

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2955

By Delegates Riley and Keaton

[Introduced January 24, 2023; 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, as
4 amended; and to amend said code by adding thereto a new section, designated §16-13D-
5 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 regional
9 stormwater authority, or any combination thereof. The function of the regional water authority shall
10 be to secure a source of water on a scale larger than is feasible for an individual public agency or
11 agencies acting alone, and to sell ~~such~~ water to public service districts, municipalities, publicly and
12 privately owned water utilities, and others. The function of the regional wastewater authority shall
13 be to enable a public agency or agencies ~~to join together~~ to provide the most economical method
14 of transportation and treatment of wastewater and to provide ~~such~~ transportation and treatment
15 services to public service districts, municipalities, publicly and privately owned wastewater utilities,

16 and others. The function of the regional stormwater authority shall be to enable a public agency or
17 agencies to provide storm, flood and surface water drainage management services to public
18 service districts, municipalities, publicly and privately owned stormwater utilities, and others. The
19 function of the regional water and wastewater authority a regional authority that provides any
20 combination of water, wastewater, or stormwater service shall be to enable a public agency or
21 agencies to join together to carry out the joint functions of both a water, wastewater, or stormwater
22 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: A 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 the
12 following: inlets, conduits, outlets, channels, ponds, drainage easements, water quality facilities,
13 catch basins, ditches, streams, gulches, flumes, culverts, syphons, retention or detention basins,

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

**§16-13D-3. Joint 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 authority,
11 or regional water and wastewater authority any combination thereof. Appropriate action by
12 ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating
13 public agency or agencies required by the provisions of Chapter 8 and Chapter 16 of this code
14 shall be necessary before any such agreement may enter into force.

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

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

19 (2) Its purpose or purposes;

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

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

24 (5) Any other necessary and proper matters.

25 ~~(e)~~ (d) Any such agreement between two or more public agencies to organize an authority
26 shall specify the following:

27 (1) Its duration;

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

30 (3) Its purpose or purposes;

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

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

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

37 (7) Any other necessary and proper matters.

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

44 ~~(e)~~ (f) Prior to taking effect Any agency acting individually to organize an authority and
45 every agreement made hereunder shall be submitted to the Public Service Commission for its

46 approval. The Public Service Commission shall, within 30 days of the filing date, notify the agency
47 whether the agency has filed all required documentation regarding the organization or agreement
48 that is required by the Commission. If the Commission determines that additional information is
49 needed it will inform the agency of the information needed. Failure by the Public Service
50 Commission to approve or disapprove an agency's decision to individually organize an authority or
51 an agreement submitted hereunder within 90 days of its submission the date that the Commission
52 has before it all of the necessary information from the agency shall constitute approval thereof:
53 Provided, That the 90-day Commission review period may be extended upon request of the
54 agency.

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

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

65 (h) (i) A public agency which enters into an agreement made hereunder ~~shall~~ may not
66 withdraw from the agreement until such time as the outstanding bonded indebtedness of the
67 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 Subject to the prior approval of the Public Service Commission pursuant to §24-2-12 of this
6 code. A any public agency, whether or not a party to an agreement pursuant to this article, and any
7 publicly or privately owned water distribution company may enter into contracts with any regional
8 ~~water authority or regional water and wastewater~~ authority created pursuant to this article for the
9 purchase of water from ~~such~~ the authority or the sale of water to the authority, the treatment of
10 water by either party, and the distribution or transmission of water by either party and any such
11 authority may enter into ~~such~~ the contracts. ~~subject to the prior approval of the Public Service~~
12 ~~Commission pursuant to the provisions of §24-2-12 of this code~~ The Public Service Commission
13 shall, within 30 days of the filing date, notify the parties to the contract whether they have filed all
14 required documentation regarding the contract. If the Commission determines that additional
15 information is needed it will inform the agency of the information needed. The Public Service
16 Commission shall act on a filing submitted hereunder within 90 days of the date that the
17 Commission has before it all necessary information from the parties to the contract. Failure of the
18 Commission to act on the filing within the 90-day period shall constitute approval thereof;
19 Provided, That the 90-day Commission review period may be extended upon request of the
20 parties to the contract.

21 Any public agency, whether or not a party to an agreement pursuant to this act, and any
22 publicly or privately owned wastewater transportation or treatment system may enter into
23 contracts with any regional ~~wastewater authority or regional water and wastewater~~ authority
24 created pursuant to this article for the transportation and treatment of wastewater by either party
25 and any ~~such~~ authority may enter into ~~such~~ the contracts, subject to the prior approval of the Public
26 Service Commission pursuant to ~~the provisions of §24-2-12 of this code.~~ Provided, That if the

27 ~~Public Service Commission has not acted on any such proposed contract within 90 days of its~~
28 ~~filing, such approval shall be deemed to have been granted. The Public Service Commission shall,~~
29 ~~within 30 days of the filing date, notify the parties to the agreement whether they have filed all~~
30 ~~required documentation regarding the contract. If the Commission determines that additional~~
31 ~~information is needed it will inform the agency of the information needed. The Public Service~~
32 ~~Commission shall act on a filing submitted hereunder within 90 days of the date that the~~
33 ~~Commission has before it all necessary information from the parties to the contract. Failure by the~~
34 ~~Commission to act within the 90-day period shall constitute approval thereof: *Provided*, That the~~
35 ~~90-day Commission review period may be extended on upon request of the parties to the contract.~~

36 Any public agency, whether or not a party to an agreement pursuant to this article, and any
37 publicly or privately owned stormwater system may enter into contracts with any regional authority
38 created pursuant to this article for the collection and disposition of stormwater by either party and
39 any authority may enter into contracts.

40 Any ~~such~~ contract may include an agreement for the purchase of water not actually
41 received or the treatment of wastewater not actually treated, or the collection and disposition of
42 stormwater not actually collected and disposed. No ~~such~~ contract shall may be made for a period
43 in excess of 40 years, but renewal options may be included therein. The obligations of any public
44 agency under any ~~such~~ contract shall be payable solely from the revenues produced from ~~such~~ the
45 public agency's water, ~~or~~ stormwater and wastewater system, and the Public Service
46 Commission, in the case of a public agency whose rates are subject to its jurisdiction, shall permit
47 the public agency to recover through its rates revenues sufficient to meet its obligations under
48 ~~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 persons selected by
2 ~~the participating public agencies governing body of the public agency.~~ Each When the authority is
3 organized by more than one public agency, each participating public agency shall appoint at least
4 one and not more than two members member.

5 The governing body of the authority shall consist of at least one member of the following
6 categories: (1) A professional engineer licensed by the State of West Virginia, (2) a certified public
7 accountant licensed by the State of West Virginia, or (3) an attorney licensed and in good standing
8 with the West Virginia State Bar. Each member of the board must be a rate-paying residential
9 customer of the authority.

10 For purposes of this section, "rate-paying residential customer" means a person who: (1) In
11 the case of water or wastewater service, is physically connected to and actively receiving
12 residential utility services from the authority; or (2) in the case of stormwater service, has
13 stormwater conveyed away from the residential property by facilities owned by the authority. Each
14 member's full term shall be not less than one year nor more than four years and initial terms shall
15 be staggered in accordance with procedures set forth in the organization document or agreement
16 provided for in §16-13D-3 of this code, and amendments thereto. In the case of an authority which
17 is made up by the agreement of two public agencies, each public agency shall appoint at least two
18 representatives to the governing body.

19 When the authority is organized by more than one public agency ~~The~~ the manner of
20 selection of ~~such~~ the governing body and terms of office shall be set forth in the agreement

21 provided for in §16-13D-3 of this code, and amendments thereto. The governing body of the
22 authority shall elect one of its members as president, one as treasurer and one as secretary.

23 Each member shall have one vote in any matter that comes before the authority for
24 decision. However, when the authority is organized by more than one public agency, the member
25 agencies shall, in the original agreement establishing the authority, set forth any special weighing
26 of ~~such~~ the votes based upon population served, volumes of water purchased, volumes of
27 wastewater treated, volumes of stormwater collected and disposed numbers of customers, or
28 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 to~~
2 ~~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 of
4 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 from
6 this state or any other state or any political subdivision or municipality thereof, or from the United
7 States, any funds or property or any interest therein for the uses and purposes of the authority and
8 to hold title thereto in trust or otherwise and to bind the authority to apply the same according to the
9 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 pursuant to
34 Chapter 24 of this code for any proposed acquisition, construction, installation or operation. The
35 Public Service Commission shall, within 30 days of a request for approval submitted hereunder,
36 notify the authority whether its filing is complete. If the Commission determines that additional
37 information is needed it will inform the agency of the information needed. Notwithstanding the
38 timeframes for Commission approval of public utility projects set forth in Chapter 24, the
39 Commission shall act on authority proposals within the following timeframes.: ~~Provided,~~ That the
40 The Public Service Commission shall act on all proposals submitted hereunder under this
41 paragraph by an authority that provides only water service or only wastewater service, or by an
42 authority that does not seek a rate increase within 120 days of filing with the commission the date
43 that the authority files with the Commission a complete application.: ~~Provided, however,~~ That if

44 Failure of the Public Service Commission has not to act acted within such the 120-day period of
45 time, shall be deemed an approval of such proposal shall be deemed granted: *Provided, That the*
46 Commission's 120-day review period may be extended upon request of the authority.

47 The Public Service Commission shall act on all proposals submitted hereunder for which
48 the authority seeks a rate increase and the authority provides water and wastewater services,
49 water and stormwater services, wastewater and stormwater services, or water and wastewater
50 and stormwater services, within 180 days of the date the authority files with the Commission the
51 necessary information showing the basis of any project related rates, fees, and charges or other
52 information as the Commission considers necessary: *Provided, That the information shall include*
53 an explanation of the amount and basis for assigning and allocating total costs between the water
54 operations, the wastewater operations, and if applicable the stormwater operations. Failure by the
55 Commission to act within the 180-day period shall constitute approval thereof. *Provided, however,*
56 That the 180-day Commission review period may be extended upon request of the authority.

57 (7) To have the general management, control, and supervision of all the business, affairs,
58 property, and facilities of the authority, and of the construction, installation, operation, and
59 maintenance of authority improvements, and to establish regulations relating thereto;

60 (8) To hire and retain agents, employees, engineers, and attorneys and to determine their
61 compensation. The governing body shall select and appoint a general manager of the authority
62 who shall serve at the pleasure of said governing body. The general manager shall have training
63 and experience in the supervision and administration of the system or systems operated by the
64 authority and shall manage and control the system under the general supervision of said the
65 governing body. All employees, servants and agents of the authority shall be under the immediate
66 control and management of said general manager. The general manager shall perform all ~~such~~
67 other duties as may be prescribed by ~~said~~ the governing body and shall give the governing body a
68 good and sufficient surety company bond in a sum to be set and approved by the governing body
69 conditioned upon the satisfactory performance of the general manager's duties. The governing

70 body may also require that any other employees be bonded in such amount as it shall determine.

71 The cost of ~~said~~ the bonds shall be paid out of the funds of the authority;

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

75 (10) To have and exercise all rights and powers necessary or incidental to or implied from
76 the specific powers granted herein. ~~Such~~ The specific powers shall may not be considered as a
77 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 be
8 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 the
23 bond or bonds as reported by the Treasury of the United States, may be payable at ~~such the~~ times,
24 may be in ~~such the~~ form, may carry ~~such the~~ registration privileges, may be executed in ~~such the~~
25 manner, may be payable at ~~such the~~ place or places, may be subject to ~~such the~~ terms of
26 redemption with or without premium, may be declared or become due before maturity date thereof,
27 may be authenticated in any manner, and upon compliance with ~~such the~~ conditions, and may
28 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 the
32 signatures of officers in office on the date of the signing thereof shall be valid and binding for all
33 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 the~~
36 manner and at ~~such the~~ time or times as is found by the governing body to be most advantageous,
37 and all such bonds may be sold at ~~such the~~ price that the interest cost of the proceeds therefrom
38 does not exceed three percent above the interest rate on treasury notes, bills or bonds of the same
39 term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the
40 Treasury of the United States, based on the average maturity of ~~such the~~ bonds and computed
41 according to standard tables of bond values. Any resolution or resolutions providing for the
42 issuance of ~~such the~~ bonds may contain ~~such~~ covenants and restrictions upon the issuance of

42 additional bonds thereafter as may be ~~deemed~~ considered necessary or advisable for the
43 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 of
12 same in operation, and the performance of the things herein required or permitted, in connection
13 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 the
5 water supply, wastewater transportation, or treatment system, or stormwater system, or any part
6 thereof of the authority or its member public agencies. The resolution authorizing the bonds and
7 fixing the details thereof may provide that ~~such~~ the trust indenture may contain ~~such~~ provisions for
8 protecting and enforcing the rights and remedies of bondholders as may be reasonable and
9 proper, not in violation of law, including covenants setting forth the duties of the authority and the

10 members of its governing body and officers in relation to the construction or acquisition of the
11 water supply, wastewater transportation, or treatment system, or stormwater system, and the
12 improvement, extension, operation, repair, maintenance, and insurance thereof, and the custody,
13 safeguarding, and application of all moneys, and may provide that all or any part of the
14 construction work shall be contracted for, constructed and paid for, under the supervision and
15 approval of consulting engineers employed or designated by the governing body and satisfactory
16 to the original bond purchasers, their successors, assignees or nominees, who may be given the
17 right to require the security given by contractors and by any depository of the proceeds of bonds or
18 revenues of the water supply, the wastewater transportation, or treatment system, or stormwater
19 system, or other money pertaining thereto be satisfactory to ~~such~~ the purchasers, their
20 successors, assignees or nominees. ~~Such~~ The indenture may set forth the rights and remedies of
21 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 in
6 the sinking fund provisions ~~aforsaid~~ or in the payment of the principal or interest on any of ~~such~~
7 the bonds or, ~~in the event~~ if the authority or its governing body or any of its officers, agents, or
8 employees, shall fail or refuse to comply with ~~the provisions of~~ this article, or shall default in any
9 covenant or agreement made with respect to the issuance of ~~such~~ the bonds or offered as security
10 therefor, then any holder or holders of ~~such~~ the bonds and any such trustee under the trust
11 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 its
17 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~~ the 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: (1) any repair and replacement fund that may be
12 required by bond covenants, and (2) 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 bonds
16 and to secure the payment of the bonds and the interest thereon. The rates, fees, and charges for

16 water, wastewater, or both, established by the authority shall be subject to review and approval by
17 the Public Service Commission pursuant to Chapter 24 of this code.

18 The Public Service Commission shall, within 30 days of a rate filing, notify the authority
19 whether its rate filing is complete. If the Commission determines that additional information is
20 needed it will inform the authority of the information needed. Notwithstanding the timeframes for
21 Commission review of rate applications set forth in Chapter 24, the Commission shall act on
22 authority rate applications within the following timeframes:

23 (1) The Public Service Commission shall act on a rate filing by an authority that provides
24 only water service or only wastewater service within 120 days of the date that the authority files
25 with the Commission the necessary information showing the basis of the rates, fees, and charges
26 or other information as the commission considers necessary. Failure of the Commission to act
27 within the 120-day time period shall constitute approval thereof: *Provided*, That the 120-day
28 period may be extended upon request of the authority.

29 (2) The Public Service Commission shall act on a rate filing by an authority that provides
30 water and wastewater services, water and stormwater services, wastewater and stormwater
31 services, or water and wastewater and stormwater services, within 180 days of the date that the
32 authority files with the Commission the necessary information showing the basis of the rates, fees,
33 and charges or other information as the Commission considers necessary: *Provided*, That the
34 information shall include an explanation of the amount and basis for assigning and allocating total
35 costs between the water operations, the wastewater operations, and if applicable the stormwater
36 operations. Failure by the Commission to act within the 180-day period shall constitute approval
37 thereof: *Provided, however*, That the 180-day Commission review period may be extended upon
38 request of the authority.

39 Notwithstanding the provisions of any other law or charter to the contrary, any regional
40 stormwater authority may provide storm, flood, and surface water drainage management services
41 to areas located outside its jurisdiction from which stormwater affects or drains into the area

42 served by the regional stormwater authority, and any regional stormwater authority may assess
43 fees for providing storm, flood, and surface water draining management services to be paid by the
44 owner of each and every lot, parcel of real estate or building that in any way uses or is served by
45 the stormwater system. The Public Service Commission has no jurisdiction to regulate the rates
46 charged for storm, flood, and surface water drainage management services.

§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 or
3 without the boundaries of the authority to the same extent and to be exercised in the same manner
4 as now or hereafter provided by law for the right of eminent domain by cities, incorporated towns,
5 and other municipal corporations: *Provided*, That the power of eminent domain provided in this
6 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.

Introduced HB 2955

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