

WV Code §16-13D

§16-13D-1. Statement of purpose.

It is the purpose of this article, to permit certain public agencies to make the most efficient use of their powers relating to public water supplies and the transportation and treatment of wastewater by enabling them to cooperate with other public agencies on a basis of mutual advantage and thereby to provide services and facilities to participating public agencies and to provide for the establishment for such purpose of a quasi-governmental public corporation which shall be known as a regional water authority, or where appropriate, a regional wastewater authority, or regional water and wastewater authority. The function of the regional water authority shall be to secure a source of water on a scale larger than is feasible for individual public agencies acting alone, and to sell such water to public service districts, municipalities, publicly and privately owned water utilities, and others. The function of the regional wastewater authority shall be to enable public agencies to join together to provide the most economical method of transportation and treatment of wastewater and to provide such transportation and treatment services to public service districts, municipalities, publicly and privately owned wastewater utilities, and others. The function of the regional water and wastewater authority shall be to enable public agencies to join together to carry out the joint functions of both regional water authority and a regional wastewater authority.

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

§16-13D-2. Definitions.

For the purposes of this article:

(a) The term "authority" shall mean any regional water authority, regional wastewater authority, or regional water and wastewater authority organized pursuant to the provisions of this article; and

(b) The term "public agency" shall mean any municipality, county, public service district, or other political subdivision of this state.

§16-13D-3. 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.

(a) Any powers, privileges or authority of a public agency of this state relating to public water supplies, or the transportation or treatment of wastewater, may be exercised jointly with any other public agency of this state, or with any agency of the United States to the extent that the laws of the United States permit. Any agency of the state government when acting jointly with

any public or private agency may exercise all of the powers, privileges and authority conferred by this act upon a public agency.

(b) Any public agency may enter into agreements with one or more other public agencies for the purpose of organizing a regional water authority, regional wastewater authority, or regional water and wastewater authority. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(c) Any such agreement shall specify the following:

(1) Its duration;

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

(3) Its purpose or purposes;

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

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

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

(7) Any other necessary and proper matters.

(d) Any such agreement may be amended to include additional public agencies by consent of two thirds of the signatories to the agreement, if no terms of agreement are changed, otherwise a new agreement with the new public agency shall be drawn. Where fewer than three public agencies come together to form an authority, both parties must consent to the amendment of the agreement to include additional public agencies.

(e) Prior to taking effect, every agreement made hereunder shall be submitted to the Public Service Commission for its approval. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

(f) Prior to taking effect, an agreement made hereunder shall be filed with the clerk of the county commission of each county in which a member of the authority is located and such agreement then also shall be filed with the Secretary of State, accompanied by a certificate from the clerk of the county commission of the county, or counties, where filed, stating that such agreement has been filed in such county.

(g) A public agency which enters into an agreement made hereunder shall not offer or provide water or wastewater services in competition with another public agency entering into such agreement.

(h) A public agency which enters into an agreement made hereunder shall not withdraw from the agreement until such time as the outstanding bonded indebtedness of the 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 and treatment of water or wastewater; terms and conditions.

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

Any public agency, whether or not a party to an agreement pursuant to this article, and any publicly or privately owned water distribution company may enter into contracts with any regional water authority or regional water and wastewater authority created pursuant to this article for the purchase of water from such authority or the sale of water to the authority, the treatment of water by either party and the distribution or transmission of water by either party and any such authority may enter into such contracts, subject to the prior approval of the Public Service Commission pursuant to the provisions of section twelve, article two of chapter twenty-four of this code. Any public agency, whether or not a party to an agreement pursuant to this act, and any publicly or privately owned wastewater transportation or treatment system may enter into contracts with any regional wastewater authority or regional water and wastewater authority created pursuant to this article for the transportation and treatment of wastewater by either party and any such authority may enter into such contracts, subject to the prior approval of the Public Service Commission pursuant to the provisions of section twelve, article two of chapter twenty-four of this code: Provided, That if the Public Service Commission has not acted on any such proposed contract within ninety days of its filing, such approval shall be deemed to have been granted. Any such contract may include an agreement for the purchase of water not actually received or the treatment of wastewater not actually treated. No such contract shall be made for a period in excess of forty years, but renewal options may be included therein. The obligations of any public agency under any such contract shall be payable solely from the revenues produced from such public agency's water or wastewater system, and the Public Service Commission, in the case of a public agency whose rates are subject to its jurisdiction, shall permit the public agency to recover through its rates revenues sufficient to meet its obligations under such agreement.

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

Upon the approval of the Public Service Commission and filing with the Secretary of State, the Secretary of State shall declare the authority organized and give it the corporate name of regional water authority number _____, regional wastewater authority number _____, or regional water

and wastewater authority number _____, whichever is appropriate. Thereupon the authority shall be a quasi-governmental public corporation.

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

The governing body of the authority shall consist of not less than three persons selected by the participating public agencies. Each participating public agency shall appoint at least one and not more than two members. Each member's full term shall be not less than one year nor more than four years and initial terms shall be staggered in accordance with procedures set forth in the agreement provided for in section three of this article and amendments thereto. In the case of an authority which is made up by the agreement of two public agencies, each public agency shall appoint two representatives to the governing body.

The manner of selection of such governing body and terms of office shall be set forth in the agreement provided for in section three of this article and amendments thereto. The governing body of the authority shall elect one of its members as president, one as treasurer and one as secretary.

Each member shall have one vote in any matter that comes before the authority for decision. However, the member agencies shall, in the original agreement establishing the authority, set forth any special weighing of such votes based upon population served, volumes of water purchased, volumes of wastewater treated, numbers of customers, or some other criterion, so as to maintain fairness in the decisions and operations of the authority.

§16-13D-7. Meetings of governing body; annual audit.

The governing body of the authority shall meet as often as the needs of the authority require; but not less frequently than on a quarterly basis. The governing body shall cause to be made an annual audit of the financial records of the authority, the cost of said audit to be paid by the authority.

§16-13D-8. Powers of governing body.

For the purpose of providing a water supply, transportation facilities, or treatment system to the participating public agencies, and others, the governing body of the authority shall have the following powers, authorities and privileges:

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

(2) To sue and be sued;

(3) To enter into franchises, contracts and agreements with this or any other state or the United States or any municipality, political subdivision or authority thereof, or any of their agencies or instrumentalities, or any public or private person, partnership, association, or corporation of this state or of any other state or the United States, and this state and any such municipality, political subdivision, authority, or any of their agencies or instrumentalities, and any such public or private person, partnership, association, or corporation is hereby authorized to enter into contracts and agreements with such authority for any term not exceeding forty years for the planning, development, construction, acquisition, maintenance, or operation of any facility or for any service rendered to, for, or by said authority;

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

(5) To acquire land and interests in land by gift, purchase, exchange or eminent domain, such power of eminent domain to be exercised within or without the boundaries of the authority in accordance with provisions of article two, chapter fifty-four of this code;

(6) To acquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, distribution and utilization of water, and transportation facilities, pump stations, lift stations, treatment facilities and other facilities for the transportation and treatment of wastewater, and to own and hold such real and personal property as may be necessary to carry out the purposes of its organization, subject to the advance approval of the Public Service Commission for any proposed acquisition, construction, installation or operation: Provided, That the Public Service Commission shall act on all proposals submitted under this paragraph within one hundred twenty days of filing with the commission: Provided, however, That if the Public Service Commission has not acted within such period of time, approval of such proposal shall be deemed granted;

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

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

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

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

§16-13D-9. Revenue bonds.

For constructing or acquiring any water supply, wastewater transportation, or treatment system for the authorized purposes of the authority, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the authority, the governing body of any such authority is hereby authorized to borrow money from time to time and in evidence thereof issue the revenue bonds of such authority. Such revenue bonds are hereby made a lien on the revenues produced from the operation of the authority's system, but shall not be general obligations of the public agencies participating in the agreement. All revenue bonds issued under this article shall be signed by the president of the governing body of the authority and attested by the secretary of the governing body of the authority and shall contain recitals stating the authority under which such bonds are issued and that they are to be paid by the authority from the net revenue derived from the operation of the authority's system and not from any other fund or source and that said bonds are negotiable and payable solely from the revenues derived from the operation of the system under control of the authority: Provided, That in the case of a regional water and wastewater authority, the statutory lien created hereby shall only be a lien on the revenues of that service funded by the proceeds of the sale of the bonds, it being understood that such combined authority shall maintain separate books and records for its water and wastewater operations. Such bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty years from their respective dates, may bear interest at a rate not exceeding two percent above the interest rate on treasury notes, bills or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the treasury of the United States, may be payable at such times, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the governing body of such authority. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond is nonnegotiable, all such bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in such manner and at such time or times as is found by the governing body to be most advantageous, and all such bonds may be sold at such price that the interest cost of the proceeds therefrom does not exceed three percent above the interest rate on treasury notes, bills or bonds of the same term

as the term of the bond or bonds the week of closing on the bond or bonds as reported by the treasury of the United States, based on the average maturity of such bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of such bonds may contain such covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized.

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

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

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

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

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

At or before the time of the issuance of any bonds under this article the governing body of the authority shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into such fund from the revenues of the water supply, wastewater transportation or treatment system operated by the authority such sums in excess of the cost of maintenance and operation of such properties as will be sufficient to pay the accruing interest and retire the bonds at or before the time each will respectively become due and to establish and maintain reserves therefor. All sums which are or should be, in accordance with such provisions, paid into such sinking fund shall be used solely for payment of interest and for the retirement of such bonds at or prior to maturity as may be provided or required 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.

The governing body of any such authority shall have power to insert enforceable provisions in any resolution authorizing the issuance of bonds relating to the collection, custody and application of revenues of the authority from the operation of the water supply, wastewater transportation or treatment system under its control and to the enforcement of the covenants and undertakings of the authority. In the event there shall be default in the sinking fund provisions aforesaid or in the payment of the principal or interest on any of such bonds or, in the event the authority or its governing body or any of its officers, agents or employees, shall fail or refuse to comply with the provisions of this article, or shall default in any covenant or agreement made with respect to the issuance of such bonds or offered as security therefor, then any holder or holders of such bonds and any such trustee under the trust indenture, if there be one, shall have the right by suit, action, mandamus or other proceeding instituted in the circuit court for the county or any of the counties wherein the authority extends, or in any other court of competent jurisdiction, to enforce and compel performance of all duties required by this article or undertaken by the authority in connection with the issuance of such bonds, and upon application of any such holder or holders, or such trustee, such court shall, upon proof of such defaults, appoint a receiver for the affairs of the authority and its properties, which receiver so appointed shall forthwith directly, or by his agents and attorneys, enter into and upon and take possession of the affairs of the authority and each and every part thereof, and hold, use, operate, manage and control the same, and in the name of the authority exercise all of the rights and powers of such authority as shall be deemed expedient, and such receiver shall have power and authority to collect and receive all revenues and apply same in such manner as the court shall direct. Whenever the default causing the appointment of such receiver shall have been cleared and fully discharged and all other defaults shall have been cured, the court may in its discretion and after such notice and hearing as it deems reasonable and proper direct the receiver to surrender possession of the affairs of the authority to its governing body. Such receiver so appointed shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of the authority except as hereinbefore provided.

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

There shall be and is hereby created a statutory mortgage lien upon such water supply, wastewater transportation or treatment system of the authority, which shall exist in favor of the

holders of bonds hereby authorized to be issued, and each of them, and such system shall remain subject to such statutory mortgage lien until payment in full of all principal of and interest on such bonds.

§16-13D-15. Rates and charges.

The governing body shall by appropriate resolution make provisions for the payment of said bonds by fixing rates, fees and charges, for the use of all services rendered by such authority, which rates, fees and charges shall be sufficient to pay the costs of operation, improvement and maintenance of the authority's water supply or wastewater transportation and/or treatment system, to provide an adequate depreciation fund, provide an adequate sinking fund to retire said bonds and pay interest thereon when due, and to create reasonable reserves for such purposes. Said fees, rates or charges shall be sufficient to allow for miscellaneous and emergency or unforeseen expenses. The resolution of the governing body authorizing the issuance of revenue bonds may include agreements, covenants or restrictions deemed necessary or advisable by the governing body to effect the efficient operation of the system and to safeguard the interests of the holders of the revenue bonds and to secure the payment of the bonds and the interest thereon.

§16-13D-16. Refunding revenue bonds.

The authority having issued bonds under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds of such authority for the purpose of retiring or refinancing such outstanding bonds, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds shall be applicable to such refunding bonds, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds to be so refunded.

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

Said bonds and the interest thereon, together with all properties and facilities of the authority owned or used in connection with the water or wastewater system, and all the moneys, revenues and other income of such authority derived from such water or wastewater system shall be exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

§16-13D-18. Bonds made legal investments.

Bonds issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state and for a business development corporation organized pursuant to chapter thirty-one, article fourteen of the Code of West Virginia.

§16-13D-19. Invalidity of part.

If any section or sections of this article be declared unconstitutional or invalid, this shall not invalidate any other section of this article.

§16-13D-20. Article to be liberally construed.

This article is necessary for the public health, safety and welfare and shall be liberally construed to effectuate its purposes.

§16-13D-21. Citation of article.

This article may be known and cited as the "Regional Water and Wastewater Authority Act".