

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1977



**ENROLLED**

SENATE BILL NO. 611

(By Mr. Burke, Mr. President )



PASSED April 8, 1977

In Effect July 1, 1977 ~~Passage~~

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### Senate Bill No. 611

(By MR. BROTHERTON, MR. PRESIDENT)

[Passed April 8, 1977; in effect July 1, 1977.]

AN ACT to amend and reenact sections three, four, five, six, eight, nine, thirteen, fourteen and fifteen, article five-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article five-c by adding thereto three new sections, designated sections six-a, sixteen-a and sixteen-b, all relating to the West Virginia water development authority; expanding the definition of certain terms; relating to the number of members of the West Virginia water development board which shall constitute a quorum; clarifying the authority to finance water development projects by making loans to governmental agencies from the proceeds of water development revenue bonds and notes; providing for the execution of and certain provisions to be contained in loan agreements for loans from the authority to governmental agencies to acquire or construct water development projects; power of the authority to collect service charges and the exercise of other powers; requirements and manner of issuance of water development revenue bonds and notes; providing for the certification to the governor of any deficiencies in reserves pledged for payment of revenue bonds and notes; powers, duties and responsibilities of the authority generally; power of such authority to charge and collect principal of and interest, fees and charges on loans to governmental agencies; contents of trust agreement; designating securities in which excess funds of the authority may be invested; specifying that

certain provisions as to rental and other revenues from water development projects shall apply only to such projects as are owned by the authority; maintenance, operation and repair of projects; providing for the redemption of bonds and notes issued by the authority; and providing for the issuance of refunding bonds.

*Be it enacted by the Legislature of West Virginia:*

That sections three, four, five, six, eight, nine, thirteen, fourteen and fifteen, article five-c, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article five-c be further amended by adding thereto three new sections, designated sections six-a, sixteen-a and sixteen-b, all to read as follows:

**ARTICLE 5C. WEST VIRGINIA WATER DEVELOPMENT AUTHORITY.**

**§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 ar-  
5 ticle, the duties, powers, responsibilities and functions  
6 of 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  
9 the public interest, health and welfare in utilizing  
10 the water resources of this state, including, but not  
11 limited to, domestic, agricultural, irrigation, industrial,  
12 manufacturing, mining, power, public, sanitary, fish and  
13 wildlife, state, county, municipal, navigational, recrea-  
14 tional, aesthetic 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 Virginia  
18 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, prop-  
29 erty rights, easements, franchise rights and interests  
30 required by the authority for such acquisition and con-  
31 struction; the cost of demolishing or removing any  
32 buildings or structures on land so acquired, including  
33 the cost of acquiring any lands to which such buildings  
34 or structures may be moved; the cost of acquiring or  
35 constructing and equipping a principal office and sub-  
36 offices of the authority; the cost of diverting highways,  
37 interchange of highways, access roads to private prop-  
38 erty, including the cost of land or easements therefor;  
39 the cost of all machinery, furnishings, and equipment;  
40 all financing charges, and interest prior to and during  
41 construction and for no more than eighteen months after  
42 completion of construction; the cost of all engineering  
43 services and all expenses of research and develop-  
44 ment with respect to waste water facilities; the cost  
45 of all legal services and expenses; the cost of all plans,  
46 specifications, surveys and estimates of cost and revenues;  
47 all working capital and other expenses necessary or in-  
48 cident to determining the feasibility or practicability  
49 of acquiring or constructing any such project; all ad-  
50 ministrative expenses and such other expenses as may  
51 be necessary or incident to the acquisition or construc-  
52 tion of the project; the financing of such acquisition or  
53 construction, including the amount authorized in the  
54 resolution of the authority providing for the issuance  
55 of water development revenue bonds to be paid into any  
56 special funds from the proceeds of such bonds; and  
57 the financing of the placing of any such project in  
58 operation. Any obligation or expenses incurred after  
59 the effective date of this section by any governmental  
60 agency, with the approval of the authority, for surveys,  
61 borings, preparation of plans and specifications and other  
62 engineering services in connection with the acqui-  
63 sition or construction of a project shall be regarded

64 as a part of the cost of such project and shall be reim-  
65 bursed out of the proceeds of loans or water develop-  
66 ment revenue bonds as authorized by the provisions of  
67 this article.

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

74 (8) "Governmental agency" means the state govern-  
75 ment or any agency, department, division or unit thereof;  
76 counties; municipalities; watershed improvement dis-  
77 tricts; soil conservation districts; sanitary districts; pub-  
78 lic service districts; drainage districts; regional govern-  
79 mental authorities and any other governmental agency,  
80 entity, political subdivision, public corporation or agency  
81 having the authority to acquire, construct or operate  
82 waste water facilities; the United States government or  
83 any agency, department, division or unit thereof; and  
84 any agency, commission or authority established pur-  
85 suant to an interstate compact or agreement.

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

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

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

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

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

144 States or any department, agency, board or com-  
145 mission of this state authorized to establish such  
146 standards.

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

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

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

169 (17) "Revenue" means any money or thing of value  
170 collected by, or paid to, the West Virginia water devel-  
171 opment authority as rent, use or service fee or charge  
172 for use of, or in connection with, any water development  
173 project, or as principal of or interest, charges or other  
174 fees on loans, or any other collections on loans made by  
175 the West Virginia water development authority to gov-  
176 ernmental agencies to finance in whole or in part the  
177 acquisition or construction of any water development  
178 project or projects, or other money or property which is  
179 received and may be expended for or pledged as revenues  
180 pursuant to this article.

181 (18) "Sewage" means water-carried human or animal  
182 wastes from residences, buildings, industrial establish-

183 ments or other places, together with such ground water  
184 infiltration and surface waters as may be present.

185 (19) "Water resources," "water" or "waters" mean  
186 any and all water on or beneath the surface of the ground,  
187 whether percolating, standing, diffused or flowing, wholly  
188 or partially within this state, or bordering this state and  
189 within its jurisdiction, and shall include, without limit-  
190 ing the generality of the foregoing, natural or artificial  
191 lakes, rivers, streams, creeks, branches, brooks, ponds  
192 (except farm ponds, industrial settling basins and ponds  
193 and water treatment facilities), impounding reservoirs,  
194 springs, wells and watercourses.

195 (20) "Waste water" means any water containing sew-  
196 age, industrial wastes, other wastes or contaminants de-  
197 rived from the prior use of such water, and shall include  
198 without limiting the generality of the foregoing, surface  
199 water of the type storm sewers are designed to collect  
200 and dispose of.

201 (21) "Waste water facilities" mean facilities for the  
202 purpose of treating, neutralizing, disposing of, stabili-  
203 zing, cooling, segregating or holding waste water, in-  
204 cluding without limitation the generality of the foregoing,  
205 facilities for the treatment and disposal of sewage, in-  
206 dustrial wastes, or other wastes, waste water, and the  
207 residue thereof; facilities for the temporary or perma-  
208 nent impoundment of waste water, both surface and un-  
209 derground; and sanitary sewers or other collection sys-  
210 tems, whether on the surface or underground, designed  
211 to transport waste water together with the equipment  
212 and furnishings thereof and their appurtenances and sys-  
213 tems, whether on the surface or underground, including  
214 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, compensa-  
tion and expenses; director of authority.**

1 There is hereby created the West Virginia water devel-  
2 opment authority. The authority is a governmental instru-



3 mentality of the state and a body corporate. The exercise  
4 by the authority of the powers conferred by this article  
5 and the carrying out of its purposes and duties shall be  
6 deemed and held to be, and are hereby determined to be,  
7 essential governmental functions and for a public pur-  
8 pose.

9 The authority shall be controll<sup>e</sup>d, managed and operated  
10 by the seven-member board known as the West Virginia  
11 water development board, which is hereby created. The  
12 director of the department of natural resources, and the  
13 director of the department of health and the state officer  
14 or employee who in the judgment of the governor is  
15 most responsible for economic or community development  
16 shall be members ex officio of the board. The governor  
17 shall designate annually the member who is the state  
18 officer or employee most responsible for economic or  
19 community development. The other four members of  
20 the board shall be appointed by the governor, by and  
21 with the advice and consent of the Senate, for terms of  
22 two, three, four and six years, respectively. The successor  
23 of each such appointed member shall be appointed for a  
24 term of six years in the same manner the original ap-  
25 pointments were made, except that any person appointed  
26 to fill a vacancy occurring prior to the expiration of the  
27 term for which his predecessor was appointed shall be  
28 appointed only for the remainder of such term. Each board  
29 member shall serve until the appointment and qualifica-  
30 tion of his successor. No more than two of the appointed  
31 board members shall at any one time belong to the same  
32 political party. Appointed board members may be re-  
33 appointed to serve additional terms: *Provided*, That each  
34 person serving as a member of the West Virginia  
35 water development board, for a term which has not ex-  
36 pired on the effective date of this article, shall be appoint-  
37 ed by the governor without Senate confirmation to the  
38 West Virginia water develop<sup>e</sup>ment board, as one of the  
39 four appointed members, for the term ending the thirtieth  
40 day of June in the year in which his term would expire  
41 as a member of the West Virginia water development  
42 board.

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

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

65 The director of the department of natural resources, the  
66 director of the department of health and the state officer  
67 or employee most responsible for economic or community  
68 development shall not receive any compensation for  
69 serving as board members. Each of the four appointed  
70 members of the board shall receive an annual salary of  
71 five thousand dollars, payable in monthly installments.  
72 Each of the seven board members shall be reimbursed for  
73 all reasonable and necessary expenses actually incurred  
74 in the performance of his duties as a member of such  
75 board. All such expenses incurred by the board shall be  
76 payable solely from funds of the authority or from funds  
77 appropriated for such purpose by the Legislature and no  
78 liability or obligation shall be incurred by the authority  
79 beyond the extent to which moneys are available from  
80 funds of the authority or from such appropriations.

81 There shall also be a director of the authority ap-  
82 pointed by the board.

**§20-5C-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies shall be subject to terms of loan agreements.**

1 To accomplish the public policies and purposes and  
2 to 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  
5 operate water development projects or cause the same  
6 to 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 water development projects by  
10 such governmental agencies; and may issue water de-  
11 velopment revenue bonds of this state, payable solely  
12 from revenues, to pay the cost of, or finance, in whole  
13 or in part, by loans to governmental agencies, such  
14 projects. A water development project shall not be  
15 undertaken unless it has been determined by the au-  
16 thority to be consistent with any applicable compre-  
17 hensive plan of water management approved by the  
18 director of the department of natural resources or in  
19 the process of preparation by such director and to be  
20 consistent with the standards set by the state water re-  
21 sources board, for the waters of the state affected thereby.  
22 Any resolution of the authority providing for acquiring  
23 or constructing such projects or for making a loan or  
24 grant for such projects shall include a finding by the  
25 authority that such determinations have been made. A  
26 loan agreement shall be entered into between the au-  
27 thority and each governmental agency to which a loan  
28 is made for the acquisition or construction of a water  
29 development project, which loan agreement shall in-  
30 clude without limitation the following provisions:

31 (1) The cost of such project, the amount of the loan,  
32 the terms of repayment of such loan and the security  
33 therefor, which may include, in addition to the pledge  
34 of all revenues from such project after a reasonable  
35 allowance for operation and maintenance expenses, a  
36 deed of trust or other appropriate security instrument  
37 creating a lien on such project;

38 (2) The specific purposes for which the proceeds of  
39 the loan shall be expended, the procedures as to the  
40 disbursement of loan proceeds and the duties and obliga-  
41 tions imposed upon the governmental agency in regard  
42 to the construction or acquisition of the project;

43 (3) The agreement of the governmental agency to  
44 impose, collect, and, if required to repay the obligations  
45 of such governmental agency under the loan agreement,  
46 increase, service charges from persons using said project,  
47 which service charges shall be pledged for the repay-  
48 ment of such loan together with all interest, fees and  
49 charges thereon and all other financial obligations of  
50 such governmental agency under the loan agreement;  
51 and

52 (4) The agreement of the governmental agency to  
53 comply with all applicable laws, rules and regulations  
54 issued by the authority or other state, federal and local  
55 bodies in regard to the construction, operation, mainte-  
56 nance and use of the project.

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

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-  
12 nine-a of this code.

13 (2) Adopt an official seal.

14 (3) Maintain a principal office and, if necessary,  
15 regional suboffices 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

19 enforce the obligations and covenants made under sec-  
20 tions eight, nine and fourteen of this article. Any ac-  
21 tions 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 the provisions of chapter twenty-nine-a of  
28 this code, adopt rules and procedures for making such  
29 loans and grants.

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

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

40 (8) Issue water development revenue bonds and notes  
41 and water development revenue refunding bonds of the  
42 state, payable solely from revenues as provided in sec-  
43 tion eight of this article unless the bonds are refunded  
44 by refunding bonds, for the purpose of paying all or  
45 any part of the cost of, or financing by loans to govern-  
46 mental agencies, one or more water development proj-  
47 ects or parts thereof.

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

52 (10) Acquire in the name of the state, by purchase  
53 or otherwise, on such terms and in such manner as it  
54 deems proper, or by the exercise of the right of eminent  
55 domain in the manner provided in chapter fifty-four of  
56 this code, such public or private lands, or parts thereof  
57 or rights therein, rights-of-way, property, rights, ease-  
58 ments and interests it deems necessary for carrying out

59 the provisions of this article, but excluding the acquisition by the exercise of the right of eminent domain of  
60 any waste water facility operated under permits issued  
61 pursuant to the provisions of article five-a, chapter  
62 twenty of this code and owned by any person or governmental agency, and compensation shall be paid for  
63 public or private lands so taken.  
64  
65

66 (11) Make and enter into all contracts and agreements  
67 and execute all instruments necessary or incidental to  
68 the performance of its duties and the execution of its  
69 powers. When the cost under any such contract or  
70 agreement, other than compensation for personal services, involves an expenditure of more than two thousand dollars, the authority shall make a written contract  
71 with the lowest responsible bidder after public notice  
72 published as a Class II legal advertisement in compliance  
73 with the provisions of article three, chapter fifty-nine  
74 of this code, the publication area for such publication to  
75 be the county wherein the work is to be performed or  
76 which is affected by the contract, which notice shall  
77 state the general character of the work and the general  
78 character of the materials to be furnished, the place  
79 where plans and specifications therefor may be examined  
80 and the time and place of receiving bids, but a contract  
81 or lease for the operation of a water development  
82 project constructed and owned by the authority or an  
83 agreement for cooperation in the acquisition or construction of a water development project pursuant to section  
84 fourteen of this article is not subject to the foregoing  
85 requirements and the authority may enter into such  
86 contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such  
87 period as it finds to be reasonable and proper under  
88 the circumstances and in the best interests of proper  
89 operation or of efficient acquisition or construction of  
90 such projects. The authority may reject any and all  
91 bids. A bond with good and sufficient surety, approved  
92 by the authority, shall be required of all contractors in  
93 an amount equal to at least fifty percent of the contract  
94 price, conditioned upon the faithful performance of the  
95 contract.  
96  
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99

*at  
J.C. 10. Jr.*

100 (12) Employ managers, superintendents and other em-  
101 ployees, who shall be covered by the state civil service  
102 system, and retain or contract with consulting engineers,  
103 financial consultants, accounting experts, architects,  
104 attorneys and such other consultants and independent  
105 contractors as are necessary in its judgment to carry  
106 out the provisions of this article, and fix the compensa-  
107 tion or fees thereof. All expenses thereof shall be pay-  
108 able solely from the proceeds of water development  
109 revenue bonds or notes issued by the authority, from  
110 revenues and from funds appropriated for such purpose  
111 by the Legislature.

112 (13) Receive and accept from any federal agency,  
113 subject to the approval of the governor, grants for or  
114 in aid of the construction of any water development  
115 project or for research and development with respect to  
116 waste water facilities and receive and accept aid or  
117 contributions from any source or money, property, labor  
118 or other things of value, to be held, used and applied  
119 only for the purposes for which such grants and con-  
120 tributions are made.

121 (14) Engage in research and development with re-  
122 spect to waste water facilities.

123 (15) Purchase fire and extended coverage and liability  
124 insurance for any water development project and for  
125 the principal office and suboffices of the authority, insur-  
126 ance protecting the authority and its officers and em-  
127 ployees against liability, if any, for damage to property  
128 or injury to or death of persons arising from its opera-  
129 tions and any other insurance the authority may agree  
130 to provide under any resolution authorizing the issuance  
131 of water development revenue bonds or in any trust  
132 agreement securing the same.

133 (16) Charge, alter and collect rentals and other  
134 charges for the use or services of any water develop-  
135 ment project as provided in this article, and charge and  
136 collect reasonable interest, fees and charges in connec-  
137 tion with the making and servicing of loans to govern-  
138 mental agencies in the furtherance of the purposes of  
139 this article.

140 (17) Establish or increase reserves from moneys re-  
141 ceived or to be received by the authority to secure or  
142 to pay the principal of and interest on the bonds and  
143 notes issued by the authority pursuant to this article.

144 (18) Do all acts necessary and proper to carry out  
145 the powers expressly granted to the authority in this  
146 article.

**§20-5C-6a. Power of authority to collect service charges and  
exercise other powers of governmental agencies  
in event of default; power to require governmen-  
tal agencies to enforce their rights.**

1 In order to insure that the public purposes to be  
2 served by the authority may be properly carried out and  
3 in order to assure the timely payment to the authority of  
4 all sums due and owing under loan agreements with  
5 governmental agencies, as referred to in section five  
6 of this article, notwithstanding any provision to the  
7 contrary elsewhere contained in this code, in event of  
8 any default by a governmental agency under such a loan  
9 agreement, the authority shall have, and may, at its  
10 option, exercise the following rights and remedies in  
11 addition to the rights and remedies conferred by law or  
12 pursuant to said loan agreement:

13 (1) The authority may directly impose, in its own  
14 name and for its own benefit service charges determined  
15 by it to be necessary under the circumstances upon all  
16 users of the water development project to be acquired  
17 or constructed pursuant to such loan agreement, and  
18 proceed directly to enforce and collect such service  
19 charges, together with all necessary costs of such en-  
20 forcement and collection.

21 (2) The authority may exercise, in its own name or in  
22 the name of and as agent for the governmental agency,  
23 all of the rights, authority, powers and remedies of the  
24 governmental agency with respect to the water develop-  
25 ment project or which may be conferred upon the gov-  
26 ernmental agency by statute, rule, regulation or judicial  
27 decision, including without limitation all rights and  
28 remedies with respect to users of such water development  
29 project.



30 (3) The authority may, by civil action, mandamus or  
31 other judicial or administrative proceeding, compel per-  
32 formance by such governmental agency of all of the  
33 terms and conditions of such loan agreement including  
34 without limitation the adjustment and increase of service  
35 charges as required to repay the loan or otherwise satisfy  
36 the terms of such loan agreement, the enforcement and  
37 collection of such service charges and the enforcement  
38 by such governmental agency of all rights and remedies  
39 conferred by statute, rule, regulation or judicial decision.

**§20-5C-8. Authority empowered to issue water development  
revenue bonds, renewal notes and refunding bonds;  
requirements and manner of such issuance.**

1 The authority is hereby empowered to issue from  
2 time to time water development revenue bonds and notes  
3 of the state in such principal amounts as the authority  
4 deems necessary to pay the cost of or finance in whole  
5 or in part by loans to governmental agencies, one or  
6 more water development projects, but the aggregate  
7 amount of all issues of bonds and notes outstanding at  
8 one time for all projects authorized hereunder shall not  
9 exceed that amount capable of being serviced by reve-  
10 nues received from such 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  
14 issuance of water development revenue refunding bonds  
15 by the state pursuant to the provisions of section six-  
16 teen-b of this article. Except as may otherwise be ex-  
17 pressly provided in this article or by the authority, every  
18 issue of its bonds or notes shall be obligations of the  
19 authority payable out of the revenues and reserves  
20 created for such purposes by the authority, which are  
21 pledged for such payment, without preference or priority  
22 of the first bonds issued, subject only to any agreements  
23 with the holders of particular bonds or notes pledging  
24 any particular revenues. Such pledge shall be valid and  
25 binding from the time the pledge is made and the reve-  
26 nues so pledged and thereafter received by the authority  
27 shall immediately be subject to the lien of such pledge

28 without any physical delivery thereof or further act and  
29 the lien of any such pledge shall be valid and binding  
30 as against all parties having claims of any kind in tort,  
31 contract or otherwise against the authority irrespective  
32 of whether such parties have notice thereof.

33 All such bonds and notes shall have and are hereby de-  
34 clared to have all the qualities of negotiable instruments.

35 The bonds and notes shall be authorized by resolu-  
36 tion of the authority, shall bear such date and shall  
37 mature at such time, in the case of any such note or  
38 any renewals thereof not exceeding five years from the  
39 date of issue of such original note, and in the case of any  
40 such bond not exceeding fifty years from the date of  
41 issue, as such resolution may provide. The bonds and  
42 notes shall bear interest at such rate, be in such denomi-  
43 nations, be in such form, either coupon or registered, carry  
44 such registration privileges, be payable in such medium  
45 of payment, at such place and be subject to such terms  
46 of redemption as the authority may authorize. The bonds  
47 and notes of the authority may be sold by the authority,  
48 at public or private sale, at or not less than the price  
49 the authority determines. The bonds and notes shall be  
50 executed by the chairman and vice-chairman of the  
51 authority, both of whom may use facsimile signatures.  
52 The official seal of the authority or a facsimile thereof  
53 shall be affixed thereto or printed thereon and attested,  
54 manually or by facsimile signature, by the secretary-  
55 treasurer of the authority, and any coupons attached  
56 thereto shall bear the signature or facsimile signature of  
57 the chairman of the authority. In case any officer whose  
58 signature, or a facsimile of whose signature, appears on  
59 any bonds, notes or coupons ceases to be such officer  
60 before delivery of such bonds or notes, such signature  
61 or facsimile is nevertheless sufficient for all purposes  
62 the same as if he had remained in office until such de-  
63 livery and in case the seal of the authority has been  
64 changed after a facsimile has been imprinted on such  
65 bonds or notes such facsimile seal will continue to be  
66 sufficient for all purposes.

67 Any resolution authorizing any bonds or notes or any

68 issue thereof may contain provisions (subject to such agree-  
69 ments with bondholders or noteholders as may then exist,  
70 which provisions shall be a part of the contract with the  
71 holders thereof) as to pledging all or any part of the reve-  
72 nues of the authority to secure the payment of the bonds or  
73 notes or of any issue thereof; the use and disposition  
74 of revenues of the authority; a covenant to fix, alter and  
75 collect rentals and other charges so that pledged reve-  
76 nues will be sufficient to pay the costs of operation,  
77 maintenance and repairs, pay principal of and interest  
78 on bonds or notes secured by the pledge of such reve-  
79 nues and provide such reserves as may be required by  
80 the applicable resolution or trust agreement; the setting  
81 aside of reserve funds, sinking funds or replacement and  
82 improvement funds and the regulation and disposition  
83 thereof; the crediting of the proceeds of the sale of  
84 bonds or notes to and among the funds referred to or  
85 provided for in the resolution authorizing the issuance  
86 of the bonds or notes; the use, lease, sale or other dis-  
87 position of any water development project or any other  
88 assets of the authority; limitations on the purpose to  
89 which the proceeds of sale of bonds or notes may be  
90 applied and pledging such proceeds to secure the pay-  
91 ment of the bonds or notes or of any issue thereof;  
92 notes issued in anticipation of the issuance of bonds, the  
93 agreement of the authority to do all things necessary for  
94 the authorization, issuance and sale of such bonds in  
95 such amounts as may be necessary for the timely re-  
96 tirement of such notes; limitations on the issuance of  
97 additional bonds or notes; the terms upon which addi-  
98 tional bonds or notes may be issued and secured; the  
99 refunding of outstanding bonds or notes; the procedure,  
100 if any, by which the terms of any contract with bond-  
101 holders or noteholders may be amended or abrogated,  
102 the amount of bonds or notes the holders of which  
103 must consent thereto and the manner in which such  
104 consent may be given; limitations on the amount of  
105 moneys to be expended by the authority for operating,  
106 administrative or other expenses of the authority; secur-  
107 ing any bonds or notes by a trust agreement; and any  
108 other matters, of like or different character, which in

109 any way affect the security or protection of the bonds  
110 or notes.

111 In the event that the sum of all reserves pledged to  
112 the payment of such bonds or notes shall be less than  
113 the minimum reserve requirements established in any  
114 resolution or resolutions authorizing the issuance of such  
115 bonds or notes, the chairman of the authority shall  
116 certify, on or before the first day of December of each  
117 year, the amount of such deficiency to the governor of  
118 the state, for inclusion, if the governor shall so elect,  
119 of the amount of such deficiency in the budget to be  
120 submitted to the next session of the Legislature for  
121 appropriation to the authority to be pledged for pay-  
122 ment of such bonds or notes: *Provided*, That the Legis-  
123 lature shall not be required to make any appropriation  
124 so requested, and the amount of such deficiencies shall  
125 not constitute a debt or liability of the state.

126 Neither the members of the authority nor any person  
127 executing the bonds or notes shall be liable personally  
128 on the bonds or notes or be subject to any personal  
129 liability or accountability by reason of the issuance  
130 thereof.

**§20-5C-9. Trustee for bondholders; contents of trust agreement.**

1 In the discretion of the authority, any water develop-  
2 ment revenue bonds or notes or water development  
3 revenue refunding bonds issued by the authority under  
4 this 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 rev-  
9 enues of the authority to be received, but shall not  
10 convey or mortgage any water development project or  
11 any part thereof. Any such trust agreement or any reso-  
12 lution providing for the issuance of such bonds or notes  
13 may contain such provisions for protecting and enforcing  
14 the rights and remedies of the bondholders or notehol-  
15 ders as are reasonable and proper and not in violation  
16 of law, including the provisions contained in section  
17 eight of this article and covenants setting forth the

18 duties of the authority in relation to the acquisition of  
19 property, the construction, improvement, maintenance,  
20 repair, operation and insurance of the water develop-  
21 ment project the cost of which is paid in whole or in part  
22 from the proceeds of such bonds or notes, the rentals or  
23 other charges to be imposed for the use or services of any  
24 water development project, provisions with regard to  
25 the payment of the principal of and interest, charges  
26 and fees on loans made to governmental agencies from  
27 the proceeds of such bonds or notes, the custody, safe-  
28 guarding, and application of all moneys and provisions  
29 for the employment of consulting engineers in connec-  
30 tion with the construction or operation of such water  
31 development project. Any banking institution or trust  
32 company incorporated under the laws of this state which  
33 may act as depository of the proceeds of bonds or notes or  
34 of revenues shall furnish such indemnifying bonds or  
35 pledge such securities as are required by the authority.  
36 Any such trust agreement may set forth the rights and  
37 remedies of the bondholders and noteholders and of the  
38 trustee and may restrict individual rights of action by  
39 bondholders and noteholders as customarily provided in  
40 trust agreements or trust indentures securing similar  
41 bonds. Such trust agreement may contain such other  
42 provisions as the authority deems reasonable and proper  
43 for the security of the bondholders or noteholders. All  
44 expenses incurred in carrying out the provisions of any  
45 such trust agreement may be treated as a part of the  
46 cost of the operation of the water development project.  
47 Any such trust agreement or resolution authorizing the  
48 issuance of water development revenue bonds may pro-  
49 vide the method whereby the general administrative  
50 overhead expenses of the authority shall be allocated  
51 among the several projects acquired or constructed by it  
52 as a factor of the operating expenses of each such  
53 project.

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

1 The authority is hereby authorized and empowered to  
2 invest any funds not needed for immediate disbursement  
3 in any of the following securities:

4 (1) Direct obligations of or obligations guaranteed by  
5 the United States of America;

6 (2) Bonds, debentures, notes or other evidences of  
7 indebtedness issued by any of the following agencies:  
8 Banks for cooperatives; federal intermediate credit banks;  
9 federal home loan bank system; Export-Import Bank of  
10 the United States; federal land banks; the Federal Na-  
11 tional Mortgage Association or the Government National  
12 Mortgage Association;

13 (3) Public housing bonds issued by public agencies or  
14 municipalities and fully secured as to the payment of  
15 both principal and interest by a pledge of annual contri-  
16 butions under an annual contributions contract or con-  
17 tracts with the United States of America; or temporary  
18 notes issued by public agencies or municipalities or pre-  
19 liminary loan notes issued by public agencies or munici-  
20 palities, in each case, fully secured as to the payment of  
21 both principal and interest by a requisition or payment  
22 agreement with the United States of America;

23 (4) Certificates of deposit secured by obligations of  
24 the United States of America;

25 (5) Direct obligations of or obligations guaranteed by  
26 the state of West Virginia;

27 (6) Direct and general obligations of any other state  
28 within the territorial United States, to the payment of  
29 the principal of and interest on which the full faith and  
30 credit of such state is pledged: *Provided*, That at the time  
31 of their purchase, such obligations are rated in either  
32 of the two highest rating categories by a nationally  
33 recognized bond-rating agency; and

34 (7) Any fixed interest bond, note or debenture of any  
35 corporations organized and operating within the United  
36 States: *Provided, however*, That such corporation shall  
37 have a minimum net worth of fifteen million dollars and  
38 its securities or its parent corporation's securities are  
39 listed on one or more of the national stock exchanges:  
40 *Provided further*, That (i) such corporation has earned  
41 a profit in eight of the preceding ten fiscal years as re-  
42 flected in its statements, and (ii) such corporation has not  
43 defaulted in the payment of principal or interest on any

44 of its outstanding funded indebtedness during its preceding  
45 ten fiscal years, and (iii) the bonds, notes or debentures  
46 of such corporation to be purchased are rated "AA" or  
47 the equivalent thereof or better than "AA" or the equiv-  
48 alent thereof at least two or more nationally recognized  
49 rating services such as Standard and Poor's, Dun & Brad-  
50 street or Moody's.

**§20-5C-14. Rentals and other revenues from water develop-  
ment projects owned by the authority; contracts  
and leases of authority; cooperation of other  
governmental agencies; bonds of such agencies.**

1 This section shall apply to any water development proj-  
2 ect or projects which are owned in whole or in part by  
3 the authority. The authority may charge, alter and collect  
4 rentals or other charges for the use or services of any water  
5 development project, and contract in the manner pro-  
6 vided by this section with one or more persons, one or  
7 more governmental agencies, or any combination there-  
8 of, desiring the use or services thereof, and fix the terms,  
9 conditions, rentals or other charges for such use or ser-  
10 vices. Such rentals or other charges shall not be subject  
11 to supervision or regulation by any other authority, de-  
12 partment, commission, board, bureau or agency of the state,  
13 and such contract may provide for acquisition by such per-  
14 son or governmental agency of all or any part of such water  
15 development project for such consideration payable over  
16 the period of the contract or otherwise as the authority in  
17 its sole discretion determines to be appropriate, but subject  
18 to the provisions of any resolution authorizing the issuance of  
19 water development revenue bonds or notes or water devel-  
20 opment revenue refunding bonds of the authority or any  
21 trust agreement securing the same. Any governmental  
22 agency which has power to construct, operate and maintain  
23 waste water facilities may enter into a contract or lease  
24 with the authority whereby the use or services of any water  
25 development project of the authority will be made avail-  
26 able to such governmental agency and pay for such use or  
27 services such rentals or other charges as may be agreed to  
28 by such governmental agency and the authority.

29 Any governmental agency or agencies or combination  
30 thereof may cooperate with the authority in the ac-

31 quisition or construction of a water development project  
32 and shall enter into such agreements with the authority  
33 as are necessary, with a view to effective cooperative  
34 action and safeguarding of the respective interests of the  
35 parties thereto, which agreements shall provide for such  
36 contributions by the parties thereto in such proportion  
37 as may be agreed upon and such other terms as may be  
38 mutually satisfactory to the parties, including without  
39 limitation the authorization of the construction of the  
40 project by one of the parties acting as agent for all of the  
41 parties and the ownership and control of the project by  
42 the authority to the extent necessary or appropriate for  
43 purposes of the issuance of water development revenue  
44 bonds by the authority. Any governmental agency may  
45 provide such contribution as is required under such agree-  
46 ments by the appropriation of money or, if authorized by  
47 a favorable vote of the electors to issue bonds or notes or  
48 levy taxes or assessments and issue notes or bonds in  
49 anticipation of the collection thereof, by the issuance of  
50 bonds or notes or by the levying of taxes or assessments  
51 and the issuance of bonds or notes in anticipation of the  
52 collection thereof, and by the payment of such appro-  
53 priated money or the proceeds of such bonds or notes to  
54 the authority pursuant to such agreements.

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



73 the facility otherwise proposed to be acquired or con-  
74 structed by the governmental agency with the proceeds  
75 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  
2 and placed in operation, shall be maintained and kept in  
3 good condition and repair by the authority or if owned  
4 by a governmental agency, by such governmental agency,  
5 or the authority or such governmental agency shall cause  
6 the same to be maintained and kept in good condition and  
7 repair. Each such project owned by the authority shall  
8 be operated by such operating employees as the authority  
9 employs or pursuant to a contract or lease with a govern-  
10 mental agency or person. All public or private property  
11 damaged or destroyed in carrying out the provisions of  
12 this article and in the exercise of the powers granted  
13 hereunder with regard to any project shall be restored or  
14 repaired and placed in its original condition, as nearly as  
15 practicable, or adequate compensation made therefor out  
16 of funds provided in accordance with the provisions of  
17 this article.

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

**§20-5C-16a. Redemption of notes or bonds.**

1 The authority, subject to such agreements with note-  
2 holders or bondholders as may then exist, shall have  
3 power, out of any funds available therefor, to purchase  
4 notes or bonds of the authority.

5 If the notes or bonds are then redeemable, the price  
6 of such purchase shall not exceed the redemption price

7 then applicable plus accrued interest to the next interest  
8 payment date thereon. If the notes or bonds are not then  
9 redeemable, the price of such purchase shall not exceed  
10 the redemption price applicable on the first date after  
11 such purchase upon which the notes or bonds become  
12 subject to redemption plus accrued interest to such date.  
13 Upon such purchase such notes or bonds shall be  
14 canceled.

**§20-5C-16b. Refunding bonds.**

1 Any bonds issued hereunder and at any time outstand-  
2 ing may at any time and from time to time be refunded  
3 by the authority by the issuance of its refunding bonds  
4 in such amount as it may deem necessary to refund the  
5 principal of the bonds so to be refunded, together with  
6 any unpaid interest thereon; to provide additional funds  
7 for the purposes of the authority; and any premiums and  
8 commissions necessary to be paid in connection there-  
9 with. Any such refunding may be effected whether the  
10 bonds to be refunded shall have then matured or shall  
11 thereafter mature, either by sale of the refunding bonds  
12 and the application of the proceeds thereof for the re-  
13 demption of the bonds to be refunded thereby, or by  
14 exchange of the refunding bonds for the bonds to be re-  
15 funded thereby: *Provided*, That the holders of any bonds  
16 so to be refunded shall not be compelled without their  
17 consent to surrender their bonds for payment or ex-  
18 change prior to the date on which they are payable or,  
19 if they are called for redemption, prior to the date on  
20 which they are by their terms subject to redemption.  
21 Any refunding bonds issued under the authority of this  
22 article shall be payable from the revenues out of which  
23 the bonds to be refunded thereby were payable, or from  
24 other moneys or the principal of and interest on or other  
25 investment yield from, investments or proceeds of bonds  
26 or other applicable funds and moneys, including invest-  
27 ments of proceeds of any refunding bonds, and shall be  
28 subject to the provisions contained in section eight of  
29 this article and shall be secured in accordance with the  
30 provisions of sections eight and nine of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*James L. Davis*  
Chairman Senate Committee

*Clarence C. Chestnut Jr.*  
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1977.

*J. C. Dillon Jr.*  
Clerk of the Senate

*C. A. Blankenship*  
Clerk of the House of Delegates

*W. B. Robinson Jr.*  
President of the Senate

*Donald L. Kopp*  
Speaker House of Delegates

The within is approved this the 26

day of April, 1977.

*John D. Ralston*  
Governor



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OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date April 26, 1977

Time 2:40 p.m.

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