

APPENDIX F: LEGAL FORMS OF UTILITY ORGANIZATION IN SOUTH CAROLINA

Although regional solutions do not fit every situation and they must be evaluated carefully, many utilities do not know what organizational options are available. The sections below provide a brief overview of the various organizational options; however, it is advised that any utility looking to regionalize or reorganize under one of these options secure legal counsel to provide guidance and information on all pros and cons associated with these alternatives. In addition, a utility should complete an evaluation or study to determine the overall feasibility of any regional or consolidated solution. In addition to the optimal organization format/governance, this should include, at a minimum, rate impacts, community impacts/concerns, asset valuation, impact on utility jobs (if any), franchise fees (if any) and impact on utility revenue.

BOARD OF COMMISSIONERS OF PUBLIC WORKS

Board of Commissioners of Public Works (CPW) is an agency of one municipality and is comprised of a Board of Commissioners that has the decision-making authority for the utility. The Commissioners are elected by the public and operate independently of the municipal government, except for borrowing money. They are, however, eligible for government funding programs. The creation of a CPW requires an act of the General Assembly. A CPW can only be abolished if the municipality itself is abolished or if all the Commissioners voted unanimously to abolish the CPW.

COUNTY WATER & SEWER AUTHORITY

A county water and sewer authority can be created by County Council either through local referendum or act of the General Assembly and its service area is confined to the county in which it is created. They can be governed by County Council, a Board of Commissioners appointed by County Council, or a Board of Directors recommended by the local legislative delegation and appointed by the Governor. These entities are considered

units of local government and are, therefore, eligible for governmental infrastructure funding programs.

JOINT WATER & SEWER AUTHORITY

A Joint Water & Sewer Authority is created through the Joint Authority Water and Sewer Systems Act, SC Code Ann. §6-25-5. It was formerly known as the “Joint Municipal Water System Act” and was developed specifically to provide a legally defined process to allow for regionalization of water and wastewater systems. Through this act, units of local government can form a Joint Authority by resolution of one or more participating unit without a referendum.

The approving resolution includes the appointment of a person that will represent the unit of government on the Authority Board. Two or more of these appointed members can then apply to the Secretary of State to obtain a Corporate Certificate for the Authority. Upon formation of the Authority, utility resources and revenues can be pooled, and the units of government can transfer water and/or wastewater assets to the Authority but transfer of assets

is not required. This gives broad legal discretion on how a utility established under this law is set up. In some situations, the way an Authority was organized may need to be reviewed for reorganization opportunities that improve operations, administration and governance.

This type of entity is considered a unit of local government and is eligible for governmental funding programs.

PRIVATE, NON-PROFIT WATER & SEWER COMPANY

Private, non-profit water and sewer companies are organized under the IRS Code 501(c)12 and must apply to the SC Secretary of State for operation. These entities are essentially co-operatives in that their Boards are made of people who are served by the system and are elected by the membership. In addition, the utility is owned by the membership. These entities are only eligible for some government funding programs, such as USDA and EDA.

REGIONAL WATER & SEWER AUTHORITY

A Regional Water & Sewer Authority

is created by an act of the General Assembly with Board Members that are appointed by the Governor based on recommendation from the local legislative delegation and that represent each participating system. In general, the number of members for each system is representative of the capacity each entity has in the regional system. This organizational structure is normally used in the creation of a regional water or wastewater treatment facility and each participating entity still owns, operates, and maintains its existing water distribution and/or wastewater collection systems. These entities are considered units of local government and are eligible for governmental funding programs for the joint assets.

RURAL WATER & SEWER DISTRICT

Rural Water and Sewer Districts are non-profit entities created by an act of the General Assembly to provide utility service within a specified area. The Governing Board of these entities consists of residents of the district that are appointed by the Governor based on recommendation of the local legislative delegation. These entities are like private, non-profit entities except that they are formed through state legislation, giving them status as units of local government. An example of a Rural Water & Sewer District in South Carolina is Pioneer Rural Water.

SPECIAL PURPOSE DISTRICT

A Special Purpose District (SPD) is established by an act of the General Assembly and is similar in some ways to a Special Tax District. This is currently one of the most common organizational models used for regional entities. The enabling

legislation for each SPD may be different and some may have specific service areas while some may not. There are also differences between SPDs that were formed before Home Rule was enacted (approximately 1976) and those that were formed afterwards. SPDs consist of a Board of Commissioners who are either appointed by the Governor based on the recommendation of the local legislative delegation or through elections from within the service area of the SPD. Counties have the authority to change the service area boundaries of an SPD within their jurisdiction but cannot abolish it. SPDs are considered units of local government and, therefore, have access to governmental funding programs. In addition, they can issue general obligation bonds with the approval of the county.

SPECIAL TAX DISTRICT

A Special Tax District can be established to own, manage, and operate a utility system. These districts are created through an act of the General Assembly, at the request of a county, and consist of a Board of Commissioners, who are appointed by the Governor based on recommendations from the local legislative delegation or through a vote of citizens within defined areas of the district. These districts are generally used in counties where the county itself cannot or does not want to operate a utility and are confined to a specific area in the county. As such, only the County Council can change the boundaries of the service area, but it cannot abolish the Special Tax District. In general, these districts have taxing authority in a specified area that can be used for infrastructure financing. This form

of organization is similar to a Special Purpose District but does not have as many powers.

PRIVATIZATION

With privatization, assets are transferred from the public utility to a private, for-profit entity. There is generally no opportunity for the public entity to provide input on decision making and policy once a transfer is completed; however, the rates would be regulated by the SC Public Service Commission. Private entities do not have access to most government infrastructure funding programs and rely on rates and private sector financing (capital market, bank loans, etc.) to fund operations, maintenance, and capital improvements.