

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3122

BY DELEGATES RILEY AND ROWE

[Introduced March 12, 2021; Referred to the
Committee on Technology and Infrastructure then
Government Organization]

1 A BILL to amend and reenact §16-13D-1, §16-13D-2, §16-13D-3, §16-13D-4, §16-13D-5, §16-
 2 13D-6, §16-13D-8, §16-13D-9, §16-13D-10, §16-13D-11, §16-13D-12, §16-13D-13, §16-
 3 13D-14, §16-13D-15, §16-13D-17, and §16-13D-21, of the Code of West Virginia, 1931,
 4 as amended; and to amend said code by adding thereto a new section, designated §16-
 5 13D-22, all relating to the establishment and operation of regional water, wastewater, and
 6 stormwater authorities.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 13D. REGIONAL WATER AND WASTEWATER AND STORMWATER
 AUTHORITY ACT.**

§16-13D-1. Statement of purpose.

1 It is the purpose of this article, to permit ~~certain public agencies~~ a public agency, or more
 2 than one public agency to make the most efficient use of its or their powers relating to public water
 3 supplies, ~~and~~ the transportation and treatment of wastewater, and the management of stormwater
 4 by enabling ~~them~~ a public agency, or more than one public agency to cooperate with other public
 5 agencies on a basis of mutual advantage and thereby to provide services and facilities to
 6 participating public agencies and to provide for the establishment for ~~such~~ the purpose of a quasi-
 7 governmental public corporation which shall be known as a regional water authority, ~~or where~~
 8 ~~appropriate,~~ a regional wastewater authority, ~~or regional water and wastewater authority~~ a
 9 regional stormwater authority, or any combination thereof. The function of the regional water
 10 authority shall be to secure a source of water on a scale larger than is feasible for an individual
 11 public agency or agencies acting alone, and to sell ~~such~~ water to public service districts,
 12 municipalities, publicly and privately owned water utilities, and others. The function of the regional
 13 wastewater authority shall be to enable a public agency or agencies ~~to join together~~ to provide
 14 the most economical method of transportation and treatment of wastewater and to provide ~~such~~
 15 transportation and treatment services to public service districts, municipalities, publicly and

16 privately owned wastewater utilities, and others. The function of the regional stormwater authority
 17 shall be to enable a public agency or agencies to provide storm, flood and surface water drainage
 18 management services to public service districts, municipalities, publicly and privately owned
 19 stormwater utilities, and others. ~~The function of the regional water and wastewater authority a~~
 20 regional authority that provides any combination of water, wastewater, or stormwater service shall
 21 be to enable a public agency or agencies to join together to carry out the joint functions of ~~both a~~
 22 water, wastewater, or stormwater regional water authority. ~~and a regional wastewater authority~~

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

§16-13D-2. Definitions.

1 For the purposes of this article:

2 (a) The term “authority” ~~shall mean~~ means any regional water authority, regional
 3 wastewater authority, regional stormwater authority, or ~~regional water and wastewater authority~~
 4 any combination thereof organized pursuant to the provisions of this article; ~~and~~

5 (b) The term “public agency” ~~shall mean~~ means any municipality, county, public service
 6 district, or other political subdivision of this state; and

7 (c) The term “stormwater,” “stormwater system” or “stormwater works” means a
 8 stormwater system in its entirety or any integral part thereof used to collect and dispose of
 9 stormwater and an associated stormwater management program. It includes all facilities,
 10 structures and natural water courses used for collecting and conducting stormwater to, through
 11 and from drainage areas to the points of final outlet, including, but not limited to, any and all of
 12 the following: inlets, conduits, outlets, channels, ponds, drainage easements, water quality
 13 facilities, catch basins, ditches, streams, gulches, flumes, culverts, syphons, retention or detention

14 basins, dams, floodwalls, levies, pipes, flood control systems and pumping stations, and
15 associated stormwater management program. The term “stormwater system” and “stormwater
16 works” may not include highways, road and drainage easements, and/or stormwater facilities
17 constructed, owned and/or operated by the West Virginia Division of Highways.

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

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

7 (b) Any public agency may individually organize a regional water authority, regional
8 wastewater authority, regional stormwater authority, or any combination thereof. Any public
9 agency may enter into agreements with one or more other public agencies for the purpose of
10 organizing a regional water authority, regional wastewater authority, regional stormwater
11 authority, or regional water and wastewater authority any combination thereof. Appropriate action
12 by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating
13 public agency or agencies shall be necessary before any ~~such~~ agreement may enter into force.

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

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

18 (2) Its purpose or purposes;

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

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

23 (5) Any other necessary and proper matters.

24 ~~(e)~~ (d) Any such agreement between two or more public agencies to organize an authority

25 shall specify the following:

26 (1) Its duration;

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

29 (3) Its purpose or purposes;

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

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

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

36 (7) Any other necessary and proper matters.

37 ~~(d)~~ (e) Any such agreement between two or more public agencies to organize an authority

38 may be amended to include additional public agencies by consent of two thirds of the signatories
39 to the agreement, if no terms of agreement are changed, otherwise a new agreement with the
40 new public agency shall be drawn. Where fewer than three public agencies come together to form
41 an authority, both parties ~~must~~ shall consent to the amendment of the agreement to include
42 additional public agencies.

43 ~~(e)~~ (f) Prior to taking effect Any agency acting individually to organize an authority and

44 every agreement made hereunder shall be submitted to the Public Service Commission for its

45 approval. Failure by the Public Service Commission to disapprove an agency's decision to
 46 individually organize an authority or an agreement submitted hereunder within 90 days of its
 47 submission shall constitute approval thereof.

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

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

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

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

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

5 Any public agency, whether or not a party to an agreement pursuant to this article, and

6 any publicly or privately owned water distribution company may enter into contracts with any
7 regional ~~water authority or regional water and wastewater~~ authority created pursuant to this article
8 for the purchase of water from ~~such the~~ authority or the sale of water to the authority, the treatment
9 of water by either party and the distribution or transmission of water by either party and any such
10 authority may enter into ~~such the~~ contracts, subject to the prior approval of the Public Service
11 Commission pursuant to ~~the provisions of~~ §24-2-12 of this code: Provided, That if the Public
12 Service Commission has not acted on any proposed contract within 90 days of its filing, the
13 approval shall be considered to have been granted. Any public agency, whether or not a party to
14 an agreement pursuant to this act, and any publicly or privately owned wastewater transportation
15 or treatment system may enter into contracts with any regional ~~wastewater authority or regional~~
16 ~~water and wastewater~~ authority created pursuant to this article for the transportation and
17 treatment of wastewater by either party and any ~~such~~ authority may enter into ~~such the~~ contracts,
18 subject to the prior approval of the Public Service Commission pursuant to ~~the provisions of~~ §24-
19 2-12 of this code: *Provided, That if the Public Service Commission has not acted on any ~~such~~*
20 *proposed contract within 90 days of its filing, ~~such the~~ approval shall be ~~deemed~~ considered*
21 *have been granted. Any public agency, whether or not a party to an agreement pursuant to this*
22 *article, and any publicly or privately owned stormwater system may enter into contracts with any*
23 *regional authority created pursuant to this article for the collection and disposition of stormwater*
24 *by either party and any authority may enter into contracts, subject to the prior approval of the*
25 *Public Service Commission pursuant to §24-2-12 of this code: Provided, That if the Public Service*
26 *Commission has not acted on any proposed contract within 90 days of its filing, the approval shall*
27 *be considered to have been granted.* Any ~~such~~ contract may include an agreement for the
28 purchase of water not actually received or the treatment of wastewater not actually treated, or the
29 collection and disposition of stormwater not actually collected and disposed. No ~~such~~ contract
30 shall may be made for a period in excess of 40 years, but renewal options may be included
31 therein. The obligations of any public agency under any ~~such~~ contract shall be payable solely

32 from the revenues produced from ~~such~~ the public agency's water, ~~or stormwater and~~ wastewater
 33 system, and the Public Service Commission, in the case of a public agency whose rates are
 34 subject to its jurisdiction, shall permit the public agency to recover through its rates revenues
 35 sufficient to meet its obligations under ~~such~~ the agreement.

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

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

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

1 The governing body of the authority shall consist of not less than ~~three~~ five persons
 2 selected by the ~~participating public agencies~~ governing body of the public agency. ~~Each~~ When
 3 the authority is organized by more than one public agency, each participating public agency shall
 4 appoint at least one ~~and not more than two members~~ member. The governing body of the authority
 5 shall consist of at least one professional engineer licensed by the State of West Virginia, and one
 6 certified public accountant licensed by the State of West Virginia. Each member of the board
 7 must be a rate-paying residential customer of the authority. For purposes of this section, "rate-
 8 paying residential customer" means a person who: (1) In the case of water or sewer service, is
 9 physically connected to and actively receiving residential utility services from the authority; or (2)
 10 In the case of stormwater service, has stormwater conveyed away from the residential property
 11 by facilities owned by the authority. Each member's full term shall be not less than one year nor
 12 more than four years and initial terms shall be staggered in accordance with procedures set forth
 13 in the organization document or agreement provided for in §16-13D-3 of this code, and

14 amendments thereto. In the case of an authority which is made up by the agreement of two public
 15 agencies, each public agency shall appoint at least two representatives to the governing body.

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

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

§16-13D-8. Powers of governing body.

1 For the purpose of ~~providing a water supply, transportation facilities, or treatment system~~
 2 ~~to the participating public agencies, and others, the governing body of the authority shall have the~~
 3 ~~following~~ operating as an authority as provided in this article, powers, authorities, and privileges
 4 of the authority shall include, but are not limited to, the following:

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

10 (2) To sue and be sued;

11 (3) To enter into franchises, contracts and agreements with this or any other state or the
 12 United States or any municipality, political subdivision or authority thereof, or any of their agencies
 13 or instrumentalities, or any public or private person, partnership, association, or corporation of this

14 state or of any other state or the United States, and this state and any ~~such~~ municipality, political
15 subdivision, authority, or any of their agencies or instrumentalities, and any ~~such~~ public or private
16 person, partnership, association, or corporation ~~is hereby authorized to~~ may enter into contracts
17 and agreements with ~~such~~ the authority for any term not exceeding 40 years for the planning,
18 development, construction, acquisition, maintenance, or operation of any facility or for any service
19 rendered to, for, or by ~~said~~ the authority;

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

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

25 (6) To acquire by purchase or lease, construct, install, and operate reservoirs, pipelines,
26 wells, check dams, pumping stations, water purification plants, and other facilities for the
27 production, distribution and utilization of water, ~~and~~ transportation facilities, pump stations, lift
28 stations, treatment facilities and other facilities for the transportation and treatment of wastewater,
29 and inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities, catch
30 basins, ditches, streams, gulches, flumes, culverts, syphons, retention or detention basins, dams,
31 floodwalls, levies, pipes, flood control systems, pumping stations, and treatment facilities and to
32 own and hold ~~such~~ the real and personal property as may be necessary to carry out the purposes
33 of its organization ~~subject to the advance approval of the Public Service Commission for any~~
34 ~~proposed acquisition, construction, installation or operation: *Provided, That* advance consent and~~
35 approval of the Public Service Commission is not required; ~~shall act on all proposals submitted~~
36 ~~under this paragraph within one hundred twenty days of filing with the commission: *Provided,*~~
37 ~~however, That if the Public Service Commission has not acted within such period of time, approval~~
38 ~~of such proposal shall be deemed granted~~

39 (7) To have the general management, control, and supervision of all the business, affairs,

40 property, and facilities of the authority, and of the construction, installation, operation, and
41 maintenance of authority improvements, and to establish regulations relating thereto;

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

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

57 (10) To have and exercise all rights and powers necessary or incidental to or implied from
58 the specific powers granted herein. ~~Such~~ The specific powers ~~shall~~ may not be considered as a
59 limitation upon any power necessary or appropriate to carry out the purposes of this article.

§16-13D-9. Revenue bonds.

1 For constructing or acquiring any water supply, wastewater transportation, or treatment
2 system, or stormwater system for the authorized purposes of the authority, or necessary or
3 incidental thereto, and for constructing improvements and extensions thereto, and also for
4 reimbursing or paying the costs and expenses of creating the authority, the governing body of any
5 ~~such~~ authority ~~is hereby authorized to~~ may borrow money from time to time and in evidence

6 thereof issue the revenue bonds of ~~such the~~ authority. ~~Such The~~ revenue bonds are hereby made
7 a lien on the revenues produced from the operation of the authority's system, but ~~shall~~ may not
8 be general obligations of the public agency individually organizing the authority or public agencies
9 participating in the agreement. All revenue bonds issued under this article shall be signed by the
10 president of the governing body of the authority and attested by the secretary of the governing
11 body of the authority and shall contain recitals stating the authority under which ~~such the~~ bonds
12 are issued and that they are to be paid by the authority from the net revenue derived from the
13 operation of the authority's system and not from any other fund or source and that ~~said the~~ bonds
14 are negotiable and payable solely from the revenues derived from the operation of the system
15 under control of the authority: *Provided*, That in the case of a regional ~~water and wastewater~~
16 authority providing combined service, the statutory lien created hereby shall only be a lien on the
17 revenues of that service funded by the proceeds of the sale of the bonds, it being understood that
18 ~~such the~~ combined authority shall maintain separate books and records for its ~~water and~~
19 ~~wastewater~~ operations. ~~Such The~~ bonds may be issued in one or more series, may bear ~~such the~~
20 date or dates, may mature at ~~such the~~ time or times not exceeding 40 years from their respective
21 dates, may bear interest at a rate not exceeding two percent above the interest rate on treasury
22 notes, bills or bonds of the same term as the term of the bond or bonds the week of closing on
23 the bond or bonds as reported by the Treasury of the United States, may be payable at ~~such the~~
24 times, may be in ~~such the~~ form, may carry ~~such the~~ registration privileges, may be executed in
25 ~~such the~~ manner, may be payable at ~~such the~~ place or places, may be subject to ~~such the~~ terms
26 of redemption with or without premium, may be declared or become due before maturity date
27 thereof, may be authenticated in any manner, and upon compliance with ~~such the~~ conditions, and
28 may contain ~~such the~~ terms and covenants as may be provided by resolution or resolutions of the
29 governing body of ~~such the~~ authority. Notwithstanding the form or tenor thereof, and in the
30 absence of any express recital on the face thereof, that the bond is nonnegotiable, all ~~such the~~
31 bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing

32 the signatures of officers in office on the date of the signing thereof shall be valid and binding for
 33 all purposes notwithstanding that before the delivery thereof any or all of the persons whose
 34 signatures appear thereon shall have ceased to be ~~such~~ officers. Notwithstanding the
 35 requirements or provisions of any other law, any such bonds may be negotiated or sold in ~~such~~
 36 the manner and at ~~such~~ the time or times as is found by the governing body to be most
 37 advantageous, and all such bonds may be sold at ~~such~~ the price that the interest cost of the
 38 proceeds therefrom does not exceed three percent above the interest rate on treasury notes, bills
 39 or bonds of the same term as the term of the bond or bonds the week of closing on the bond or
 40 bonds as reported by the Treasury of the United States, based on the average maturity of ~~such~~
 41 the bonds and computed according to standard tables of bond values. Any resolution or
 42 resolutions providing for the issuance of ~~such~~ the bonds may contain ~~such~~ covenants and
 43 restrictions upon the issuance of additional bonds thereafter as may be ~~deemed~~ considered
 44 necessary or advisable for the assurance of the payment of the bonds thereby authorized.

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

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

13 connection with any thereof.

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

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

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

1 At or before the time of the issuance of any bonds under this article the governing body of
2 the authority shall by resolution or in the trust indenture provide for the creation of a sinking fund

3 and for monthly payments into ~~such~~ the fund from the revenues of the water supply, wastewater
 4 transportation or treatment system, or stormwater system operated by the authority such sums in
 5 excess of the cost of maintenance and operation of ~~such~~ the properties as will be sufficient to pay
 6 the accruing interest and retire the bonds at or before the time each will respectively become due
 7 and to establish and maintain reserves therefor. All sums which are or should be, in accordance
 8 with ~~such~~ the provisions, paid into ~~such~~ the sinking fund shall be used solely for payment of
 9 interest and for the retirement of ~~such~~ bonds at or prior to maturity as may be provided or required
 10 by such resolutions.

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

1 The governing body of any such authority ~~shall have power to~~ may insert enforceable
 2 provisions in any resolution authorizing the issuance of bonds relating to the collection, custody,
 3 and application of revenues of the authority from the operation of the water supply, wastewater
 4 transportation or treatment system, or stormwater system under its control and to the enforcement
 5 of the covenants and undertakings of the authority. ~~In the event there shall be~~ If there is a default
 6 in the sinking fund provisions ~~aforsaid~~ or in the payment of the principal or interest on any of
 7 ~~such~~ the bonds or, ~~in the event~~ if the authority or its governing body or any of its officers, agents
 8 or employees, shall fail or refuse to comply with ~~the provisions of~~ this article, or shall default in
 9 any covenant or agreement made with respect to the issuance of ~~such~~ the bonds or offered as
 10 security therefor, then any holder or holders of ~~such~~ the bonds and any such trustee under the
 11 trust indenture, if there ~~be~~ is one, ~~shall have the right~~ may by suit, action, mandamus or other
 12 proceeding instituted in the circuit court for the county or any of the counties wherein the authority
 13 extends, or in any other court of competent jurisdiction, ~~to~~ enforce and compel performance of all
 14 duties required by this article or undertaken by the authority in connection with the issuance of
 15 ~~such~~ the bonds, and upon application of any such holder or holders, or ~~such~~ the trustee, ~~such~~ the

16 court shall, upon proof of ~~such~~ the defaults, appoint a receiver for the affairs of the authority and
 17 its properties, which receiver so appointed shall forthwith directly, or by his or her agents and
 18 attorneys, enter into and upon and take possession of the affairs of the authority and each and
 19 every part thereof, and hold, use, operate, manage and control the ~~same~~ authority, and in the
 20 name of the authority exercise all of the rights and powers of ~~such~~ the authority as ~~shall be~~ is
 21 ~~deemed~~ considered expedient, and ~~such~~ the receiver ~~shall have power and authority to~~ may
 22 collect and receive all revenues and apply ~~same~~ them in ~~such~~ the manner as the court shall direct.
 23 Whenever the default causing the appointment of ~~such~~ the receiver ~~shall have~~ has been cleared
 24 and fully discharged and all other defaults ~~shall have~~ been cured, the court may ~~in its discretion~~
 25 and after ~~such~~ the notice and hearing as it ~~deems~~ considers reasonable and proper direct the
 26 receiver to surrender possession of the affairs of the authority to its governing body. ~~Such~~ The
 27 receiver so appointed ~~shall have no power to~~ may not sell, assign, mortgage, or otherwise dispose
 28 of any assets of the authority except as hereinbefore provided.

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

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

§16-13D-15. Rates and charges.

1 The governing body shall by appropriate resolution make provisions for the payment of
 2 said bonds by fixing rates, fees and charges, for the use of all services rendered by ~~such~~ the
 3 authority, which rates, fees and charges shall be sufficient to pay the costs of operation,
 4 improvement and maintenance of the authority's water supply, ~~or~~ wastewater transportation
 5 and/or treatment system, or stormwater system, to provide an adequate depreciation fund,
 6 provide an adequate sinking fund to retire ~~said~~ the bonds and pay interest thereon when due, and

7 to create reasonable reserves for ~~such~~ those purposes. ~~Said~~ The fees, rates or charges shall be
 8 sufficient to allow for miscellaneous and emergency or unforeseen expenses. The authority shall
 9 maintain a working capital reserve in an amount of no less than one-eighth of all expenses
 10 incurred by the authority on an annual basis: *Provided*, That this working capital reserve shall be
 11 separate and distinct from and in addition to (i) any repair and replacement fund that may be
 12 required by bond covenants, and (ii) any other funds held by the authority. The resolution of the
 13 governing body authorizing the issuance of revenue bonds may include agreements, covenants
 14 or restrictions ~~deemed~~ considered necessary or advisable by the governing body to effect the
 15 efficient operation of the system and to safeguard the interests of the holders of the revenue
 16 bonds and to secure the payment of the bonds and the interest thereon. The rates, fees and
 17 charges established by the authority shall be subject to review and approval by the Public Service
 18 Commission: *Provided*, That the Public Service Commission shall act on all proposals submitted
 19 under this section within 120 days of filing with the commission: *Provided, however*, That if the
 20 Public Service Commission has not acted within that period of time, approval of the proposed
 21 rates shall be considered granted. Notwithstanding the provisions of any other law or charter to
 22 the contrary, any regional stormwater authority may provide storm, flood and surface water
 23 drainage management services to areas located outside its jurisdiction from which stormwater
 24 affects or drains into the area served by the regional stormwater authority, and any regional
 25 stormwater authority may assess fees for providing storm, flood and surface water draining
 26 management services to be paid by the owner of each and every lot, parcel of real estate or
 27 building that in any way uses or is served by the stormwater system.

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

1 ~~Said~~ The bonds and the interest thereon, together with all properties and facilities of the
 2 authority owned or used in connection with the water, ~~or~~ wastewater system, or stormwater
 3 system, and all the moneys, revenues and other income of ~~such~~ the authority derived from ~~such~~
 4 the water, or wastewater system, or stormwater system shall be exempt from all taxation by the

5 state of West Virginia or any county, municipality, political subdivision, or agency thereof.

§16-13D-21. Citation of article.

1 This article may be known and cited as the “Regional Water and Wastewater, and
2 Stormwater Authority Act”.

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

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

NOTE: The purpose of this bill is to establish the operation of regional water, wastewater, and stormwater authorities.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.