

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972

ENROLLED

SENATE BILL NO. 154

(By Mr. Charles M. Hubbard)

PASSED March 11, 1972

In Effect Passage



OFFICE OF
SECRETARY OF STATE
WEST VIRGINIA

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

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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-

thorizing 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 Vir-
2 ginia 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
2 state of West Virginia and a responsibility of the state
3 of West Virginia, through the establishment, funding,
4 operation and maintenance of water development proj-
5 ects, to maintain, preserve, protect, conserve and in all
6 instances possible to improve the purity and quality of
7 water within the state in order to (1) protect and im-
8 prove public health; (2) assure the fullest use and enjoy-
9 ment of such water by the public; (3) provide suitable
10 environment for the propagation and protection of ani-
11 mal, bird, fish, aquatic and plant life, all of which are
12 essential to the health and well-being of the public, and
13 (4) provide water of the necessary quality and in the
14 amount needed for the development, maintenance and
15 expansion of, and to attract, service industries and busi-
16 nesses, agriculture, mining, manufacturing and other
17 types of businesses and industries.

18 To assist in the preservation, protection, improvement
19 and management of the purity and quality of the waters
20 of this state, to prevent or abate pollution of water re-
21 sources and to promote the health and welfare of citizens
22 of this state, it is the purpose and intent of the Legisla-
23 ture in enacting this article to provide for the necessary,
24 dependable, effective and efficient purification of water;
25 the disposal of liquid and solid wastes harmful to the
26 public health and safety removed from such water; to
27 improve water and stream quality; and to assist and co-
28 operate with governmental agencies in achieving all of
29 the purposes set forth in this section.

30 The Legislature finds and hereby declares that the re-
31 sponsibility of the state as outlined above cannot be
32 effectively met without the establishment, funding, oper-
33 ation and maintenance of water development projects as
34 provided for in this article.

§20-5C-3. Definitions.

1 As used in this article, unless the context clearly re-
2 quires a different meaning:

3 (1) "Authority" means the West Virginia water de-

4 velopment authority created in section four of this article,
5 the duties, powers, responsibilities and functions of
6 which are specified in this article.

7 (2) "Beneficial use" means a use of water by a person
8 or by the general public that is consistent with the public
9 interest, health and welfare in utilizing the water re-
10 sources of this state, including, but not limited to,
11 domestic, agricultural, irrigation, industrial, manufactur-
12 ing, mining, power, public, sanitary, fish and wildlife,
13 state, county, municipal, navigational, recreational, aesthe-
14 tic and scenic use.

15 (3) "Board" means the West Virginia water develop-
16 ment authority board created in section four of this
17 article, which shall manage and control the West Vir-
18 ginia water development authority.

19 (4) "Bond" or "water development revenue bond"
20 means a revenue bond or note issued by the West Vir-
21 ginia water development authority to effect the intents
22 and purposes of this article.

23 (5) "Construction" includes reconstruction, enlarge-
24 ment, improvement and providing furnishings or equip-
25 ment.

26 (6) "Cost" means, as applied to water development
27 projects, the cost of their acquisition and construction;
28 the cost of acquisition of all land, rights-of-way, property
29 rights, easements, franchise rights and interests required
30 by the authority for such acquisition and construction;
31 the cost of demolishing or removing any buildings
32 or structures on land so acquired, including the cost
33 of acquiring any lands to which such buildings or struc-
34 tures may be moved; the cost of acquiring or con-
35 structing and equipping a principal office and sub-offices
36 of the authority; the cost of diverting highways, inter-
37 change of highways, access roads to private property,
38 including the cost of land or easements therefor; the cost
39 of all machinery, furnishings, and equipment; all financing
40 charges, and interest prior to and during construction
41 and for no more than eighteen months after completion
42 of construction; the cost of all engineering services and

43 all expenses of research and development with respect
44 to waste water facilities; the cost of all legal services and
45 expenses; the cost of all plans, specifications, surveys
46 and estimates of cost and revenues; all working capital
47 and other expenses necessary or incident to determining
48 the feasibility or practicability of acquiring or construc-
49 ting any such project; all administrative expenses and
50 such other expenses as may be necessary or incident to
51 the acquisition or construction of the project; the financing
52 of such acquisition or construction, including the amount
53 authorized in the resolution of the authority providing
54 for the issuance of water development revenue bonds
55 to be paid into any special funds from the proceeds of
56 such bonds; and the financing of the placing of any
57 such project in operation. Any obligation or expenses
58 incurred after the effective date of this section by any
59 governmental agency, with the approval of the authority,
60 for surveys, borings, preparation of plans and specifica-
61 tions and other engineering services in connection with
62 the acquisition or construction of a project shall be re-
63 garded as a part of the cost of such project and shall
64 be reimbursed out of the proceeds of water development
65 revenue bonds as authorized by the provisions of this
66 article.

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

73 (8) "Governmental agency" means the state govern-
74 ment or any agency, department, division or unit there-
75 of; counties; municipalities; watershed improvement
76 districts; soil conservation districts; sanitary districts;
77 public service districts; drainage districts; regional
78 governmental authorities and any other governmental
79 agency, entity, political subdivision, public corporation
80 or agency having the authority to acquire, construct
81 or operate waste water facilities; the United States
82 government or any agency, department, division or unit

83 thereof; and any agency, commission or authority estab-
84 lished pursuant to an interstate compact or agreement.

85 (9) "Industrial wastes" means any liquid, gaseous,
86 solid or other waste substance, or any combination
87 thereof, resulting from or incidental to any process of
88 industry, manufacturing, trade or business, or from or
89 incidental to the development, processing or recovery
90 of any natural resources; and the admixture with
91 such industrial wastes of sewage or other wastes, as
92 defined in this section, shall also be considered industrial
93 wastes.

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

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

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

117 (13) "Pollution" means (a) the discharge, release,
118 escape, deposit or disposition, directly or indirectly, of
119 treated or untreated sewage, industrial wastes, or other
120 wastes, of whatever kind or character, in or near any
121 waters of the state, in such condition, manner or quantity,

122 as does, will, or is likely to (1) contaminate or sub-
123 stantially contribute to the contamination of any of
124 such waters, or (2) alter or substantially contribute to
125 the alteration of the physical, chemical or biological
126 properties of any of such waters, if such contamination
127 or alteration, or the resulting contamination or alteration
128 where a person only contributes thereto, is to such an
129 extent as to make any of such waters (i) directly or
130 indirectly harmful, detrimental or injurious to the public
131 health, safety and welfare, or (ii) directly or indirectly
132 detrimental to existing animal, bird, fish, aquatic or
133 plant life, or (iii) unsuitable for present or future domes-
134 tic, commercial, industrial, agricultural, recreational,
135 scenic or other legitimate uses; and also means (b) the
136 discharge, release, escape, deposit, or disposition, directly
137 or indirectly, of treated or untreated sewage, industrial
138 wastes or other wastes, of whatever kind or character,
139 in or near any waters of the state in such condition,
140 manner or quantity, as does, will, or is likely to reduce
141 the quality of the waters of the state below the standards
142 established therefor by the United States or any depart-
143 ment, agency, board or commission of this state authorized
144 to establish such standards.

145 (14) "Project" or "water development project" means
146 any waste water facility the acquisition or construction
147 of which is authorized by the West Virginia water
148 development authority or the acquisition or construction
149 of which is financed in whole or in part from funds
150 made available by grant or loan by, or through, the
151 authority as provided in this article, including all build-
152 ings and facilities which the authority deems necessary
153 for the operation of the project, together with all property,
154 rights, easements and interest which may be required
155 for the operation of the project, but excluding all build-
156 ings and facilities used to produce electricity other than
157 electricity for consumption by the authority in the
158 operation and maintenance of the project.

159 (15) "Public roads" mean all public highways, roads
160 and streets in this state, whether maintained by the
161 state, county, municipality or other political subdivision.

162 (16) "Public utility facilities" mean public utility
163 plants or installations and includes tracks, pipes, mains,
164 conduits, cables, wires, towers, poles and other equip-
165 ment and appliances of any public utility.

166 (17) "Revenue" means any money or thing of value
167 collected by, or paid to, the West Virginia water develop-
168 ment authority as rent, use or service fee or charge for
169 use of, or in connection with, any water development
170 project.

171 (18) "Sewage" means water-carried human or animal
172 wastes from residences, buildings, industrial establish-
173 ments or other places, together with such ground water
174 infiltration and surface waters as may be present.

175 (19) "Water resources," "water" or "waters" mean any
176 and all water on or beneath the surface of the ground,
177 whether percolating, standing, diffused or flowing, wholly
178 or partially within this state, or bordering this state and
179 within its jurisdiction, and shall include, without limiting
180 the generality of the foregoing, natural or artificial lakes,
181 rivers, streams, creeks, branches, brooks, ponds (ex-
182 cept farm ponds, industrial settling basins and ponds
183 and water treatment facilities), impounding reservoirs,
184 springs, wells and watercourses.

185 (20) "Waste water" means any water containing sew-
186 age, industrial wastes, other wastes or contaminants deriv-
187 ed from the prior use of such water, and shall include with-
188 out limiting the generality of the foregoing, surface water
189 of the type storm sewers are designed to collect and
190 dispose of.

191 (21) "Waste water facilities" mean facilities for the
192 purpose of treating, neutralizing, disposing of, stabilizing,
193 cooling, segregating or holding waste water, including
194 without limiting the generality of the foregoing, facilities
195 for the treatment and disposal of sewage, industrial
196 wastes, or other wastes, or waste water, and the residue
197 thereof; facilities for the temporary or permanent im-
198 poundment of waste water, both surface and underground;
199 and sanitary sewers or other collection systems, whether
200 on the surface or underground, designed to transport

201 waste water together with the equipment and furnishings
202 thereof and their appurtenances and systems, whether on
203 the surface or underground, including force mains and
204 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, compen-
sation and expenses.**

1 There is hereby created the West Virginia water de-
2 velopment authority. The authority is a governmental
3 instrumentality of the state and a body corporate. The
4 exercise by the authority of the powers conferred by
5 this article and the carrying out of its purposes and duties
6 shall be deemed and held to be, and are hereby deter-
7 mined to be, essential governmental functions and for a
8 public purpose.

9 The authority shall be controlled, managed and oper-
10 ated by the five-member board known as the West Vir-
11 ginia water development board, which is hereby created.
12 The director of the department of natural resources and
13 the director of the department of health shall be mem-
14 bers ex officio of the board. The other three members of
15 the board shall be appointed by the governor, by and
16 with the advice and consent of the Senate, for terms of
17 two, four and six years, respectively. The successor of
18 each such appointed member shall be appointed for a
19 term of six years in the same manner the original ap-
20 pointments were made, except that any person appointed
21 to fill a vacancy occurring prior to the expiration of the
22 term for which his predecessor was appointed shall be
23 appointed only for the remainder of such term. Each
24 board member shall serve until the appointment and qual-
25 ification of his successor. No more than two of the ap-
26 pointed board members shall at any one time belong to
27 the same political party. Appointed board members may
28 be reappointed to serve additional terms.

29 All members of the board shall be citizens of the state.
30 Each appointed member of the board, before entering
31 upon his duties, shall comply with the requirements of

32 article one, chapter six of this code and give bond in the
33 sum of twenty-five thousand dollars in the manner pro-
34 vided in article two, chapter six of this code. The gov-
35 ernor may remove any board member for cause as pro-
36 vided in article six, chapter six of this code.

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

50 The director of the department of natural resources
51 and the director of the department of health shall not
52 receive any compensation for serving as board members.
53 Each of the three appointed members of the board shall
54 receive an annual salary of five thousand dollars, payable
55 in monthly installments. Each of the five board mem-
56 bers shall be reimbursed for all reasonable and neces-
57 sary expenses actually incurred in the performance of
58 his duties as a member of such board. All such expenses
59 incurred by the board shall be payable solely from funds
60 of the authority or from funds appropriated for such pur-
61 pose by the Legislature and no liability or obligation
62 shall be incurred by the authority beyond the extent to
63 which moneys are available from funds of the authority
64 or from such appropriations.

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

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

1 To accomplish the public policies and purposes and to
2 meet the responsibility of the state as set forth in this
3 article, the West Virginia water development authority
4 may initiate, acquire, construct, maintain, repair and op-

5 erate water development projects or cause the same to
 6 be operated pursuant to a lease, sublease or agreement
 7 with any person or governmental agency; may make
 8 loans and grants to governmental agencies for the acqui-
 9 sition or construction of waste water facilities by such
 10 governmental agencies; and may issue water develop-
 11 ment revenue bonds of this state, payable solely from
 12 revenues, to pay the cost of such projects. A water de-
 13 velopment project shall not be undertaken unless it has
 14 been determined by the authority to be consistent with
 15 any applicable comprehensive plan of water management
 16 approved by the director of the department of natural
 17 resources or in the process of preparation by such di-
 18 rector and to be consistent with the standards set by the
 19 state water resources board, for the waters of the state
 20 affected thereby. Any resolution of the authority pro-
 21 viding for acquiring or constructing such projects or for
 22 making a loan or grant for such projects shall include a
 23 finding by the authority that such determinations have
 24 been made.

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

1 The West Virginia water development authority is
 2 hereby granted, has and may exercise all powers neces-
 3 sary or appropriate to carry out and effectuate its cor-
 4 porate purpose. The authority shall have the power and
 5 capacity to:

6 (1) Adopt, and from time to time, amend and repeal
 7 bylaws necessary and proper for the regulation of its
 8 affairs and the conduct of its business and rules and
 9 regulations to implement and make effective its powers
 10 and duties, such rules and regulations to be promulgated
 11 in accordance with the provisions of chapter twenty-nine-
 12 a of this code.

13 (2) Adopt an official seal.

14 (3) Maintain a principal office and, if necessary, re-
 15 gional sub-offices at locations properly designated or
 16 provided.

17 (4) Sue and be sued in its own name and plead and
 18 be impleaded in its own name, and particularly to en-
 19 force the obligations and covenants made under sections

20 eight, nine and fourteen of this article. Any actions
21 against the authority shall be brought in the circuit
22 court of Kanawha county in which the principal office
23 of the authority shall be located.

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

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

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

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

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

48 (10) Acquire in the name of the state, by purchase or
49 otherwise, on such terms and in such manner as it deems
50 proper, or by the exercise of the right of eminent domain
51 in the manner provided in chapter fifty-four of this code,
52 such public or private lands, or parts thereof or rights
53 therein, rights-of-way, property, rights, easements and in-
54 terests it deems necessary for carrying out the provisions
55 of this article, but excluding the acquisition by the exercise
56 of the right of eminent domain of any waste water facility
57 operated under permits issued pursuant to the provisions
58 of article five-a, chapter twenty of this code and owned by

59 any person or governmental agency, and compensation
60 shall be paid for public or private lands so taken.

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

94 (12) Employ managers, superintendents and other em-
95 ployees, who shall be covered by the state civil service
96 system, and retain or contract with consulting engineers,
97 financial consultants, accounting experts, architects, at-
98 torneys and such other consultants and independent con-

99 tractors as are necessary in its judgment to carry out
100 the provisions of this article, and fix the compensation
101 or fees thereof. All expenses thereof shall be payable
102 solely from the proceeds of water development revenue
103 bonds or notes issued by the authority, from reve-
104 nues and from funds appropriated for such purpose by
105 the Legislature.

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

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

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

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

130 (17) Do all acts necessary and proper to carry out the
131 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
2 the director of the department of natural resources or
3 the director of the department of health, or both of them,
4 shall expend, out of any funds available for the purpose,

5 such moneys as are necessary for the study of any pro-
6 posed water development project and may use its engi-
7 neering and other forces, including consulting engineers
8 and sanitary engineers, for the purpose of effecting such
9 study. All such expenses incurred by such directors or
10 either of them prior to the issuance of water develop-
11 ment revenue bonds or notes under this article shall be
12 paid by the director or respective directors incurring such
13 expenses and charged to the appropriate water develop-
14 ment project and the director or respective directors shall
15 keep proper records and accounts, showing the amounts
16 so charged. Upon the sale of water development revenue
17 bonds or notes for a water development project, the funds
18 so expended by the director or respective directors, with
19 the approval of the authority, in connection with such
20 project, shall be repaid to the department or departments
21 of such director or directors from the proceeds of such
22 bonds or notes.

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

1 The authority is hereby empowered to raise the cost
2 of one or more water development projects or parts
3 thereof by the issuance from time to time of water
4 development revenue bonds and notes of the state in
5 such principal amount as the authority deems neces-
6 sary, but the aggregate amount of all issues of bonds
7 and notes outstanding at one time for all projects au-
8 thorized hereunder shall not exceed that amount capable
9 of being serviced by revenues received from such
10 projects.

11 The authority may, from time to time, issue renewal
12 notes, issue bonds to pay such notes and whenever it
13 deems refunding expedient, refund any bonds by the is-
14 suance of water development revenue refunding bonds of
15 the state, whether the bonds to be refunded have or have
16 not matured, and issue bonds partly to refund bonds then
17 outstanding and partly for any other authorized pur-
18 pose. The refunding bonds shall be sold and the pro-
19 ceeds applied to the purchase, redemption or payment of

20 the bonds to be refunded. Except as may otherwise be
21 expressly provided by the authority, every issue of its
22 bonds or notes shall be obligations of the authority pay-
23 able out of the revenues of the authority, which are
24 pledged for such payment, without preference or priority
25 of the first bonds issued, subject only to any agreements
26 with the holders of particular bonds or notes pledging any
27 particular revenues. Such pledge shall be valid and bind-
28 ing from the time the pledge is made and the revenue so
29 pledged and thereafter received by the authority shall
30 immediately be subject to the lien of such pledge without
31 any physical delivery thereof or further act and the lien
32 of any such pledge shall be valid and binding as against
33 all parties having claims of any kind in tort, contract or
34 otherwise against the authority irrespective of whether
35 such parties have notice thereof.

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

39 The bonds and notes shall be authorized by resolution of
40 the authority, shall bear such date and shall mature at
41 such time, in the case of any such note or any renewals
42 thereof not exceeding five years from the date of issue of
43 such original note, and in the case of any such bond not
44 exceeding fifty years from the date of issue, as such reso-
45 lution may provide. The bonds and notes shall bear in-
46 terest at such rate, be in such denominations, be in such
47 form, either coupon or registered, carry such registration
48 privileges, be payable in such medium of payment, at
49 such place and be subject to such terms of redemption as
50 the authority may authorize. The bonds and notes of the
51 authority may be sold by the authority, at public or pri-
52 vate sale, at or not less than the price the authority de-
53 termines. The bonds and notes shall be executed by the
54 chairman and vice-chairman of the authority, both of
55 whom may use facsimile signatures. The official seal of
56 the authority or a facsimile thereof shall be affixed there-
57 to or printed thereon and attested, manually or by fac-
58 simile signature, by the secretary-treasurer of the author-
59 ity, and any coupons attached thereto shall bear the

60 signature or facsimile signature of the chairman of the
61 authority. In case any officer whose signature, or a fac-
62 simile of whose signature, appears on any bonds, notes
63 or coupons ceases to be such officer before delivery of
64 such bonds or notes, such signature or facsimile is never-
65 theless sufficient for all purposes the same as if he had
66 remained in office until such delivery and in case the seal
67 of the authority has been changed after a facsimile has
68 been imprinted on such bonds or notes such facsimile seal
69 will continue to be sufficient for all purposes.

70 Any resolution authorizing any bonds or notes or any
71 issue thereof may contain provisions (subject to such
72 agreements with bondholders or noteholders as may then
73 exist, which provisions shall be a part of the contract
74 with the holders thereof) as to pledging all or any part
75 of the revenues of the authority to secure the payment of
76 the bonds or notes or of any issue thereof; the use and
77 disposition of revenues of the authority; a covenant to fix,
78 alter and collect rentals and other charges so that pledged
79 revenues will be sufficient to pay the costs of operation,
80 maintenance and repairs, pay principal of and interest on
81 bonds or notes secured by the pledge of such revenues and
82 provide such reserves as may be required by the ap-
83 plicable resolution or trust agreement; the setting aside
84 of reserve funds, sinking funds or replacement and im-
85 provement funds and the regulation and disposition there-
86 of; the crediting of the proceeds of the sale of bonds or
87 notes to and among the funds referred to or provided for
88 in the resolution authorizing the issuance of the bonds
89 or notes; the use, lease, sale or other disposition of any
90 water development project or any other assets of the
91 authority; limitations on the purpose to which the pro-
92 ceeds of sale of bonds or notes may be applied and pledg-
93 ing such proceeds to secure the payment of the bonds or
94 notes or of any issue thereof; notes issued in anticipation
95 of the issuance of bonds, the agreement of the authority
96 to do all things necessary for the authorization, issuance
97 and sale of such bonds in such amounts as may be neces-
98 sary for the timely retirement of such notes; limitations
99 on the issuance of additional bonds or notes; the terms
100 upon which additional bonds or notes may be issued and

101 secured; the refunding of outstanding bonds or notes;
102 the procedure, if any, by which the terms of any contract
103 with bondholders or noteholders may be amended or
104 abrogated, the amount of bonds or notes the holders of
105 which must consent thereto and the manner in which
106 such consent may be given; limitations on the amount
107 of moneys to be expended by the authority for operating,
108 administrative or other expenses of the authority; se-
109 curing any bonds or notes by a trust agreement; and any
110 other matters, of like or different character, which in any
111 way affect the security or protection of the bonds or notes.

112 Neither the members of the authority nor any person
113 executing the bonds or notes shall be liable personally on
114 the bonds or notes or be subject to any personal liability
115 or accountability by reason of the issuance thereof.

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

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

8 Any such trust agreement may pledge or assign reve-
9 nues of the authority to be received, but shall not convey
10 or mortgage any water development project or any part
11 thereof. Any such trust agreement or any resolution pro-
12 viding for the issuance of such bonds or notes may con-
13 tain such provisions for protecting and enforcing the
14 rights and remedies of the bondholders or noteholders as
15 are reasonable and proper and not in violation of law,
16 including covenants setting forth the duties of the au-
17 thority in relation to the acquisition of property, the con-
18 struction, improvement, maintenance, repair, operation
19 and insurance of the water development project in con-
20 nection with which such bonds or notes are authorized,
21 the rentals or other charges to be imposed for the use
22 or services of any water development project, the custody,
23 safeguarding, and application of all moneys and provisions

24 for the employment of consulting engineers in connec-
25 tion with the construction or operation of such water de-
26 velopment project. Any banking institution or trust
27 company incorporated under the laws of this state which
28 may act as depository of the proceeds of bonds or notes
29 or of revenues shall furnish such indemnifying bonds or
30 pledge such securities as are required by the authority.
31 Any such trust agreement may set forth the rights and
32 remedies of the bondholders and noteholders and of the
33 trustee and may restrict individual rights of action by
34 bondholders and noteholders as customarily provided in
35 trust agreements or trust indentures securing similar
36 bonds. Such trust agreement may contain such other pro-
37 visions as the authority deems reasonable and proper for
38 the security of the bondholders or noteholders. All ex-
39 penses incurred in carrying out the provisions of any such
40 trust agreement may be treated as a part of the cost of the
41 operation of the water development project. Any such
42 trust agreement or resolution authorizing the issuance of
43 water development revenue bonds may provide the
44 method whereby the general administrative overhead ex-
45 penses of the authority shall be allocated among the sev-
46 eral projects acquired or constructed by it as a factor of
47 the operating expenses of each such project.

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

1 Any holder of water development revenue bonds issued
2 under the authority of this article or any of the coupons
3 appertaining thereto and the trustee under any trust
4 agreement, except to the extent the rights given by this
5 article may be restricted by the applicable resolution or
6 such trust agreement, may by civil action, mandamus or
7 other proceedings, protect and enforce any rights granted
8 under the laws of this state or granted under this article,
9 by the trust agreement or by the resolution authorizing
10 the issuance of such bonds, and may enforce and compel
11 the performance of all duties required by this article, or
12 by the trust agreement or resolution, to be performed
13 by the authority or any officer thereof, including the
14 fixing, charging and collecting of sufficient rentals or
15 other charges.

§20-5C-11. Bonds and notes not debt of state, county, municipality or of any political subdivision.

1 Water development revenue bonds and notes and water
2 development revenue refunding bonds issued under au-
3 thority of this article and any coupons in connection
4 therewith shall not constitute a debt or a pledge of the
5 faith and credit or taxing power of this state or of any
6 county, municipality or any other political subdivision of
7 this state, and the holders or owners thereof shall have no
8 right to have taxes levied by the Legislature or taxing
9 authority of any county, municipality or any other politi-
10 cal subdivision of this state for the payment of the princi-
11 pal thereof or interest thereon, but such bonds and notes
12 shall be payable solely from the revenues and funds
13 pledged for their payment as authorized by this article
14 unless the notes are issued in anticipation of the issuance
15 of bonds or the bonds are refunded by refunding bonds
16 issued under authority of this article, which bonds or re-
17 funding bonds shall be payable solely from revenues and
18 funds pledged for their payment as authorized by this
19 article. All such bonds and notes shall contain on the
20 face thereof a statement to the effect that the bonds or
21 notes, as to both principal and interest, are not debts of
22 the state or any county, municipality or political sub-
23 division thereof, but are payable solely from revenues
24 and funds pledged for their payment.

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

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

1 All moneys, properties and assets acquired by the
2 authority, whether as proceeds from the sale of water
3 development revenue bonds or as revenues or otherwise,
4 shall be held by it in trust for the purposes of carrying
5 out its powers and duties, and shall be used and reused in
6 accordance with the purposes and provisions of this article.
7 Such moneys shall at no time be commingled with other

8 public funds. Such moneys, except as otherwise provided
9 in any resolution authorizing the issuance of water de-
10 velopment revenue bonds or in any trust agreement secur-
11 ing the same, or except when invested pursuant to section
12 thirteen of this article, shall be kept in appropriate de-
13 positories and secured as provided and required by law.
14 The resolution authorizing the issuance of such bonds
15 of any issue or the trust agreement securing such bonds
16 shall provide that any officer to whom, or any banking
17 institution or trust company to which, such moneys are
18 paid shall act as trustee of such moneys and hold and
19 apply them for the purposes hereof, subject to the condi-
20 tions this article and such resolution or trust agreement
21 provide.

§20-5C-13. Investment of funds by authority.

1 Funds of the authority in excess of current needs,
2 except as otherwise provided in any resolution au-
3 thorizing the issuance of its water development revenue
4 bonds or in any trust agreement securing the same,
5 may be invested by the authority in any security or
6 securities in which the "West Virginia State Board of
7 Investments" is authorized to invest under sections nine
8 and ten, article six, chapter twelve of this code, except
9 those securities specified in subdivisions (f) and (g) of
10 said section nine. Income from all such investments of
11 moneys in any fund shall be credited to such funds as
12 the authority determines, subject to the provisions of any
13 such resolution or trust agreement and such investments
14 may be sold at such times as the authority determines.

**§20-5C-14. Rentals and other revenues from water develop-
ment projects.**

1 The authority may charge, alter and collect rentals
2 or other charges for the use or services of any water
3 development project, and contract in the manner provided
4 by this section with one or more persons, one or more
5 government agencies, or any combination thereof, de-
6 siring the use or services thereof, and fix the terms,
7 conditions, rentals or other charges for such use or
8 services. Such rentals or other charges shall not be sub-

9 ject to supervision or regulation by any other authority,
10 department, commission, board, bureau or agency of the
11 state, and such contract may provide for acquisition by
12 such person or governmental agency of all or any part
13 of such water development project for such consideration
14 payable over the period of the contract or otherwise
15 as the authority in its sole discretion determines to be
16 appropriate, but subject to the provisions of any resolu-
17 tion authorizing the issuance of water development
18 revenue bonds or notes or water development revenue
19 refunding bonds of the authority or any trust agreement
20 securing the same. Any governmental agency which has
21 power to construct, operate and maintain waste water
22 facilities may enter into a contract or lease with the
23 authority whereby the use or services of any water de-
24 velopment project of the authority will be made available
25 to such governmental agency and pay for such use or
26 services such rentals or other charges as may be agreed
27 to by such governmental agency and the authority.

28 Any governmental agency or agencies or combination
29 thereof may cooperate with the authority in the acqui-
30 sition or construction of a water development project and
31 shall enter into such agreements with the authority as
32 are necessary, with a view to effective cooperative action
33 and safeguarding of the respective interests of the parties
34 thereto, which agreements shall provide for such con-
35 tributions by the parties thereto in such proportion as
36 may be agreed upon and such other terms as may be
37 mutually satisfactory to the parties, including without
38 limitation the authorization of the construction of the
39 project by one of the parties acting as agent for all of
40 the parties and the ownership and control of the project
41 by the authority to the extent necessary or appropriate
42 for purposes of the issuance of water development revenue
43 bonds by the authority. Any governmental agency may
44 provide such contribution as is required under such
45 agreements by the appropriation of money or, if
46 authorized by a favorable vote of the electors to issue
47 bonds or notes or levy taxes or assessments and issue
48 notes or bonds in anticipation of the collection there-

49 of, by the issuance of bonds or notes or by the levying of
 50 taxes or assessments and the issuance of bonds or notes in
 51 anticipation of the collection thereof, and by the payment
 52 of such appropriated money or the proceeds of such bonds
 53 or notes to the authority pursuant to such agreements.

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

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

1 Each water development project, when constructed and
 2 placed in operation, shall be maintained and kept in good
 3 condition and repair by the authority or the authority
 4 shall cause the same to be maintained and kept in good
 5 condition and repair. Each such project shall be operated
 6 by such operating employees as the authority employs or
 7 pursuant to a contract or lease with a governmental
 8 agency or person. All public or private property damaged
 9 or destroyed in carrying out the provisions of this article
 10 and in the exercise of the powers granted hereunder with
 11 regard to any project shall be restored or repaired and
 12 placed in its original condition, as nearly as practicable,

13 or adequate compensation made therefor out of funds
14 provided in accordance with the provisions of this article.

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

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

1 The provisions of sections nine and ten, article six,
2 chapter twelve of this code to the contrary notwithstand-
3 ing, all water development revenue bonds issued pur-
4 suant to this article shall be lawful investments for the
5 West Virginia state board of investments and shall also
6 be lawful investments for banking institutions, societies
7 for savings, building and loan associations, savings and
8 loan associations, deposit guarantee associations, trust
9 companies, insurance companies, including domestic for
10 life and domestic not for life insurance companies.

§20-5C-17. Exemption from taxation.

1 The exercise of the powers granted to the authority by
2 this article will be in all respects for the benefit of the
3 people of the state, for the improvement of their health,
4 safety, convenience and welfare and for the enhancement
5 of their residential, agricultural, recreational, economic,
6 commercial and industrial opportunities and is a public
7 purpose. As the operation and maintenance of water de-
8 velopment projects will constitute the performance of
9 essential governmental functions, the authority shall not
10 be required to pay any taxes or assessments upon any
11 water development project or upon any property acquired
12 or used by the authority or upon the income therefrom.
13 Such bonds and notes and all interest and income thereon
14 shall be exempt from all taxation by this state, or any
15 county, municipality, political subdivision or agency
16 thereof, except inheritance taxes.

§20-5C-18. Acquisition by authority of property.

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

10 All governmental agencies, notwithstanding any con-
11 trary provision of law, may lease, lend, grant or convey
12 to the authority, at its request, upon such terms as the
13 proper authorities of such governmental agencies deem
14 reasonable and fair and without the necessity for an ad-
15 vertisement, auction, order of court or other action or
16 formality, other than the regular and formal action of
17 the governmental agency concerned, any real property or
18 interests therein, including improvements thereto or per-
19 sonal property which is necessary or convenient to the
20 effectuation of the authorized purposes of the authority,
21 including public roads and other real property or inter-
22 ests therein, including improvements thereto or personal
23 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,
2 section six of this article, any land, rights, rights-of-way,
3 franchises, easements or other property necessary or
4 proper for the construction or the efficient operation of
5 any water development project.

6 This section does not authorize the authority to take
7 or disturb property or facilities belonging to any public
8 utility or to a common carrier, which property or facili-
9 ties are required for the proper and convenient operation
10 of such public utility or common carrier, unless provision
11 is made for the restoration, relocation or duplication of
12 such property or facilities elsewhere at the sole cost of
13 the authority.

14 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 municipi-
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

56 railroad or public utility owning or operating such facilities shall relocate or remove them in accordance with the
 57 order of the authority. The cost and expenses of such
 58 relocation or removal, including the cost of installing
 59 such facilities in a new location, the cost of any lands or
 60 any rights or interests in lands and the cost of any other
 61 rights acquired to accomplish such relocation or removal,
 62 may be paid by the authority as a part of the cost of such
 63 water development project. In case of any such relocation
 64 or removal of facilities, the railroad or public utility
 65 owning or operating them, and its successors or assigns,
 66 may maintain and operate such facilities, with the necessary appurtenances in the new location in, on, over or
 67 under the property of the authority for as long a period
 68 and upon the same terms as it had the right to maintain
 69 and operate such facilities in their former location.
 70
 71

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

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

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

1 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
 2 provided in this section. All final actions of the authority
 3 shall be journalized and such journal shall also be open
 4 to the inspection of the public at all reasonable times.
 5 Any records or information relating to secret processes
 6 or secret methods of manufacture or production which
 7
 8

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.

Russell H. Beall
Chairman Senate Committee

Phyllis J. Rutledge
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Howard W. Larson
Clerk of the Senate

C. Blankinship
Clerk of the House of Delegates

Edmond
President of the Senate

Lewis R. McManus
Speaker House of Delegates

The within approved this the 27th
day of March, 1972.

Orlando S. Shreve, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/17/72

Time 12:30 p.m.