WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1972

ENROLLED

SENATE BILL NO. 154

(By Mr.

PASSED ........................................ 1972

In Effect ........................................ Passage

PASSED ........................................ March 14, 1972

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FILED IN THE OFFICE OF SECRETARY OF STATE OF WEST VIRGINIA
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OFFICE OF SECRETARY OF STATE
FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-29-72
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 154

(MR. GAINER and MR. HUBBARD, original sponsors)

[Passed March 11, 1972; in effect from passage.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-c, providing for the adoption of the West Virginia water development authority act; setting forth a declaration of policy and responsibility in connection therewith; relating to the purposes of such act; setting forth certain legislative findings; defining terms; creating the West Virginia water development authority for the performance of essential governmental functions; creating the West Virginia water development board; relating to the organization and composition of such board; relating to the designation or appointment of board members, the terms of their office, their oaths and bonds and their compensation and expenses; relating to the qualification of board members, the removal thereof for cause and the functioning of such board; relating to officers of such board and the bond of the secretary-treasurer thereof; relating to the director of the authority; authorizing the authority to provide water development projects; relating to such projects generally; relating to the powers, duties and responsibilities of the authority; relating to venue of actions; authorizing the authority to exercise the right of eminent domain; relating to the expenditure of funds for the study and engineering of proposed water development projects; empowering the authority to issue water development revenue bonds and notes and refunding revenue bonds; specifying the requirements for the issuance of the same; relating generally to all such revenue bonds and notes and resolutions au-
Enr. Com. Sub. for S. B. No. 154

Authorizing the same; relating to trust agreements to secure all such revenue bonds and notes; relating to legal remedies of bondholders and trustees; relating to the involvement of the authority and counties, municipalities and other political subdivisions in the establishment of water development projects and the maintenance and operation thereof; specifying that all such revenue bonds and notes shall not be a debt of this state, or any county, municipality or political subdivision in this state; relating to the use of moneys, properties and assets by the authority and restrictions on such use; relating to the investment of funds by the authority; relating to rentals and all other revenues from water development projects; relating generally to contracts and agreements with respect to such projects; authorizing governmental and other contributions to the authority; authorizing proceeds of other bond issues to be used to aid the authority; relating to the maintenance, operation and repair of water development projects; relating to the taking, destroying and damaging of property; requiring reports by the authority; making water development revenue bonds lawful investments; providing broad exemption from taxation; relating to the acquisition by the authority of property interests; relating to the disturbing, taking, relocation or vacation of highways and property or facilities belonging to any public utility or common carrier and costs in connection therewith; prohibiting certain financial interests; creating criminal offenses; providing criminal penalties; requiring meetings and records of authority to be public; providing a rule of construction; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-c, to read as follows:

ARTICLE 5C. WEST VIRGINIA WATER DEVELOPMENT AUTHORITY.

§20-5C-1. Short title.

1 This article shall be known and cited as the "West Virginia Water Development Authority Act."
§20-5C-2. Declaration of policy and responsibility; purpose and intent of article; findings.

1 It is hereby declared to be the public policy of the state of West Virginia and a responsibility of the state of West Virginia, through the establishment, funding, operation and maintenance of water development projects, to maintain, preserve, protect, conserve and in all instances possible to improve the purity and quality of water within the state in order to (1) protect and improve public health; (2) assure the fullest use and enjoyment of such water by the public; (3) provide suitable environment for the propagation and protection of animal, bird, fish, aquatic and plant life, all of which are essential to the health and well-being of the public, and (4) provide water of the necessary quality and in the amount needed for the development, maintenance and expansion of, and to attract, service industries and businesses, agriculture, mining, manufacturing and other types of businesses and industries.

To assist in the preservation, protection, improvement and management of the purity and quality of the waters of this state, to prevent or abate pollution of water resources and to promote the health and welfare of citizens of this state, it is the purpose and intent of the Legislature in enacting this article to provide for the necessary, dependable, effective and efficient purification of water; the disposal of liquid and solid wastes harmful to the public health and safety removed from such water; to improve water and stream quality; and to assist and cooperate with governmental agencies in achieving all of the purposes set forth in this section.

The Legislature finds and hereby declares that the responsibility of the state as outlined above cannot be effectively met without the establishment, funding, operation and maintenance of water development projects as provided for in this article.

§20-5C-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

(1) "Authority" means the West Virginia water de-
(2) "Beneficial use" means a use of water by a person or by the general public that is consistent with the public interest, health and welfare in utilizing the water resources of this state, including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, mining, power, public, sanitary, fish and wildlife, state, county, municipal, navigational, recreational, aesthetic and scenic use.

(3) "Board" means the West Virginia water development authority board created in section four of this article, which shall manage and control the West Virginia water development authority.

(4) "Bond" or "water development revenue bond" means a revenue bond or note issued by the West Virginia water development authority to effect the intents and purposes of this article.

(5) "Construction" includes reconstruction, enlargement, improvement and providing furnishings or equipment.

(6) "Cost" means, as applied to water development projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and interests required by the authority for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of acquiring or constructing and equipping a principal office and sub-offices of the authority; the cost of diverting highways, interchange of highways, access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings, and equipment; all financing charges, and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and
all expenses of research and development with respect
to waste water facilities; the cost of all legal services and
expenses; the cost of all plans, specifications, surveys
and estimates of cost and revenues; all working capital
and other expenses necessary or incident to determining
the feasibility or practicability of acquiring or construct-
ing any such project; all administrative expenses and
such other expenses as may be necessary or incident to
the acquisition or construction of the project; the financing
of such acquisition or construction, including the amount
authorized in the resolution of the authority providing
for the issuance of water development revenue bonds
to be paid into any special funds from the proceeds of
such bonds; and the financing of the placing of any
such project in operation. Any obligation or expenses
incurred after the effective date of this section by any
governmental agency, with the approval of the authority,
for surveys, borings, preparation of plans and specifica-
tions and other engineering services in connection with
the acquisition or construction of a project shall be re-
garded as a part of the cost of such project and shall
be reimbursed out of the proceeds of water development
revenue bonds as authorized by the provisions of this
article.

(7) "Establishment" means an industrial establish-
ment, mill, factory, tannery, paper or pulp mill, mine,
colliery, breaker or mineral processing operation, quarry,
refinery, well, and each and every industry or plant or
works or activity in the operation or process of which
industrial wastes, or other wastes are produced.

(8) "Governmental agency" means the state govern-
ment or any agency, department, division or unit there-
of; counties; municipalities; watershed improvement
districts; soil conservation districts; sanitary districts;
public service districts; drainage districts; regional
governmental authorities and any other governmental
agency, entity, political subdivision, public corporation
or agency having the authority to acquire, construct
or operate waste water facilities; the United States
government or any agency, department, division or unit
(9) "Industrial wastes" means any liquid, gaseous, solid or other waste substance, or any combination thereof, resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resources; and the admixture with such industrial wastes of sewage or other wastes, as defined in this section, shall also be considered industrial wastes.

(10) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals, and all other materials or substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of this state.

(11) "Owner" includes all persons, copartnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(12) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; any federal or state governmental agency; political subdivision; county court; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group or any other legal entity whatever.

(13) "Pollution" means (a) the discharge, release, escape, deposit or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes, or other wastes, of whatever kind or character, in or near any waters of the state, in such condition, manner or quantity,
as does, will, or is likely to (1) contaminate or substantially contribute to the contamination of any of such waters, or (2) alter or substantially contribute to the alteration of the physical, chemical or biological properties of any of such waters, if such contamination or alteration, or the resulting contamination or alteration where a person only contributes thereto, is to such an extent as to make any of such waters (i) directly or indirectly harmful, detrimental or injurious to the public health, safety and welfare, or (ii) directly or indirectly detrimental to existing animal, bird, fish, aquatic or plant life, or (iii) unsuitable for present or future domestic, commercial, industrial, agricultural, recreational, scenic or other legitimate uses; and also means (b) the discharge, release, escape, deposit, or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or character, in or near any waters of the state in such condition, manner or quantity, as does, will, or is likely to reduce the quality of the waters of the state below the standards established therefor by the United States or any department, agency, board or commission of this state authorized to establish such standards.

(14) “Project” or “water development project” means any waste water facility the acquisition or construction of which is authorized by the West Virginia water development authority or the acquisition or construction of which is financed in whole or in part from funds made available by grant or loan by, or through, the authority as provided in this article, including all buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements and interest which may be required for the operation of the project, but excluding all buildings and facilities used to produce electricity other than electricity for consumption by the authority in the operation and maintenance of the project.

(15) “Public roads” mean all public highways, roads and streets in this state, whether maintained by the state, county, municipality or other political subdivision.
(16) “Public utility facilities” mean public utility plants or installations and includes tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances of any public utility.

(17) “Revenue” means any money or thing of value collected by, or paid to, the West Virginia water development authority as rent, use or service fee or charge for use of, or in connection with, any water development project.

(18) “Sewage” means water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface waters as may be present.

(19) “Water resources,” “water” or “waters” mean any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and watercourses.

(20) “Waste water” means any water containing sewage, industrial wastes, other wastes or contaminants derived from the prior use of such water, and shall include without limiting the generality of the foregoing, surface water of the type storm sewers are designed to collect and dispose of.

(21) “Waste water facilities” mean facilities for the purpose of treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding waste water, including without limiting the generality of the foregoing, facilities for the treatment and disposal of sewage, industrial wastes, or other wastes, or waste water, and the residue thereof; facilities for the temporary or permanent impoundment of waste water, both surface and underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport
waste water together with the equipment and furnishings thereof and their appurtenances and systems, whether on the surface or underground, including force mains and pumping facilities therefor.

§20-5C-4. West Virginia water development authority created; West Virginia water development board created; organization of authority and board; appointment of board members; their term of office, compensation and expenses.

There is hereby created the West Virginia water development authority. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties shall be deemed and held to be, and are hereby determined to be, essential governmental functions and for a public purpose.

The authority shall be controlled, managed and operated by the five-member board known as the West Virginia water development board, which is hereby created. The director of the department of natural resources and the director of the department of health shall be members ex officio of the board. The other three members of the board shall be appointed by the governor, by and with the advice and consent of the Senate, for terms of two, four and six years, respectively. The successor of each such appointed member shall be appointed for a term of six years in the same manner the original appointments were made, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each board member shall serve until the appointment and qualification of his successor. No more than two of the appointed board members shall at any one time belong to the same political party. Appointed board members may be reappointed to serve additional terms.

All members of the board shall be citizens of the state. Each appointed member of the board, before entering upon his duties, shall comply with the requirements of
article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars in the manner provided in article two, chapter six of this code. The governor may remove any board member for cause as provided in article six, chapter six of this code.

Annually the board shall elect one of its appointed members as chairman and another as vice-chairman, and shall appoint a secretary-treasurer, who need not be a member of the board. Four members of the board shall constitute a quorum and the affirmative vote of four members shall be necessary for any action taken by vote of the board. No vacancy in the membership of the board shall impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority. The person appointed as secretary-treasurer, including a board member if he is so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

The director of the department of natural resources and the director of the department of health shall not receive any compensation for serving as board members. Each of the three appointed members of the board shall receive an annual salary of five thousand dollars, payable in monthly installments. Each of the five board members shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of such board. All such expenses incurred by the board shall be payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

There shall also be a director of the authority appointed by the board.

§20-5C-5. Authority to provide water development projects.

To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the West Virginia water development authority may initiate, acquire, construct, maintain, repair and op-
erate water development projects or cause the same to be operated pursuant to a lease, sublease or agreement with any person or governmental agency; may make loans and grants to governmental agencies for the acquisition or construction of waste water facilities by such governmental agencies; and may issue water development revenue bonds of this state, payable solely from revenues, to pay the cost of such projects. A water development project shall not be undertaken unless it has been determined by the authority to be consistent with any applicable comprehensive plan of water management approved by the director of the department of natural resources or in the process of preparation by such director and to be consistent with the standards set by the state water resources board, for the waters of the state affected thereby. Any resolution of the authority providing for acquiring or constructing such projects or for making a loan or grant for such projects shall include a finding by the authority that such determinations have been made.

§20-5C-6. Powers, duties and responsibilities of authority.

The West Virginia water development authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. The authority shall have the power and capacity to:

1. Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules and regulations to implement and make effective its powers and duties, such rules and regulations to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.
2. Adopt an official seal.
3. Maintain a principal office and, if necessary, regional sub-offices at locations properly designated or provided.
4. Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under sections
eight, nine and fourteen of this article. Any actions
against the authority shall be brought in the circuit
court of Kanawha county in which the principal office
of the authority shall be located.

(5) Make loans and grants to governmental agencies
for the acquisition or construction of water development
projects by any such governmental agency and, in ac-
cordance with chapter twenty-nine-a of this code, adopt
rules and procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve,
furnish, equip, maintain, repair, operate, lease or rent
to, or contract for operation by a governmental agency
or person, water development projects, and, in accordance
with chapter twenty-nine-a of this code, adopt rules and
regulations for the use of such projects.

(7) Make available the use or services of any water
development project to one or more persons, one or more
governmental agencies, or any combination thereof.

(8) Issue water development revenue bonds and notes
and water development revenue refunding bonds of the
state, payable solely from revenues as provided in sec-
tion eight of this article unless the bonds are refunded
by refunding bonds, for the purpose of paying any part
of the cost of one or more water development projects
or parts thereof.

(9) Acquire by gift or purchase, hold and dispose of real
and personal property in the exercise of its powers and the
performance of its duties as set forth in this article.

(10) Acquire in the name of the state, by purchase or
otherwise, on such terms and in such manner as it deems
proper, or by the exercise of the right of eminent domain
in the manner provided in chapter fifty-four of this code,
such public or private lands, or parts thereof or rights
therein, rights-of-way, property, rights, easements and in-
terests it deems necessary for carrying out the provisions
of this article, but excluding the acquisition by the exercise
of the right of eminent domain of any waste water facility
operated under permits issued pursuant to the provisions
of article five-a, chapter twenty of this code and owned by
any person or governmental agency, and compensation
shall be paid for public or private lands so taken.

(11) Make and enter into all contracts and agreements
and execute all instruments necessary or incidental to
the performance of its duties and the execution of its
powers. When the cost under any such contract or agree-
ment, other than compensation for personal services,
involves an expenditure of more than two thousand dol-
lars, the authority shall make a written contract with
the lowest responsible bidder after public notice pub-
lished as a Class II legal advertisement in compliance
with the provisions of article three, chapter fifty-nine
of this code, the publication area for such publication to
be the county wherein the work is to be performed or
which is affected by the contract, which notice shall
state the general character of the work and the general
character of the materials to be furnished, the place
where plans and specifications therefor may be examined
and the time and place of receiving bids, but a contract
or lease for the operation of a water development project
constructed and owned by the authority or an agree-
ment for cooperation in the acquisition or construction
of a water development project pursuant to section four-
ten of this article is not subject to the foregoing require-
ments and the authority may enter into such contract or
lease or such agreement pursuant to negotiation and
upon such terms and conditions and for such period as
it finds to be reasonable and proper under the circum-
stances and in the best interests of proper operation or of
efficient acquisition or construction of such project. The
authority may reject any and all bids. A bond with
good and sufficient surety, approved by the authority,
shall be required of all contractors in an amount equal
to at least fifty percent of the contract price, conditioned
upon the faithful performance of the contract.

(12) Employ managers, superintendents and other em-
ployees, who shall be covered by the state civil service
system, and retain or contract with consulting engineers,
financial consultants, accounting experts, architects, at-
torneys and such other consultants and independent con-
99 tractors as are necessary in its judgment to carry out
the provisions of this article, and fix the compensation
or fees thereof. All expenses thereof shall be payable
solely from the proceeds of water development revenue
bonds or notes issued by the authority, from reve-
 nues and from funds appropriated for such purpose by
the Legislature.

106 (13) Receive and accept from any federal agency, sub-
ject to the approval of the governor, grants for or in aid
of the construction of any water development project or
for research and development with respect to waste
water facilities and receive and accept aid or contribu-
tions from any source of money, property, labor or other
things of value, to be held, used and applied only for
the purposes for which such grants and contributions
are made.

115 (14) Engage in research and development with respect
to waste water facilities.

117 (15) Purchase fire and extended coverage and liability
insurance for any water development project and for the
principal office and sub-offices of the authority, insurance
protecting the authority and its officers and employees
against liability, if any, for damage to property or injury
to or death of persons arising from its operations and any
other insurance the authority may agree to provide under
any resolution authorizing the issuance of water develop-
ment revenue bonds or in any trust agreement securing
the same.

127 (16) Charge, alter and collect rentals and other charges
for the use or services of any water development project
as provided in this article.

130 (17) Do all acts necessary and proper to carry out the
powers expressly granted to the authority in this article.

§20-5C-7. Expenditure of funds for study and engineering of
proposed projects.

1 With the approval and the consent of the board, either
the director of the department of natural resources or
the director of the department of health, or both of them,
shall expend, out of any funds available for the purpose,
such moneys as are necessary for the study of any proposed water development project and may use its engineering and other forces, including consulting engineers and sanitary engineers, for the purpose of effecting such study. All such expenses incurred by such directors or either of them prior to the issuance of water development revenue bonds or notes under this article shall be paid by the director or respective directors incurring such expenses and charged to the appropriate water development project and the director or respective directors shall keep proper records and accounts, showing the amounts so charged. Upon the sale of water development revenue bonds or notes for a water development project, the funds so expended by the director or respective directors, with the approval of the authority, in connection with such project, shall be repaid to the department or departments of such director or directors from the proceeds of such bonds or notes.

§20-5C-8. Authority to issue water development revenue bonds granted; requirements and manner of such issuance.

The authority is hereby empowered to raise the cost of one or more water development projects or parts thereof by the issuance from time to time of water development revenue bonds and notes of the state in such principal amount as the authority deems necessary, but the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues received from such projects.

The authority may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of water development revenue refunding bonds of the state, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds then outstanding and partly for any other authorized purpose. The refunding bonds shall be sold and the proceeds applied to the purchase, redemption or payment of
the bonds to be refunded. Except as may otherwise be
expressly provided by the authority, every issue of its
bonds or notes shall be obligations of the authority pay-
able out of the revenues of the authority, which are
pledged for such payment, without preference or priority
of the first bonds issued, subject only to any agreements
with the holders of particular bonds or notes pledging any
particular revenues. Such pledge shall be valid and bind-
ing from the time the pledge is made and the revenue so
pledged and thereafter received by the authority shall
immediately be subject to the lien of such pledge without
any physical delivery thereof or further act and the lien
of any such pledge shall be valid and binding as against
all parties having claims of any kind in tort, contract or
otherwise against the authority irrespective of whether
such parties have notice thereof.

All such bonds and notes shall have and are hereby
declared to have all the qualities of negotiable instru-
ments.

The bonds and notes shall be authorized by resolution of
the authority, shall bear such date and shall mature at
such time, in the case of any such note or any renewals
thereof not exceeding five years from the date of issue of
such original note, and in the case of any such bond not
exceeding fifty years from the date of issue, as such reso-
lution may provide. The bonds and notes shall bear in-
terest at such rate, be in such denominations, be in such
form, either coupon or registered, carry such registration
privileges, be payable in such medium of payment, at
such place and be subject to such terms of redemption as
the authority may authorize. The bonds and notes of the
authority may be sold by the authority, at public or pri-
ivate sale, at or not less than the price the authority de-
termines. The bonds and notes shall be executed by the
chairman and vice-chairman of the authority, both of
whom may use facsimile signatures. The official seal of
the authority or a facsimile thereof shall be affixed there-
to or printed thereon and attested, manually or by fac-
simile signature, by the secretary-treasurer of the author-
ity, and any coupons attached thereto shall bear the
signature or facsimile signature of the chairman of the authority. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he had remained in office until such delivery and in case the seal of the authority has been changed after a facsimile has been imprinted on such bonds or notes such facsimile seal will continue to be sufficient for all purposes.

Any resolution authorizing any bonds or notes or any issue thereof may contain provisions (subject to such agreements with bondholders or noteholders as may then exist, which provisions shall be a part of the contract with the holders thereof) as to pledging all or any part of the revenues of the authority to secure the payment of the bonds or notes or of any issue thereof; the use and disposition of revenues of the authority; a covenant to fix, alter and collect rentals and other charges so that pledged revenues will be sufficient to pay the costs of operation, maintenance and repairs, pay principal of and interest on bonds or notes secured by the pledge of such revenues and provide such reserves as may be required by the applicable resolution or trust agreement; the setting aside of reserve funds, sinking funds or replacement and improvement funds and the regulation and disposition thereof; the crediting of the proceeds of the sale of bonds or notes to and among the funds referred to or provided for in the resolution authorizing the issuance of the bonds or notes; the use, lease, sale or other disposition of any water development project or any other assets of the authority; limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue thereof; notes issued in anticipation of the issuance of bonds, the agreement of the authority to do all things necessary for the authorization, issuance and sale of such bonds in such amounts as may be necessary for the timely retirement of such notes; limitations on the issuance of additional bonds or notes; the terms upon which additional bonds or notes may be issued and
secured; the refunding of outstanding bonds or notes;
the procedure, if any, by which the terms of any contract
with bondholders or noteholders may be amended or
abrogated, the amount of bonds or notes the holders of
which must consent thereto and the manner in which
such consent may be given; limitations on the amount
of moneys to be expended by the authority for operating,
administrative or other expenses of the authority; se-
curing any bonds or notes by a trust agreement; and any
other matters, of like or different character, which in any
way affect the security or protection of the bonds or notes.
Neither the members of the authority nor any person
executing the bonds or notes shall be liable personally on
the bonds or notes or be subject to any personal liability
or accountability by reason of the issuance thereof.

§20-5C-9. Trustee for holders of bonds; contents of trust
agreement.

In the discretion of the authority, any water develop-
ment revenue bonds or notes or water development reve-
 nue refunding bonds issued by the authority under this
article may be secured by a trust agreement between
the authority and a corporate trustee, which trustee may
be any trust company or banking institution having the
powers of a trust company within or without this state.

Any such trust agreement may pledge or assign reve-
 nues of the authority to be received, but shall not convey
or mortgage any water development project or any part
thereof. Any such trust agreement or any resolution pro-
viding for the issuance of such bonds or notes may con-
tain such provisions for protecting and enforcing the
rights and remedies of the bondholders or noteholders as
are reasonable and proper and not in violation of law,
including covenants setting forth the duties of the au-
thority in relation to the acquisition of property, the con-
struction, improvement, maintenance, repair, operation
and insurance of the water development project in con-
nection with which such bonds or notes are authorized,
the rentals or other charges to be imposed for the use
or services of any water development project, the custody,
safeguarding, and application of all moneys and provisions
for the employment of consulting engineers in connection with the construction or operation of such water development project. Any banking institution or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or notes or of revenues shall furnish such indemnifying bonds or pledge such securities as are required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of action by bondholders and noteholders as customarily provided in trust agreements or trust indentures securing similar bonds. Such trust agreement may contain such other provisions as the authority deems reasonable and proper for the security of the bondholders or noteholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the water development project. Any such trust agreement or resolution authorizing the issuance of water development revenue bonds may provide the method whereby the general administrative overhead expenses of the authority shall be allocated among the several projects acquired or constructed by it as a factor of the operating expenses of each such project.

§20-5C-10. Legal remedies of bondholders and trustees.

Any holder of water development revenue bonds issued under the authority of this article or any of the coupons appertaining thereto and the trustee under any trust agreement, except to the extent the rights given by this article may be restricted by the applicable resolution or such trust agreement, may by civil action, mandamus or other proceedings, protect and enforce any rights granted under the laws of this state or granted under this article, by the trust agreement or by the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article, or by the trust agreement or resolution, to be performed by the authority or any officer thereof, including the fixing, charging and collecting of sufficient rentals or other charges.
§20-5C-11. Bonds and notes not debt of state, county, municipality or of any political subdivision.

Water development revenue bonds and notes and water development revenue refunding bonds issued under authority of this article and any coupons in connection therewith shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders or owners thereof shall have no right to have taxes levied by the Legislature or taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon, but such bonds and notes shall be payable solely from the revenues and funds pledged for their payment as authorized by this article unless the notes are issued in anticipation of the issuance of bonds or the bonds are refunded by refunding bonds issued under authority of this article, which bonds or refunding bonds shall be payable solely from revenues and funds pledged for their payment as authorized by this article. All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under authority of this article. Such article does not authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any county, municipality or political subdivision thereof.

§20-5C-12. Use of funds by authority; restrictions thereon.

All moneys, properties and assets acquired by the authority, whether as proceeds from the sale of water development revenue bonds or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys shall at no time be commingled with other
public funds. Such moneys, except as otherwise provided in any resolution authorizing the issuance of water development revenue bonds or in any trust agreement securing the same, or except when invested pursuant to section thirteen of this article, shall be kept in appropriate depositories and secured as provided and required by law. The resolution authorizing the issuance of such bonds of any issue or the trust agreement securing such bonds shall provide that any officer to whom, or any banking institution or trust company to which, such moneys are paid shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and such resolution or trust agreement provide.

§20-5C-13. Investment of funds by authority.
Funds of the authority in excess of current needs, except as otherwise provided in any resolution authorizing the issuance of its water development revenue bonds or in any trust agreement securing the same, may be invested by the authority in any security or securities in which the “West Virginia State Board of Investments” is authorized to invest under sections nine and ten, article six, chapter twelve of this code, except those securities specified in subdivisions (f) and (g) of said section nine. Income from all such investments of moneys in any fund shall be credited to such funds as the authority determines, subject to the provisions of any such resolution or trust agreement and such investments may be sold at such times as the authority determines.

§20-5C-14. Rentals and other revenues from water development projects.
The authority may charge, alter and collect rentals or other charges for the use or services of any water development project, and contract in the manner provided by this section with one or more persons, one or more government agencies, or any combination thereof, desiring the use or services thereof, and fix the terms, conditions, rentals or other charges for such use or services. Such rentals or other charges shall not be sub-
ject to supervision or regulation by any other authority, department, commission, board, bureau or agency of the state, and such contract may provide for acquisition by such person or governmental agency of all or any part of such water development project for such consideration payable over the period of the contract or otherwise as the authority in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of water development revenue bonds or notes or water development revenue refunding bonds of the authority or any trust agreement securing the same. Any governmental agency which has power to construct, operate and maintain waste water facilities may enter into a contract or lease with the authority whereby the use or services of any water development project of the authority will be made available to such governmental agency and pay for such use or services such rentals or other charges as may be agreed to by such governmental agency and the authority.

Any governmental agency or agencies or combination thereof may cooperate with the authority in the acquisition or construction of a water development project and shall enter into such agreements with the authority as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties, including without limitation the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the authority to the extent necessary or appropriate for purposes of the issuance of water development revenue bonds by the authority. Any governmental agency may provide such contribution as is required under such agreements by the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection there-
of, by the issuance of bonds or notes or by the levying of
taxes or assessments and the issuance of bonds or notes in
anticipation of the collection thereof, and by the payment
of such appropriated money or the proceeds of such bonds
or notes to the authority pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote
of the electors in an election held before or after the
effective date of this section for the purpose of issuing
bonds to provide funds to acquire, construct or equip,
or provide real estate and interests in real estate for
a waste water facility, whether or not the governmental
agency at the time of such election had the authority
to pay the proceeds from such bonds or notes issued in
anticipation thereof to the authority as provided in this
section, may issue such bonds or notes in anticipation of
the issuance thereof and pay the proceeds thereof to the
authority in accordance with an agreement between such
governmental agency and the authority: Provided, That
the legislative authority of the governmental agency finds
and determines that the water development project to
be acquired or constructed by the authority in coopera-
tion with such governmental agency will serve the same
public purpose and meet substantially the same public
need as the facility otherwise proposed to be acquired
or constructed by the governmental agency with the pro-
ceeds of such bonds or notes.

§20-5C-15. Maintenance, operation and repair of projects; re-
ports by authority to governor and Legislature.

Each water development project, when constructed and
placed in operation, shall be maintained and kept in good
condition and repair by the authority or the authority
shall cause the same to be maintained and kept in good
condition and repair. Each such project shall be operated
by such operating employees as the authority employs or
pursuant to a contract or lease with a governmental
agency or person. All public or private property damaged
or destroyed in carrying out the provisions of this article
and in the exercise of the powers granted hereunder with
regard to any project shall be restored or repaired and
placed in its original condition, as nearly as practicable,
or adequate compensation made therefor out of funds provided in accordance with the provisions of this article.

As soon as possible after the close of each fiscal year, the authority shall make an annual report of its activities for the preceding fiscal year to the governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of its projects.

§20-5C-16. Water development bonds lawful investments.

The provisions of sections nine and ten, article six, chapter twelve of this code to the contrary notwithstanding, all water development revenue bonds issued pursuant to this article shall be lawful investments for the West Virginia state board of investments and shall also be lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, insurance companies, including domestic for life and domestic not for life insurance companies.

§20-5C-17. Exemption from taxation.

The exercise of the powers granted to the authority by this article will be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their residential, agricultural, recreational, economic, commercial and industrial opportunities and is a public purpose. As the operation and maintenance of water development projects will constitute the performance of essential governmental functions, the authority shall not be required to pay any taxes or assessments upon any water development project or upon any property acquired or used by the authority or upon the income therefrom. Such bonds and notes and all interest and income thereon shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except inheritance taxes.
§20-5C-18. Acquisition by authority of property.

1 The authority may acquire by purchase, whenever it deems such purchase expedient, any land, property, rights, rights-of-way, franchises, easements and other interests in lands it deems necessary or convenient for the construction and operation of any water development project upon such terms and at such prices it considers reasonable and can be agreed upon between the authority and the owner thereof, and take title thereto in the name of the state.

All governmental agencies, notwithstanding any contrary provision of law, may lease, lend, grant or convey to the authority, at its request, upon such terms as the proper authorities of such governmental agencies deem reasonable and fair and without the necessity for an advertisement, auction, order of court or other action or formality, other than the regular and formal action of the governmental agency concerned, any real property or interests therein, including improvements thereto or personal property which is necessary or convenient to the effectuation of the authorized purposes of the authority, including public roads and other real property or interests therein, including improvements thereto or personal property already devoted to public use.

§20-5C-19. Relocation of highways; restoration or payment for properties taken or damaged by authority.

1 The authority may acquire, pursuant to subdivision ten, section six of this article, any land, rights, rights-of-way, franchises, easements or other property necessary or proper for the construction or the efficient operation of any water development project.

This section does not authorize the authority to take or disturb property or facilities belonging to any public utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, unless provision is made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the authority.

When the authority finds it necessary to change the
15 location of any portion of any public road, state highway,
16 railroad or public utility facility in connection with the
17 construction of a water development project, it shall
18 cause the same to be reconstructed at such location as the
19 unit or division of government having jurisdiction over
20 such road, highway, railroad or public utility facility
21 deems most favorable. Such construction shall be of
22 substantially the same type and in as good condition as
23 the original road, highway, railroad or public utility
24 facility. The cost of such reconstruction, relocation or
25 removal and any damage incurred in changing the loca-
26 tion of any such road, highway, railroad or public utility
27 facility shall be paid by the authority as a part of the
28 cost of such water development project.
29 When the authority finds it necessary that any public
30 highway or portion thereof be vacated by reason of the
31 acquisition or construction of a water development proj-
32 ect, the authority shall request the West Virginia com-
33 missioner of highways, in writing, to vacate such highway
34 or portion thereof if the highway or portion thereof to
35 be vacated is part of the state road system, or, if the high-
36 way or portion thereof to be vacated is under the juris-
37 diction of a county or a municipality, the authority shall
38 request the governing body of such county or munici-
39 pality to vacate such public road or portion thereof. The
40 authority shall pay to the West Virginia commissioner of
41 highways or to the county or municipality, as the case
42 may be, as part of the cost of such water development
43 project, any amounts required to be deposited with any
44 court in connection with proceedings for the determina-
45 tion of compensation and damages and all amounts of
46 compensation and damages finally determined to be pay-
47 able as a result of such vacation.
48 The authority may make reasonable rules and regula-
49 tions for the installation, construction, maintenance, re-
50 pair, renewal, relocation and removal of railroad or public
51 utility facilities in, on, over or under any water develop-
52 ment project. Whenever the authority determines that
53 it is necessary that any such facilities installed or con-
54 structed in, on, over or under property of the authority
55 pursuant to such rules and regulations be relocated, the
railroad or public utility owning or operating such facilities shall relocate or remove them in accordance with the order of the authority. The cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location, the cost of any lands or any rights or interests in lands and the cost of any other rights acquired to accomplish such relocation or removal, may be paid by the authority as a part of the cost of such water development project. In case of any such relocation or removal of facilities, the railroad or public utility owning or operating them, and its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances in the new location in, on, over or under the property of the authority for as long a period and upon the same terms as it had the right to maintain and operate such facilities in their former location.

§20-5C-20. Financial interest in contracts prohibited; penalty.

No officer, member or employee of the authority shall be financially interested, directly or indirectly, in any contract of any person with the authority, or in the sale of any property, real or personal, to or from the authority. This section does not apply to contracts or purchases of property, real or personal, between the authority and any governmental agency. If any officer, member or employee of the authority has such financial interest in a contract or sale of property prohibited hereby, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

§20-5C-21. Meetings and records of authority to be kept public.

All meetings of the authority shall be open to the public and the records of the authority shall be open to public inspection at all reasonable times, except as otherwise provided in this section. All final actions of the authority shall be journalized and such journal shall also be open to the inspection of the public at all reasonable times. Any records or information relating to secret processes or secret methods of manufacture or production which
9 may be obtained by the authority or other persons acting
10 under authority of this article are confidential and shall
11 not be disclosed.

§20-5C-22. Liberal construction of article.
1 The provisions of this article are hereby declared to be
2 remedial and shall be liberally construed to effectuate its
3 purposes and intents.

§20-5C-23. Severability.
1 If any section, part or provision of this article or the
2 application thereof to any person or circumstance is held
3 unconstitutional or invalid, such unconstitutionality or
4 invalidity shall not affect any other section, part or pro-
5 vision of this article or its application and to this end
6 the provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 21st day of March, 1972.

Governor
PRESENTED TO THE GOVERNOR

Date 3/17/72
Time 12:30 p.m.