized by this chapter has no power to condemn a facility under construction or an existing facility or any facility to be constructed in the future used for the generation, transmission, or distribution of electric power or energy.

HISTORY: 1978 Act No. 473, Section 30; 1987 Act No. 173, Section 14.

**SECTION 6‑23‑300.** Immunity of directors, officers and their agents.

No director of any joint agency or officer of any municipality or person or persons acting in their behalf, while acting within the scope of their authority, shall be subject to any personal liability by reason of carrying out any of the powers expressly or impliedly given in this chapter.

HISTORY: 1978 Act No. 473, Section 31.

**SECTION 6‑23‑310.** Immunity of joint agencies waived and withdrawn.

The General Assembly hereby waives and withdraws from the joint agencies authorized by this chapter their immunity from suit of every kind and description, whether the same be in tort, contract, or otherwise, which suits arise out of or are in any way connected with the development, ownership, operation, maintenance, or otherwise of a project or the doing, or failure to do, of anything authorized by this chapter.

HISTORY: 1978 Act No. 473, Section 34.

**SECTION 6‑23‑320.** Powers cumulative; bonds for financing private facilities not authorized.

The foregoing sections of this chapter shall be deemed to provide an additional, alternative and complete method for the doing of the things authorized thereby and shall be deemed and construed to be supplemental and additional to powers conferred by existing laws, and shall not be regarded as in degradation of any powers not existing; provided, however, that insofar as provisions of this chapter are inconsistent with the provisions of any other general, special or local law, the provisions of this chapter shall be controlling. Nothing in this chapter shall be construed to authorize the issuance of the bonds for the purpose of financing facilities to be owned wholly or in part by any private corporation.

HISTORY: 1978 Act No. 473, Section 32.

**SECTION 6‑23‑330.** Liberal construction; savings clause.

In order to effectuate the purposes and policies prescribed in this chapter, the provisions hereof shall be liberally construed. If any provision or section of this chapter be held invalid or unconstitutional such holding shall not affect the remaining provisions of this chapter.

HISTORY: 1978 Act No. 473, Section 33.

**SECTION 6‑23‑335.** Provision, distribution, marketing, or sale by joint agency of energy or service to retail customers.

Nothing in this chapter shall be interpreted to authorize a joint agency to provide, distribute, market, or sell electric energy or service to retail customers.

HISTORY: 1996 Act No. 358, Section 10.

**SECTION 6‑23‑340.** Legal and binding effect of existing contracts.

Nothing in Act 358 of 1996 shall, or shall be deemed or construed to, amend, supplement, modify, or otherwise alter or affect the provisions of contracts entered into by a joint agency prior to the effective date of Act 358 of 1996.

HISTORY: 1996 Act No. 358, Section 11.