WEST VIRGINIA CODE CHAPTER 16 ARTICLE 13D

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§16-13D-1. Statement of purpose.

It is the purpose of this article, to permit a public agency, or more than one public agency to make the most efficient use of its or their powers relating to public water supplies, the transportation and treatment of wastewater, and the management of stormwater by enabling a public agency, or more than one public agency to cooperate with other public agencies on a basis of mutual advantage and thereby to provide services and facilities to participating public agencies and to provide for the establishment for the purpose of a quasi-governmental public corporation which shall be known as a regional water authority, a regional wastewater authority, a regional stormwater authority, or any combination thereof. The function of the regional water authority shall be to secure a source of water on a scale larger than is feasible for an individual public agency or agencies acting alone, and to sell water to public service districts, municipalities, publicly and privately owned water utilities, and others. The function of the regional wastewater authority shall be to enable a public agency or agencies to provide the most economical method of transportation and treatment of wastewater and to provide transportation and treatment services to public service districts, municipalities, publicly and privately owned wastewater utilities, and others. The function of the regional stormwater authority shall be to enable a public agency or agencies to provide storm, flood and surface water drainage management services to public service districts, municipalities, publicly and privately owned stormwater utilities, and others. The function of a regional authority that provides any combination of water, wastewater, or stormwater service shall be to enable a public agency or agencies to carry out the joint functions of a water, wastewater, or stormwater regional water authority.

In addition to the purposes for which it may have originally been created, any authority created pursuant to this article may enter into agreements with public agencies, privately owned utilities, and other authorities, for the provision of related services including, but not limited to the following: administration, operation and maintenance, billing, and collection.

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§16-13D-2. Definitions.

For the purposes of this article:

(a) The term "authority" means any regional water authority, regional wastewater authority, regional stormwater authority, or any combination thereof organized pursuant to the provisions of this article;

(b) The term "public agency" means any municipality, county, public service district, or other political subdivision of this state; and

(c) The term "stormwater," "stormwater system," or "stormwater works" means a stormwater system in its entirety or any integral part thereof used to collect and dispose of stormwater and an associated stormwater management program. It includes all facilities, structures, and natural water courses used for collecting and conducting stormwater to, through, and from drainage areas to the points of final outlet, including, but not limited to, any and all of the following: inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, syphons, retention or detention basins, dams, floodwalls, levies, pipes, flood control systems and pumping stations, and associated stormwater management program. The term "stormwater system" and "stormwater works" shall not include highways, road and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of Highways.

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§16-13D-3. Individual or joint exercise of powers by certain public agencies; agreements among agencies, contents; submission to Public Service Commission; filing of agreement; prohibition against competition; retirement of bonds.

(a) Any powers, privileges, or authority of a public agency of this state relating to public water supplies, or the transportation or treatment of wastewater, or the operation of a stormwater system may be exercised individually or jointly with any other public agency of this state, or with any agency of the United States to the extent that the laws of the United States permit. Any agency of the state government when acting individually or jointly with any public or private agency may exercise all of the powers, privileges, and authority conferred by this act upon a public agency.

(b) Any public agency may individually organize a regional water authority, regional wastewater authority, regional stormwater authority, or any combination thereof. Any public agency may enter into agreements with one or more other public agencies for the purpose of organizing a regional water authority, regional wastewater authority, regional stormwater authority, or any combination thereof. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agency or agencies required by the provisions of Chapter 8 and Chapter 16 of this code shall be necessary before any agreement may enter into force.

(c) For an agency acting individually, the organizational document for the authority shall specify the following:

(1) The precise organization, composition, and nature of the authority created thereby together with the powers delegated thereto;

(2) Its purpose or purposes;

(3) The manner of financing for the authority and of establishing and maintaining a budget therefor;

(4) The manner of acquiring, holding, and disposing of real and personal property of the authority; and

(5) Any other necessary and proper matters.

(d) Any agreement between two or more public agencies to organize an authority shall specify the following:

(1) Its duration;

(2) The precise organization, composition and nature of the authority created thereby together with the powers delegated thereto;

(3) Its purpose or purposes;

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(4) The manner of financing for the authority and of establishing and maintaining a budget therefor;

(5) The permissible methods for partial or complete termination of the agreement and for disposing of property upon partial or complete termination;

(6) The manner of acquiring, holding, and disposing of real and personal property of the authority;

(7) Any other necessary and proper matters.

(e) Any agreement between two or more public agencies to organize an authority may be amended to include additional public agencies by consent of two-thirds of the signatories to the agreement, if no terms of agreement are changed, otherwise a new agreement with the new public agency shall be drawn. Where fewer than three public agencies come together to form an authority, both parties shall consent to the amendment of the agreement to include additional public agencies.

(f) Any agency acting individually to organize an authority and every agreement made hereunder shall be submitted to the Public Service Commission for its approval. The Public Service Commission shall, within 30 days of the filing date, notify the agency whether the agency has filed all required documentation regarding the organization or agreement that is required by the Commission. If the Commission determines that additional information is needed it will inform the agency of the information needed. Failure by the Public Service Commission to approve or disapprove an agency's decision to individually organize an authority or an agreement submitted hereunder within 90 days of the date that the Commission has before it all of the necessary information from the agency shall constitute approval thereof: *Provided*, That the 90-day Commission review period may be extended upon request of the agency.

(g) Prior to taking effect, the organizational document of the agency acting individually or the agreement between two or more agencies made hereunder shall be filed with the clerk of the county commission of each county in which the agency acting individually, or in the case of an authority organized by agreement of two or more agencies, in the county where each member of the authority is located and the agreement then also shall be filed with the Secretary of State, accompanied by a certificate from the clerk of the county commission of the county, or counties, where filed, stating that the agreement has been filed in that county.

(h) A public agency which enters into an agreement made hereunder may not offer or provide water, wastewater, or stormwater services in competition with another public agency entering into the agreement.

(i) A public agency which enters into an agreement made hereunder may not withdraw from the agreement until such time as the outstanding bonded indebtedness of the authority is retired or the bond holders are otherwise protected.

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§16-13D-4. Furnishing of funds, personnel or services by certain public agencies, agreements for purchase, sale, distribution, transmission, transportation, collection, disposal, and treatment of water, wastewater, or stormwater; terms and conditions; bidding requirements; emergency repairs.

Any public agency acting individually to organize an authority or entering into an agreement pursuant to this article may appropriate funds and may sell, lease, give, or otherwise supply to the authority created the personnel or services for the operation of the authority as may be within its legal power to furnish.

Subject to the prior approval of the Public Service Commission pursuant to §24-2-12 of this code, any public agency, whether or not a party to an agreement pursuant to this article, and any publicly or privately owned water distribution company may enter into contracts with any regional authority created pursuant to this article for the purchase of water from the authority or the sale of water to the authority, the treatment of water by either party, and the distribution or transmission of water by either party and any such authority may enter into the contracts. The Public Service Commission shall, within 30 days of the filing date, notify the parties to the contract whether they have filed all required documentation regarding the contract. If the Commission determines that additional information is needed it will inform the agency of the information needed. The Public Service Commission shall act on a filing submitted hereunder within 90 days of the date that the Commission has before it all necessary information from the parties to the contract. Failure of the Commission to act on the filing within the 90-day period shall constitute approval thereof: *Provided*, That the 90-day Commission review period may be extended upon request of the parties to the contract.

Any public agency, whether or not a party to an agreement pursuant to this act, and any publicly or privately owned wastewater transportation or treatment system may enter into contracts with any regional authority created pursuant to this article for the transportation and treatment of wastewater by either party and any authority may enter into the contracts, subject to the prior approval of the Public Service Commission pursuant to §24-2-12 of this code. The Public Service Commission shall, within 30 days of the filing date, notify the parties to the agreement whether they have filed all required documentation regarding the contract. If the Commission determines that additional information is needed it will inform the agency of the information needed. The Public Service Commission shall act on a filing submitted hereunder within 90 days of the date that the Commission has before it all necessary information from the parties to the contract. Failure by the Commission to act within the 90-day period shall constitute approval thereof: *Provided*, That the 90-day Commission review period may be extended on upon request of the parties to the contract.

No contract or agreement authorized by the provisions of this article with any contractor or contractors for labor or materials, or both, exceeding in amount the sum of $50,000 may be made without advertising for bids, which bids shall be publicly opened and an award made to the lowest responsible bidder, with power and authority in the commission to reject any and all bids. Emergency repairs shall be exempt from the bidding requirements of this

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section. For the purpose of this section, the term emergency repairs means repairs that if not made immediately will seriously impair the use of building components, systems, and public infrastructure or cause danger to persons using the building components, systems, and public infrastructure.

Any public agency, whether or not a party to an agreement pursuant to this article, and any publicly or privately owned stormwater system may enter into contracts with any regional authority created pursuant to this article for the collection and disposition of stormwater by either party and any authority may enter into contracts.

Any contract may include an agreement for the purchase of water not actually received or the treatment of wastewater not actually treated, or the collection and disposition of stormwater not actually collected and disposed. No contract may be made for a period in excess of 40 years, but renewal options may be included therein. The obligations of any public agency under any contract shall be payable solely from the revenues produced from the public agency's water, stormwater and wastewater system, and the Public Service Commission, in the case of a public agency whose rates are subject to its jurisdiction, shall permit the public agency to recover through its rates revenues sufficient to meet its obligations under the agreement.

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§16-13D-5. Declaration of authority organization, when quasi-governmental public corporation.

Upon the approval of the Public Service Commission and filing with the Secretary of State, the Secretary of State shall declare the authority organized and give it the corporate name of regional water authority number ____ , regional wastewater authority number ____ , regional stormwater authority number ____, or any combination thereof, whichever is appropriate. Thereupon the authority shall be a quasi-governmental public corporation.

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§16-13D-6. Governing body; appointments; terms of members, voting rights.

The governing body of the authority shall consist of not less than three persons selected by the governing body of the public agency. When the authority is organized by more than one public agency, each participating public agency shall appoint at least one member.

The governing body of the authority shall consist of at least one member of the following categories: (1) A professional engineer licensed by the State of West Virginia, (2) a certified public accountant licensed by the State of West Virginia, or (3) an attorney licensed and in good standing with the West Virginia State Bar. Each member of the board must be a rate-paying residential customer of the authority.

For purposes of this section, "rate-paying residential customer" means a person who: (1) In the case of water or wastewater service, is physically connected to and actively receiving residential utility services from the authority; or (2) in the case of stormwater service, has stormwater conveyed away from the residential property by facilities owned by the authority. Each member's full term shall be not less than one year nor more than four years and initial terms shall be staggered in accordance with procedures set forth in the organization document or agreement provided for in §16-13D-3 of this code, and amendments thereto. In the case of an authority which is made up by the agreement of two public agencies, each public agency shall appoint at least two representatives to the governing body.

When the authority is organized by more than one public agency the manner of selection of the governing body and terms of office shall be set forth in the agreement provided for in §16-13D-3 of this code, and amendments thereto. The governing body of the authority shall elect one of its members as president, one as treasurer and one as secretary.

Each member shall have one vote in any matter that comes before the authority for decision. However, when the authority is organized by more than one public agency, the member agencies shall, in the original agreement establishing the authority, set forth any special weighing of the votes based upon population served, volumes of water purchased, volumes of wastewater treated, volumes of stormwater collected and disposed numbers of customers, or some other criterion, so as to maintain fairness in the decisions and operations of the authority.

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§16-13D-7. Meetings of governing body; annual audit.

The governing body of the authority shall meet as often as the needs of the authority require; but not less frequently than on a quarterly basis. The governing body shall cause to be made an annual audit of the financial records of the authority, the cost of said audit to be paid by the authority.

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§16-13D-8. Powers of governing body.

For the purpose of operating as an authority as provided in this article, powers, authorities, and privileges of the authority shall include, but are not limited to, the following:

(1) To accept by gift or grant from any person, firm, corporation, trust, or foundation, or from this state or any other state or any political subdivision or municipality thereof, or from the United States, any funds or property or any interest therein for the uses and purposes of the authority and to hold title thereto in trust or otherwise and to bind the authority to apply the same according to the terms of the gift or grant;

(2) To sue and be sued;

(3) To enter into franchises, contracts and agreements with this or any other state or the United States or any municipality, political subdivision or authority thereof, or any of their agencies or instrumentalities, or any public or private person, partnership, association, or corporation of this state or of any other state or the United States, and this state and any municipality, political subdivision, authority, or any of their agencies or instrumentalities, and any public or private person, partnership, association, or corporation may enter into contracts and agreements with the authority for any term not exceeding 40 years for the planning, development, construction, acquisition, maintenance, or operation of any facility or for any service rendered to, for, or by the authority;

(4) To borrow money and evidence the same by warrants, notes, or bonds as hereinafter provided in this article, and to refund the same by the issuance of refunding obligations;

(5) To acquire land and interests in land by gift, purchase, exchange, or eminent domain, the power of eminent domain to be exercised within or without the boundaries of the authority in accordance with §54-2-1 *et seq*. of this code;

(6) To acquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, distribution, and utilization of water, transportation facilities, pump stations, lift stations, treatment facilities, and other facilities for the transportation and treatment of wastewater, and inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch basins, ditches, streams, gulches, flumes, culverts, syphons, retention or detention basins, dams, floodwalls, levies, pipes, flood control systems, pumping stations, and treatment facilities and to own and hold the real and personal property as may be necessary to carry out the purposes of its organization subject to the advance approval of the Public Service Commission pursuant to Chapter 24 of this code for any proposed acquisition, construction, installation or operation. The Public Service Commission shall, within 30 days of a request for approval submitted hereunder, notify the authority whether its filing is complete. If the Commission determines that additional information is needed it will inform the agency of the information needed. Notwithstanding the timeframes for Commission approval of public utility projects set forth in Chapter 24, the Commission shall

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act on authority proposals within the following timeframes.

The Public Service Commission shall act on all proposals submitted hereunder by an authority that provides only water service or only wastewater service, or by an authority that does not seek a rate increase within 120 days of the date that the authority files with the Commission a complete application. Failure of the Public Service Commission to act within the 120-day period shall be deemed an approval of such proposal: *Provided*, That the Commission's 120-day review period may be extended upon request of the authority.

The Public Service Commission shall act on all proposals submitted hereunder for which the authority seeks a rate increase and the authority provides water and wastewater services, water and stormwater services, wastewater and stormwater services, or water and wastewater and stormwater services, within 180 days of the date the authority files with the Commission the necessary information showing the basis of any project related rates, fees, and charges or other information as the Commission considers necessary: *Provided*, That the information shall include an explanation of the amount and basis for assigning and allocating total costs between the water operations, the wastewater operations, and if applicable the stormwater operations. Failure by the Commission to act within the 180-day period shall constitute approval thereof. *Provided, however*, That the 180-day Commission review period may be extended upon request of the authority.

(7) To have the general management, control, and supervision of all the business, affairs, property, and facilities of the authority, and of the construction, installation, operation, and maintenance of authority improvements, and to establish regulations relating thereto;

(8) To hire and retain agents, employees, engineers, and attorneys and to determine their compensation. The governing body shall select and appoint a general manager of the authority who shall serve at the pleasure of said governing body. The general manager shall have training and experience in the supervision and administration of the system or systems operated by the authority and shall manage and control the system under the general supervision of the governing body. All employees, servants and agents of the authority shall be under the immediate control and management of said general manager. The general manager shall perform all other duties as may be prescribed by the governing body and shall give the governing body a good and sufficient surety company bond in a sum to be set and approved by the governing body conditioned upon the satisfactory performance of the general manager's duties. The governing body may also require that any other employees be bonded in such amount as it shall determine. The cost of the bonds shall be paid out of the funds of the authority;

(9) To adopt and amend rules and regulations not in conflict with the Constitution and laws of this state, necessary for the carrying on of the business, objects, and affairs of the governing body and of the authority;

(10) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein. The specific powers may not be considered as a

limitation upon any power necessary or appropriate to carry out the purposes of this article.

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§16-13D-9. Revenue bonds.

For constructing or acquiring any water supply, wastewater transportation, or treatment system, or stormwater system for the authorized purposes of the authority, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the authority, the governing body of any authority may borrow money from time to time and in evidence thereof issue the revenue bonds of the authority. The revenue bonds are hereby made a lien on the revenues produced from the operation of the authority's system, but may not be general obligations of the public agency individually organizing the authority or public agencies participating in the agreement. All revenue bonds issued under this article shall be signed by the president of the governing body of the authority and attested by the secretary of the governing body of the authority and shall contain recitals stating the authority under which the bonds are issued and that they are to be paid by the authority from the net revenue derived from the operation of the authority's system and not from any other fund or source and that the bonds are negotiable and payable solely from the revenues derived from the operation of the system under control of the authority: *Provided*, That in the case of a regional authority providing combined service, the statutory lien created hereby shall only be a lien on the revenues of that service funded by the proceeds of the sale of the bonds, it being understood that the combined authority shall maintain separate books and records for its operations. The bonds may be issued in one or more series, may bear the date or dates, may mature at the time or times not exceeding 40 years from their respective dates, may bear interest at a rate not exceeding two percent above the interest rate on treasury notes, bills or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the Treasury of the United States, may be payable at the times, may be in the form, may carry the registration privileges, may be executed in the manner, may be payable at the place or places, may be subject to the terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with the conditions, and may contain the terms and covenants as may be provided by resolution or resolutions of the governing body of the authority. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond is nonnegotiable, all the bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in the manner and at the time or times as is found by the governing body to be most advantageous, and all such bonds may be sold at the price that the interest cost of the proceeds therefrom does not exceed three percent above the interest rate on treasury notes, bills or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the Treasury of the United States, based on the average maturity of the bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of the bonds may contain covenants and restrictions upon the issuance of additional bonds

thereafter as may be considered necessary or advisable for the assurance of the payment of the bonds thereby authorized.

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§16-13D-10. Items included in cost of properties.

The cost of any water supply, wastewater transportation, treatment system, or stormwater system acquired or constructed under this article shall be considered to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises considered necessary or convenient therefor and for the improvements and extensions thereto; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof.

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§16-13D-11. Bonds may be secured by trust indenture.

In the discretion and at the option of the governing body of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the State of West Virginia, but no trust indenture may convey, mortgage, or create any lien upon the water supply, wastewater transportation or treatment system, or stormwater system, or any part thereof of the authority or its member public agencies. The resolution authorizing the bonds and fixing the details thereof may provide that the trust indenture may contain provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the authority and the members of its governing body and officers in relation to the construction or acquisition of the water supply, wastewater transportation or treatment system, or stormwater system, and the improvement, extension, operation, repair, maintenance, and insurance thereof, and the custody, safeguarding, and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the governing body and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the water supply, the wastewater transportation or treatment system, or stormwater system, or other money pertaining thereto be satisfactory to the purchasers, their successors, assignees or nominees. The indenture may set forth the rights and remedies of the bondholders and the trustee.

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§16-13D-12. Sinking fund for revenue bonds.

At or before the time of the issuance of any bonds under this article the governing body of the authority shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into the fund from the revenues of the water supply, wastewater transportation or treatment system, or stormwater system operated by the authority such sums in excess of the cost of maintenance and operation of the properties as will be sufficient to pay the accruing interest and retire the bonds at or before the time each will respectively become due and to establish and maintain reserves therefor. All sums which are or should be, in accordance with the provisions, paid into the sinking fund shall be used solely for payment of interest and for the retirement of bonds at or prior to maturity as may be provided or required by such resolutions.

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§16-13D-13. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.

The governing body of any such authority may insert enforceable provisions in any resolution authorizing the issuance of bonds relating to the collection, custody, and application of revenues of the authority from the operation of the water supply, wastewater transportation or treatment system, or stormwater system under its control and to the enforcement of the covenants and undertakings of the authority. If there is a default in the sinking fund provisions or in the payment of the principal or interest on any of the bonds or, if the authority or its governing body or any of its officers, agents, or employees, shall fail or refuse to comply with this article, or shall default in any covenant or agreement made with respect to the issuance of the bonds or offered as security therefor, then any holder or holders of the bonds and any such trustee under the trust indenture, if there is one, may by suit, action, mandamus, or other proceeding instituted in the circuit court for the county or any of the counties wherein the authority extends, or in any other court of competent jurisdiction, enforce and compel performance of all duties required by this article or undertaken by the authority in connection with the issuance of the bonds, and upon application of any such holder or holders, or the trustee, the court shall, upon proof of the defaults, appoint a receiver for the affairs of the authority and its properties, which receiver so appointed shall forthwith directly, or by his or her agents and attorneys, enter into and upon and take possession of the affairs of the authority and each and every part thereof, and hold, use, operate, manage, and control the authority, and in the name of the authority exercise all of the rights and powers of the authority as is considered expedient, and the receiver may collect and receive all revenues and apply them in the manner as the court shall direct. Whenever the default causing the appointment of the receiver has been cleared and fully discharged and all other defaults have been cured, the court may and after the notice and hearing as it considers reasonable and proper direct the receiver to surrender possession of the affairs of the authority to its governing body. The receiver so appointed may not sell, assign, mortgage, or otherwise dispose of any assets of the authority except as hereinbefore provided.

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§16-13D-14. Statutory mortgage lien created; foreclosure thereof.

There is hereby created a statutory mortgage lien upon the water supply, wastewater transportation or treatment system, or stormwater system of the authority, which shall exist in favor of the holders of bonds hereby authorized to be issued, and each of them, and the system shall remain subject to the statutory mortgage lien until payment in full of all principal of and interest on the bonds.

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§16-13D-15. Rates and charges.

The governing body shall by appropriate resolution make provisions for the payment of the bonds by fixing rates, fees, and charges, for the use of all services rendered by the authority, which rates, fees, and charges shall be sufficient to pay the costs of operation, improvement, and maintenance of the authority's water supply, wastewater transportation and/or treatment system, or stormwater system, to provide an adequate depreciation fund, provide an adequate sinking fund to retire the bonds and pay interest thereon when due, and to create reasonable reserves for those purposes. The fees, rates or charges shall be sufficient to allow for miscellaneous and emergency or unforeseen expenses. The authority shall maintain a working capital reserve in an amount of no less than one-eighth of all expenses incurred by the authority on an annual basis: *Provided*, That this working capital reserve shall be separate and distinct from, and in addition to: (1) any repair and replacement fund that may be required by bond covenants, and (2) any other funds held by the authority. The resolution of the governing body authorizing the issuance of revenue bonds may include agreements, covenants, or restrictions considered necessary or advisable by the governing body to effect the efficient operation of the system and to safeguard the interests of the holders of the revenue bonds and to secure the payment of the bonds and the interest thereon. The rates, fees, and charges for water, wastewater, or both, established by the authority shall be subject to review and approval by the Public Service Commission pursuant to Chapter 24 of this code.

The Public Service Commission shall, within 30 days of a rate filing, notify the authority whether its rate filing is complete. If the Commission determines that additional information is needed it will inform the authority of the information needed. Notwithstanding the timeframes for Commission review of rate applications set forth in Chapter 24, the Commission shall act on authority rate applications within the following timeframes:

(1) The Public Service Commission shall act on a rate filing by an authority that provides only water service or only wastewater service within 120 days of the date that the authority files with the Commission the necessary information showing the basis of the rates, fees, and charges or other information as the commission considers necessary. Failure of the Commission to act within the 120-day time period shall constitute approval thereof: *Provided*, That the 120-day period may be extended upon request of the authority.

(2) The Public Service Commission shall act on a rate filing by an authority that provides water and wastewater services, water and stormwater services, wastewater and stormwater services, or water and wastewater and stormwater services, within 180 days of the date that the authority files with the Commission the necessary information showing the basis of the rates, fees, and charges or other information as the Commission considers necessary: *Provided*, That the information shall include an explanation of the amount and basis for assigning and allocating total costs between the water operations, the wastewater operations, and if applicable the stormwater operations. Failure by the Commission to act within the 180-day period shall constitute approval thereof: *Provided, however*, That the 180-day Commission review period may be extended upon request of the authority.

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Notwithstanding the provisions of any other law or charter to the contrary, any regional stormwater authority may provide storm, flood, and surface water drainage management services to areas located outside its jurisdiction from which stormwater affects or drains into the area served by the regional stormwater authority, and any regional stormwater authority may assess fees for providing storm, flood, and surface water draining management services to be paid by the owner of each and every lot, parcel of real estate or building that in any way uses or is served by the stormwater system. The Public Service Commission has no jurisdiction to regulate the rates charged for storm, flood, and surface water drainage management services.

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§16-13D-16. Refunding revenue bonds.

The authority having issued bonds under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds of such authority for the purpose of retiring or refinancing such outstanding bonds, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds shall be applicable to such refunding bonds, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds to be so refunded.

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§16-13D-17. Exemption of bonds from taxation.

The bonds and the interest thereon, together with all properties and facilities of the authority owned or used in connection with the water, wastewater system, or stormwater system, and all the moneys, revenues, and other income of the authority derived from the water, wastewater system, or stormwater system shall be exempt from all taxation by the state of West Virginia or any county, municipality, political subdivision, or agency thereof.

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§16-13D-18. Bonds made legal investments.

Bonds issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state and for a business development corporation organized pursuant to chapter thirty-one, article fourteen of the Code of West Virginia.

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§16-13D-19. Invalidity of part.

If any section or sections of this article be declared unconstitutional or invalid, this shall not invalidate any other section of this article.

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§16-13D-20. Article to be liberally construed.

This article is necessary for the public health, safety and welfare and shall be liberally construed to effectuate its purposes.

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§16-13D-21. Citation of article.

This article may be known and cited as the "Regional Water and Wastewater, and Stormwater Authority Act".

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§16-13D-22. Acquisition by condemnation.

For the purpose of acquiring any lands, rights, or easements considered necessary or incidental for the purposes of the authority, each authority has the right of eminent domain within or without the boundaries of the authority to the same extent and to be exercised in the same manner as now or hereafter provided by law for the right of eminent domain by cities, incorporated towns, and other municipal corporations: *Provided*, That the power of eminent domain provided in this section does not extend to highways, road and drainage easements, or stormwater facilities constructed, owned, or operated by the West Virginia Division of Highways without the express agreement of the Commissioner of Highways.

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