73-7-68. Validation of the creation and organization of irrigation districts and of district elections.

All proceedings that have been adopted and actions taken before this section takes effect, under authority of Chapter 7, Title 73, purporting to create any irrigation district or purporting to provide for the inclusion of any additional area in any irrigation district, including all petitions filed and all notices given, published, and mailed in connection with any such creation and any inclusion, are validated, ratified, and confirmed, notwithstanding any failure to comply with any one or more pertinent statutory provisions, and each irrigation district so created or enlarged is declared to be a validly created and existing district. All proceedings and actions taken with respect to the appointment, election, and organization of a board of directors and officers for each irrigation district are validated, ratified, and confirmed and each board of directors is declared to be the de facto and de jure governing body of its respective irrigation district.

History: C. 1953, 73-7-68, enacted by L. 1987, ch. 191, § 5.


CHAPTER 8
METROPOLITAN WATER DISTRICTS

Section 73-8-1. Short title.
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73-8-34. Bonds as legal investment for trust and institutional funds.
73-8-1. Short title.

This act shall be known as the "Metropolitan Water District Act" and shall apply to the incorporation, organization, government, maintenance and operation of the water districts herein provided for and described, and to the board of directors herein referred to.

History: L. 1935, ch. 110, § 1; C. 1943, 100-10-1.

Meaning of "this act." — Laws 1935, ch. 110 enacted §§ 73-8-1 to 73-8-55. The reference should probably be to "this chapter."

Cross-References. — Cities and towns, power to acquire water supply and works, § 10-7-4 et seq.
Water conservancy district, sale or lease of water to municipalities, 73-9-17.

NOTES TO DECISIONS

Constitutionality.

This act held not unconstitutional as a special law. Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935).

This act held not unconstitutional as an attempt to unlawfully delegate power of taxation to a special commission, and to interfere in city and town affairs in violation of Const. Art. VI, § 29 (now § 28), since board of directors in whom control of district has been entrusted is not a special commission, and power of such directors is over property of districts and not over property of towns in the district. Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935).

This act held constitutional as against objection act was in violation of due process of law in that taxing powers conferred on district by § 73-8-18 were in nature of assessments for benefits and no provision was made as to hearings with respect to such benefits, since tax imposed was general ad valorem tax and not assessment for benefits. Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935).

This act held not unconstitutional as violating Const. Art. VI, § 31 (now § 29) providing that no political subdivision should lend its credit or subscribe to stock or bonds in aid of other corporate enterprise in that § 73-8-18 empowered district to join with other corporations for purpose of carrying out its powers and to obligate itself with other corporations in financing its operations and to become surety for payment of indebtedness of corporation in which district should have stock, since powers of district are for acquiring and using water for public benefit. Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935).

Metropolitan Water District Act held constitutional as against contention that notice of election was required by § 73-8-11 to be published in each county instead of in each city included in proposed district. Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935).

Power to incur indebtedness not to exceed 10% of assessed valuation given district by § 73-8-18 did not render this act unconstitutional as violation of Const. Art. XIV, § 3, requiring no debt in excess of taxes for current year to be incurred by county or subdivision thereof, since district was not subdivision of county. Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935).
73-8-2. Definitions.

As used herein the term "municipality" or "city" shall be deemed to mean and include any incorporated city or town of the state of Utah.
The terms "board" and "board of directors" shall be deemed to refer to the board of directors created under Section 73-8-20 hereof.
The term "governing body" as used herein shall be deemed to mean the legislative body of any municipality.
The term "public corporation" as used herein shall be deemed to mean and include the United States or any public agency thereof, this or any other state or any political district or subdivision thereof.

History: L. 1935, ch. 110, § 2; C. 1943, 100-10-2; L. 1963, ch. 180 § 1.

73-8-3. Purpose and corporate existence of districts.

Metropolitan water districts may be organized hereunder for the purpose of acquiring, appropriating, developing, storing, selling, leasing and distributing water for, and devoting water to, municipal and domestic purposes, irrigation, power, milling, manufacturing, mining, metallurgical and any and all other beneficial uses, and such district may be formed of the territory included within the corporate boundaries of any one or more municipalities, which need not be contiguous, and may be organized and incorporated and thereafter governed, maintained and operated as herein provided, and when so incorporated shall have and exercise such powers as are herein expressly granted, together with such powers as are reasonably implied herefrom and necessary and proper to carry out the objects and purposes of such incorporated districts. Each such district when so incorporated shall be a separate and independent political corporate entity.

History: L. 1935, ch. 110, § 3; C. 1943, 100-10-3.

73-8-4. Organization — Ordinance.

Such metropolitan water district shall be organized and incorporated in the following manner:
The legislative body of any municipality may pass an ordinance declaring that the public convenience and necessity require the incorporation of a metropolitan water district, which ordinance shall state: (1) That it is proposed to
incorporate a metropolitan water district under the provisions of this act; (2) the name or names of the city or cities proposed to be included within the district to be incorporated; (3) the name of the proposed district; (4) if the district is to comprise more than one city an estimate of the preliminary costs and expenses of incorporating and organizing the proposed district and an apportionment of such costs and expenses among the several municipalities proposed to be included within such district. Such apportionment shall be substantially in accordance with population as shown by the most recent federal census.

History: L. 1935, ch. 110, § 4; C. 1943, 100-10-4.

73-8-5. Copies to be mailed.

It shall be the duty of the clerk of the legislative body, upon the taking effect of such ordinance, to forthwith transmit a certified copy thereof by registered mail to the chief executive officer of each of the other municipalities named therein.

History: L. 1935, ch. 110, § 5; C. 1943, 100-10-5.

73-8-6. Approval or rejection.

Within sixty days after the receipt by any municipality named therein of a certified copy of such ordinance, the legislative body of such municipality shall by order either approve or reject such ordinance without alteration or amendment. In the event that the legislative body of any municipality shall fail to act upon such ordinance as herein provided within such period of sixty days after the receipt of a certified copy thereof, such municipality shall be deemed to have rejected said ordinance.

History: L. 1935, ch. 110, § 6; C. 1943, 100-10-6.

73-8-7. Resolution forwarded — Preliminary expenses.

Immediately upon the approval or rejection of said ordinance by the legislative body of any municipality, the clerk thereof shall forward to the clerk of the municipality initiating the proceedings a certified copy of the resolution or ordinance, either enacting or rejecting such ordinance as the case may be. Each municipality thus approving such ordinance shall promptly pay over to the municipality initiating the procedure hereunder the sum of money apportioned to it by the municipality initiating the proceedings as its share of the preliminary costs and expenses of the incorporation and organization of such district, and the money so paid shall constitute a fund for the purpose of defraying such costs and expenses herein provided for, as are not met by the respective municipalities, and such incidental expenses as may be properly incurred in connection therewith. Each municipality contributing money as herein provided shall be entitled to credit with the district for the amount contributed.
73-8-8. Call for election.

Within one hundred twenty days after the transmission of said original ordinance, as provided in Section 73-8-5 hereof, but not until each municipality named therein shall have acted thereon or said sixty day periods shall have expired, the legislative bodies of the cities within the proposed district including the initiating city shall call and provide for the holding of a special election in all of the municipalities, at which election the proposition of the incorporation of such metropolitan water district shall be submitted to the electors residing within such municipalities for ratification or rejection. Such election may be held separately or may be consolidated or held concurrently with any other election or elections authorized by law at which the electors residing in all of the cities wherein such election is called to be held are entitled to vote.

73-8-9. Election districts.

Such election shall be called by ordinance by the governing bodies of the municipalities enacting the original ordinance including the initiating city. Such ordinance shall contain: (1) The names of all cities, the governing bodies of which shall have approved the original ordinance as provided in Section 73-8-6 hereof, in which cities such election shall be called to be held, (2) the day upon which such election shall be held, which day shall be the same day in all municipalities, (3) the time for opening and closing polls, and (4) the manner of voting for or against the proposition. (5) Such ordinance shall also designate the voting districts and polling places and shall appoint for each polling place, from each election district from the electors thereof, the officers of such election, which officers shall consist of three judges, one of whom shall act as clerk, who shall constitute a board of election for each polling place. The description of election districts may be made by reference to any order or orders of the board of county commissioners of the county or respective boards of county commissioners of the counties in which the proposed metropolitan water district, or any part thereof, shall be situated, or by reference to any provisions, orders or ordinances of the legislative body of any municipality proposed to be included in the incorporation of such metropolitan water district, or by detailed description of such election districts. Election districts established by the board of county commissioners of the various counties may be consolidated for special elections held hereunder.

History: L. 1935, ch. 110, § 7; C. 1943, 100-10-7.
73-8-10. Concurrent and consolidated elections.

Whenever any election held hereunder shall be held concurrently with or shall be consolidated with any primary or general election, the precincts, polling places and officers of election shall be those designated and appointed for such primary or general election, and the ordinance calling the election hereunder need not designate precincts or polling places or name the election officers, but shall refer to the order or orders, or act or acts, by which such other election shall have been called, and by which the precincts and polling places thereof shall have been fixed and the officers of election appointed.

History: L. 1935, ch. 110, § 10; C. 1943, 100-10-10.

73-8-11. Publication of call.

The ordinance calling such election shall be published once at least ten days before the date of the election therein called in a newspaper of general circulation printed and published in each county within the proposed metropolitan water district, and no other or further notice of such election or publication of the names of election officers or of the precincts or polling places need be given or made.

History: L. 1935, ch. 110, § 11; C. 1943, 100-10-11.

NOTES TO DECISIONS

Constitutionality.
Metropolitan Water District Act held constitutional as against contention that notice of election was required by this section to be published in each county instead of in each city included in proposed district. Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935).

73-8-12. Ballot.

The ballot used at such election shall contain the words "Shall the territory embraced within the corporate boundaries of the city of ________ become a part of the ________ metropolitan water district" (inserting the name of the city or water district as the case may be wherein such ballot shall be used and the name of the metropolitan water district as stated in the initiating ordinance) and the words "Yes" and "No" accompanied by voting squares set opposite thereto so that any elector may record his vote either for or against the propositions.

History: L. 1935, ch. 110, § 12; C. 1943, 100-10-12.
73-8-13. Counting ballots and canvassing returns.

When such election shall be held separately or shall be conducted concurrently with any other election but by the use of separate ballots, such ballots shall be counted by the respective election boards and the returns thereof shall be made to the governing board of the initiating city, which governing board, at a meeting thereof to be held within five days after such election, shall canvass the returns and declare the result thereof.

History: L. 1935, ch. 110, § 13; C. 1943, 100-10-13.

73-8-14. Consolidated elections.

In the event that any election held hereunder shall be consolidated with any primary or general election and the proposition herein provided for shall be printed upon a ballot containing other propositions, the returns of the election held hereunder shall be made with the returns of the primary or general election to the board of commissioners or other bodies whose duty it shall be to canvass the returns thereof, and the results of the election held hereunder shall be canvassed at the time and in the manner provided by law for the canvass of the returns of such primary or general election. It shall be the duty of such canvassing body or bodies to promptly certify and transmit to the governing body of the initiating city a statement of the result of the vote upon the proposition submitted hereunder in each of the respective cities, the returns for which shall have been made to such canvassing bodies. Upon the receipt of such certificates it shall be the duty of the governing body of the initiating city to tabulate and declare the result thereof.

History: L. 1935, ch. 110, § 14; C. 1943, 100-10-14.


The governing body of the initiating city shall certify to the lieutenant governor the proceedings together with the result of the election, separately stating the names of the cities in which a majority of the electors voting upon the proposition have voted affirmatively; but the total taxable value in the approving municipalities as shown by county assessment records, shall be not less than $\frac{2}{5}$ of the total taxable value within the district as proposed in the original ordinance according to the records of the county or counties.


Amendment Notes. — The 1988 amendment, effective February 9, 1988, substituted "taxable value" for "assessed valuation" in two places and made minor stylistic changes.

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act "has retrospective operation to January 1, 1988."
73-8-16. Incorporation — Certificate — Date effective.

The lieutenant governor shall within ten days after the receipt of such certificate of election issue a certificate of incorporation reciting that the district named in such certificate of election has been duly incorporated according to the laws of the state of Utah, and naming the municipality or municipalities of which said district shall be composed as shown by such certificate of election, which municipality or municipalities shall be those in which the majority of electors voting on the proposition of incorporation shall have voted affirmatively. The lieutenant governor shall transmit to each such municipality a copy of said certificate of incorporation. The incorporation of any metropolitan water district shall be and become effective from and after the date of the issuance of such certificate of incorporation, and such district shall thereupon and thereafter become vested with all of the rights, privileges, and powers in this act provided.

History: L. 1935, ch. 110, § 16; C. 1943, 100-10-16; L. 1984, ch. 68, § 89. § 11-12-1.

Cross-References. — Notice of incorporation, filing with State Tax Commission, 100-10-17.

73-8-17. Validity.

The validity of the incorporation of any such district shall be incontestable in any suit or proceeding which shall not have been commenced within three months from the date of the issuance of the certificate of incorporation thereof; and no invalidity or irregularity in any proceeding which does not substantially and adversely affect the interests of the electors or citizens of the district, or any municipality therein, shall be held to invalidate the incorporation of any such district.

History: L. 1935, ch. 110, § 17; C. 1943, 100-10-17.

73-8-18. Powers of incorporated districts — Preferential right of city to purchase water.

(1) Any district incorporated as provided in this chapter may:

(a) Have perpetual succession.

(b) Sue and be sued in all actions and proceedings and in all courts and tribunals of competent jurisdiction.

(c) Adopt a corporate seal and alter it at pleasure.

(d) Take by grant, purchase, bequest, devise, or lease, and hold, enjoy, lease, sell, encumber, alienate, or otherwise dispose of, water, waterworks, water rights, and sources of water supply, and any and all real and personal property of any kind within or without the district and within and without the state necessary or convenient to the full exercise of its powers; acquire, construct, or operate, control and use any and all works, facilities, and means necessary or convenient to the exercise of its powers, both within and without the district and within and without the state, and perform any and all things necessary or convenient to the full exercise of the powers granted under this section.

(e) Have and exercise the power of eminent domain and in the manner provided by law for the condemnation of private property for public use to
take any property necessary to the exercise of the powers granted under this section; and in any proceeding relative to the exercise of this power of eminent domain, the district has the same rights, powers, and privileges as a municipal corporation.

(f) Construct and maintain works and establish and maintain facilities across or along any public street or highway and in, upon, or over any vacant public lands, which public lands are now, or may become, the property of the state, and construct works and establish and maintain facilities across any stream of water or watercourse if the district promptly restores the street or highway to its former state of usefulness as nearly as may be and does not use the same in a manner as to completely or unnecessarily impair the usefulness of it. The grant of the right to use these vacant state lands is effective upon the filing by the district with the Division of State Lands of an application showing the boundaries, extent, and locations of the lands, rights of way, or easements desired for these purposes. If the land, rights of way, or easement for which the application is made is for the construction of any aqueduct, ditch, pipeline, conduit, tunnel, or other works for the conveyance of water, or for roads, or for poles, or towers and wires for the conveyance of electrical energy or for telephonic or telegraphic communication, no compensation may be charged the district, unless, in the opinion of the Board of State Lands, the construction of these works will render the remainder of the legal subdivision through which the works are to be constructed valueless or unsaleable, in which event the district shall pay for the lands to be taken and for that portion of any legal subdivision which, in the opinion of the Board of State Lands, are rendered valueless or unsaleable, at the rate of $2.50 per acre. If the lands for which the application is made are for purposes other than the construction of roads or works for the conveyance of water, or electricity, telephonic, or telegraphic communications, the district shall pay to the state for these lands at the rate of $2.50 per acre. Upon filing the application, accompanied by map or plat showing the location or proposed location of the works or facilities, the fee title to so much of the state lands as is necessary or convenient to enable the district efficiently and without interference to construct, maintain, and operate its works and to establish, maintain, and operate its facilities, shall be conveyed to the district by patent; but if an easement or right-of-way only over the lands be sought by the district, the easement or right-of-way shall be evidenced by permit or grant executed by or on behalf of the Division of State Lands. The division may reserve in these patents, grants, or permits, easements and rights of way in the public across any lands covered by them for streets, roads, and highways previously established according to law. Before the patent, grant, or permit is executed, any compensation due to the state under the provisions of this subsection shall be paid. No fee may be exacted from the district for any patent, permit, or grant so issued or for any service rendered. In the use of streets the district shall be subject to the reasonable rules and regulations of the county or city in which the streets lie concerning excavations and the refilling of excavations, the relaying of pavements and the protection of the public during periods of construction; but the district may not be required to pay any license or permit fees, or file any bonds. The district may be required to pay reasonable inspection fees.
(g) Borrow money, incur indebtedness, and issue bonds and other obligations; but no district may issue bonds to the payment of which the full faith and credit of the district are pledged which in the aggregate exceed 10% of the fair market value, as defined under Section 59-2-102, of the taxable property in the district as computed from the last equalized assessment roll for county purposes prior to the issuance of these bonds. For purposes of the limitation of this subsection, the fair market value of all tax equivalent property, as defined under Section 59-3-102, shall be included as a part of the fair market value of taxable property in the district. Contracts and agreements with the United States of America, and with any water users' association or any other entity, public, cooperative, or private, from which the district procures water, and bonds payable solely from revenues of the district other than the proceeds of ad valorem taxes, may not come within the limitation of this subsection.

(h) Fix and determine the funds required for district purposes of every nature and apportion and charge the same against the area of each city within the district as follows:

(i) As to the costs of all water, water rights, reservoirs, canals, conduits, and other works for which the district as a whole receives the benefit, and on account of which the district is indebted or on account of which the district has made payment without any previous apportionment and charge having been made, and the charges made against the district by reason of its ownership of stock in any water users' association, in the same proportion as the water and water rights set apart or allotted to each area bear to the total water and water rights owned or held by the district.

(ii) As to that portion of these funds required for operation, maintenance, and the cost of construction of distributing systems, these shall be equitably apportioned and shall be determined and based on the benefits and the relative cost of service rendered by the district to each respective area.

(i) Levy and collect taxes for the purposes of carrying on the operations and paying the obligations of the district; and levy in any year a tax sufficient to cover in full any deficit that may have resulted from tax delinquencies for any preceding year; but taxes levied under this subsection for administering the district and maintaining and operating its properties may not exceed .0005 per dollar of taxable value of taxable property in the district. Taxes levied to pay principal of and interest on the bonds of the district, to pay indebtedness and interest owed to the United States of America, or to pay assessments or other amounts due any water users' association or other entity, public cooperative or private, from which the district procures water, may not be subject to this limitation. Taxes levied for the payment of principal of and interest on the bonds of the district shall be levied for that specific purpose, the proceeds from them shall be applied solely to the payment of this principal and interest; and these levies, being separate and special levies, may not be subject to any priorities in favor of obligations of the district in existence at the time the bonds were issued. None of the taxes authorized by this subsection may be levied until a district has first conducted, at its regular place of business, a public hearing on the purposes and necessities of the taxation. The public hearing shall be conducted by the board of directors.
of a district not less than ten days prior to June 15 of each year, and a notice regarding it shall be advertised by the district for not less than three consecutive days in a newspaper of general circulation within the district, this advertising to begin not later than 30 days prior to June 22 of each year.

(j) Enter into contracts, employ and retain personal services, and employ laborers; create, establish, and maintain and elect, appoint, and employ officers, attorneys, agents convenient for the transaction of the business of the district, officers and positions as necessary, and employees for this purpose as found by the board of directors to be necessary and convenient.

(k) Join with one or more other corporations, public or private, for the purpose of carrying out any of its powers, and for that purpose to contract with any other corporation or corporations for the purposes of financing acquisitions, constructions, and operations, and in the contract to obligate itself severally or jointly with the other corporation or corporations; and also secure, guarantee, or become surety for the payment of any indebtedness, or the performance of any contract or other obligation that may be, or has been, incurred or entered into by any corporation in which the district has acquired shares of stock by subscription or otherwise. The contracts may provide for contributions to be made by each party to them and for the division and apportionment of the expenses of the acquisitions and operations, and the division and apportionment of the benefits, the services and products from them, and may provide for an agency to effect the acquisitions and carry on these operations, and shall provide the powers and the methods of procedure for the agency the method by which the agency may contract. The contract may contain further covenants and agreements as necessary and convenient to accomplish its purposes.

(l) Acquire water and water rights within or without the state; develop, store, and transport water; subscribe for, purchase, and acquire stock in canal companies, water companies, and water users' associations; provide, sell, lease, and deliver water within or outside of the district for municipal and domestic purposes, irrigation, power, milling, manufacturing, mining, and metallurgical and any and all other beneficial uses; fix the rates; and acquire, construct, operate, and maintain any and all works, facilities, improvements, and property which are necessary or convenient, and in the doing of all of these things to obligate itself jointly with other persons and corporations, public and private, and execute and perform these obligations according to their tenor.

(m) Invest any surplus money in the district treasury, including any money in any sinking fund established for the purpose of providing for the payment of the principal or interest of any bonded contract or other indebtedness or for any other purpose, not required for immediate necessities of the district, in its own bonds, or in treasury notes or bonds of the United States, or of this state; and this investment may be made by direct purchase of any issue of these bonds or treasury notes, or part of the issue, at the original sale of the same, or by the subsequent purchase of these bonds or treasury notes. Any bonds or treasury notes thus purchased and held may be sold and the proceeds reinvested in bonds or treasury notes as provided in this section. Sales of any bonds or treasury notes thus purchased and held shall be made in season so that the proceeds may be
applied to the purposes for which the money, with which the bonds or treasury notes were originally purchased, was placed in the treasury of the district. The functions and duties authorized by this subsection shall be performed by joint action of the controller and treasurer, with the approval of the attorney, under rules adopted by the board of directors of the district.

(2) Each city, the area of which shall be a part or all of any district incorporated under this chapter, has a preferential right to purchase from the district, at rates determined by the board of directors of the district, for distribution by the city, or any public utility empowered by the city for the purpose, for domestic, municipal, and other beneficial uses within the city, a portion of the water served by the district which shall bear the same ratio to all of the water supply of the district as the total accumulation of amounts levied as taxes by the district against the property of the city which is within the area of the district shall bear to the total of all taxes levied by the district against the property in all of the cities in the areas of which are within the area of the district.


Amendment Notes. — The 1985 amendment substituted ".0005" for "two and one-half mills on each dollar" in Subsection (1)(i).

The 1987 amendment by ch. 2, effective February 6, 1987, changed the statutory reference in Subsection (1)(g) and made minor stylistic and punctuation changes throughout the section.

The 1987 amendment by ch. 4, effective February 6, 1987, in Subsection (1)(g), substituted in three locations "fair market value, as established under Section 59-2-103," for "reasonable fair cash value" and made various phraseology and stylistic changes throughout the section.

The 1987 amendment by ch. 148, effective March 16, 1987, in the last sentence of Subsection (1)(i), substituted "June 22" for "June 15."

The 1988 amendment, effective February 9, 1988, substituted "defined under Section 59-2-102" for "established under Section 59-2-103" in the first sentence of Subsection (1)(g); deleted "as established under Section 59-2-103" following "fair market value" in two places in the second sentence of Subsection (1)(g); substituted "per dollar of taxable value" for "of the assessed valuation" near the end of the first sentence of Subsection (1)(i); and made minor stylistic changes throughout.

Severability Clauses. — Section 7 of Laws 1981, ch. 243 provided: "If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby."

Retrospective Operation. — Laws 1987, ch. 2, § 331, ch. 4, § 307, and ch. 148, § 8 each provides: "This act has retrospective operation to January 1, 1987."

Laws 1988, ch. 3, § 269 provides that the act has retrospective operation to January 1, 1988.

Cross-References. — Board and Division of State Lands and Forestry, Title 1 of Chapter 65A.

NOTES TO DECISIONS

Constitutionality.

Limitation on indebtedness.

Payments under contract for purchase of water.

Validity of tax levy.

Constitutionality.

This act held constitutional as against objection that it violated due process of law in that taxing powers conferred on district by this section were in nature of assessments for benefits and no provision was made for hearings with respect to such benefits, since tax imposed was general ad valorem tax and not assessment for benefits. Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935).

This act held not unconstitutional as an attempt to unlawfully delegate power of taxation to a special commission and to interfere in city and town affairs in violation of Const. Art. VI, § 29 (now § 28), since board of directors in whom control of district has been entrusted is not a special commission, and power of such
directors is over property of district and not over property of towns in the district. Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935).

This act held not unconstitutional as violating Const. Art. VI, § 31 (now § 29), providing that no political subdivision should lend its credit or subscribe to stock or bonds in aid of other corporate enterprise in that this section empowered district to join with other corporation for purpose of carrying out its powers and to obligate itself with other corporations in financing its operations and to become surety for payment of indebtedness of corporation in which district should have stock, since powers of district are for acquiring and using water for public benefit. Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935).

Limitation on indebtedness.

Power to incur indebtedness not to exceed 10% of assessed valuation given district by this section did not render this act unconstitutional as violation of Const. Art. XIV, § 3, requiring no debt in excess of taxes for current year to be incurred by county or subdivision thereof, since district was not subdivision of county. Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935).

Metropolitan water district is not a municipal corporation and hence not subject to the 4% debt limitation imposed by Const. Art. XIV, § 4. Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935).

Where plaintiff water district delivered a check for $6,000 to defendant water users' association prior to execution of an amended subscription contract, parol evidence was admissible to prove existence of oral trust and that plaintiff's statutory debt limitation was not exceeded by the payment of the $6,000 to defendant. The $6,000 was in no way a part of plaintiff's indebtedness. It was evidently obtained from funds already in existence and was not, therefore, within the operation of the limitation of indebtedness in Subsection (l)(g). Since the $6,000, by the terms of the oral trust, was permanently committed to extinguish the liability of plaintiff when payments became due, there was no basis in fact to assert that the statutory limit of indebtedness had been exceeded. Metropolitan Water Dist. v. Provo River Water Users Ass'n, 16 Utah 2d 15, 395 P.2d 52 (1964).

Subsection (l)(g), prior to the 1957 amendment, confined the term "indebtedness" to obligations in the form of bonds or other written evidence of indebtedness. Metropolitan Water Dist. v. Provo River Water Users Ass'n, 16 Utah 2d 15, 395 P.2d 52 (1964).

Payments under contract for purchase of water.

Payments made by a city under an existing contract for the purchase of water are obligatory and not permissible or voluntary and a city was not entitled to a credit against taxes levied under the provisions of this section for amounts paid by the city under the contract to purchase water. Salt Lake City v. Metropolitan Water Dist., 13 Utah 2d 325, 373 P.2d 911 (1962).

Validity of tax levy.

The resolution under § 73-8-36 should specify the statutory purposes for which the levy is set, including a showing of the number of mills levied "for administering the district and operating its properties" for that year and the number of mills levied for each of the other authorized expenditures enumerated therein. Salt Lake City v. Metropolitan Water Dist., 13 Utah 2d 325, 373 P.2d 911 (1962).

Where a board's resolution did not attempt to make a levy provide for operations in a year subsequent to that in which a tax was levied, the tax was valid. Salt Lake City v. Metropolitan Water Dist., 13 Utah 2d 325, 373 P.2d 911 (1962) (decided prior to the 1963 amendment of this section and addition of § 73-8-57).

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(5).

Key Numbers. — Waters and Water Courses ⇑ 183½.


Repeals. — Section 73-8-19 (L. 1935, ch. 110, § 18a; 1941, ch. 98, § 1; C. 1943; 100-10-19), relating to municipal attorney and engineer acting for district, was repealed by Laws 1957, ch. 159, § 3.

(1) All powers, privileges and duties vested in or imposed upon any district incorporated under this chapter shall be exercised and performed by and through a board of directors, all the members of which shall serve without compensation for the terms of office as provided and who, in all events, shall be designated and appointed by the legislative body or bodies, respectively, of a city or cities the area of which is within a metropolitan water district. The exercise of any and all executive, administrative, and ministerial powers may be by the board of directors delegated and redelegated to any of the offices created by this chapter or by the board of directors acting under this chapter.

(2) If the district is organized to comprise the area of two or more cities, the board of directors shall consist of at least one representative from each municipality, the area of which shall lie within the metropolitan water district. As a member of the board of directors, each representative may vote on all questions, orders, resolutions, and ordinances coming before the board, and may cast one vote for each $10,000,000, or major fractional part of that amount, of the taxable value of property taxable for district purposes in the city represented by the representative as shown by the assessment records of the county and evidenced by the certificate of the county auditor. Each city shall have at least one vote. In lieu of one representative any city may at its option designate and appoint several representatives not exceeding one additional representative for each $1,000,000 of taxable value, but the representative shall cast the vote to which the city would otherwise be entitled as a unit and as a majority of such representatives present shall determine. The affirmative vote of members representing more than 50% of the total number of votes of all the members shall be necessary and, except as otherwise provided, shall be sufficient to carry any order, resolution, or ordinance coming before the board of directors. For the purposes of this section, the term "major fractional part" means a fractional part larger than one-half.

(3) If a district includes the area of only one municipality, the board of directors may consist of either five or seven members, as determined by the legislative body of the municipality. Each director may cast one vote on all matters coming before the board; on a board of five members, the affirmative vote of three, and on a board of seven members, the affirmative vote of four, shall, except as otherwise provided, be necessary and sufficient to carry any order, resolution, or ordinance coming before the board.

(4) Members of the board of directors of any metropolitan water district who have been appointed as provided shall convene at the time and place fixed by the presiding officer of the municipality initiating the proceedings, and immediately upon convening, the board of directors shall elect from its membership a chairman, a vice-chairman, and a secretary, who shall serve for a period of two years, or until sooner recalled or resigning, or until a successor is elected and qualified.

(5) Every member of the board of directors of a metropolitan water district shall be a registered voter, a property taxpayer, and a resident of the municipality by the legislative body of which the member is appointed. In each municipality, the area of which is in a metropolitan water district, except in districts occupying the area of more than one city, one of the directors appointed by its legislative body to the board of directors shall be the commis-
sioner of water supply and waterworks, or other comparable officer, however designated, who is in charge of the municipality's water supply and distribution system, if municipally owned, and who shall be known as the ex officio director. Except for the ex officio director, all other elected or appointed officers, or the employees of the municipality shall be ineligible for appointment to any district board; and except for the ex officio director, any member of the metropolitan water district board of directors who at a time after appointment to the board becomes elected or appointed to office in, or who becomes an employee of, the municipality in which the member resides shall immediately become disqualified as a director and shall forfeit the office, and the legislative body of the municipality shall immediately appoint a successor to serve the unexpired portion of the term of office. The appointment of directors by the legislative body of a municipality shall be made without regard to partisan political affiliations from among citizens of the highest integrity, attainment, competence, and standing in the community, and it is the intent of this act that each municipality shall adhere so far as possible to a policy of continuing reappointment, at the expiration of their terms of office, of directors of high character and proven competence.

(6) Except as to an ex officio director, the terms of office of members of the board of directors are as follows:

(a) in metropolitan water districts comprising the area of two or more cities, six years;

(b) in metropolitan water districts comprising the area of only one city where the number of members of the board of directors is five, one member shall be appointed for a two-year term; one for a three-year term; one for a five-year term; one for a six-year term all as determined by lot; and upon the expiration of these terms, the ensuing terms of office for each shall be six years; and

(c) in metropolitan water districts comprising the area of only one city where the number of members of the board of directors is seven, two members shall be appointed for a two-year term; two for a four-year term and two for a six-year term, all as determined by lot; and upon the expiration of these terms, the ensuing terms of office for each shall be six years.

(7) Every member of a board of directors shall serve until the member resigns or until a successor has been duly appointed and qualified, or until recalled as provided in Section 73-8-52; and before assuming office every director, other than an ex officio director, shall first subscribe to the constitutional oath of office of the state, and the oath shall be delivered to and retained among the records of the secretary of the district.

(8) Members of the board of directors of any metropolitan water district who are serving as such on the effective date of this amendment and who are otherwise qualified as provided in Subsection (5), shall immediately be reappointed to office by the legislative body or bodies, respectively, of the city or cities the area of which is included in a metropolitan water district, and for the terms of office provided in Subsection (6).


Amendment Notes. — The 1988 amendment, effective February 9, 1988, substituted "under this chapter" and "by this chapter" for "hereunder" and "hereby" where the term appears in Subsection (1); substituted "taxable value" for "assessed valuation" in the second and fourth sentences of Subsection (2); inserted
the subsection designation (7); redesignated former Subsection (7) as Subsection (8); and made minor stylistic changes throughout.

Compiler's Notes. — The phrase "this act" near the end of Subsection (5) first appeared in this section in Laws 1963, ch. 180, which amended various sections in this chapter.

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act "has retrospective operation to January 1, 1988."

**COLLATERAL REFERENCES**


Key Numbers. — Waters and Water Courses ⇆ 183½.


The board of directors shall have power:

Meetings.

(1) To fix the time and place or places at which its regular meetings shall be held, and shall provide for the calling and holding of special meetings.

Ordinances, Resolutions and Orders — Roll Call.

(2) To make and pass ordinances, resolutions and orders not repugnant to the Constitution of the United States or of the state of Utah, or to the provisions of this act, necessary for the government and management of the affairs of the district, for the execution of the powers vested in the district and for carrying into effect the provisions of this act. On all ordinances the roll shall be called and the ayes and noes recorded. Resolutions and orders may be adopted by viva voce, but on demand of any member the roll shall be called. No ordinance shall be adopted unless it shall have been introduced on a day previous to the time of such adoption except by unanimous vote of all the members of the board of directors present, provided there shall be present directors from not less than three-fourths of all cities composing said metropolitan water district and representing not less than three-fourths of the total votes of said district; provided, that in lieu of such previous introduction or unanimous vote any ordinance may be mailed by registered mail, postage prepaid to each member of the board of directors at least five days prior to the day upon which such ordinance shall be presented for adoption. All ordinances shall take effect upon their adoption by the board of directors.

Location of Offices.

(3) To fix the location of the principal place of business of the district and the location of all offices and departments maintained hereunder.

Business Administration, Officers and Employees.

(4) To prescribe by ordinance a system of business administration and to create any and all necessary offices which shall include the offices of controller and of treasurer and to select and employ, and establish and re-establish the powers, duties and compensation of all officers and employees and prescribe the periods, terms and conditions of their employment, and to require and fix the amount of all official bonds necessary for the protection of the funds and the property of the district.

Civil Service.

(5) To prescribe by ordinance a system of civil service.

Delegation of Authority to Officers.
(6) By ordinance or resolution to delegate and redelegate to officers of the district power to employ clerical, legal and engineering assistants and labor, and, under such conditions and restrictions as shall be fixed by the directors, power to bind the district by contract.

Claims, Method of Auditing — Construction of Works — Letting Contracts.

(7) To prescribe a method of auditing and allowing or rejecting claims and demands; also to prescribe methods for the construction of works and for the letting of contracts for the constructions of works, structures or equipment, or the performance or furnishing of labor, materials or supplies, required for the carrying out of any of the purposes of this act; provided, that in cases where work is not to be done by the district itself by force account, and the amount involved shall be $10,000, or more, the board of directors shall provide for the letting of contracts to the lowest responsible bidder, after publication of notices inviting bids, at least once and not less than ten days prior to the expiration of the period within which bids shall be received, subject always to the right of said board to reject any and all proposals. Provided, likewise, that the board of directors in advertising for bids and in letting contracts as above provided, may require all articles to be furnished to the district thereunder to be manufactured, produced or fabricated in the United States or its territories, and may prohibit the use in, or employment in connection with, the carrying out of such contracts by the contractor or any subcontractor, of all machinery or materials except such as shall have been manufactured, produced or fabricated in the United States or its territories, if such are available, the question of such availability to be determined by the board of directors. Provided, further, that contracts, in writing or otherwise, may be let without advertising for or inviting bids, when any repairs, alterations, or other work or the purchase of materials, supplies, equipment or other property shall be deemed by the board of directors to be of urgent necessity, and shall be authorized by a two-thirds vote thereof.

Rates.

(8) To fix the rates, from time to time, at which water shall be sold; provided, however, the rates shall be equitable, although not necessarily equal or uniform, for like classes of service throughout the district.

History: L. 1935, ch. 110, § 20; C. 1943, 100-10-21; L. 1963, ch. 180, § 1.

NOTES TO DECISIONS

Constitutionality.

This act held not unconstitutional as an attempt to unlawfully delegate power of taxation to a special commission and to interfere in city and town affairs in violation of Const. Art. VI, § 29 (now § 28), since board of directors in whom control of district has been entrusted is not a special commission, and power of such directors is over property of districts and not over property of towns in the district. Lehi City v. Meiling, 87 Utah 237, 48 P.2d 530 (1935).

COLLATERAL REFERENCES

A.L.R. — Public contracts: authority of state or its subdivision to reject all bids, 52 A.L.R.4th 186.
73-8-22. Resolution or ordinance proposing obligations or indebtedness — Election.

Whenever the board of directors of any metropolitan water district incorporated under this chapter shall, by resolution or ordinance adopted by a vote of a majority of the aggregate number of votes of all the members of the board of directors, determine that the interests of the district and the public interest or necessity demand the acquisition, construction, or completion of any source of water supply, water, waterworks or other improvement, works or facility, or the making of any contract with the United States or other persons or corporations, or the incurring of any preliminary expense, necessary or convenient to carry out the objects or purposes of the district wherein an indebtedness or obligation shall be created to satisfy which shall require a greater expenditure than the ordinary annual income and revenue of the district shall permit, the board of directors may order the submission of the proposition of incurring the obligation or bonded or other indebtedness, for the purposes set forth in the resolution or ordinance, to the qualified electors of the district at an election held for that purpose. The resolution or ordinance calling the election shall be adopted, the notice of the election shall be given, the election shall be held, the voters' qualifications shall be determined, and the results of the elections canvassed in the manner and subject to such conditions as are provided in the Utah Municipal Bond Act. The declaration of public interest or necessity so required and the provision for the holding of the election may be included within the same resolution or ordinance, which resolution or ordinance, in addition to the declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the public works or improvements, or the estimated amount of preliminary expenses, as the case may be, and the maximum amount of the principal of the indebtedness to be incurred.


COLLATERAL REFERENCES


73-8-23. Repealed.

Repeals. — Section 73-8-23 (L. 1935, ch. 110, § 22; 1937, ch. 133, § 1; C. 1943, ch. 81, § 5), relating to publication of ordinance


The respective election boards shall conduct the election in their respective precincts in the manner prescribed by law for the holding of general elections, and shall make their returns to the secretary of the district. At any regular or special meeting of the board of directors held not earlier than five days following the date of such election, the returns thereof shall be canvassed and the
results thereof declared. In the event that any election held hereunder shall be consolidated with any primary or general election and the proposition to be submitted hereunder shall be printed upon a ballot containing other propositions, the returns of the election held hereunder shall be made with the returns of the primary or general election to the board of commissioners or other bodies whose duty it shall be to canvass the returns thereof, and the results of the election held hereunder shall be canvassed at the time and in the manner provided by law for the canvass of the returns of such primary or general election. It shall be the duty of such canvassing body or bodies to promptly certify and transmit to the board of directors of the district a statement of the result of the vote upon the propositions submitted hereunder. Upon receipt of such certificates, it shall be the duty of the board of directors to tabulate and declare the results of the election held hereunder.


73-8-25. Majority vote in favor of incurring obligations or indebtedness.

If it appears from the returns that a majority of the qualified electors of the district who shall have voted on any proposition submitted under this chapter at the election, voted in favor of the proposition, the district shall then be authorized to incur such indebtedness or obligation, enter into such contract, and issue and sell such bonds of the district, all for the purposes and objects provided for in the proposition so submitted.


73-8-26. Revenue indebtedness or general obligation indebtedness — Procedure for incurring — Terms.

(1) Any district which has determined to issue bonds shall issue its bonds under Chapter 14, Title 11, the Utah Municipal Bond Act, for the acquisition through construction, purchase, or otherwise and for the improvement or extension of any properties necessary or desirable in the obtaining, treatment, and distribution of water and any other properties which the district is authorized to own under this chapter. Bonds may be issued or a contract indebtedness or obligation may be created (a) payable solely from the revenues of the district other than the proceeds of taxes, in which case they shall be known for purposes of this section as "revenue indebtedness," or (b) payable solely from the proceeds of taxes, in which case they shall be known for purposes of this section as "general obligation indebtedness," or (c) payable from both operating revenues and the proceeds of taxes, in which case they shall be known for purposes of this section as "general obligation revenue indebtedness." The full faith and credit of the district shall be pledged to the payment of its general obligation and general obligation revenue indebtedness, and taxes shall be levied fully sufficient to pay that part of the principal of and interest on general obligation revenue indebtedness as the revenues of the district pledged for this purpose may not be sufficient to meet. General obligation
indebtedness and general obligation revenue indebtedness may be issued only after approval at an election as provided in Section 73-8-22. Revenue indebtedness may be similarly submitted at an election as provided in Section 73-8-22 if considered desirable by the board of directors, but nothing in this chapter shall be construed to require such submission. Refunding bonds may be issued without approval at an election.

(2) Revenue indebtedness and general obligation revenue indebtedness may be payable from and secured by the pledge of all or any specified part of the revenues to be derived by the district from its water supply and the operation of its water facilities and other properties. It is the duty of the board of directors to impose for water and water services rendered thereby, rates fully sufficient to carry out all undertakings contained in the resolution authorizing the bonds or the contract. The board of directors may in the resolution agree to pay the expenses of maintaining and operating the properties of the district from the proceeds of the ad valorem taxes authorized in Subsection 73-8-18(1)(i) and may enter into those covenants with the future holders of the bonds or the other contracting party as to the management and operation of the properties, the imposition and collection of fees and charges for water and services furnished thereby, the disposition of the fees and revenues, the issuance of future bonds or the creation of future contract indebtedness or obligations and the creation of future liens and encumbrances against the properties and the revenues from them, the carrying of insurance on the properties, the keeping of books and records, the deposit, securing, and paying out of the proceeds of the bonds, and other pertinent matters, as deemed proper by the board of directors to assure the marketability of the bonds or the making of the contract. The board of directors may undertake in the resolution to make the revenues of the properties sufficient to pay all or any specified part of the expense of the operation and maintenance of them. Covenants may be contained in the resolution with respect to the manner of the imposition and collection of water charges, and provision also may be made in it for the appointment of a receiver for the properties of the district in the event of a default by the district in carrying out the covenants and agreements contained in the resolution. Provision may also be made in the resolution for a trustee to perform those services with respect to the holding and paying out of the revenues of the district and the proceeds of the bonds, and otherwise, as may be considered advisable. Maintenance and operation costs and expenses as referred to in this section shall be construed to include any payments made by the district to the United States of America, to any water users' association, or to any other public or private entity for the cost of operating facilities used in providing water for the district.

History: L. 1935, ch. 110, § 25; C. 1943, 100-10-26; L. 1957, ch. 159, § 1; 1982, ch. 81, § 3; 1985, ch. 190, § 1.

Amendment Notes. — The 1985 amendment substituted "indebtedness" for "bonds" in ten places; substituted "Chapter 14, Title 11" for "the provisions of" in the first sentence of Subsection (1); substituted "or a contract indebtedness or obligation may be created" for "in such manner as to be" before clause (a) of Subsection (1); inserted the internal designations (a) through (c) of Subsection (1); inserted "for purposes of this section" in clauses (a) through (c); deleted "may be issued in such manner as to be" at the end of clauses (a) and (b); inserted "as provided in Section 73-8-22" in the next-to-last sentence of Subsection (1); deleted "or constitutionally necessary" after "desirable" in the next-to-last sentence of Subsection (1); added "or the contract" at the end of the second sentence of Subsection (2); inserted "or the other contracting party," "or the creation of future contract indebtedness or obligations," and "or the making of the contract" in the third sentence of Subsection (2); deleted "bonds" before "resolution" near the end of the
fifth sentence of Subsection (2); and made minor changes in phraseology.

COLLATERAL REFERENCES

Key Numbers. — Waters and Water Courses ⇔ 183½.

73-8-27. Validity of signatures and facsimile signatures.

In case any of such officers, whose signatures or countersignatures appear on the bonds or coupons, shall cease to be such officer before the delivery of such bonds to the purchaser, such signatures or countersignatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until the delivery of such bonds.

Any officer whose signature or countersignature is required on bonds and coupons may make written request to, and the board of directors of the metropolitan water district issuing bonds as herein provided shall thereupon grant and by resolution authorize the, use of his signature on bonds and coupons by facsimile imprinting in lieu of his hand-affixed signature and such imprinted facsimile signature shall in every instance be valid and sufficient for all of the purposes of such bonds and coupons.


Bonds issued under this chapter shall be sold in compliance with the provisions of the Utah Municipal Bond Act.

History: L. 1935, ch. 110, § 27; C. 1943, 100-10-28; L. 1957, ch. 159, § 1; 1982, ch. 81, § 4.

Cross-References. — Utah Municipal Bond Act, § 11-14-1 et seq.

73-8-29. Proceeds of sale of bonds.

Such bonds may be issued and sold by said board of directors as they shall determine, and the proceeds thereof, excepting premium and accrued interest, shall be placed in the treasury of said district to the credit of the proper improvement fund, and shall be applied exclusively to the purposes and objects mentioned in said ordinance; provided, that the interest on said bonds accruing during the construction period and for one year thereafter shall be deemed to be a construction cost within the meaning of the purposes and objects mentioned in said ordinance, and such interest may be paid from said proceeds of the sales of such bonds. Premium and accrued interest shall be placed in the fund to be applied to the payment of interest on, and the retirement of, the bonds so sold. For the purposes of this section, the construction period shall be deemed to end when the works, the construction of which shall have been authorized from the proceeds of any such bond issue, shall have been placed in operation to such extent as to result in the sale and delivery in the district, of water transported and provided by means of such works.
73-8-30. Action to test validity of contracts, bonds and other contract obligations or indebtedness.

The board of directors may, within ninety days from the date of the election authorizing the issuance of bonds, the making of any contract, the incurring of any contract obligation or indebtedness, cause to be brought in the name of the district an action in the district court of the county in which said district, or the greater portion of the property subject to taxation by said district, according to the most recent assessment, is located, to determine the validity of any such bonds, contract, contract obligation, or indebtedness, and the sufficiency of the provision for the collection of an annual tax sufficient to pay the interest on such bonded or other indebtedness and the principal thereof as such interest and principal shall fall due and/or to constitute a sinking fund for the payment of principal on or before maturity. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication of summons for at least once a week for three weeks in some paper of general circulation published in the county where the action is pending, such paper to be designated by the court having jurisdiction of the proceedings. Jurisdiction shall be complete within ten days after the full publication of such summons in the manner herein provided. Anyone interested may at any time before the expiration of said ten days appear and by proper proceedings contest the validity of such bonds, contract or contract obligation, or indebtedness and the sufficiency of the provisions for the collection of said annual tax. Such action shall be speedily tried and judgment rendered declaring such bonds, contract or contract obligation, or indebtedness to be valid or invalid, and declaring the provision for the collection of an annual tax for said purposes, to be sufficient or insufficient. Either party may have the right to appeal to the Supreme Court at any time within thirty days after the rendition of such judgment, which appeal must be heard and determined within three months from the time of taking such appeal. After the expiration of ninety days from the date of the election authorizing the making of such contract or contracts, the issuance of bonds, or the incurring of other obligation or indebtedness, no action may be brought to contest or question the validity of said bonds, contract, obligation, or indebtedness and proceedings in relation thereto or the sufficiency of the provision for the collection of an annual tax sufficient to pay the interest on such indebtedness, or the principal thereof, as it falls due and/or to constitute a sinking fund for the payment of principal on or before maturity. If there be more than one action or proceeding involving the validity of any such bonds, indebtedness or contract, or the sufficiency of the provision for the collection of an annual tax sufficient for the said purposes, they shall be consolidated and tried together. The court hearing any proceeding or action inquiring into the regularity, legality or correctness of the proceedings leading up to the making of such contract or contracts, the incurring of said indebtedness or issuance of bonds or the validity of such bonds or the sufficiency of such provision for the collection of an annual tax, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said action or proceeding. The rules of pleading and practice provided by the Code of Civil Procedure, which are not
inconsistent with the provisions of this act, are applicable to all actions or proceedings herein provided for. The motion for a new trial of any such action or proceeding must be heard and determined within ten days from the filing of the notice of intention. The costs on any proceeding or action herein provided for may be allowed and apportioned between the parties or taxed to the losing party, in the discretion of the court.

History: L. 1935, ch. 110, § 29; C. 1943, 100-10-30.

73-8-31. Water rates to pay operating expenses, repairs and depreciation — Interest and principal of bonded and other debt to be paid so far as practicable from water rates — Tax levy if rate inadequate.

The board of directors shall fix such rate or rates for water furnished as will, in conjunction with the proceeds of the maintenance and operation tax authorized by Subsection 73-8-18(i) above, pay the operating expenses of the district, provide for repairs and depreciation of works owned or operated by such district, pay the interest on any bonded or other debt, and so far as practicable, provide a sinking or other fund for the payment of the principal of such debt as the same may become due; it being the intention of this section to require the districts to pay the interest and principal of its indebtedness from the revenues of such district, so far as practicable. If, however, from any cause, the revenues of the district shall be inadequate to pay the interest or principal of any debt, other than revenue bonds, as the same shall become due, the board of directors shall, at the time of fixing the tax levy and in the manner for such tax levy provided, levy and collect annually until said indebtedness shall be paid or until there shall be a sum in the treasury of the district set apart for that purpose sufficient to meet all sums coming due for principal and interest thereon, a tax sufficient to pay the annual interest on such indebtedness, or such part thereof as shall not be met from revenues of the district; and also sufficient to pay such part of the principal of such bonds and other debt as shall become due before the time when money will be available from the next general tax levy, or such portion thereof as shall not be met from revenues of the district; provided, however, that if the maturity of such indebtedness be made to begin more than one year after the date when the same shall be incurred, such tax shall be levied and collected at the time and in the manner aforesaid annually sufficient when added to revenues of the district to pay the interest on such indebtedness as it falls due and also to constitute, together with the revenues of the district available for such purpose, a sinking fund for the payment of the principal thereof on or before maturity. The taxes herein required to be levied and collected shall be in addition to all other taxes levied for district purposes and shall be collected at the time and in the same manner as other district taxes are collected and shall be used for no purpose other than the payment of such indebtedness and accruing interest. Nothing in this chapter shall be so construed as to prevent the making of long term contracts by the district for the sale of water to industrial or other large consumers at fixed rates.
73-8-32. Conversion of coupon bonds into registered bonds — Reconversion — Exchanging for higher denomination.

Coupon bonds issued hereunder, at the request of the holder, may be registered as to principal and interest in the holder's name on the books of the treasurer of the district, and the coupons surrendered and the principal and interest made payable only to the registered holder of the bond. For that purpose the treasurer of the district shall detach and cancel the coupons, and shall endorse a statement on the bonds that the coupon sheet issued therewith has been surrendered by the holder, and the coupons canceled by such treasurer, and that the principal and the semiannual interest are thereafter to be paid to the registered holder, or order, by draft, check or warrant drawn payable at a place of payment specified in the bond, after which no transfer shall be valid unless made on such treasurer's books by the registered holder, or by his attorney duly authorized, and similarly noted on the bond. After such registration, the principal and interest of such bond shall be payable only to the registered owner. Bonds registered under this paragraph, may, with the consent of the district and the holders of the bonds, be reconverted into coupon bonds at the expense of the holder thereof, and again reconverted into registered bonds from time to time, as the board of directors of the district and the holders of the bonds may determine. In converting coupon bonds into registered bonds, coupon bonds may be exchanged for registered bonds of $100 each, or multiples thereof, but not exceeding $50,000 each, in which event new registered bonds shall be issued at the expense of the holder. Coupon bonds may be exchanged for other coupon bonds of $100 each, or multiples thereof, but not exceeding $50,000 each, in which event new coupon bonds shall be issued at the expense of the holder.
73-8-33. Fees.

For each conversion or reconversion of a coupon or registered bond, the treasurer of the district shall be entitled to charge and collect such fee as the board of directors of the district may prescribe from time to time.

History: L. 1935, ch. 110, § 32; C. 1943, 100-10-33.

73-8-34. Bonds as legal investment for trust and institutional funds.

All bonds heretofore or hereafter issued by any metropolitan water district shall be legal investments for all trust funds, and for the funds of all insurance companies, banks, both commercial and savings and trust companies, and for the state school funds, and for all sinking funds under the control of the state treasurer, and whenever any moneys or funds may by law now or hereafter enacted be invested in, or loaned upon the security of, bonds of cities, cities and counties, counties, or school districts in the state of Utah, such moneys or funds may be invested in, or loaned upon the security of, the bonds, of such metropolitan water districts; and whenever bonds of cities, cities and counties, counties, or school districts, by any law now or hereafter enacted, may be used as security for the faithful performance or execution of any court or private trust or of any other act, bonds of such metropolitan water district may be so used.

History: L. 1935, ch. 110, § 33; C. 1943, 100-10-34.

73-8-35. Taxation — Valuation.

It is the duty of the auditor of each county in which a district or any part of a district lies, under Section 59-2-924, to prepare and deliver to the controller of the district a certificate showing the taxable value of all property within the district lying in the county, and also the taxable value segregated according to cities, the area of which lies within the district.


Amendment Notes. — The 1987 amendment, effective February 6, 1987, changed the statutory reference. The 1988 amendment, effective February 9, 1988, substituted "taxable value" for "assessed valuation" in two places.

Retrospective Operation. — Laws 1987, ch. 4, § 307 provides: "This act has retrospective operation to January 1, 1987."

Laws 1988, ch. 3, § 269 provides that the act "has retrospective operation to January 1, 1988."

COLLATERAL REFERENCES


Key Numbers. — Waters and Water Courses ⇒ 183½.
73-8-36. Rate of taxation.

Before June 22 the board of directors of the district shall, by resolution, determine the amount of money necessary to be raised by taxation during the fiscal year beginning the preceding January 1 and shall fix the rate of taxation of the areas of each separate city within the district, designating the levy on taxable value of taxable property in each of the areas in each county and shall levy a tax accordingly:

(1) sufficient to meet interest and sinking fund requirements on, and/or any payment to principal of, outstanding bonded and other indebtedness of the district; and sufficient to meet the payment of the principal and interest on any refunding bonds, or on any bonds the issuance of which may have been authorized as provided in this part, and which bonds have not been sold but which, in the judgment of the board of directors, will be sold prior to the time when money will be available from the next subsequent tax levy, and in case the bonds are not so issued and sold or the tax for any other reason is not required for that purpose, the tax levied shall be applied to the payment of interest and/or principal on any refunding bonds, or on any bonds authorized as provided in this part, then outstanding or subsequently issued and/or sold, or on any contract or other indebtedness; and

(2) for all other district purposes.


Amendment Notes. — The 1985 amendment substituted "levy on assessed valuation" for "number of mills upon each one dollar of assessed valuation" in the introductory sentence.

The 1987 amendment, effective February 6, 1987, in the introductory paragraph, substituted "June 22" for "June 15" and made various minor stylistic and punctuation changes throughout the section.

The 1988 amendment, effective February 9, 1988, substituted "taxable value" for "assessed valuation" near the end of the first paragraph and made minor stylistic changes.

Retrospective Operation. — Laws 1987, ch. 4, § 307 provides: "This act has retrospective operation to January 1, 1987."

Laws 1988, ch. 3, § 269 provides that the act "has retrospective operation to January 1, 1988."

NOTES TO DECISIONS

Specification of purposes of levy.

The resolution under this section should specify the statutory purposes for which the levy is set including a showing of the number of mills levied "for administering the district and operating its properties" for that year and the number of mills levied for each of the other authorized expenditures enumerated in § 73-8-18. Salt Lake City v. Metropolitan Water Dist., 13 Utah 2d 325, 373 P.2d 911 (1962).

73-8-37. Amounts due from cities declared in resolution.

The board of directors shall also cause to be computed and shall declare in said resolution the amount of money to be derived from the area of the district lying within each separate municipality by virtue of the tax levy in accordance with the provisions of Subdivision [(1)](h) of Section 73-8-18. The board shall immediately cause certified copies of such resolution to be transmitted to the presiding officer of the governing body of each such city.
73-8-38. Repealed.

Repeals. — Section 73-8-38 (L. 1943, ch. 110, § 37; C. 1943, 100-10-38), relating to the election by cities to pay all or a portion of tax amount out of municipal funds in cash or deferred installments, was repealed by Laws 1963, ch. 180, § 3.


Before June 22 the controller of the district shall cause to be prepared and transmitted to the auditor of each county in which the district lies, a statement showing the tax rate to be applied to taxable property in each city, which rate shall be the rate fixed by resolution of the board of directors.

73-8-40. Collection of taxes.

Upon receipt by the auditor of each county wherein such district, or any part thereof, shall lie, of a certified copy of the controller’s statement showing the tax rate to be applied to taxable property in each city, it shall be the duty of the county officers to collect taxes for the benefit of the district at the rates specified as herein provided. The taxes so levied shall be computed and collected at the time and in the manner required by law for the computation and collection of taxes for county purposes, and the property subject to such tax shall be subject to the same penalties for delinquency, and the same provisions of law relating to the sale of property for nonpayment of county taxes and redemption thereof shall apply to the tax herein authorized. When so collected, such taxes shall be paid over to the treasurer of the district, subject to the deduction herein authorized.

73-8-41. Collection fees.

In consideration of service rendered hereunder, any county shall annually be entitled to deduct and withhold an amount not exceeding one per cent on the first $25,000 collected hereunder, and one-fourth of one per cent on any amount in excess of $25,000 collected hereunder. The board of commissioners of each such county may provide such extra help as in their judgment may be necessary for the proper performance of duties hereunder.
73-8-42. **Lien of taxes.**

Whenever any real property situated in any district organized hereunder and upon which a tax shall have been levied, as herein provided shall be sold for taxes and shall be redeemed, the money paid for such redemption, except advertising costs, shall be apportioned and paid in part to such district in the proportion which the tax due to such district shall bear to the total tax for which such property shall have been sold. All taxes levied under the provisions of this act shall be a lien upon the property upon which levied, and the enforcement of the collection of such tax shall be had in the same manner and by the same means as is or shall be provided by law for the enforcement of liens for state and county taxes, and all the provisions of law relating to the enforcement of such taxes are hereby made a part of this act so far as applicable.

History: L. 1935, ch. 110, § 40; C. 1943, 100-10-41.

**Cross-References.** — Collection of property taxes, § 59-2-1301 et seq.

73-8-43, 73-8-44. **Repealed.**

**Repeals.** — Sections 73-8-43 to 73-8-44 (L. 1943, ch. 110, §§ 42, 43; C. 1943, 100-10-43, 100-10-44), relating to credits in reduction of taxes, were repealed by Laws 1963, ch. 180, § 3.

73-8-45. **Expenses of incorporation.**

Any city which shall incur expenses in preliminary work in preparing for the incorporation of or in the incorporation of any district hereunder likewise may certify the amount thereof, without interest, to the board of directors of said district at any time within four years from the date of the incorporation of such district, and if allowed by the board of directors, such amount shall be credited to the city incurring the same, and shall be considered as a payment for water purchased, or to be purchased, by such city from the district.

History: L. 1935, ch. 110, § 44; C. 1943, 100-10-45; L. 1963, ch. 180, § 1.

73-8-46 to 73-8-48. **Repealed.**

**Repeals.** — Sections 73-8-46 to 73-8-48 (L. 1935, ch. 110, §§ 45 to 47; C. 1943, 100-10-46 to 100-10-48), relating to an exception in the crediting of money paid in the avoidance of taxes, the certification and allowance of credits, and the effect of the failure of a city to carry out election to make payments in lieu of taxation, were repealed by Laws 1963, ch. 180, § 3.
73-8-49. Annexation to district — Validity of proceedings.

Annexation to the territory of any district organized hereunder may be effected by either of the following methods:

(1) If any area is annexed to or consolidated with any city, the area of which city shall be a part of any district organized under this chapter, the annexed or consolidated area shall by virtue of its annexation or consolidation to the city become and be a part of the district and is taxable in accordance with the provisions of this chapter, to pay the indebtedness of the district outstanding at the time of annexation or consolidation.

(2) The governing or legislative body of any municipality may apply to the controller of any metropolitan water district for a statement showing the amount of the bonded and other indebtedness of the district, the taxable value of the taxable property in the district according to the most recent assessment, and the names of all municipalities, the areas of which are included within the district, and the controller shall then furnish the information to the applicant. After consideration of the statement the governing body of the municipality may apply to the board of directors of the metropolitan water district for consent to annex the municipality to the metropolitan water district. The board of directors may grant or deny the application and in granting it may fix the terms and conditions upon which the city may be annexed to and become a part of the metropolitan water district. The action of the board of directors evidenced by order made on motion shall be promptly transmitted to the governing body of the applying city, which governing body may then submit to the qualified electors of the city, at any general or special election held in the city, the proposition of the annexation subject to the terms and conditions fixed as provided in this chapter. Notice of the election shall be given by posting or publication; when given by posting the notice shall be posted at least ten days and in three public places in the city; when given by publication the notice shall be published once at least ten days before the date fixed for the election in a newspaper of general circulation in the city. The notice shall contain the substance of the terms and conditions fixed by the board of directors. The election shall be conducted and the returns canvassed in the manner provided by law for municipal elections in the city. If the proposition receives the affirmative vote of a majority of electors of the city voting at the election, the governing body of the municipality shall certify the result of the election on the proposition to the board of directors of the district and a certificate of proceedings shall be made by the secretary of the district and filed with the lieutenant governor. Upon filing the certificate in the office of the lieutenant governor, the municipality is an integral part of the metropolitan water district, and the taxable property in the municipality shall be subject to taxation for the purposes of the metropolitan water district, including the payment of bonds and other obligations of the district at the time authorized or outstanding.

(3) The validity of any proceedings for the annexation of a municipality or city to any district organized under this chapter may not be contested in any action unless the action is brought within three months after the completion of the proceedings, or, in case such proceedings are completed
prior to the time that this section takes effect, then within three months after this section becomes effective.


Amendment Notes. — The 1988 amendment, effective February 9, 1988, substituted "under this chapter" or "in this chapter" for "hereunder" or "herein" where the words appear; substituted "this chapter" for "this act" near the end of Subsection (1); substituted "taxable value" for "assessed value" in the first sentence of Subsection (2); substituted "section becomes effective" for "paragraph shall have become effective" at the end of Subsection (3); and made minor stylistic changes throughout.

Retrospective Operation. — Laws 1988, ch. 3, § 269 provides that the act "has retrospective operation to January 1, 1988."

Cross-References. — Modification of boundaries of districts, notice to State Tax Commission, § 11-12-1.

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(3).
Key Numbers. — Waters and Water Courses ⇔ 183½.

73-8-50. Withdrawal from district.

Any municipality whose corporate area has become or is a part of any water district may withdraw therefrom in the following manner:

The governing body of any such municipality may submit to the electors thereof at any general or special election the proposition of withdrawing from any water district incorporated thereunder. Notice of such election shall be given in the manner provided in Subsection 73-8-49(2). Such election shall be conducted and the returns thereof canvassed in the manner provided by law for the conduct of municipal elections in said city. In the event that the majority of the electors voting thereon vote in favor of such withdrawal, the result thereof shall be certified by the governing body of such municipality to the board of directors of the district. A certificate of the proceedings hereunder shall be made by the secretary of the district and filed with the lieutenant governor, and upon the filing of such certificate the area of the municipality so withdrawing shall be excluded from the said water district, and shall no longer be a part thereof; provided, however, that the property within the said municipality as it shall exist at the time of such exclusion shall continue taxable for the purpose of paying said bonded and other indebtedness outstanding or contracted for, at the time of such exclusion and until such bonded or other indebtedness shall have been satisfied.

History: L. 1935, ch. 110, § 49; C. 1943, 100-10-50; L. 1984, ch. 68, § 91.

73-8-51. Interest of directors or employees in contracts.

Except as herein provided, no director or any other officer or employee of the district shall in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board of directors, or made or to be made by such officer or employee pursuant to discretionary authority vested in him, or in the profits to be derived therefrom. Notwithstanding the fact that such director or other officer or employee of the district may be a stockholder or bondholder or director or other officer or employee of a corporation...
contracting with the district, contracts may be made with such corporation for its general benefit unless such director or officer or employee of the district shall own or control, directly or indirectly, stock or bonds to an amount exceeding 5 per cent of the total amount of the stock or bonds, respectively, of such contracting corporation issued and outstanding. For any violation of this section such director or other officer or employee of the district shall be deemed guilty of a misdemeanor, and such conviction shall work a forfeiture of his office, or employment, and he shall be punished by a fine not exceeding $500, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: L. 1935, ch. 110, § 50; C. 1943, 100-10-51.

COLLATERAL REFERENCES

Key Numbers. — Waters and Water Courses ⇐ 183½.

73-8-52. Recall and resignation of directors.

Every member of the board of directors of a metropolitan water district formed hereunder shall be subject to recall for cause after charges have been preferred and hearing thereon held by the governing body of the municipality from which such member shall be appointed, and any member may resign from said board of directors and any office held by him in said district.

History: L. 1935, ch. 110, § 51; C. 1943, 100-10-52; L. 1957, ch. 159, § 1; 1963, ch. 180, § 1.

NOTES TO DECISIONS

Removal of directors.
While this section protects directors of metropolitan water district boards from arbitrary removal from office by the city commission, it does not operate to create life tenure for directors. Metropolitan Water Dist. v. Salt Lake City, 14 Utah 2d 171, 380 P.2d 721 (1963).

73-8-53. Necessities.

All matters and things necessary for the proper administration of the affairs of said district which are not provided for in this act shall be provided for by the board of directors of the district by ordinance.

History: L. 1935, ch. 110, § 52; C. 1943, 100-10-53.
73-8-54. Action by ordinance.

Any action required by this act to be done by resolution may be done, with equal validity, by ordinance.

History: L. 1935, ch. 110, § 53; C. 1943, 100-10-54.

COLLATERAL REFERENCES

C.J.S. — 94 C.J.S. Waters § 243(1).

Key Numbers. — Waters and Water

Courses ⇐ 183½.

73-8-55. Fiscal year — Annual statements.

The fiscal year of any metropolitan water district incorporated hereunder shall commence on the 1st day of January of each year and shall continue until the close of the 31st day of December. As promptly as shall be possible after the close of each fiscal year, it shall be the duty of the controller of the district to prepare and transmit to the chief executive officer of each municipality, the area of which shall lie within the district, a statement of revenues and expenditures in such detail as shall be prescribed by the board of directors; also a statement of the amount of water stored by or made available to the district and the amounts used by the respective cities, the areas of which shall lie within the district.

History: L. 1935, ch. 110, § 54; C. 1943, 100-10-55.

Severability Clauses. — Section 55 of Laws 1935, ch. 110 (Code 1943, 100-10-56) provided: "If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional."

COLLATERAL REFERENCES


Key Numbers. — Waters and Water

Courses ⇐ 183½.

73-8-56. Validating provision.

All metropolitan water districts heretofore created under authority of this chapter and its predecessor acts, and all bonds heretofore issued, and all contracts heretofore entered into by such districts, including contracts with other corporations and with water users' associations, are hereby ratified, validated and confirmed, and such districts are hereby found and declared to be valid and legally constituted districts and such bonds and contracts to constitute valid and legally binding obligations of such districts in accordance with the terms thereof.
73-8-57. Time for expenditure of tax revenues.

Tax revenues levied and collected pursuant to the provisions of Subsection 73-8-18(i) [73-8-18(1)(i)] and Section 73-8-36 need not necessarily be expended during the fiscal year of their levy or collection but may, when so elected by the board of directors, be expended in the fiscal year or years ensuing.


73-8-58. Reserve funds — Creation — Use of funds — Limitation.

The board of directors of a metropolitan water district is hereby authorized to create and maintain, out of revenues of any nature available to it, a reserve fund and to expend therefrom when it deems necessary sums to meet immediate needs and emergencies such as major catastrophe, earthquake, drought relief or any other happening which imperils the public health and safety, and, among other things, but without intention to limit, for any district purposes necessary for the health, safety and security of the inhabitants of the district; provided, that such reserve fund shall in no event exceed ten per cent of the total investment value, at cost, of such metropolitan water district in water acquisitions, water rights, reservoirs, pipelines and water treatment plants and the like, whether such investments are financed by such district directly or for its benefit by the United States or the state of Utah. Such reserve funds may also be drawn upon by the board of directors when in its discretion it is advisable to do so either in abatement of a tax levy, in lieu of a tax levy, or in avoidance of an increase in a tax levy for any year.


73-8-59. Separability.

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.