WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1977

ENROLLED

SENATE BILL NO. 611

(By Mr. Bratton, Mr. President)

PASSED April 8, 1977

In Effect July 1, 1977
ENROLLED

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.

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

1. “Authority” means the West Virginia water development authority created in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

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

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

4. “Bond” or “water development revenue bond” means a revenue bond or note issued by the West Virginia water development authority to effect the intents and purposes of this article.
(5) "Construction" includes reconstruction, enlargement, improvement and providing furnishings or equipment.

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

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

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

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

(10) "Other wastes" means garbage, refuse, decayed
wood, sawdust, shavings, bark and other wood debris
and residues, sand, lime, cinders, ashes, offal, night soil,
silt, oil, tar, dyestuffs, acids, chemicals, and all other
materials or substances not sewage or industrial wastes
which may cause or might reasonably be expected
to cause or to contribute to the pollution of any
of the waters of this state.
(11) "Owner" includes all persons, copartnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

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

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

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

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

(16) "Public utility facilities" mean public utility plants or installations and includes tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances of any public utility.

(17) "Revenue" means any money or thing of value collected by, or paid to, the West Virginia water development authority as rent, use or service fee or charge for use of, or in connection with, any water development project, or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the West Virginia water development authority to governmental agencies to finance in whole or in part the acquisition or construction of any water development project or projects, or other money or property which is received and may be expended for or pledged as revenues pursuant to this article.

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

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

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

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

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

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

The authority shall be controlled, managed and operated by the seven-member board known as the West Virginia water development board, which is hereby created. The director of the department of natural resources, and the director of the department of health and the state officer or employee who in the judgment of the governor is most responsible for economic or community development shall be members ex officio of the board. The governor shall designate annually the member who is the state officer or employee most responsible for economic or community development. The other four members of the board shall be appointed by the governor, by and with the advice and consent of the Senate, for terms of two, three, four and six years, respectively. The successor of each such appointed member shall be appointed for a term of six years in the same manner the original appointments were made, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each board member shall serve until the appointment and qualification of his successor. No more than two of the appointed board members shall at any one time belong to the same political party. Appointed board members may be reappointed to serve additional terms: Provided, That each person serving as a member of the West Virginia water development board, for a term which has not expired on the effective date of this article, shall be appointed by the governor without Senate confirmation to the West Virginia water development board, as one of the four appointed members, for the term ending the thirtieth day of June in the year in which his term would expire as a member of the West Virginia water development board.
All members of the board shall be citizens of the state.
Each appointed member of the board, before entering upon his duties, shall comply with the requirements of article one, chapter six of this code and give bond in the sum of twenty-five thousand dollars in the manner provided in article two, chapter six of this code. The governor may remove any board member for cause as provided in article six, chapter six of this code.

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

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

There shall also be a director of the authority appointed by the board.
§20-5C-5. Authority may construct, finance, maintain, etc., water development projects; loans to governmental agencies shall be subject to terms of loan agreements.

To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the West Virginia water development authority may initiate, acquire, construct, maintain, repair and operate water development projects or cause the same to be operated pursuant to a lease, sublease or agreement with any person or governmental agency; may make loans and grants to governmental agencies for the acquisition or construction of water development projects by such governmental agencies; and may issue water development revenue bonds of this state, payable solely from revenues, to pay the cost of, or finance, in whole or in part, by loans to governmental agencies, such projects. A water development project shall not be undertaken unless it has been determined by the authority to be consistent with any applicable comprehensive plan of water management approved by the director of the department of natural resources or in the process of preparation by such director and to be consistent with the standards set by the state water resources board, for the waters of the state affected thereby. Any resolution of the authority providing for acquiring or constructing such projects or for making a loan or grant for such projects shall include a finding by the authority that such determinations have been made. A loan agreement shall be entered into between the authority and each governmental agency to which a loan is made for the acquisition or construction of a water development project, which loan agreement shall include without limitation the following provisions:

(1) The cost of such project, the amount of the loan, the terms of repayment of such loan and the security therefor, which may include, in addition to the pledge of all revenues from such project after a reasonable allowance for operation and maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on such project;
(2) The specific purposes for which the proceeds of the loan shall be expended, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the governmental agency in regard to the construction or acquisition of the project;

(3) The agreement of the governmental agency to impose, collect, and, if required to repay the obligations of such governmental agency under the loan agreement, increase, service charges from persons using said project, which service charges shall be pledged for the repayment of such loan together with all interest, fees and charges thereon and all other financial obligations of such governmental agency under the loan agreement;

and

(4) The agreement of the governmental agency to comply with all applicable laws, rules and regulations issued by the authority or other state, federal and local bodies in regard to the construction, operation, maintenance and use of the project.

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

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

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

(2) Adopt an official seal.

(3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to
enforce the obligations and covenants made under sections eight, nine and fourteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha county in which the principal office of the authority shall be located.

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

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

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

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

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

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

(11) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers. When the cost under any such contract or agreement, other than compensation for personal services, involves an expenditure of more than two thousand dollars, the authority shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids, but a contract or lease for the operation of a water development project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a water development project pursuant to section fourteen of this article is not subject to the foregoing requirements and the authority may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such projects. The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, shall be required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.
Employ managers, superintendents and other employees, who shall be covered by the state civil service system, and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be payable solely from the proceeds of water development revenue bonds or notes issued by the authority, from revenues and from funds appropriated for such purpose by the Legislature.

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

Engage in research and development with respect to waste water facilities.

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

Charge, alter and collect rentals and other charges for the use or services of any water development project as provided in this article, and charge and collect reasonable interest, fees and charges in connection with the making and servicing of loans to governmental agencies in the furtherance of the purposes of this article.
(17) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds and notes issued by the authority pursuant to this article.

(18) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this 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 governmental agencies to enforce their rights.

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

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

(2) The authority may exercise, in its own name or in the name of and as agent for the governmental agency, all of the rights, authority, powers and remedies of the governmental agency with respect to the water development project or which may be conferred upon the governmental agency by statute, rule, regulation or judicial decision, including without limitation all rights and remedies with respect to users of such water development project.
(3) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by such governmental agency of all of the terms and conditions of such loan agreement including without limitation the adjustment and increase of service charges as required to repay the loan or otherwise satisfy the terms of such loan agreement, the enforcement and collection of such service charges and the enforcement by such governmental agency of all rights and remedies 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 time to time water development revenue bonds and notes of the state in such principal amounts as the authority deems necessary to pay the cost of or finance in whole or in part by loans to governmental agencies, one or more water development projects, but the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues received from such projects.

11 The authority may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of water development revenue refunding bonds by the state pursuant to the provisions of section sixteen-b of this article. Except as may otherwise be expressly provided in this article or by the authority, every issue of its bonds or notes shall be obligations of the authority payable out of the revenues and reserves created for such purposes by the authority, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge shall be valid and binding from the time the pledge is made and the revenues so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge
without any physical delivery thereof or further act and
the lien of any such pledge shall be valid and binding
as against all parties having claims of any kind in tort,
contract or otherwise against the authority irrespective
of whether such parties have notice thereof.

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

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

Any resolution authorizing any bonds or notes or any
issue thereof may contain provisions (subject to such agree-
ments with bondholders or noteholders as may then exist,
which provisions shall be a part of the contract with the
holders thereof) as to pledging all or any part of the reve-
nues of the authority to secure the payment of the bonds or
notes or of any issue thereof; the use and disposition
of revenues of the authority; a covenant to fix, alter and
collect rentals and other charges so that pledged reve-
nues will be sufficient to pay the costs of operation,
maintenance and repairs, pay principal of and interest
on bonds or notes secured by the pledge of such reve-
nues and provide such reserves as may be required by
the applicable resolution or trust agreement; the setting
aside of reserve funds, sinking funds or replacement and
improvement funds and the regulation and disposition
thereof; the crediting of the proceeds of the sale of
bonds or notes to and among the funds referred to or
provided for in the resolution authorizing the issuance
of the bonds or notes; the use, lease, sale or other dis-
position of any water development project or any other
assets of the authority; limitations on the purpose to
which the proceeds of sale of bonds or notes may be
applied and pledging such proceeds to secure the pay-
ment of the bonds or notes or of any issue thereof;
notes issued in anticipation of the issuance of bonds, the
agreement of the authority to do all things necessary for
the authorization, issuance and sale of such bonds in
such amounts as may be necessary for the timely re-
tirement of such notes; limitations on the issuance of
additional bonds or notes; the terms upon which addi-
tional bonds or notes may be issued and secured; the
refunding of outstanding bonds or notes; the procedure,
if any, by which the terms of any contract with bond-
holders or noteholders may be amended or abrogated,
the amount of bonds or notes the holders of which
must consent thereto and the manner in which such
consent may be given; limitations on the amount of
moneys to be expended by the authority for operating,
administrative or other expenses of the authority; secur-
ing any bonds or notes by a trust agreement; and any
other matters, of like or different character, which in
any way affect the security or protection of the bonds or notes.

In the event that the sum of all reserves pledged to the payment of such bonds or notes shall be less than the minimum reserve requirements established in any resolution or resolutions authorizing the issuance of such bonds or notes, the chairman of the authority shall certify, on or before the first day of December of each year, the amount of such deficiency to the governor of the state, for inclusion, if the governor shall so elect, of the amount of such deficiency in the budget to be submitted to the next session of the Legislature for appropriation to the authority to be pledged for payment of such bonds or notes: Provided, That the Legislature shall not be required to make any appropriation so requested, and the amount of such deficiencies shall not constitute a debt or liability of the state.

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

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

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

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

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

1 The authority is hereby authorized and empowered to invest any funds not needed for immediate disbursement in any of the following securities:
(1) Direct obligations of or obligations guaranteed by the United States of America;

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

(3) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes issued by public agencies or municipalities or preliminary loan notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

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

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

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

(7) Any fixed interest bond, note or debenture of any corporations organized and operating within the United States: Provided, however, That such corporation shall have a minimum net worth of fifteen million dollars and its securities or its parent corporation’s securities are listed on one or more of the national stock exchanges: Provided further, That (i) such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements, and (ii) such corporation has not defaulted in the payment of principal or interest on any
of its outstanding funded indebtedness during its preceding
four fiscal years, and (iii) the bonds, notes or debentures
of such corporation to be purchased are rated “AA” or
the equivalent thereof or better than “AA” or the equiv-
alent thereof at least two or more nationally recognized
rating services such as Standard and Poor’s, Dun & Brad-
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.

This section shall apply to any water development proj­
et or projects which are owned in whole or in part by
the authority. The authority may charge, alter and collect
rentals or other charges for the use or services of any water
development project, and contract in the manner pro­
vided by this section with one or more persons, one or
more governmental agencies, or any combination there­
of, desiring the use or services thereof, and fix the terms,
conditions, rentals or other charges for such use or ser­
vices. Such rentals or other charges shall not be subject
to supervision or regulation by any other authority, de­
partment, commission, board, bureau or agency of the state,
and such contract may provide for acquisition by such per­
son or governmental agency of all or any part of such water
development project for such consideration payable over
the period of the contract or otherwise as the authority in
its sole discretion determines to be appropriate, but subject
to the provisions of any resolution authorizing the issuance of
water development revenue bonds or notes or water devel­
opment revenue refunding bonds of the authority or any
trust agreement securing the same. Any governmental
agency which has power to construct, operate and maintain
waste water facilities may enter into a contract or lease
with the authority whereby the use or services of any water
development project of the authority will be made avail­
able to such governmental agency and pay for such use or
services such rentals or other charges as may be agreed to
by such governmental agency and the authority.

Any governmental agency or agencies or combination
thereof may cooperate with the authority in the 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
§20-5C-15. Maintenance, operation and repair of projects; reports by authority to governor and Legislature.

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

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

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

The authority, subject to such agreements with note-holders or bondholders as may then exist, shall have power, out of any funds available therefor, to purchase notes or bonds of the authority. If the notes or bonds are then redeemable, the price of such purchase shall not exceed the redemption price.
then applicable plus accrued interest to the next interest payment date thereon. If the notes or bonds are not then redeemable, the price of such purchase shall not exceed the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date. Upon such purchase such notes or bonds shall be canceled.

§20-5C-16b. Refunding bonds.

Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as it may deem necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon; to provide additional funds for the purposes of the authority; and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of this article shall be payable from the revenues out of which the bonds to be refunded thereby were payable, or from other moneys or the principal of and interest on or other investment yield from, investments or proceeds of bonds or other applicable funds and moneys, including investments of proceeds of any refunding bonds, and shall be subject to the provisions contained in section eight of this article and shall be secured in accordance with the 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 Davis
Chairman Senate Committee

Clarence E. Cummins
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1977.

J. Dillon
Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Donald L. Zupp
Speaker House of Delegates

The within is approved this the 26 day of April, 1977.

Governor