CHAPTER 25

Joint Authority Water and Sewer Systems Act

Editor's Note

2007 Act No. 59, Section 1, changed the title of this chapter which was formerly "Joint Municipal Water Systems".

**SECTION 6‑25‑5.** Legislative findings.

The General Assembly finds that:

(1) The availability of water and sewer services to assist economic development and to provide for the health, safety, and welfare of its people is a very critical matter for this State.

(2) It is appropriate to make it possible for a member of a joint authority water system to utilize certain sources of revenues available to them, including payments in lieu of taxes, to assist in the development of additional water and sewer treatment capacity and the provision of collection and distribution lines.

(3) It is desirable to facilitate a joint authority water and sewer system in accommodating the desires of its members in projects and financings that affect only those members.

HISTORY: 1997 Act No. 74, Section 1; 2007 Act No. 59, Section 1, eff June 6, 2007.

Code Commissioner's Note

This section was classified at the direction of the Code Commissioner.

Effect of Amendment

The 2007 amendment, in item (2), substituted "authority" for "municipal"; and, in item (3), substituted "joint authority water and sewer system" for "joint water system".

**SECTION 6‑25‑10.** Short title.

This chapter may be cited as the "Joint Authority Water and Sewer Systems Act".

HISTORY: 1983 Act No. 82, Section 2; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment substituted "Joint Authority Water and Sewer" for "Joint Municipal Water".

**SECTION 6‑25‑20.** Definitions.

For purposes of this chapter:

(1) "Joint Authority Water and Sewer System" or "joint system" means a government entity organized under this chapter to undertake or acquire a water or sewer project.

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

(3) "Project" means a project undertaken by a joint authority water and sewer system to:

(a) impound, produce, treat, transmit, distribute, sell, and service water to a member, or to an authority that is not a member but who is engaged in providing water or sewer service, or to any other person or entity if water service is not otherwise available from any other source when approved by the governing body of each member; and

(b) collect, transport, process, treat, dispose, and control municipal, domestic, industrial, or communal waste, flood water, or storm water, whether in fluid, solid, or composite state, including specifically the control, abatement, or reduction of pollution for a member, or for an authority that is not a member and is engaged in waste and wastewater collection, treatment, and disposal, or to any other person or entity if sewer service is not otherwise available from any other source when approved by the governing body of each member.

(4) "Cost" or "cost of a project" means, but is not limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of costs and revenues relating to the project; 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 security for them; administrative, legal, professional, engineering, and inspection expenses; financing fees, expenses, and costs; working capital; insurance; interest on the bonds during the period of construction and for a reasonable period after construction as may be determined by the commission of the joint system; establishment of reserves; and all other expenditures of the joint system incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, or extension of any project and the placing of the project in operation.

(5) "Governing body" means with respect to an authority; the board, commission, council, or other entity charged by law with governing the authority.

(6) "Authority" includes:

(a) a county or municipality incorporated under the laws of this State;

(b) a consolidated political subdivision of this State;

(c) a commission of public works; and

(d) an agency or public body created under the laws of this State and authorized by legislation to be engaged in the sale and service of water for industrial and domestic purposes, or the collection for treatment of wastewater.

(7) "Revenue bonds" and "bonds" mean bonds, notes, certificates, or other obligations of a joint system issued pursuant to the provisions of this chapter and include a refinancing or refunding of bonds, notes, certificates, or other obligations, but which must be paid solely from the revenue or another source of funds available to a joint system.

(8) "Member of a joint system" means an authority that has taken the actions necessary to form or join the joint system.

(9) "Construction note" or "note" means a note of a joint system issued to provide funding for the creation of a financing pool and the costs associated with it.

(10) "Financing agreement" means an agreement entered into by a joint system organized to create a financing pool and a member of it in connection with the lending of the proceeds of construction notes or portion thereof by the joint system to the member so as to provide for the repayment of amounts loaned and interest on it by the member to the joint system.

(11) "Financing pool" means a fund of money, obtained through the issuance of a construction note of a joint authority water and sewer system, which may be loaned to the members of it by way of interim financing. A joint system may not lend more than five percent of the principal amount of a financing pool to a not‑for‑profit corporation established pursuant to Chapter 35 of Title 33.

(12) "Government" means the United States of America, acting through the United States Department of Agriculture, or its successor, and the agencies and divisions of it.

(13) "Interim financing" means bond anticipation notes issued pursuant to the provisions of Sections 11‑17‑10 to 11‑17‑120 in anticipation of the issuance of bonds of an authority to be sold to the government.

HISTORY: 1983 Act No. 82, Section 2; 1986 Act No. 312, Section 1; 1986 Act No. 456, Sections 1‑4; 1997 Act No. 74, Section 2; 1999 Act No. 113, Sections 4, 5; 2001 Act No. 78, Section 3; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment redesignated items (a) to (m) as items (1) to (13); and rewrote items (1), (3), (5), (6), (7), (8), (11) and (13).

**SECTION 6‑25‑25.** Authority to purchase, construct, etc., facilities.

In addition to all other project purposes, the joint system formed under the Joint Authority Water and Sewer Systems Act is authorized to purchase, construct, acquire, own, operate, maintain, repair, and improve any and all works, improvements, facilities, plants, equipment, transportation lines, pump stations, sewage treatment plants, apparatus, and appliances incidental, helpful, or necessary to its members upon request and approval of its members in accordance with the bylaws of the joint system.

HISTORY: 1986 Act No. 312, Section 2; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment substituted "Joint Authority Water and Sewer" for "Joint Municipal Water", and added "transportation lines, pump stations, sewage treatment plants, apparatus,".

**SECTION 6‑25‑30.** Creation of joint systems.

(A) The governing body of an authority may join another authority to form a joint system after ascertaining by resolution that a joint system best serves the interests of the authority, its citizens, and its customers.

(B) A joint system may be formed:

(1) to plan, finance, develop, construct, acquire, improve, enlarge, sell, lease, maintain, and operate a project to service the needs of its service area;

(2) to create a finance pool; or

(3) both.

(C) A governing body of a member of a joint system may plan and enter a contract in connection with a project of the joint system consistent with the terms of this chapter.

(D) An authority may conduct a study to assess the necessity and feasibility of a project.

HISTORY: 1983 Act No. 82, Section 2; 1999 Act No. 113, Section 6; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment rewrote this section.

**SECTION 6‑25‑35.** Extension of provisions applicable to water.

A reference to the purpose of a project in this chapter pertaining specifically to water includes all the purposes as provided in Sections 6‑25‑20(3) and 6‑25‑25 and a power or authority provided for in this chapter to a joint system or a member of a joint system may be exercised with respect to any project or purpose of the joint system.

HISTORY: 1986 Act No. 312, Section 3; 1995 Act No. 145, Part II, Section 91A; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment made nonsubstantive and conforming changes.

**SECTION 6‑25‑40.** Notice of ordinance or resolution creating system; objections; exception.

An authority adopting a resolution to create a joint system shall publish notice of the adoption of the resolution in a newspaper of general circulation within the county in which the governing body is located. The publication must be made once a week for two consecutive weeks following the adoption of the resolution. A person affected by the adoption of the resolution may institute an action in the circuit court for the county in which the governing body is located within twenty days following the last publication of the notice prescribed challenging the action of the governing body and not thereafter.

HISTORY: 1983 Act No. 82, Section 2; 1999 Act No. 113, Section 7; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment rewrote this section.

**SECTION 6‑25‑50.** Agreement as to number of commissioners each member may appoint; application filed with Secretary of State; corporate certificate.

(A) The governing bodies of the members of a joint system shall form an agreement specifying the number of commissioners each member may appoint to a commission created to govern the joint system pursuant to Section 6‑25‑60.

(B) Two or more commissioners shall file with the Secretary of State an application signed by the commissioner of each proposed member setting forth:

(1) the names of all proposed members and their respective appointed commissioners;

(2) a certified copy of:

(a) the resolution of each member determining it is in its best interest to participate in the proposed joint system; and

(b) the resolution appointing the member's commissioner;

(3) the desire that the joint system be organized as a public body corporate and politic under this chapter;

(4) the name which is proposed for the joint system; and

(5) the purpose for creation of the joint system.

The Secretary of State shall file the application if after examining it and determining that it complies with the requirements in this section and that the proposed name of the joint system is not identical with that of any other corporation of the State or any agency or instrumentality or so nearly similar as to lead to confusion and uncertainty.

After the application has been filed, the Secretary of State shall issue a corporate certificate that must be filed with the application, and the joint system then must be constituted a public body corporate and politic under the name proposed in the application. The corporate certificate shall set forth the names of all voting members and of the name of the joint system. There also must be stated upon the corporate certificate the purpose for which it has been created, as set forth in the application. Notice of the issuance of such corporate certificate must be given to all members of the joint system by the Secretary of State.

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

HISTORY: 1983 Act No. 82 Section 2; 1999 Act No. 113, Section 8; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment designated the first sentence as subsection (A) and rewrote it; designated the second sentence and items (a) to (e) as subsection (B), redesignated items (a) to (e) as paragraphs (1) to (5) and substituted "commissioner" for "representative" throughout; and made nonsubstantive changes in the second and third undesignated paragraphs.

**SECTION 6‑25‑60.** Joint system to be managed and controlled by commission; appointment of commissioners; oath; records; seal; quorum; vacancies; expenses.

(A) The management and control of a joint system is vested in a commission that may consist of no fewer than five members and no more than eleven members. The governing body of each voting member of a joint system shall appoint a commissioner, pursuant to Section 6‑25‑50(A), to serve as a commissioner of the joint system. A commissioner has one vote and may have additional votes as a majority of the members of the joint system determines. A commissioner serves at the pleasure of the governing body by which he was appointed. A commissioner, 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 oath must be filed with the governing body of the appointing authority.

Notwithstanding the provisions of this subsection requiring the commission managing a joint system to have no fewer than five members and no more than eleven members, a joint system in existence on this section's effective date and having fewer than five members or more than eleven members on this section's effective date may continue to maintain the number of members serving on the section's effective date and may add additional members as its commissioners determine.

(B) The commissioners of the joint system shall annually, or biennially, if provided in the bylaws of the joint system, elect, with each commissioner having one vote, one of the commissioners as chairman, another as vice chairman, and other persons who may, but need not be commissioners, as treasurer, secretary and, if desired, assistant secretary. The office of treasurer may be held by the secretary or assistant secretary. The commission may also appoint such additional officers as it deems necessary. The secretary or assistant secretary of the joint system shall keep a record of the proceedings of the joint system, and the secretary must be the custodian of all books, records, documents, and papers filed with the joint system, the minute book or journal of the joint system, and its official seal.

(C) A majority of the commissioners of the joint system shall constitute a quorum. A vacancy on the commission of the joint system shall not impair the right of a quorum to exercise all rights and perform all the duties of a joint system. Any action taken by the joint system 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 system, and each resolution shall take effect immediately and need not be published or posted. Except as is otherwise provided in this chapter or in the bylaws of the joint system, a majority of the votes which the commissioners present are entitled to cast, with a quorum present, shall be necessary and sufficient to take any action or to pass any resolution. No commissioner of a joint system shall receive any compensation solely for the performance of duties as a commissioner, but each commissioner may be paid per diem, mileage, and subsistence expenses, as provided by law for state boards, committees, and commissions, incurred while engaged in the performance of such duties.

HISTORY: 1983 Act No. 82, Section 2; 1988 Act No. 569; 1999 Act No. 113, Section 9; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment redesignated subsections (a) to (c) as subsections (A) to (C); in subsection (A), in the first paragraph in the first sentence added "that may consist of no fewer than five members and no more than eleven members", in the second sentence substituted "commissioner, pursuant to Section 6‑25‑50(A), to serve as" for "representative who must be", deleted the third sentence which provided "The representative may be an officer or employee of the member and may also serve ex officio as a member of the commission", and made nonsubstantive changes in the remaining sentences; and rewrote the second undesignated paragraph which related to appointment of additional representatives.

**SECTION 6‑25‑70.** Change in membership of joint system.

(A) After the creation of a joint system, any other authority may become a member upon:

(1) adoption of a resolution or ordinance by the governing body complying with the requirements of Section 6‑25‑40 including publication of notice;

(2) submission of an application to the joint system; and

(3) approval of the application by resolution of the governing body of each member of the joint system except in the case of a joint system organized for the purpose of creating a financing pool, in which case the application must be approved by resolution of the commission.

(B) A member may withdraw from a joint system by resolution or ordinance of its governing body. A contractual right acquired or contractual obligation incurred by a member while it was a member remains in full force and effect after the member's withdrawal.

(C) Notice of a change in membership must be filed in the Office of the Secretary of State. No change is final until this filing occurs. The filing is not required if a joint system is organized only for the purpose of creating a financing pool.

HISTORY: 1983 Act No. 82, Section 2; 1999 Act No. 113, Section 10; 2000 Act No. 404, Section 10; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment designated subsections (A) to (C) and redesignated items (a) to (c) as paragraphs (A)(1) to (A)(3); in subsection (A), substituted "authority" for "municipality"; in subsection (B), made nonsubstantive changes and added "after the member's withdrawal"; and, in subsection (C), made nonsubstantive changes.

**SECTION 6‑25‑80.** Dissolution of system.

Whenever the commission of a joint system and the governing body of each of its members shall by resolution or ordinance determine that the purposes for which the joint system was formed have been substantially fulfilled and that all bonds issued and all other obligations incurred by the joint system have been fully paid or satisfied, the commission and members may declare the joint system to be dissolved. On the effective date of the resolution or ordinance, the title to all funds and other income and property owned by the joint system at the time of dissolution must be disbursed to the voting members of the joint system according to its bylaws.

HISTORY: 1983 Act No. 82, Section 2; 1999 Act No. 113, Section 11; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment reprinted this section with no apparent change.

**SECTION 6‑25‑90.** Executive committee; composition; powers; terms of office; vacancies; filing notice of change with Secretary of State.

The commission of a joint system may create an executive committee, the composition of which must be set forth in the bylaws of the joint system. The composition of the executive committee shall afford a fair representation of the members. The executive committee may exercise such powers during intervals between the commission's meetings as provided by the commission. The terms of office of the members of the executive committee and the method of filling vacancies must be fixed by the bylaws of the joint system. A change in membership of a joint system is not final until notice of the change is filed with the Secretary of State, except where a joint system is organized to create a financing pool.

HISTORY: 1983 Act No. 82, Section 2; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment added the fifth sentence relating to filing membership changes with the Secretary of State.

**SECTION 6‑25‑100.** Powers of joint system.

A joint system shall have all the rights and powers of a public body politic and corporate of this State, necessary or convenient to carry out the provisions of this chapter, including, without limitation, the power or right to:

(1) have perpetual succession;

(2) sue and be sued;

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

(4) maintain a principal office;

(5) make 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, equipment, flumes, conduits, mains, pipes, dykes, dams, reservoirs, water treatment facilities, and any facilities to impound, treat, produce, transmit, distribute, operate, service, or sell water or to collect and treat wastewater in connection with the project;

(8) acquire and operate machines, appliances, or appurtenances necessary or useful to construct, operate, or maintain the system;

(9) enter contracts to purchase or sell water or provide sewer service;

(10) prescribe rates or regulations under which water is sold;

(11) make contracts and execute instruments or documents necessary or convenient to carry on the business of the joint system;

(12) sell, lease, exchange, transfer, or otherwise dispose of or to grant an option concerning an interest in property in conformity with state law;

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

(14) borrow money and issue revenue bonds or notes of the joint system, to loan the proceeds of any borrowing to any member of the joint system to be paid solely from revenues of the system, the loan repayments of members, and such other funds as may be available therefor with a favorable vote of two‑thirds of the commissioners. A bond or note may not be issued, the payment for which depends upon a contract or agreement with a member except with the approval of the governing body of such member, by resolution of the governing body of the member. The requirements of this item are satisfied and no further action is required with respect to a bond or note issued to finance a project that has been approved by the governing body of the member as provided in Section 6‑25‑110. The approval of a note or bond under this chapter shall include an issuance in one or more series and any refunding or refinancing of them so that only the original issuance of the debt must be approved. The members of a joint system may prescribe additional procedures and requirements as they determine appropriate to issue a note or bond in the bylaws of a joint system;

(15) pledge or assign money, rents, charges, or other revenue and proceeds derived by the joint system from the sale of property, insurance, or a condemnation award;

(16) authorize the construction, operation, or maintenance of a project by a person, firm, or corporation, including a political subdivision and agency of a state of the United States;

(17) apply to the appropriate agencies of the State, the United States or another state, and to another proper agency to obtain a permit, license, certificate, or approval as necessary; and to construct, maintain, and operate the project in accordance with such a license, permit, certificate, or approval;

(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 shall be bonded for the faithful performance of their duties;

(19) employ engineers, architects, attorneys, appraisers, financial advisors, or other consultants or employees required, and to fix and pay their compensation from funds available to the joint system;

(20) make use of county and state highway rights‑of‑way in which to lay pipes and lines, in such manner and under such conditions as the appropriate officials in charge of such rights‑of‑way shall approve;

(21) exercise the power of eminent domain as provided by the laws of this State;

(22) before, and in connection with the acquisition of a project, study, plan, finance, own, operate, and maintain the project, and after the acquisition, to study, plan, finance, acquire, construct, reconstruct, improve, enlarge, extend, own, operate, and maintain an additional project;

(23) acquire by negotiated purchase or lease an existing project, a project under construction, or other property, either individually or jointly, with another authority in this State or another state owning a water or sewer facility or with a political division or agency of another state, or another joint system created pursuant to this chapter;

(24) 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 authority in this State or another state owning a water or sewer facility or with a political subdivision or agency of another state or with another joint system created pursuant to this chapter;

(25) fix, charge, and collect rents, rates, fees, and charges for water or sewage services, and commodities sold, furnished, or supplied through a project; and

(26) acquire and operate a water treatment system, water distribution system, or sewer system, including the system of a member if its consent is first obtained and referendum approval is obtained in those instances where required by law.

Provided, that the provisions of (7), (8), (9), (11), (17), (18), (21), (22), (23), (24), (25), and (26) do not apply to a joint system organized solely for the purpose of creating a financing pool.

HISTORY: 1983 Act No. 82, Section 2; 1986 Act No. 456, Section 5; 1995 Act No. 145, Part II, Section 91B; 1997 Act No. 74, Section 3; 1999 Act No. 113, Sections 12, 13; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment redesignated items (a) et seq. as items (1) et seq.; deleted items (i) relating to contracts to sell water to member and nonmember municipalities, (z) relating to contracts with joint systems and municipalities, and (bb) relating to sale of water at retail and wholesale; and made conforming amendments throughout.

**SECTION 6‑25‑110.** Authorization to incur debt and issue bonds.

A joint system may incur debt for any of its purposes and may issue bonds pledging to the payment as to both principal and interest the revenues, or any portion, derived or to be derived from all or any of its projects and any additions and betterments or extensions or contributions or advances from its members or other sources of funds available to it. A joint system may not undertake a project required to be financed, in whole or in part, with the proceeds of bonds without the approval of the governing bodies of each member which is obligated or to be obligated under any contract for the payment of amounts to be pledged as security therefore and a favorable vote of two‑thirds of all commissioners. A joint system formed only for the purpose of creating a financing pool may issue notes in anticipation of the issuance of bonds by its members to the government.

HISTORY: 1983 Act No. 82, Section 2; 1997 Act No. 74, Section 4; 1999 Act No. 113, Section 14; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment made nonsubstantive changes.

**SECTION 6‑25‑111.** Issuance, sale, and execution of bonds; use of proceeds; issuance of temporary bonds; replacement of bonds.

(A) A joint system may issue bonds for the purpose of paying all or any part of the cost of any of the purposes authorized in this chapter. The principal of, premium, if any, and the interest on the bonds are payable solely from the respective funds provided for such payment by this chapter. The bonds of each issue may be sold at public or private sale. The bonds may be sold at a price, and must bear interest at a rate, as may be determined by the commission of the joint system. The bonds of each issue must be dated and must mature in amounts and at times not exceeding fifty years from their respective dates, as may be determined by the commission of the joint system, and may be made redeemable before maturity at a price and under terms and conditions as may be fixed by the commission of the joint system before the issuance of the bonds. The commission of the joint system shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached to them, and shall fix the denomination of the bonds and the place 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 appears on any bonds or coupons ceases to be an officer before the delivery of the bonds, the signature of the facsimile is nevertheless valid and sufficient for all purposes the same as if he had remained in office until the delivery. The commission of the joint system also may 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 commission of the joint system 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 may be used solely for the purposes for which the bonds are issued, and must be disbursed in a manner and under restrictions, if any, as the commission of the joint system may provide in the resolution authorizing the issuance of the bonds or in any trust agreement securing them. The joint system may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The joint system also may provide for the replacement of any bonds which have become mutilated or 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 of them, but no joint system shall undertake any project required to be financed, in whole or in part, with the proceeds of bonds without the approval of the governing bodies of members as prescribed in Section 6‑25‑110.

HISTORY: 1986 Act No. 456, Section 6; 1997 Act No. 74, Section 5; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment, in subsection (A), in the first sentence deleted "at one time or from time to time its" preceding "bonds".

**SECTION 6‑25‑112.** Trust agreements or resolutions providing for issuance of bonds.

In the discretion of the commission of the joint system, any bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the joint system and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. The trust agreement or the resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustees 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 the bonds may contain covenants including, but not limited to, the following:

(1) the pledge of the revenue derived from the project to be financed by the bonds or from the water system or facilities of a joint system;

(2) 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 system;

(3) the setting aside of reserves and the investment, regulation, and disposition of the reserves;

(4) the custody, collection, securing, investment, and payment of any monies held for the payment of bonds;

(5) limitations or restrictions on the purposes to which the proceeds of sale of bonds then or thereafter issued may be applied;

(6) 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;

(7) the procedure to amend the terms of a contract with bondholders, the percentage of bonds the bondholders of which must consent thereto, and the manner in which the consent may be given;

(8) events of default and the rights and liabilities arising on default, the terms and conditions upon which a bond issued under this chapter becomes or may be declared due before maturity, and the terms and conditions upon which the declaration and its consequences may be waived;

(9) the preparation and maintenance of a budget;

(10) the retention or employment of engineers, independent auditors, and other technical consultants;

(11) limitations on or the prohibition of free service to any public or private person;

(12) the acquisition and disposal of property, but no project or part of a project may be mortgaged by the trust agreement or resolution;

(13) provisions for insurance and for accounting reports and the inspection and audit of them;

(14) the continuing operation and maintenance of the project; or

(15) conditions under which the bonds may be defeased.

HISTORY: 1986 Act No. 456, Section 6; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment redesignated items (a) to (o) as items (1) to (15) and made nonsubstantive changes.

**SECTION 6‑25‑113.** Revenues from which bonds payable; statement of restriction.

The bonds are special obligations of the joint system issuing them. The principal of, premium, if any, and interest on the bonds are not payable from the general funds of the joint system, nor do 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 an authority is, or may be, pledged for the payment of the principal of or interest on the bonds, and no holder of the bonds has the right to compel the exercise of the taxing power by the State or an authority or the forfeiture of any of its property in connection with any default. However, the provisions of this section do not affect the ability of any member county or authority from providing a pledge of all or part of any revenues derived as payments in lieu of taxes with respect to a project. Every bond must recite in substance that the principal of and interest on the bond is payable solely from the revenues and other funds pledged to its payment and that the joint system is not obligated to pay the principal or interest except from such revenues and funds so pledged.

HISTORY: 1986 Act No. 456, Section 6; 1997 Act No. 74, Section 6; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment substituted "authority" for "municipality" throughout.

**SECTION 6‑25‑114.** Issuance of refunding bonds.

A joint system may provide by resolution for the issuance of refunding bonds of the joint system for the purpose of refunding outstanding bonds that have been issued under the provisions of this chapter, including the payment of any redemption premium and interest accrued or to accrue to the date of redemption of the bond. The issuance of the bonds, their maturities, and other details, the rights of their holders, and the rights, duties, and obligations of the joint system in respect to the bonds are governed by the provisions of this chapter that relate to the issuance of bonds.

HISTORY: 1986 Act No. 456, Section 6; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment made nonsubstantive changes.

**SECTION 6‑25‑115.** Financing pools and construction notes.

(A) A joint system organized only for the purpose of creating a financing pool may issue from time to time its construction notes for the purpose of creating a financing pool and providing funds to defray the cost of administration of the financing pool and the costs of issuance of the construction notes. The principal, applicable premium, and interest on an issue of construction notes must be payable solely from the proceeds of the construction notes, earning on the proceeds, the proceeds of bonds issued to the government by members of the joint system, financing agreements between the joint system and its members, and such funds and accounts of the joint system as provided by the resolution of the commission authorizing the issuance of such issue of construction notes or a trust agreement securing the issue of construction notes. Each issue of construction notes may be sold at public or private sale. The construction notes may be sold at a price, and must bear interest at a rate, as may be determined by the commission of the joint system. The construction notes of each issue must be dated and must mature in amounts and at times not exceeding two years from their respective dates, as may be determined by the commission of the joint system, and may be made redeemable before maturity at a price and under terms and conditions as may be fixed by the commission of the joint system before the issuance of the construction notes. The commission of the joint system shall determine the form and the manner of execution of the construction notes, including any interest coupons to be attached to them, and shall fix the denomination of the construction notes and the place 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 appears on any construction note or coupons ceases to be an officer before the delivery of the construction notes, the signature of the facsimile is nevertheless valid and sufficient for all purposes the same as if he had remained in office until the delivery. The commission of the joint system also may provide for the authentication of the construction notes by a trustee or fiscal agent. The construction notes may be issued in bearer or in fully registered form, or both, as the commission of the joint system may determine.

(B) The proceeds of the construction notes of each issue may be used solely for the purposes for which the construction notes are issued, and must be disbursed in a manner and under restrictions, if any, as the commission of the joint system may provide in the resolution authorizing the issuance of the construction notes or in any trust agreement securing them. The joint system also may provide for the replacement of any construction notes which have become mutilated or have been destroyed or lost.

(C) The proceeds of the construction notes must be applied solely to the costs of issuance thereof, the cost of administration of the joint system, to capitalized interest on the notes, and to create a financing pool.

(D) Money in a financing pool may be loaned to members of the joint system upon such terms and conditions as are set forth by the resolution of the commission authorizing construction notes issued to provide funds for the financing pool or a trust agreement securing the issue of construction notes, provided, however, that the loan made from the financing pool may be only made upon the delivery by the borrower of such funds of a letter of commitment from the government to provide permanent financing for the capital project to be initially financed by the loan.

(E) A construction note must be a special obligation of the joint system that issued the note, and the full faith, credit, and the taxing power of this State and its political subdivisions may not be pledged for these notes. All construction notes shall include a legend substantially similar to the following:

THIS NOTE IS A SPECIAL AND LIMITED OBLIGATION OF (NAME OF JOINT SYSTEM), A BODY CORPORATE AND POLITIC OF THE STATE OF SOUTH CAROLINA. THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THIS NOTE IS NOT PAYABLE FROM THE GENERAL FUNDS OF THE (NAME OF JOINT SYSTEM), NOR DOES IT 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 ISSUANCE OF THIS NOTE OR THE TRUST AGREEMENT SECURING THIS NOTE. THIS NOTE DOES NOT CONSTITUTE A DEBT, LIABILITY, OR OTHER OBLIGATION OF THE STATE OF SOUTH CAROLINA, OR ANY POLITICAL SUBDIVISION OF IT. THE (NAME OF JOINT SYSTEM) IS NOT OBLIGATED TO PAY THIS NOTE OR THE INTEREST HEREON EXCEPT FROM THE REVENUES, FUNDS, AND ASSETS PLEDGED THEREFORE, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF SOUTH CAROLINA. THE (NAME OF JOINT SYSTEM) OR ITS MEMBER ENTITIES IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS NOTE. NO HOLDER OF THIS NOTE HAS THE RIGHT TO COMPEL THE EXERCISE OF THE TAXING POWER BY THE STATE OR ANY POLITICAL SUBDIVISION OF IT OR THE FORFEITURE OF ANY OF ITS PROPERTY IN CONNECTION WITH ANY DEFAULT.

(F) A construction note may be issued pursuant to this chapter without obtaining the consent or approval of this State or its political subdivision, or an agency, commission, or instrumentality of this State, but such a construction note may not be issued without the prior approval of a majority of the commissioners of the joint system present and voting at a duly called meeting of it. A member is not liable for a payment in respect of a construction note issued by a joint system except with the approval of the governing body of the member, by resolution or ordinance of the governing body of the member.

(G) In the discretion of the commission of the joint system, any construction notes issued under the provisions of this chapter may be secured by a trust agreement by and between the joint system and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. The trust agreement or the resolution providing for the issuance of the construction notes may contain provisions for protecting and enforcing the rights and remedies of the holders of the construction notes and of the trustees as may be reasonable and proper and not in violation of law, and may restrict the individual right of action by holders of construction notes. The trust agreement or the resolution providing for the issuance of the construction notes may contain covenants including, but not limited to, the following:

(1) the pledge of the proceeds of the construction notes, earnings on the proceeds, the proceeds of bonds issued to the government by members of the joint system, agreements between the joint system and its members, and the funds and accounts of the joint system;

(2) the terms and conditions of loans to be made from the financing pool;

(3) the setting aside of reserves and the investment, regulation, and disposition of the reserves;

(4) the custody, collection, securing, investment, and payment of any monies held for the payment of construction notes;

(5) limitations or restrictions on the purposes to which the proceeds of sale of construction notes then or thereafter issued may be applied;

(6) limitations or restrictions on the issuance of additional construction notes, the terms upon which additional construction notes may be issued and secured, or the refunding of outstanding or other construction notes;

(7) the procedure by which the terms of any contract with holders of construction notes may be amended, the percentage of construction notes the holders of which must consent to, and the manner in which the consent may be given;

(8) events of default and the rights and liabilities arising on default, the terms and conditions upon which construction notes issued under this chapter become or may be declared due before maturity, and the terms and conditions upon which the declaration and its consequences may be waived;

(9) the retention or employment of financial advisors, attorneys, independent auditors, and other technical consultants;

(10) provisions for insurance and for accounting reports and the inspection and audit of them; or

(11) conditions under which the construction notes may be defeased or redeemed.

HISTORY: 1999 Act No. 113, Section 1; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment made nonsubstantive changes.

**SECTION 6‑25‑120.** Repayment of notes, obligations, or bonds.

A joint system may not pledge the full faith, credit, or taxing power of its members when borrowing money or issuing a bond, note, or other obligation. Only revenues and other funds available to the joint system may be used to pay or pledged to the repayment of any notes, obligations, or bonds.

HISTORY: 1983 Act No. 82, Section 2; 1997 Act No. 74, Section 7; 1999 Act No. 113, Section 15; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment rewrote this section.

**SECTION 6‑25‑125.** Charges for services; pledges.

A joint system may fix, charge, and collect rents, rates, fees, and charges for its services. For so long as any bonds of a joint system are outstanding and unpaid, the rents, rates, fees, and charges must be fixed 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; to pay when due the principal of, premium, if any, and interest on all bonds payable from the revenues; to create and maintain reserves and comply with 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 system may be obligated to pay from the revenues by law or contract.

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

HISTORY: 1986 Act No. 456, Section 7; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment, in the first undesignated paragraph, in the first sentence substituted "its services" for "water and other services, related to the impounding, production, treatment, transmission, distribution, sale, and service of water"; and, in the second undesignated paragraph, in the second sentence substituted "authority" for "municipality".

**SECTION 6‑25‑126.** Temporary investment of funds pending disbursements.

The resolution authorizing the bonds or construction notes of any issue or the trust agreement securing the bonds or construction notes may provide that any of the monies may be temporarily invested and reinvested pending disbursements and the securities and other investments provided in the resolution or trust agreement, and must provide that any bank or trust company with which the monies are deposited shall act as trustee of the monies and shall hold and apply them for the purposes of this chapter, subject to regulation as this chapter and the resolution or trust agreement may provide.

HISTORY: 1986 Act No. 456, Section 7; 1999 Act No. 113, Section 16; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment reprinted this section with no apparent change.

**SECTION 6‑25‑127.** Enforcement of bondholder and construction note holder rights.

Any holder of bond or construction notes issued under the provisions of this chapter or any of the coupons appertaining to them, and the trustee under any trust agreement, except to the extent the rights given by this chapter may be restricted by the trust agreement or the resolution authorizing the issuance of the bonds or construction notes, 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 under this chapter, or, to the extent permitted by law, under the trust agreement or resolution authorizing the issuance of the bonds or under any agreement or other contract executed by the joint system pursuant to this chapter, and may enforce and compel the performance of all duties required by this chapter or by the trust agreement or resolution to be performed by any joint system or authority or by their officers, including the fixing, charging, and collecting of rents, fees, and charges.

HISTORY: 1986 Act No. 456, Section 7; 1999 Act No. 113, Section 17; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment substituted "authority" for "municipality".

**SECTION 6‑25‑128.** Contracts between authority and joint system; duration.

An authority may contract to buy from the joint system water required for its present or future requirements, including the capacity and output, or a portion or share of one or more specified projects. An authority also may contract for the collection or treatment of wastewater, including present or future capacity, or a portion or share of another project. The creation of a joint system is an alternative method whereby an authority may obtain the benefits and assume the responsibilities of ownership in a project, so a contract may provide that the authority forming the contract is obligated to make a payment 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 water contracted for, and that the payments under the contract are not subject to reduction, whether by offset or otherwise, and are not conditioned upon the performance or nonperformance of the joint system or any other member of the joint system under the contract or any other instrument. A contract with respect to the sale or purchase of capacity or output, or a portion or share of them, of a project entered into between a joint system and its member authorities also may provide that if an authority or authorities default in the payment of its or their obligations with respect to the purchase of the capacity or output, or a portion or share of them, in that event the remaining member authorities which are purchasing capacity and output under the contract are required to accept and pay for and are entitled proportionately to and may use or otherwise dispose of the capacity or output which was to be purchased by the defaulting authority.

A contract concerning the sale or purchase of capacity and output from a project may extend for a period not exceeding fifty years from the date of the contract and may be renewable and extended upon terms as the parties may agree for not exceeding an additional fifty years; and the execution and effectiveness is not subject to any authorizations or approvals by the State or any agency, commission, or instrumentality or political subdivision of them.

Payments by an authority under a contract for the purchase of capacity and output from a joint system may be made from the revenues derived from the ownership and operation of the water system of the authority or from such other sources of funds as may be available, including any amounts received as payments in lieu of taxes. An authority may not pledge its full faith, credit, and taxing power to secure its obligations to the joint system or the bonds of the joint system. An authority is obligated to fix, charge, and collect rents, rates, fees, and charges for water or sewer services, facilities, and commodities sold, furnished, or supplied through its water or sewer system sufficient to provide revenues adequate to meet its obligations under any contract and to pay any and all other amounts payable from or constituting a charge and lien upon the revenues, including amounts sufficient to pay the principal of and interest on general obligation bonds, if any, heretofore or hereafter issued by the authority for purposes related to its water or sewer system.

An authority that is a member of a joint system may furnish the joint system with money derived from the ownership and operation of its water or sewer system or facilities and provide the joint system with personnel, equipment, and property, both real and personal, and from any other sources legally available to it for such purposes. An authority also may provide services to a joint system.

A member of a joint system may contract for, advance, or contribute funds derived from the ownership and operation of its water or sewer system or facilities or from another legal source to a joint system as agreed upon by the joint system and the member, and the joint system shall repay the advances or contributions from the proceeds of bonds, operating revenue, or other funds of the joint system, together with interest as agreed upon by the member and the joint system.

HISTORY: 1986 Act No. 456, Section 7; 1997 Act No. 74, Section 8; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment, in the first undesignated paragraph, added the second sentence relating to wastewater; in the third undesignated paragraph, in the third sentence added "or sewer" in two places; and substituted "authority" for "municipality" and made nonsubstantive changes throughout.

**SECTION 6‑25‑129.** Governmental functions; state tax exemption.

A joint system is an instrumentality of local government, and is authorized by this chapter exclusively for the performance of governmental functions, and the income of a joint system is exempt from state taxes.

HISTORY: 1999 Act No. 113, Section 2; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment reprinted this section with no apparent change.

**SECTION 6‑25‑130.** Employment or appointment of personnel; rights, privileges, and benefits.

Personnel employed or appointed by a member to work for a joint system shall have the same authority, rights, privileges, and immunities including coverage under the Workers' Compensation laws which the officers, agents, and employees of the appointing member enjoy within the territory of that member whether within or without the territory of the appointing member 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 system 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 an authority, if they are residents of this State.

HISTORY: 1983 Act No. 82, Section 2; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment, in the second undesignated paragraph, substituted "an authority" for "a municipality".

**SECTION 6‑25‑131.** Restriction as to who may benefit from joint system income, profit or assets; exception.

The income, profit, or assets of a joint system may not inure to the benefit of an individual or private entity, except for a joint authority water and sewer system created under this chapter.

HISTORY: 1999 Act No. 113, Section 3; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment added ", except for a joint authority water and sewer system created under this chapter", and made nonsubstantive changes.

**SECTION 6‑25‑140.** Annual system audit; reports.

There shall be an annual audit of each joint system and reports given to the governing body of each of the members. The costs shall be considered as part of the construction costs or part of expenses of administration.

HISTORY: 1983 Act No. 82, Section 2; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment reprinted this section with no apparent change.

**SECTION 6‑25‑145.** Investment by fiduciaries in bonds and construction notes.

It is lawful for any executor, administrator, guardian, committee, or other fiduciary to invest any monies in his hand in bonds and construction notes issued under the provisions of this chapter.

HISTORY: 1986 Act No. 456, Section 8; 1999 Act No. 113, Section 18; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment reprinted this section with no apparent change.

**SECTION 6‑25‑150.** Contracts with federal and state government and agencies.

The commission of any joint system may make application for grants and enter into contracts for and accept grants in aid and loans from the federal and state governments and their agencies in connection with the planning, acquiring, constructing, expanding, maintaining, and operating any project, or participating in any research or development program in connection therewith. The commission may agree to comply with any reasonable conditions which are imposed upon such grants, loans, or aids, and may accept such without a contract.

HISTORY: 1983 Act No. 82, Section 2; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment reprinted this section with no apparent change.

**SECTION 6‑25‑155.** Bonds, interest coupons and construction notes as investment securities.

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

HISTORY: 1986 Act No. 456, Section 9; 1999 Act No. 113, Section 19; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment reprinted this section with no apparent change.

**SECTION 6‑25‑160.** Tax status of evidences of indebtedness issued by joint system.

The principal and interest on the bonds, notes, construction notes, or other evidences of indebtedness issued pursuant to this chapter have the tax‑exempt status prescribed by Section 12‑2‑50.

HISTORY: 1983 Act No. 82, Section 2; 1999 Act No. 113, Section 20; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment reprinted this section with no apparent change.

**SECTION 6‑25‑170.** Construction of chapter.

The provisions of this chapter must be liberally construed.

HISTORY: 1983 Act No. 82, Section 2; 2007 Act No. 59, Section 1, eff June 6, 2007.

Effect of Amendment

The 2007 amendment reprinted this section with no apparent change.