CHAPTER 36

Corporations Not‑for‑Profit Financed by Federal or State Loans

ARTICLE 1

General Provisions

Editor's Note

2000 Act No. 404, Section 1, provides as follows:

"(A)(1) This act must be construed liberally. The enumeration of any object, purposes, power, manner, method, or thing does not exclude like or similar objects, purposes, powers, manners, methods, or things.

"(2) The provisions of this chapter may not be repealed by implication. If they conflict with other provisions of the 1976 Code, the provisions of this chapter prevail.

"3) The powers and authorities conferred by this chapter may be added to and supplemented by any other general law.

"(B) The General Assembly finds that corporations not‑for‑profit established pursuant to this chapter have been authorized to provide the local governmental functions of water service or sewage treatment or a combination of both, fire protection service, ambulance service, and medical clinic facilities. Corporations not‑for‑profit exist for a public purpose, and the General Assembly declares that corporations not‑for‑profit must be treated like special purpose districts for purposes of Chapter 78 of Title 15, Chapter 56 of Title 12, and Sections 56‑3‑780 and 58‑31‑30(23) of the 1976 Code. Corporations not‑for‑profit may participate, under the same conditions as afforded special purpose districts, in the State Retirement System, the State Health Insurance System, state purchasing programs, and Sections 1‑11‑140 and 1‑11‑141 of the 1976 Code."

2000 Act No. 404, Section 7, provides as follows:

"Any charter of a corporation not‑for‑profit filed with the Secretary of State before the effective date of this act is not repealed or nullified by this act. If any article, sector, or paragraph of an existing charter is inconsistent with a provision of this act, the article, sector, or paragraph is automatically modified to the extent necessary to conform with this act."

**SECTION 33‑36‑10.** "Corporation not‑for‑profit" defined.

As used in this chapter "corporation not‑for‑ profit" means a corporation which, upon its original organization, is financed in whole or in part by a loan made under the provisions of the Consolidated Farmers Home Administration Act of 1961, as amended by the Food and Agriculture Act of 1962, and acts amending it, and by the State Revolving Fund for Water or Sewer.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑20.** Issuance of stock; compensation of members and officers; disposition of assets upon dissolution.

A corporation incorporated pursuant to this chapter may not own or issue shares of stock representing ownership interests in the corporation itself. A corporation incorporated pursuant to this chapter may pay compensation in a reasonable amount to its members, board members, and officers for services rendered, and may confer benefits upon its members in conformity with its purposes. Upon dissolution or final liquidation of the corporation incorporated pursuant to this chapter, the residual assets must be disposed of in the manner required for organizations exempt from federal income tax as described in Section 501(c)(12) of the Internal Revenue Code of 1986.

HISTORY: 2000 Act No. 404, Section 2.

ARTICLE 2

Incorporation

**SECTION 33‑36‑210.** Articles of incorporation.

(A) Corporations not‑for‑profit may be organized pursuant to this chapter by any three or more persons who make, subscribe, acknowledge, and file articles of incorporation with the Secretary of State, and obtain approval from the Secretary of State when the articles of incorporation comply with this chapter.

The written articles of incorporation must contain:

(1) the name of the proposed corporation, which must include the word "Incorporated" or "Inc.". The name may not be the same as, or deceptively similar to, the name of another domestic corporation, or a foreign corporation authorized to do business in this State;

(2) the purpose for which the corporation is organized;

(3) the qualification of members and the manner of their admission;

(4) the term for which the corporation is to exist, which may be perpetual;

(5) by what officers the affairs of the corporation are to be managed and the times at which they are to be elected or appointed;

(6) the names of the officers who are to serve until the first election or appointment pursuant to the articles of incorporation;

(7) the number of persons constituting the first governing board, which may not be less than three, and the names and addresses of the persons who are to serve as board members, managers, or officers until the first election;

(8) by whom the bylaws of the corporation are to be made, altered, or rescinded;

(9) by whom and in what manner amendments to the articles of incorporation may be proposed and adopted;

(10) the name and address of the corporation's registered agent for service of process;

(11) any provision which the incorporators choose to insert for the conduct of the affairs of the corporation and any provision creating, dividing, limiting, and regulating the powers of the corporation, the board members, managers, or officers not in conflict with this chapter, except that the articles of incorporation do not need to enumerate the powers in Sections 33‑36‑260 and 33‑36‑270; and

(12) the signatures of not less than three natural persons competent to contract and an acknowledgment by all of the subscribers before an officer authorized to take acknowledgments.

(B) The original articles of incorporation must be filed with the Secretary of State for approval by any method approved by the Secretary of State. A duplicate copy, signed and acknowledged, also may be filed.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑220.** When corporation constituted.

When the articles of incorporation conforming to Section 33‑36‑210 have been filed with the Secretary of State and the specified filing fee has been paid, the subscribers and their associates and successors constitute a corporation. A duplicate received with the original must be endorsed, certified, and returned to the person from whom it was received upon payment of the fee required for certified copies.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑230.** Fees.

Upon filing articles of incorporation or amendments, or other paper relating to the incorporation, merger, consolidation, or dissolution of a corporation not‑for‑profit with the Secretary of State, the following fees must be paid:

(1) a filing fee of ten dollars for the filing and approval of articles of incorporation;

(2) a fee of one dollar for the first page, fifty cents for each additional page, and two dollars for authentication for furnishing certified copies of articles of incorporation or other documents concerning a corporation not‑for‑profit;

(3) a fee of five dollars in each case for filing papers relating to dissolution or amendment of articles of incorporation.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑240.** Amendment of charter and articles of incorporation.

A corporation incorporated pursuant to this chapter may amend its charter as provided in its bylaws. The articles of incorporation may be amended and the amendment incorporated into the articles only if the amendment has been filed with the Secretary of State and all filing fees have been paid.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑250.** Conformance to provisions of Sections 33‑36‑10 and 33‑36‑20.

The Secretary of State shall conform articles of incorporation supplied by his office for "corporations not‑for‑profit" to the provisions of Sections 33‑36‑10 and 33‑36‑20. In addition, any other forms supplied by the Secretary of State which may be required of a corporation not‑ for‑profit must be conformed to the provisions of this chapter.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑260.** Powers.

A corporation not‑for‑profit organized pursuant to this chapter, unless otherwise provided in its articles of incorporation or by law, has the power to:

(1) have succession by its corporate name for the period provided for in its articles of incorporation;

(2) sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person;

(3) adopt and use and alter a common corporate seal;

(4) elect or appoint officers and agents as its affairs require and allow them reasonable compensation;

(5) adopt, change, amend, and repeal bylaws, not inconsistent with law or its articles of incorporation, for the administration of the affairs of the corporation and the exercise of its corporate powers;

(6) increase, by vote of its members cast as the bylaws direct, the numbers of its board members, managers, or officers so that the number is not less than three;

(7) make contracts and incur liabilities, borrow money at the rates of interest the corporation determines, issue its notes, bonds, and other obligations, secure its obligations by mortgage, and pledge all or any of its property, franchises, or income;

(8) conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or any foreign country;

(9) purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real or personal property, or any interest in it, wherever situated;

(10) acquire, enjoy, utilize, and dispose of patents, copyrights, and trademarks and licenses and other rights or interests in them;

(11) sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or part of its property and assets;

(12) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares and other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or other government, state, territory, governmental district, municipality, or an instrumentality of them;

(13) lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds loaned or invested;

(14) make donations for the public welfare or for religious, charitable, scientific, educational, or other similar purposes;

(15) have and exercise all powers necessary or convenient to effect the purposes for which the corporation is organized.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑270.** Additional powers.

(A) In addition to the general powers of nonprofit corporations contained within Section 33‑36‑260, nonprofit corporations created pursuant to this chapter may:

(1) engage in the business of supplying water or sewage disposal, or a combination of water and sewer services, and provide other services and facilities including, but not limited to, fire protection services, ambulance services, and medical clinic facilities to individuals, corporations, and political subdivisions within the geographical area specified within the articles of incorporation, including water districts;

(2) exercise, in connection with water or sewage disposal business, the power of eminent domain as prescribed in Section 6‑13‑50(19);

(3) borrow funds and contract with municipalities, counties, and other political subdivisions for the provision of services and facilities including, but not limited to, fire protection services, ambulance services, and medical clinic facilities in accordance with this chapter and the Rural Development Act of 1972.

(B) Counties, municipalities, and other political subdivisions may contract with nonprofit corporations for those purposes, and water and sewer authorities also may make provision for fire protection. Before providing any of the services authorized in this section, a nonprofit corporation or a group intending to organize a nonprofit corporation must notify the governing body of the county or municipality in which the service is to be provided of its intention and the nature of the service. The governing body shall have a period of ninety days from the date of the notification to approve the request to provide the services or inform the person requesting permission to provide the service that the governing body intends to provide for the service as a public function of government. The notification of intent by the governing body must include a detailed description of the area to be served, the services to be provided, and the time schedule under which the service will be available from the county or municipality. Failure to notify the corporation within ninety days of the governing body's approval or intent to serve is considered approval.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑280.** Nonprofit corporations providing water supply or sewage disposal; exemption from rate regulation.

The rates charged for services furnished by a nonprofit corporation created for the purpose of providing water supply or sewage disposal, or a combination of those services, are not subject to supervision or regulation by a state board, commission, or agency or department or division of it.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑290.** Effect of irregularity in complying with provisions of chapter.

An irregularity in complying with the provisions of this chapter does not vitiate the incorporation until a direct proceeding to set aside and annul the charter is instituted by the proper authorities of the State. All acts done and contracts entered into have the same force and effect as if no irregularity had existed.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑300.** Amendment of bylaws; emergency bylaws.

The original bylaws of a corporation not‑for‑profit must be adopted by its incorporators. After that, bylaws must be adopted, amended, or repealed by the members, except that the corporation's governing body may enact emergency bylaws in the same manner as provided for nonprofit corporations in Section 33‑31‑207. The governing board also may adopt changes to the bylaws by a two‑thirds vote when necessary to conform with state or federal laws governing the operation of the corporation or the services provided by the corporation. This power to amend the bylaws by the board may not be used to conform to permissive powers granted in state or federal legislation or to undertake services not already provided by the corporation.

HISTORY: 2000 Act No. 404, Section 2.

ARTICLE 3

Members

**SECTION 33‑36‑410.** Use of services provided as condition of membership.

A person who is not an incorporator may not become a member of a corporation not‑for‑profit unless the person agrees to use the services furnished by the corporation when the service is available through its facilities. The bylaws of a corporation not‑for‑profit may provide that a person, including an incorporator, ceases to be a member if he fails or refuses to use the services made available by the corporation. The bylaws may prescribe additional qualifications and limitations in respect to membership.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑420.** Annual meetings.

(A) An annual meeting of the membership of a corporation not‑for‑profit must be held at times provided in the bylaws. A special meeting of the membership may be called by a majority of its governing board, by not less than ten percent of the membership, or by the principal officer of its governing board.

(B) Meetings must be held at places provided in the bylaws and, in the absence of a provision, the principal office of the corporation is the location of all meetings.

(C) Except as otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose for which the meeting is called, must be given to each member, personally or by mail, not less than ten nor more than twenty‑five days before the date of the meeting.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑430.** Quorum.

A quorum must be provided in the bylaws, except that the number required by the bylaws may not be less than the number of the governing board who conduct the business of the corporation between meetings of the membership.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑440.** Voting.

Each member is entitled to one vote on each matter submitted to a vote at a membership meeting. Voting must be in person, unless the bylaws provide specifically for voting by proxy and the conditions under which proxy voting may be exercised.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑450.** Member petitions.

(A) Notwithstanding another provision of this chapter, any proposition embodied in a petition signed by at least ten percent of the members of the corporation, except for dissolution or sale of a substantial portion of the assets of the corporation, must be submitted to the members of the corporation. The submission to the membership must occur at a special meeting of the membership held within forty‑five days after the presentation of the petition unless the next annual meeting of members falls within ninety days after the presentation or unless the petition requests the issue be raised at the annual meeting.

(B) The approval of the board is not required for a proposition signed by ten percent of the membership, except for dissolution or the vote to sell a substantial portion of the assets of the corporation, to be submitted to the membership for vote and adopted at a regular or special meeting.

(C) The board must exercise its best efforts to carry out the directives of the membership which are adopted pursuant to a ten percent or greater membership petition, and failure by a board member to exercise his best efforts to carry out the directive is just cause for removal from the board.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑460.** Private property of members exempted from liability for debt of corporation.

The private property of the members of a corporation not‑for‑profit is exempt from execution for the debts of the corporation, and a member is not liable or responsible for debts of the corporation.

HISTORY: 2000 Act No. 404, Section 2.

ARTICLE 4

Governing Board

**SECTION 33‑36‑610.** Governing board; powers; membership.

(A) The business and affairs of the corporation must be managed by a board of not less than three persons, each of whom must be a member of the corporation or an agent of a corporation which is a member. If a husband and wife hold a joint membership in a corporation not‑for‑profit one, but not both, may be elected to the board.

(B) The board may exercise all the powers of a corporation not‑for‑profit except those powers conferred upon the members by this chapter, its articles of incorporation, or bylaws.

(C) The bylaws must prescribe the number of board members, their qualifications other than those provided for in this chapter, the manner of holding meetings of the board, and the filling of vacancies on the board. The bylaws also may provide for the removal of a board member from office and for the election of his successors.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑620.** Quorum.

A majority of the board constitutes a quorum, unless otherwise specified in the bylaws.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑630.** Indemnification of board members who become parties to proceedings.

Unless limited by its articles of incorporation, a corporation not‑for‑profit must indemnify against reasonable expenses incurred by a board member who is successful on the merits or otherwise in the defense of a proceeding to which he is a party because of his board membership.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑640.** Standards for board members.

General standards for board members are the same as those required of directors of nonprofit corporations under Section 33‑31‑830.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑650.** Election of board members; district representation; terms.

The bylaws may provide for the division of the service area of the corporation into two or more districts for designating seats on its governing board. The bylaws also may provide that a district have two or more seats on its governing board. One or more members may be elected from each district to fill the seats designated for the district. The entire membership must vote on election of board members even though only members from certain geographic districts are qualified candidates for district board seats. The bylaws may provide further that board elections be staggered so that no less than one‑third or more than one‑half of all board members' terms expire each year.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑660.** Immunity.

All board members of corporations not‑for‑profit are immune from suits arising from the conduct of the affairs of the corporation, unless conduct amounts to wilful, wanton, or gross negligence. Nothing in this article grants immunity to a corporation not‑for‑profit.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑670.** Officers.

A corporation not‑for‑profit has the officers described in its bylaws, and they are chosen by the board in accordance with the bylaws. A duly appointed officer may have one or more assistant officers if authorized by the bylaws. The bylaws of the corporation must delegate to one officer the customary responsibilities of an officer commonly known as "president", to one officer the customary responsibilities of an officer known as "secretary", and one officer the customary responsibilities of an officer commonly known as "treasurer". The responsibilities of secretary and treasurer may be held by the same person. An officer may be removed from office and his successor selected in the manner prescribed by the bylaws.

HISTORY: 2000 Act No. 404, Section 2.

ARTICLE 5

Sale, Consolidation, and Mergers

**SECTION 33‑36‑810.** Sale of assets.

(A) A corporation not‑for‑profit may sell its assets. A "sale" means a sale, lease, exchange, donation, or other disposition of assets, except a mortgage of or other security interest in the assets.

(B) A sale of all or substantially all the property and assets, with or without the goodwill of a corporation not‑for‑profit, may be made upon terms and conditions and for consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as are authorized, in the following manner:

(1) Two‑thirds of the board must adopt a resolution recommending the sale and directing the submission of it to a vote at a special or annual meeting of members.

(2) Written or printed notice must be given to each member of record entitled to vote at the meeting, within the time and in the manner provided for the giving of notice of meetings of members, and must state that the purpose of the meeting is to consider the proposed sale.

(3) At the meeting the members may authorize the sale by an affirmative vote of at least two‑thirds of all the members, and may fix, or authorize the board to fix, the terms and conditions of the sale and the consideration to be received by the corporation.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑820.** Consolidation.

Two or more corporations not‑for‑profit, each of which is designated a "consolidating corporation", may consolidate into a new corporation not‑for‑profit, designated the "new corporation", by complying with the following requirements:

(1) The proposition for consolidating into a new corporation and proposed articles of consolidation must be approved first by the board of each consolidating corporation. The proposed articles of consolidation must recite in the caption that they are executed pursuant to this chapter and must state:

(a) the name of each consolidating corporation, the address of its principal office, and the date of the filing of its articles of incorporation with the Secretary of State;

(b) the name of the new corporation and the address of its principal office;

(c) the names and addresses of the persons who constitute the first board of the new corporation;

(d) the terms and conditions of the consolidation and the mode of effecting it, including the manner and basis of converting memberships in each consolidating corporation into memberships in the new corporation and the issuance of certificates of membership for the converted memberships; and

(e) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of the business and affairs of the new corporation.

(2) Upon approval by the board of each consolidating corporation, the proposition for consolidating and the proposed articles of consolidation must be submitted to a vote of the members of each consolidating corporation at an annual or special meeting, the notice of which must explain fully the proposed consolidation. The proposed consolidation and the proposed articles of consolidation are approved upon the affirmative vote of not less than two‑thirds of those members of each consolidating corporation voting at the meeting.

(3)(a) Upon approval by the members of the respective consolidating corporations, articles of consolidation in the approved form must be executed and acknowledged on behalf of each consolidating corporation by the officers specified in their bylaws, and attested under seal by the officer specified in their bylaws.

(b) The chief officer of each consolidating corporation, by whatever name designated in the bylaws, must execute the articles of consolidation and make and attach to them an affidavit stating that the provisions of this section were duly complied with by the corporation not‑for‑profit.

(c) The articles of consolidation and affidavits must be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑830.** Merger.

Any one or more corporations not‑for‑profit, each of which is designated a "merging corporation", may merge into another corporation not‑for‑profit, designated the "surviving corporation", by complying with the following requirements:

(1) The proposition for merging into a surviving corporation and proposed articles of merger must be approved first by the board of each merging corporation and by the board of the surviving corporation. The proposed articles of merger must recite in the caption that they are executed pursuant to this chapter and must state:

(a) the name of each merging corporation, the address of its principal office, and the date of the filing of its articles of incorporation with the Secretary of State;

(b) the name of the surviving corporation and the address of its principal office;

(c) a statement that each merging corporation elects to be merged into the surviving corporation;

(d) the terms and conditions of the merger and the mode of effecting it, including the manner and basis of converting the memberships in the merging corporation or corporations into memberships in the surviving corporation and the issuance of certificates of membership for the converted memberships; and

(e) any provisions not inconsistent with this chapter considered necessary or advisable for the conduct of the business and affairs of the surviving corporation.

(2) After approval by the boards of the respective parties to the proposed merger, the proposition for merging into a surviving corporation and the proposed articles of merger must be submitted to a vote of the members of each corporation at an annual or special meeting, the notice of which must explain fully the proposed merger. The proposed merger and the proposed articles of merger are approved upon the affirmative vote of not less than two‑thirds of those members of each corporation voting at the meeting.

(3)(a) Upon approval by the members of the respective parties to the proposed merger, articles of merger in the approved form must be executed and acknowledged on behalf of each such corporation by its chief officer, by whatever name designated in its bylaws, and attested under seal by the officer specified in its bylaws.

(b) The chief officer of each corporation executing the articles of merger also must make and attach to them an affidavit stating that the provisions of this section were duly complied with by the corporation.

(c) The articles of merger and affidavits must be submitted to the Secretary of State for filing as provided in this chapter.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑840.** Effect of consolidation or merger.

The effect of consolidation or merger is as follows:

(1) The several parties to the consolidation or merger are a single corporation not‑for‑profit. In the case of a consolidation, it is the new corporation provided for in the articles of consolidation and, in the case of a merger, it is the surviving corporation. The separate existence of all corporate parties to the consolidation or merger, except the new or surviving corporation, ceases.

(2) The new or surviving corporation has all the rights, privileges, immunities, and powers and is subject to all the duties and liabilities of a corporation not‑for‑profit organized pursuant to this chapter, and possesses all the rights, privileges, immunities, and franchises of a public or private nature, and all property, real and personal, applications for membership, all debts due on whatever account, and all other choses in action of each of the consolidating or merging corporations. Every interest of, or belonging or due to, each of the consolidating or merging corporations are transferred to and vested in the new or surviving corporation without further act or deed. The title to real estate, or an interest in real estate, vested in a consolidating or merging corporation does not revert or is not impaired by reason of the consolidation or merger.

(3) The new or surviving corporation is responsible and liable for all of the liabilities and obligations of each of the consolidating or merging corporations, and a claim existing or action or proceeding pending by or against any of the corporations may be prosecuted as if the consolidation or merger had not taken place, except that the new or surviving corporation may be substituted in its place.

(4) Neither the rights of creditors nor liens upon the property of consolidating or merging corporations are impaired by consolidation or merger.

(5) In the case of a consolidation, the articles of consolidation are the articles of incorporation of the new corporation, and in the case of a merger, the articles of incorporation of the surviving corporation are considered to be amended to the extent that the changes are provided for in the articles of merger.

HISTORY: 2000 Act No. 404, Section 2.

ARTICLE 6

Dissolution

**SECTION 33‑36‑1010.** Voluntary dissolution of corporation‑not‑for profit which has not commenced business.

A corporation not‑for‑profit which has not commenced business may dissolve voluntarily by delivering to the Secretary of State for filing articles of dissolution, executed and acknowledged on behalf of the corporation, and stating:

(1) the name of the corporation;

(2) the address of its principal office;

(3) the date of its incorporation;

(4) that the corporation has not commenced business;

(5) that the amount, if any, actually paid in an amount of membership fees, less any part disbursed for necessary expenses, has been returned to those entitled to it;

(6) that no debt of the corporation remains unpaid; and

(7) that a majority of the incorporators elects that the corporation be dissolved.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑1020.** Voluntary dissolution of corporation not‑for‑profit which has commenced business.

A corporation not‑for‑profit which has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) Two‑thirds of the board shall adopt a resolution recommending dissolution and directing the submission of the question to a vote at an annual or special meeting of members.

(2) Written or printed notice must be given to each member of record entitled to vote at the meeting within the time and in the manner provided for the giving of notice of meetings of members and must state that the purpose of the meeting is to consider the dissolution.

(3) At the meeting the members may authorize the dissolution and may fix, or authorize the board to fix, its terms and conditions. Each member may vote and the authorization requires the affirmative vote of at least two‑thirds of all the members.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑1030.** Certificate of election to dissolve; affidavit of compliance.

(A) Upon meeting the requirements of Section 33‑36‑1020, a certificate of election to dissolve must be executed and acknowledged on behalf of the corporation by its chief officer, by whatever name designated by the bylaws, and attested under seal by the officer specified in its bylaws.

(B) The certificate must state:

(1) the name of the corporation;

(2) the address of its principal office;

(3) the names and addresses of its board members; and

(4) the total number of members of the corporation, the number voting for dissolution, and the number voting against dissolution.

(C) The corporate officer executing the certificate of election to dissolve also must make, as an attachment to the certificate, an affidavit stating compliance with the provisions of Section 33‑36‑1020.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑1040.** Submission of certificate of dissolution and affidavit to Secretary of State.

The certificate of dissolution and affidavit must be submitted to the Secretary of State for filing and the corporation not‑for‑profit must cease to carry on its business, except as is necessary for the winding up of its business. Its corporate existence continues until articles of dissolution have been filed by the Secretary of State.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑1050.** Winding up and settling affairs.

The board has full power to wind up and settle the affairs of the corporation not‑for‑profit. It shall collect the debts owing to the corporation, sell and dispose of its property and assets, and pay, satisfy, and discharge its debts, obligations, and liabilities. After paying or adequately providing for the payment of all debts, obligations, and liabilities, the board shall dispose of the residual assets in accordance with the requirements of Section 501(c)(12) of the United States Internal Revenue Code of 1986.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑1060.** Notice of winding up proceedings.

Upon the filing of the certificate of dissolution by the Secretary of State, the board immediately shall cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for two successive weeks in a newspaper of general circulation in the county in which the principal office of the corporation is located.

HISTORY: 2000 Act No. 404, Section 2.

**SECTION 33‑36‑1070.** Articles of dissolution.

(A) When all debts, liabilities, and obligations of the corporation have been paid and all remaining property and assets distributed, the board shall authorize the execution of articles of dissolution, executed and acknowledged on behalf of the corporation by its chief officer, by whatever name designated in its bylaws, and attested under seal by the officer specified in its bylaws.

(B) The articles of dissolution must recite in the caption that they are executed pursuant to this chapter and must state:

(1) the name of the corporation;

(2) the address of the principal office;

(3) that the corporation has delivered to the Secretary of State a certificate of election to dissolve and the date on which the certificate was filed by the Secretary of State in the records of his office;

(4) that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provisions have been made for payment or discharge;

(5) that all residual assets of the corporation have been distributed in accordance with Section 501(c)(12) of the 1986 Internal Revenue Code;

(6) that no actions or suits are pending against the corporation.

(C) The officer executing the articles of dissolution also shall make and attach to them an affidavit stating that the provisions of this article have been duly complied with. The articles of dissolution and affidavit, accompanied by proof of the publication required in Section 33‑36‑1060, must be submitted to the Secretary of State for filing.

HISTORY: 2000 Act No. 404, Section 2.

ARTICLE 7

Miscellaneous

**SECTION 33‑36‑1210.** Corporations organized under Chapter 35 of Title 33.

A domestic corporation organized and governed pursuant to Chapter 35 of Title 33 before the effective date of this chapter is deemed to have been organized pursuant to this chapter as of its effective date and must be governed by the provisions of this chapter.

HISTORY: 2000 Act No. 404, Section 2.

ARTICLE 8

Election to Become Public Body Politic and Corporate

Editor's Note

2001 Act No. 78, Section 1, provides as follows:

"Act 1030 of 1964 was enacted to take advantage of federal funding available through the Farmer's Home Administration Act to provide for the growing need for utility and other services, especially in rural areas. Since that time, the availability of the funding has diminished, and federal and state funding are more often provided from additional sources. The General Assembly finds, under certain conditions, that the not‑for‑profit corporations organized under Act 1030 of 1964, for the purposes of providing water services, should be granted the right to elect to become public bodies politic and corporate for reasons including, but not limited to, the following:

"(1) the opportunity to receive funding, loans, and grants from other sources such as the State Revolving Fund will be increased or enhanced;

"(2) the right to participate in a joint municipal water system as authorized under Chapter 25, Title 6 of the 1976 Code will be afforded; and

"(3) the cost of borrowing money for infrastructure construction and expansion will be lower and growth demands more economically met."

**SECTION 33‑36‑1310.** Election procedures for nonprofit corporation providing water and sewer services to become a public service district.

(A) For the exclusive purposes of participating in a joint municipal water system as authorized under Chapter 25, Title 6, a nonprofit corporation incorporated for the purposes of providing water or water and sewer services, pursuant to the provisions of this chapter may elect, by resolution, to become a public service district, a public body politic and corporate:

(1) before January 1, 2002, upon a majority vote of its members constituting a quorum present at a duly called and noticed meeting; or

(2) on and after January 1, 2002, upon a majority vote of fifteen percent of its members present or by proxy at a duly called and noticed meeting.

(B) Notice of this meeting must be given by regular mail, addressed to the last known address of the member, and mailed not less than ten days prior to the meeting. The secretary of the corporation shall certify the date of mailing. The notice shall state the purpose, time, and place of the meeting.

(C) Upon a favorable vote, the chief executive officer of the corporation shall petition the Secretary of State to issue a new charter to convert and constitute the nonprofit corporation a public service district, a public body politic and corporate.

HISTORY: 2001 Act No. 78, Section 2.

**SECTION 33‑36‑1315.** Resolution to become public service district; notice; petition; vote.

(A) Corporations not‑for‑profit incorporated for the purposes of providing water service which, pursuant to the provisions of this chapter, serve a population of at least twenty thousand persons as shown in the most recent sanitary survey of the South Carolina Department of Health and Environmental Control, and provide water service in two or more counties within the State, may determine, by resolution adopted by the board of directors of the corporation and subject to the additional conditions provided in this section, to become a public service district, a public body politic and corporate. The resolution shall make findings as to: (1) whether the corporation owns assets, including, but not limited to, reserves, that are not reasonably required to continue its operations following its conversion to a public service district and, if so, the amount of the assets; and (2) whether the assets of the corporation have appreciated in value over their original cost and, if so, the amount of the value appreciation. The procedures provided in this section are valid, complete, and sufficient to effect the conversion notwithstanding any contrary provisions of law or the corporation's organizational documents or bylaws.

(B) Notice of the meeting of the board of directors at which the resolution to become a public service district is to be considered must be given by regular mail to each member of the corporation, addressed to the last known address of the member, and mailed not less than ten days before the meeting. Notice is effective upon mailing. The secretary of the corporation shall certify the date of mailing as to each member. The notice shall state the purpose, time, and place of the meeting. At the meeting, the board of directors shall afford any members in attendance an opportunity to speak and be heard in support of or in opposition to the conversion of the corporation to a public service district.

(C) Promptly after adoption by the board of directors of a resolution to become a public service district, the board of directors shall cause notice of the adoption to be mailed by regular mail to each member of the corporation, addressed to the last known address of the member. In addition, the board of directors, not earlier than the mailing required above, also shall cause the notice of adoption to be published at least once in one or more newspapers of general circulation in the counties in which the corporation provides service. The mailed and published notices shall include the name of the corporation, a statement that the board of directors has determined by resolution that the corporation shall be converted to a public service district, the date of the adoption of the resolution, and a statement that the resolution shall become effective and not subject to further review unless a petition signed by not less than fifteen percent of the membership of the corporation is filed as provided in this section. Within sixty days after the publication of the last notice required by this subsection, a petition signed by the members of the corporation equal in number to at least fifteen percent of the total membership may be filed with the clerk of court for the counties in which the corporation provides service calling for a vote of the membership on the question of whether the corporation shall become a public service district.

(D) Except for a petition being duly and timely filed in accordance with subsection (C), no action whatsoever may be commenced to challenge on any grounds the conversion of the corporation to a public service district more than ninety days after the date of the last publication required by subsection (C).

(E) If a petition is duly and timely filed in accordance with subsection (C), then the board of directors shall call a meeting of the members of the corporation to submit the question of whether the corporation shall become a public service district. Notice of this meeting must be given by regular mail to each member of the corporation, addressed to the last known address of the member, and mailed not less than ten days before the meeting. Notice is effective upon mailing. The secretary of the corporation shall certify the date of mailing as to each member. The notice shall state the purpose, time, and place of the meeting. The question shall be determined upon a majority vote of the members present in person at the meeting and voting. Action taken at the meeting is effective only if a quorum of the members of the corporation is present in person. For purposes of this subsection, a quorum consists of at least fifteen percent of the members of the corporation upon admission to the meeting.

(F) If the membership vote results in a determination to become a public service district, then the corporation promptly shall cause notice of the result to be mailed by regular mail to each member, addressed to the last known address of each member. In addition, the corporation, not earlier than the date of the mailing required above, also shall cause notice of the result to be published once in a newspaper or newspapers of general circulation in each county in which the corporation provides service. The mailed and published notices shall include the name of the corporation, a statement that the corporation has determined by membership vote to become a public service district, and a statement that no action may be commenced on account of the meeting or the conversion of the corporation to a public service district more than twenty days after the date of the final publication. No action whatsoever may be commenced to challenge on any grounds the conversion of the corporation to a public service district more than twenty days after the date of the final publication as provided in this subsection.

(G) If any member of the corporation that becomes a public service district pursuant to this section has received or been credited in a specified amount any capital stock, revolving fund certificate, retain certificate, certificate of indebtedness, letter of advice, or other written notice from the corporation and the specified amount has been realized as gross income to such member for federal income tax purposes with respect to any period prior to the date of conversion to a public service district, but the corresponding amount of money has not been distributed to the member, then the member is considered to have contributed such amount to the public service district. The resolution of the board of directors provided for in subsection (B) must specify this information, if applicable. If the board of directors has specified in the resolution provided for in subsection (B) that the corporation owns assets in excess of that reasonably required to continue its operations following conversion to a public service district or that there has been appreciation in the value of the assets of the corporation over their original cost, then, prior to conversion to a public service district, the corporation shall cause the amount thereof, as reasonably determined by the board of directors, to be distributed to the members of the corporation on a cooperative basis.

(H) Upon a final, favorable determination, either by vote of the board of directors or by vote of the membership, in the event a petition has been duly and timely filed in accordance with subsection (C), to become a public service district, and upon the expiration of the limitation periods provided by this section, the chief executive officer of the corporation shall petition the Secretary of State to issue a new charter to convert and constitute the nonprofit corporation a public service district, a public body politic and corporate.

HISTORY: 2012 Act No. 168, Section 1, eff May 14, 2012.

**SECTION 33‑36‑1320.** Petition for charter.

(A) The petition shall include:

(1) the name of the district;

(2) an attached copy of the resolution adopted, certified by the secretary of the corporation;

(3) the name of the current board of directors, their terms of office, and expiration dates;

(4) the desire to become a public body corporate and politic; and

(5) a word description and an attached map showing the present and existing boundaries of the service area.

(B) Upon receipt of the petition, the Secretary of State must verify the contents of the petition and their compliance with subsection (A). Upon verification, the Secretary of State must issue a new charter, referencing the petition, and designating the corporation as a public service district, a public body politic and corporate of the State.

HISTORY: 2001 Act No. 78, Section 2.

**SECTION 33‑36‑1330.** Appointment or election of board members.

(A) For a corporation converted to a public service district pursuant to Section 33‑36‑1310, the existing board of directors and officers shall serve until the expiration of their present terms. Thereafter, and not less than forty‑five days before any expiration of the term of a board member, the board of directors shall submit to the county legislative delegation the name or names of a person or persons recommended for appointment or reappointment. A letter of recommendation by the board stating why the name or names are recommended shall accompany the submission. The county legislative delegation shall consider the recommendation of the board but is not limited to make a selection for its own recommendation from among those submitted. Upon recommendation of the county legislative delegation, members of the board must be appointed by the Governor for a term of four years. A vacancy may be filled by the board, if the remaining term is less than two years; if more than two years, then in the usual manner for the unexpired term.

(B) For a corporation converted to a public service district pursuant to Section 33‑36‑1315, the existing directors, who shall constitute the initial governing board of the district, and officers shall serve until the expiration of their current terms. Thereafter, the public service district must be governed by a board comprising the same number of members as the predecessor corporation had as directors; provided that the governing board shall comprise no fewer than five members and no more than nine members. The governing board, by resolution, may decrease the number of members to not less than five and may increase the number of members to not more than nine. The successor members must be recommended by the board and appointed by the respective county legislative delegations in accordance with the following procedures. Each county legislative delegation shall have the right to appoint a number of members who bear the same relationship to the total number of members as the number of customers of the district within the county bears to the total number of customers of the district. The number of customers within each county, and the total number of customers, must be determined by reference to the billing and customer records of the public service district. Not less than forty‑five days before the expiration of the term of any member, the governing board shall submit to the county legislative delegation with the right to appoint the successor member the name of a person recommended for appointment or reappointment to the board. A letter of recommendation by the board stating why the name is recommended shall accompany the submission. The county legislative delegation shall consider the recommendation of the board, but is not limited to that person in making its appointment. Each member must be appointed for a term of four years and until his successor is appointed and qualifies, provided that the terms of the members must be staggered by a county legislative delegation in making its appointments such that approximately one‑half of the total members appointed by that county legislative delegation must be appointed or reappointed every two years. No member may be appointed for more than two consecutive terms. A vacancy must be filled for the remainder of the unexpired term in the manner of original appointment.

(C) For a corporation converted to a public service district pursuant to Section 33‑36‑1310, the governing body of the district, by a resolution adopted by a two‑thirds vote of all members of the governing body, may request that board members be elected in a nonpartisan general election. If adopted, a certified copy of the resolution and a map clearly setting out the lines of the boundaries of the district in the county or counties in which the district is situated must be presented to the county election commission before August first of a general election held in an even numbered year for the election to be held at the general election in November of that year. The governing body must be elected from single member election districts.

(D) Notice of the election must be published by the governing body of the district at least three times before the election, including (i) not less than sixty days before the date of the election, (ii) two weeks after the first date of publication, and (iii) a date not more than fifteen and not less than ten days before the date of the election. The notice must appear in a newspaper of general circulation within the district and contain at a minimum the following:

(1) the full name of the district and its governing body;

(2) the names, addresses, and telephone numbers of the members of the district's governing body;

(3) the existing means of appointment of members of the district's governing body;

(4) a brief description of the governmental services provided by the district;

(5) a map showing generally the boundaries of the district;

(6) a list of precincts and polling places in which ballots may be cast; and

(7) an explanation of the procedure to be followed for election of members of the district's governing body and State.

HISTORY: 2001 Act No. 78, Section 2; 2012 Act No. 168, Section 2, eff May 14, 2012.

Effect of Amendment

The 2012 amendment rewrote the section.

**SECTION 33‑36‑1340.** Election of commissioners.

(A) On the first Tuesday following the first Monday in November in the year immediately following the year of the resolution, the voters shall elect commissioners for all seats on the district's governing body. Candidates must file a statement of intention of candidacy with the entity charged by law with conducting the election. Except for the initial election of commissioners as provided in subsection (B), all commissioners must be elected on an at‑large basis for terms of four years with terms staggered so that a simple majority of the commissioners are elected in the next ensuing general election year, and the remaining commissioners are elected at the next following general election. The terms of office of commissioners whose seats are subject to contest in general election shall expire fourteen days following the general election.

(B) For the initial election of commissioners, all seats are considered vacant. From among the commissioners elected in the initial election, a simple majority thereof shall serve terms which expire fourteen days following the general election held two years after the initial election. Those commissioners entitled to serve the initial four‑year terms are those commissioners equal in number to a simple majority of the membership who received the highest number of votes cast in the initial election. The remaining commissioners shall serve terms which expire fourteen days following the general election held the year following the initial election.

(C) The county election commission is charged with conducting and supervising the elections for commissioners in the manner governed by the election laws of this State, mutatis mutandis. Vacancies must be filled in the manner provided in Section 7‑13‑190.

HISTORY: 2001 Act No. 78, Section 2.

**SECTION 33‑36‑1350.** Election of officers by the board.

The board shall annually elect its officers, a chairperson, vice chairperson, and a secretary and treasurer. The latter two offices may be combined.

HISTORY: 2001 Act No. 78, Section 2.

**SECTION 33‑36‑1360.** Rights and powers of district.

(A) The newly converted district has all rights and powers of a public body politic and corporate of this State including, without limitations, all the rights and powers necessary or convenient to carry out and effectuate its purposes including, but not limited to, the following rights and powers to:

(1) have perpetual succession;

(2) sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person;

(3) adopt, use, and alter a corporate seal;

(4) maintain a principal office;

(5) adopt, change, amend, and repeal bylaws for the management and regulation of its affairs;

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

(7) purchase, build, construct, maintain, rent, lease, and operate ditches, tunnels, culverts, flumes, conduits, mains, pipes, trunk and collection lines, dykes, dams, reservoirs, water and wastewater treatment facilities, and any adjunct facility or facilities for the impounding, treatment, production, transmission, distribution, operation, service in connection with the sale of water or supply of sewer service;

(8) acquire and operate any type of machinery, appliances, or appurtenances necessary or useful in constructing, operating, and maintaining the system;

(9) enter into contracts of short or long duration;

(10) prescribe rate charges for its services and enact regulations;

(11) make contracts of all kinds and execute all instruments or documents necessary or convenient to carry out the business of the district;

(12) sell, lease, exchange, transfer, or otherwise dispose of or grant option for any purpose with respect to any real or personal property or interest in them in conformity with state law;

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

(14) incur liabilities, lend and borrow money, issue bonds or notes of the district, secure its obligations by mortgage, and pledge or assign any money, rents, charges, or other revenues and any proceeds derived by the district from the sales of property, insurance, or condemnation awards;

(15) acquire, enjoy, utilize, and dispose of patents, copyrights, and trademarks and licenses and other rights or interests in them;

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

(17) apply to the appropriate agencies of the State, the United States or any state, and to any other proper agency for and obtain from them permits, licenses, certificates, or approvals as may be necessary; and construct, maintain, and operate the project in accordance with such license, permits, certificates, or approvals;

(18) appoint officers, agents, employees, and servants to prescribe the duties of such, to fix their compensation, and to determine if and to what extent they must be bonded for the faithful performance of their duties;

(19) employ engineers, architects, attorneys, appraisers, financial advisors, and other consultants and employers as may be required in the judgment of the district and fix and pay their compensation from funds available to the joint system, if applicable;

(20) engage in the business of supplying water, water distribution, or sewage collection or treatment; and

(21) exercise, in connection with water or sewage disposal business, the power of eminent domain as prescribed in Section 6‑13‑50(19).

(B) The rates charged for services furnished for the purpose of providing water supply or sewage disposal, or a combination of these services, is not subject to supervision or regulations by any state bureau, board, commission, or like instrumentality or agency of it.

HISTORY: 2001 Act No. 78, Section 2.

**SECTION 33‑36‑1370.** District to assume all assets, properties and liabilities of antecedent nonprofit corporation.

Districts converted pursuant to this article shall assume all assets, properties, and liabilities of the antecedent nonprofit corporation.

HISTORY: 2001 Act No. 78, Section 2.