

**REPORT OF THE**

# **State Water Study Commission**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



## **House Document No. 32**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1984**



## MEMBERS OF COMMISSION

Lewis W. Parker, Jr., Chairman  
Charles J. Colgan, Vice Chairman  
Howard P. Anderson  
J. Paul Councill, Jr.  
James H. Dillard, II  
Glenn B. McClanan  
Wiley F. Mitchell, Jr.  
William T. Parker  
Robert R. Peters, P.E.  
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Millard B. Rice, Ex-Officio

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**Report of the  
State Water Study Commission  
To  
The Governor and the General Assembly of Virginia  
Richmond, Virginia  
January, 1984**

To: Honorable Charles S. Robb, Governor of Virginia  
and

The General Assembly of Virginia

**BACKGROUND**

The State Water Study Commission was continued pursuant to House Joint Resolution No. 67 of 1983 (see Appendix A). New to the Commission this past year were Delegates A. Victor Thomas and William P. Robinson, Jr. Mr. George M. Cornell, who served the Commission ably for several years, retired July 1; his position as ex-officio representative of the Water Control Board was filled by Millard B. Rice.

Delegate Lewis W. Parker, Jr., and Senator Charles J. Colgan were re-elected by the Commission as its chairman and vice-chairman, respectively.

**1983 ACTIVITIES**

During 1983, the Commission considered these issues: the regulation of water wells and water well drillers, the interbasin transfer of water, amendments to the Groundwater Act of 1973 and the financing of capitol projects for water supply and wastewater treatment needs. Each of these is treated separately below.

1. Regulation of water wells and water well drillers.

For several years now, the Water Study Commission has been studying problems related to improperly drilled wells. Testimony received by the Commission suggested that much of this problem could be alleviated through state regulation of the well drilling industry. Accordingly, legislation was recommended by the Commission in 1982 and 1983 to establish a new licensure program within the Department of Commerce for well drillers.

During both years that the legislation was introduced, it faced opposition from the Administration once it was heard in Committee. The need for the establishment of a new regulatory board was questioned. The most recent bill (H.B. No. 367, 1983) was withdrawn at the request of its principal patron, Delegate Councill, with the understanding that the Department of Commerce would study the question of how best to protect water quality in private wells, and would report within one year. Pursuant to that mandate, the State Board of Commerce and the State Board for Contractors conducted a study on behalf of the Department of Commerce. The Department found that while it is clear that some degree of well pollution does exist, there is no reliable data on its scope, its severity, or its causes. A major concern, however, results from the fact that if one private well becomes polluted, there is a danger that numerous other local wells will become polluted because they are tied to a common aquifer. The Department reached the conclusion that new state initiatives were needed to address this problem. It did not suggest, however, that a new licensing board for well drillers be included among these initiatives. Instead, it recommended:

1. That the General Assembly require the issuance of well construction permits statewide;
2. That members of the well drilling profession be encouraged to comply with current state law and register as contractors when required to do so;

3. That the \$1500 threshold, below which well drillers are not required to register as contractors, be lowered so that more well drillers are required to register.

The Commission discussed these recommendations at length, first in Subcommittee, and then at a full Commission meeting. The thrust of the suggestions was good, it was agreed, and legislative options to implement them were considered.

Agencies which were identified as appropriate to regulate well construction were the Water Control Board, the Department of Housing and Community Development, and the Department of Health. The Water Control Board normally oversees measures aimed at protecting water quality. The Department of Housing and Community Development, through its Building Code responsibilities, oversees construction standards for many structures.

The Department of Health, however, is responsible for matters potentially affecting the public health. Consequently, it is concerned with any well construction problems with public health implications. It already permits and regulates wells that are constructed in conjunction with the installation of septic systems. Since the Department currently has these responsibilities, the Commission agreed to assign new water well authority to it also. The Commission staff was directed to prepare a bill that includes the following:

1. A findings clause noting that the purpose of the legislation is to protect the aquifer;
2. Provisions for the Department of Health to issue permits; and
3. A limit on the Department's new regulatory authority so that it would apply only to the location and construction of wells.

Staff was also instructed to ensure that the provisions of the bill were no more restrictive than those of the current septic system regulations that deal with wells.

The Commission further directed that a companion measure be drawn up to eliminate the \$1500 threshold below which well drillers are required to register as contractors. Should the law be so changed, anyone who drills a well for a fee will have to procure a contractor's license.

## 2. Interbasin Transfer.

Since its inception, the Commission has searched for means to ensure that all areas of the Commonwealth have access to an adequate supply of water. In 1982, legislation was introduced to establish a fee-permitting system for transfers of water from one river basin to another. The legislation was withdrawn by its patron, and the Commission studied it further that year.

In testimony given the Commission in 1982, the City of Virginia Beach, the only locality known to the Commission to be contemplating such a transfer in the near future, posited its belief that interbasin transfer could take place under current law. This would be accomplished through the acquisition of riparian rights and the use of condemnation powers set out in § 15.1-875 of the Code. Largely because of this testimony, the Commission made no recommendation for interbasin transfer legislation to the 1983 General Assembly.

During the past year, the City of Virginia Beach made application to the U.S. Army Corps of Engineers for a permit to build a pipeline and withdraw water from Lake Gaston for use by the City and, to a lesser extent, neighboring localities. This proposal has been opposed for some time by many of the Commonwealth's residents and localities in the Lake Gaston area, as well as the State of North Carolina and many of its residents. A compromise agreement on the issues involved in this matter was worked out by representatives of Virginia and North Carolina, but then renounced by North Carolina's Governor.

By the end of 1983, threats of litigation over Virginia Beach's proposed transfer were being made regular. Because of the likelihood of litigation, and because of the intransigence of North Carolina, the Commission reached consensus that no interbasin transfer legislation should be recommended to the 1984 General Assembly.

### 3. Amendments to the Groundwater Act of 1973.

The Bi-State Committee, which consists of the representatives of Virginia and North Carolina mentioned above in the interbasin transfer discussion, also has discussed statutory changes needed to protect aquifers common to the two states. Tentative agreements were reached on changes that Virginia should make for this purpose. These efforts, too, were dealt a severe blow when the Governor of North Carolina refused to endorse other agreements worked out by the Bi-State Committee.

The Commission took note of these problems, and of the disproportionate benefits that would be enjoyed by North Carolina should Virginia choose to amend its groundwater laws. Accordingly, it chose to postpone any such proposals to the Virginia General Assembly for at least another year. Should potential matters of litigation be settled during that time, and should discussions on this issue between the two states resume, the Commission will be willing to look into this issue again next year.

### 4. Financing of capital projects for water supply and wastewater treatment needs.

In 1972, Congress passed the Clean Water Act, which, in part, called for "fishable, swimmable waters wherever attainable by July 1, 1983." This Act further required publicly owned treatment works (POTW's) to achieve secondary treatment or receiving stream standards by July 1, 1977. Subsequent amendments to the Act have extended this deadline for POTW's until July 1, 1988. The estimated cost of projects required to meet this POTW deadline is in the \$100 billion range.

There has been much discussion on this subject at both the state and national level. The general consensus is that federal funds to underwrite these costs are winding down. Not only are appropriations for these costs decreasing; so too is the federal proportion allowed for such capital projects. Consequently, the responsibility for identifying sources for needed water projects is being shifted to a greater extent to state and local governments.

The State Water Study Commission was requested, in the Resolution continuing it through 1983, to investigate means of financing needed wastewater treatment and water supply programs in Virginia. While federal support has been available recently in large amounts for wastewater treatment programs, significant federal appropriations have not been available for water supply facilities. Critical needs now exist in both areas, and funding for all these needs has become severely limited.

The Commission reviewed different methods being proposed throughout the country to finance the current and future needs for water facilities. Although these are often referred to as "new" or "innovative," these methods are more accurately termed innovative uses of traditional ways to finance such projects with limited or no federal support. Suggestions for alternative financing involved the use of state, local, and private funds. A brief explanation of specific mechanisms that were suggested follows.

A. State grant program. This involves an appropriation of moneys from the state's general fund.

B. State loan program. The form such a program might take varies, but it could be initiated with an appropriation from the general fund, the sale of state-backed bonds, or other sources. Should it be established as a revolving loan fund, payments from borrowers could be channeled into loans for new projects.

C. Infrastructure (i.e., capital projects) bank. Funding for water projects might be approached as a portion of a larger capital projects funding program, in which funding for a variety of infrastructure projects (e.g., sewage treatment plants, bridges, highways, etc.) is sought. Block grants and other funds could be set aside as seed money for infrastructure projects.

D. Privatization. This term, currently very popular, simply means the use of the private sector to construct or operate, or both construct and operate, water projects.

The Commission as a whole studied this problem, and potential solutions to it, during the

spring and summer of 1983. It then appointed a subcommittee to look into the relevant issues in detail. Senator Colgan was appointed as the Subcommittee chairman.

The Subcommittee began its work by determining the level of need in the Commonwealth for water supply and wastewater treatment facilities. The Department of Health directly surveyed municipal public water supply systems to ascertain the cost of providing for capital projects through the year 2000. The estimate, statewide, was \$1.75 billion. The Water Control Board similarly estimated wastewater treatment needs for the same period at \$2.1 billion; this estimate was based on surveys done for the U.S. Environmental Protection Agency.

At this and several subsequent meetings, members of the Subcommittee discussed their options, as well as measures being taken by other states, with representatives of the financial community. Included in these meetings were individuals from Wheat First Securities, Craigie, Inc., Lehman Brothers Kuhn Loeb, Incorporated, and Alex Brown and Sons, Inc. Attorneys involved in issuing bonds, as well as those who espouse privatization, also took part in these discussions.

After lengthy consideration, the Subcommittee agreed to recommend to the Commission that a Water and Sewer Assistance Authority be established to help local governments finance their water supply and sewage treatment needs. Draft legislation was prepared with the assistance of outside counsel. Among the bill's provisions are:

1. A nine-member governing board, including three General Assembly appointees, three gubernatorial appointees, the State Treasurer, the Executive Director of the State Water Control Board, and the State Health Commissioner.
2. The moral obligation of the Commonwealth to fund any shortfalls experienced by the Authority;
3. Permissive language enabling the Authority to make grants to local governments.

Otherwise, the Authority is designed in much the same way as many of the State's other finance authorities (e.g., Virginia Housing Development Authority and Virginia Public School Authority). The intent of the Subcommittee was to establish an entity that could receive a general fund appropriation (e.g., \$10 million per year for five years) and use it as leverage to borrow money in the bond market. Testimony received by the Subcommittee indicated that bonds issued under such an agreement by the State would receive an AA rating. This would enable many communities to finance their water and sewer needs at a considerable savings over what they would pay if they issued bonds themselves.

The Subcommittee is aware that many small towns have water and sewer needs that cannot be funded by borrowing money, even at a lower interest rate. It is for this reason that the grant clause was included in the bill, and it was the Subcommittee's intent that such a grant program be established whenever feasible.

### **COMMISSION RECOMMENDATIONS**

Based on its studies during the past year, the State Water Study Commission makes these recommendations:

1. The Department of Health should be given regulatory authority over the location and construction of all private water wells, as described earlier in this report and set out in Appendix B.
2. All individuals who construct wells for a fee should be required to register as contractors (see Appendix C for legislation).
3. The Department of Commerce and the State Board for Contractors should work with members of the well drilling profession to ensure that well drillers register as contractors as required by law.

4. The Virginia Water and Sewer Assistance Authority, as proposed elsewhere in this report, should be established (see Appendix D for appropriate legislation); for the next five years, an appropriation of \$10 million per year should be given this Authority.

5. Should the Authority be established, this Commission should evaluate its effectiveness after an appropriate period of time.

6. This Commission should be continued to pursue its studies and to overview and coordinate the activities of all state entities considering water-related issues (e.g., the Water Control Board's Advisory Committee, the Virginia North Carolina Bi-State Committee, etc.).

Respectfully submitted,

Lewis W. Parker Jr., Chairman

Charles J. Colgan, Vice-chairman

Howard P. Anderson

J. Paul Councill, Jr.

James H. Dillard, II

Glenn B. McClanan

Wiley F. Mitchell, Jr.

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Clifton A. Woodrum

Millard B. Rice, Ex-officio



**1983 SESSION**  
**HOUSE JOINT RESOLUTION NO. 67**

*Continuing the State Water Study Commission.*

Agreed to by the House of Delegates, February 8, 1983  
Agreed to by the Senate, February 14, 1983

WHEREAS, the State Water Study Commission was created in 1977 pursuant to House Joint Resolution No. 236 to recommend to the General Assembly ways to address water supply and allocation problems, particularly in Northern and Southeastern Virginia; and

WHEREAS, the State Water Study Commission was continued by subsequent resolutions adopted since that time; and

WHEREAS, the State Water Study Commission has observed that many of the present laws, doctrines, policies and practices of the Commonwealth applicable to the use and allocation of the water resources of the Commonwealth may be inadequate to assure economically and environmentally effective management; and

WHEREAS, there exist critical present and potential areas of concern with regard to the water supply of the Commonwealth and, coincident with the need for expanding water supply facilities to meet the future withdrawal demand, there is a continuing need for replacement, rehabilitation and expansion of wastewater treatment works; and

WHEREAS, the present level of funding of municipal sewage treatment works grants in Virginia under the provision of the Federal Water Pollution Control Act is \$50 million per year but, yet, the present need for treatment plant construction in the state exceeds \$700 million; and

WHEREAS, the provisions of § 62.1-44.15:1 of the Code of Virginia may prohibit the required needed construction of municipal sewage treatment plants unless federal funds have been provided; and

WHEREAS, the Commission has sought to address these concerns through various legislative proposals; and

WHEREAS, further consideration of legislative proposals is needed to attempt to alleviate the Commonwealth's water supply, allocation and wastewater treatment problems; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the State Water Study Commission is continued. The Commission is requested to continue to study and make recommendations with regard to the water supply and allocation problems as well as the funding of construction of wastewater treatment plants in of the Commonwealth. The State Water Control Board and other agencies of the Commonwealth are directed to continue to assist the Commission upon request.

The membership of the Commission shall remain the same. If a vacancy occurs for any reason, it shall be filled in the same manner as the appointment of the original members.

All members of the Commission shall be entitled to such compensation as is set forth in § 14.1-18 for each day or part thereof devoted to their duties as members of the Commission. In addition to such compensation, all members shall be reimbursed for the actual and necessary expenses incurred in the performance of Commission duties.

For these and other purposes, the Commission is hereby allocated from the general appropriation to the General Assembly the unexpended balance of such sums as were allocated by Senate Joint Resolution No. 1 of 1978.

The Commission shall submit any recommendations it deems advisable to the Governor and the 1984 Session of the General Assembly.

## APPENDIX B

A BILL to amend § 36-97 of the Code of Virginia, and to amend the Code of Virginia by adding in Chapter 6 of Title 32.1 an article numbered 2.1, consisting of sections numbered 32.1-176.1 through 32.1-176.7, pertaining to private well construction.

Be it enacted by the General Assembly of Virginia:

1. That § 36-97 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 6 of Title 32.1 an article numbered 2.1, consisting of sections numbered 32.1-176.1 through 32.1-176.7, as follows:

### *Article 2.1.*

#### *Private Well Construction.*

*§ 32.1-176.1. Short title.—This article shall be known and may be cited as the “Virginia Private Well Construction Act.”*

*§ 32.1-176.2. Findings and policy.—The General Assembly finds that the improper construction of private wells can adversely affect aquifers as groundwater resources in the Commonwealth. Consistent with the duty to protect these groundwater resources and to safeguard the public welfare, safety and health it is declared to be the policy of this Commonwealth to require that the construction and location of private wells conform to reasonable requirements.*

*§ 32.1-176.3. Definitions.—As used in this article:*

*“Construction of wells” means acts necessary to construct wells, including the location of wells.*

*“Private well” means any well constructed for a person on land which is owned or leased by that person and is usually intended for household, groundwater source heat pump or agricultural use.*

*§ 32.1-176.4. Powers and duties of Board and Department; regulations.—The Board shall adopt regulations pertaining to the location and construction of private wells in the Commonwealth. Regulations for construction standards shall not exceed those currently in effect pertaining to sewage disposal as authorized in § 32.1-164 of the Code of Virginia. The Department shall enforce the provisions of this article and any rules and regulations adopted pursuant thereto.*

*§ 32.1-176.5. Construction permit.—Any person intending to construct a private well shall apply to the Department for and receive a permit before proceeding with construction. This permit shall be issued in accordance with the Board’s regulations. To avoid the issuance of multiple permits, the regulations shall include provisions which allow for the issuance of a construction permit by any other agency which the Board may designate, in lieu of the Department permit.*

*§ 32.1-176.6. Inspection.—A. The Department shall have the authority to conduct such inspections as it may reasonably find necessary to ensure that the construction work conforms to applicable construction standards.*

*B. The Department may authorize that well inspections completed by local building inspectors are proper inspections in lieu of Health Department inspections.*

*§ 32.1-176.7. Other agencies to cooperate with Department.—The Department of Housing and Community Development and the State Water Control Board shall cooperate fully and promptly with the Department of Health in the administration of this article.*

*§ 36-97. Definitions.—As used in this chapter, unless the context or subject matter requires*

otherwise, the following words or terms shall have the meaning herein ascribed to them, respectively:

(1) "Board" means the Board of Housing and Community Development.

(2), (3) [Repealed.]

(4) "Review Board" means the State Building Code Technical Review Board.

(5) "Building Code" means the Uniform Statewide Building Code.

(6) "Code provisions" means the provisions of the Uniform Statewide Building Code as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated by such Board from time to time.

(7) "Building regulations" means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted by the ~~State~~ *Commonwealth* or any county or municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to construction, reconstruction, alteration, conversion, repair, maintenance or use of structures and buildings and installation of equipment therein. The term does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the erection, alteration or repair of a building or structure.

(8) "Municipality" means any city or town in this ~~State~~ *Commonwealth* .

(9) "Local governing body" means the governing body of any city, county or town in this ~~State~~ *Commonwealth* .

(10) "Local building department" means the agency or agencies of any local governing body charged with the administration, supervision, or enforcement of building codes and regulations, approval of plans, inspection of buildings, or issuance of permits, licenses, certificates or similar documents prescribed or required by ~~State~~ *state* or local building regulations.

(11) "State agency" means any ~~State~~ *state* department, board, bureau, commission, or agency of this ~~State~~ *Commonwealth* .

(12) "Building" means a combination of any materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons, or property; ~~provided~~, however, ~~that~~ farm buildings not used for residential purposes and frequented generally by the owner, members of his family, and farm employees shall be exempt from the provisions of the Uniform Statewide Building Code, but such buildings lying within flood plain or in a mud-slide prone area shall be subject to flood proofing regulations or mud-slide regulations, as applicable. The word "building" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

(13) "Equipment" means plumbing, heating, electrical, ventilating, air-conditioning and refrigeration equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(14) "Construction" means the construction, reconstruction, alteration, repair or conversion of buildings.

(15) "Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a building.

(16) [Repealed.]

(17) "Director" means the Director of the Department of Housing and Community Development.

(18) "Structure" means an assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature ; ~~provided, however, that farm~~ *but excluding water wells. Farm* structures not used for residential purposes shall be exempt from the provisions of the Uniform Statewide Building Code, but such structures lying within a flood plain or in a mudslide-prone area shall be subject to flood proofing regulations or mud-slide regulations, as applicable. The word "structure" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

(19) "Department" means the Department of Housing and Community Development.

## APPENDIX C

A BILL to amend and reenact § 54-113 of the Code of Virginia, pertaining to definition of contractor.

Be it enacted by the General Assembly of Virginia:

1. That § 54-113 of the Code of Virginia is amended and reenacted as follows:

§ 54-113. Meaning of terms.— ~~The following terms~~ As used in this chapter ; ~~unless the context otherwise requires, are for the purposes hereof defined as given below :~~

(1) “Board” ~~shall mean~~ *means* the State Board for Contractors.

(2) “Contractor” ~~shall mean~~ *means* any person, firm, association, or corporation that for a fixed price, commission, fee or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing or superintending in whole or in part, the construction, removal, repair or improvement of any building or structure permanently annexed to real property owned, controlled or leased by another person or any other improvements to such real property.

(3) “Person” ~~shall mean~~ *means* any person, firm, corporation, association, partnership, joint venture or other legal entity.

(4) The singular personal pronoun shall be taken to include any person, firm, association, corporation, partnership, joint venture or other legal entity.

(5) [Repealed.]

(6) The phrase, “any other improvements to such real property,” shall not be construed to include horticulture, nursery or forest products.

(7) “Department” ~~shall mean~~ *means* the Department of Commerce.

(8) “Director” ~~shall mean~~ *means* the Director of the Department of Commerce.

(9) “License” ~~shall mean~~ *means* a method of regulation whereby the practice of the profession or occupation licensed is unlawful without the issuance of a license.

(10) “Class A contractors” are those performing construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is \$40,000 or more or (ii) the total value of all such construction, removal, repair or improvements undertaken by such person within any twelve-month period is \$300,000 or more.

(11) “Value” ~~shall mean~~ *means* fair market value. When improvements are performed or supervised by a general contractor or subcontractor, the contract price shall be prima facie evidence of value.

(12) “Class B contractors” are those performing construction, removal, repair or improvements when (i) the total value referred to in a single contract or project is less than \$40,000, ~~and~~ (ii) when the work performed in such contract is \$1,500 or more , *or (iii) when the work is for the purpose of constructing a water well to reach groundwater as defined in § 62.1-44.85 (8) of the Code of Virginia, regardless of contract or project amount .*

## APPENDIX D

A BILL to amend the Code of Virginia by adding in Title 62.1 a chapter numbered 21, consisting of sections 62.1-197 through 62.1-223 establishing a Virginia Water and Sewer Assistance Authority.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 62.1 a chapter numbered 21, consisting of sections 62.1-197 through 62.1-223 as follows:

### CHAPTER 21.

#### VIRGINIA WATER AND SEWER ASSISTANCE AUTHORITY.

*§ 62.1-197. Short title.—This chapter shall be known and may be cited as the Virginia Water and Sewer Assistance Authority Act.*

*§ 62.1-198. Legislative findings and purposes.—The General Assembly finds that there exists in the Commonwealth a critical need for additional sources of funding to finance the present and future needs of the Commonwealth for water supply and wastewater treatment facilities. This need can be alleviated in part through the creation of a state water and sewer assistance authority. Its purpose is to encourage the investment of both public and private funds and to make loans and grants available to local governments to finance water and sewer projects. The General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose and will promote the health, safety, welfare, convenience or prosperity of the people of the Commonwealth.*

*§ 62.1-199. Definitions.—As used in this chapter, unless a different meaning clearly appears from the context:*

*“Authority” means the Virginia Water and Sewer Assistance Authority created by this chapter.*

*“Board of Directors” means the Board of Directors of the Authority.*

*“Bonds” means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, lease and sale-leaseback transactions or any other evidences of indebtedness of the Authority.*

*“Capital Reserve Fund” means the reserve fund created and established by the Authority in accordance with § 62.1-204.*

*“Cost,” as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred by the local government in the course of the development of the project, carrying charges incurred before placing the project in service, interest on local obligations issued to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary.*

*“Local government” means any county, city, town, water and sewer authority, sanitary*

*district or any other state or local authority, board, district or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the Commonwealth.*

*“Local obligations” means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, leases or any other evidences of indebtedness of a local government.*

*“Minimum capital reserve fund requirement” means, as of any particular date of computation, the amount of money designated as the minimum capital reserve fund requirement which may be established in the resolution of the authority authorizing the issuance of, or the trust indenture securing, any outstanding issue of bonds.*

*“Project” means any water supply or wastewater treatment facility located or to be located in the Commonwealth by any local government. The term includes, without limitation, water supply and intake facilities; water treatment and filtration facilities; water storage facilities; water distribution facilities; sewage collection, treatment and disposal facilities; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto.*

*§ 62.1-200. Creation of Authority.—The Virginia Water and Sewer Assistance Authority is created, with the duties and powers set forth in this chapter, as a public body corporate and as a political subdivision of the Commonwealth. The exercise by the Authority of the duties and powers conferred by this chapter shall be deemed to be the performance of an essential governmental function of the Commonwealth.*

*§ 62.1-201. Board of Directors.—A. All powers, rights and duties conferred by this chapter or other provisions of law upon the Authority shall be exercised by a Board of Directors consisting of the State Treasurer, the Executive Director of the State Water Control Board, the State Health Commissioner, three members appointed by the Governor, subject to confirmation by the General Assembly, and three additional members appointed by the General Assembly. The members of the Board of Directors appointed by the Governor and the General Assembly shall serve terms of four years each, except that the original terms of the three members appointed by the Governor shall end on June 30 1985, 1986, and 1987, respectively, as designated by the Governor. Any appointment to fill a vacancy on the Board of Directors shall be made for the unexpired term of the member whose death, resignation or removal created the vacancy. All members of the Board of Directors shall be residents of the Commonwealth. Members may be appointed to successive terms on the Board of Directors. Each member of the Board of Directors shall be reimbursed for his or her reasonable expenses incurred in attendance at meetings or when otherwise engaged in the business of the Authority and shall be compensated at the rate provided in § 2.1-20.3 of the Code of Virginia for each day or portion thereof in which the member is engaged in the business of the Authority.*

*B. The Governor shall designate one member of the Board of Directors as chairman; he shall be the chief executive officer of the Authority. The Board of Directors may elect one member as vice-chairman; he shall exercise the powers of chairman in the absence of the chairman or as directed by the chairman. The State Treasurer, the Executive Director of the State Water Control Board and the State Health Commissioner shall not be eligible to serve as chairman or vice chairman.*

*C. Meetings of the Board of Directors shall be held at the call of the chairman or of any four members. Five members of the Board of Directors shall constitute a quorum for the transaction of the business of the Authority. An act of the majority of the members of the Board of Directors present at any regular or special meeting at which a quorum is present shall be an act of the Board of Directors. No vacancy on the Board of Directors shall impair the right of a majority of a quorum of the members of the Board of Directors to exercise all the rights and perform all the duties of the Authority.*

*D. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth shall be deemed to have forfeited or shall have forfeited his or her office or employment by reason of acceptance of membership on the Board of Directors or by providing service to the Authority.*

*§ 62.1-202. Appointment and duties of Executive Director.—The Governor shall appoint an*

*Executive Director of the Authority, who shall report to, but not be a member of, the Board of Directors. The Executive Director shall serve as the ex officio secretary of the Board of Directors and shall administer, manage and direct the affairs and activities of the Authority in accordance with the policies and under the control and direction of the Board of Directors. He shall attend meetings of the Board of Directors, shall keep a record of the proceedings of the Board of Directors and shall maintain and be custodian of all books, documents and papers of the Authority, the minute book of the Authority and its official seal. He may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under seal of the Authority to the effect that the copies are true copies, and all persons dealing with the Authority may rely upon the certificates. He shall also perform other duties as instructed by the Board of Directors in carrying out the purposes of this chapter. He shall execute a surety bond in a penalty sum determined by the Attorney General. The surety bond shall be executed by a surety company authorized to transact business in the Commonwealth and shall be conditioned upon the faithful performance of the duties of the office.*

*§ 62.1-203. Powers of Authority.—The Authority is granted all powers necessary or appropriate to carry out and to effectuate its purposes, including the following:*

*1. To have perpetual succession as a public body corporate and as a political subdivision of the Commonwealth;*

*2. To adopt, amend and repeal bylaws, rules and regulations not inconsistent with this chapter for the administration and regulation of its affairs and to carry into effect the powers and purposes of the Authority and the conduct of its business;*

*3. To sue and be sued in its own name;*

*4. To have an official seal and alter it at will although the failure to affix this seal shall not affect the validity of any instrument executed on behalf of the Authority;*

*5. To maintain an office at any place within the Commonwealth which it designates;*

*6. To make and execute contracts and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;*

*7. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its properties and assets;*

*8. To employ officers, employees, agents, advisers and consultants and to determine their duties and compensation;*

*9. To procure insurance, in amounts and from insurers of its choice, against any loss in connection with its property, assets or activities, including insurance against liability for its acts or the acts of its directors, employees or agents and for the indemnification of the members of its Board of Directors;*

*10. To procure insurance, guarantees, letters of credit and other forms of collateral or security from any public or private entities, including any department, agency or instrumentality of the United States of America or the Commonwealth, for the payment of any bonds issued by the Authority, including the power to pay premiums or fees on any such insurance, guarantees, letters of credit and other forms of collateral or security;*

*11. To receive and accept from any source aid, grants and contributions of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this chapter subject to the conditions upon which the aid, grants or contributions are made;*

*12. To enter into agreements with any department, agency or instrumentality of the United States of America or the Commonwealth for the purpose of planning, regulating and providing for the financing of any projects;*



13. To collect, or to authorize the trustee under any trust indenture securing any bonds to collect, amounts due under any local obligations owned by the Authority, including taking the action required by § 15.1-225 to obtain payment of any sums in default;

14. To enter into contracts or agreements for the servicing and processing of local obligations owned by the Authority;

15. To invest or reinvest its funds as provided in this chapter or permitted by applicable law;

16. Unless restricted under any agreement with holders of bonds, to consent to any modification with respect to the rate of interest, time and payment of any installment of principal or interest, or any other term of any local obligations owned by the Authority;

17. To establish, and revise, amend and repeal, and to charge and collect, fees and charges in connection with any activities or services of the Authority; and

18. To do any act necessary or convenient to the exercise of the powers granted or reasonably implied by this chapter.

§ 62.1-204. Power to borrow money and issue bonds.—The Authority shall have the power to borrow money and issue its bonds in whatever principal amounts the Authority determines to be necessary or convenient to provide funds to carry out its purposes and powers.

§ 62.1-205. Power to issue refunding bonds.—The Authority shall have the power: (i) to issue bonds to renew or to pay bonds, including the interest, (ii) whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and (iii) to issue bonds partly to refund bonds then outstanding and partly for its corporate purposes. The refunding bonds may be exchanged for the bonds to be refunded or they may be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded.

§ 62.1-206. Sources of Payment and Security for Bonds.—The Authority shall have the power to pledge any revenue or funds of the Authority to the payment of its bonds, subject only to any prior agreements with the holders of particular bonds pledging money or revenue. Bonds may be additionally secured by a pledge of any local obligation owned by the Authority, any grant, contribution or guaranty from the United States of America, the Commonwealth or any corporation, association, institution or person, any other property or assets of the Authority, or a pledge of any money, income or revenue of the Authority from any source.

§ 62.1-207. Liability of Commonwealth, political subdivisions and members of board of directors.—No bonds issued by the Authority under this chapter shall constitute a debt or a pledge of the faith and credit of the Commonwealth, or any political subdivision thereof other than the Authority, but shall be payable solely from the revenue, money or property of the Authority as provided for in this chapter. No member of the Board of Directors or officer, employee or agent of the Authority or any person executing bonds of the Authority shall be liable personally on the bonds by reason of their issuance or execution. Each bond issued under this chapter shall contain on its face a statement to the effect (i) that neither the Commonwealth, nor any political subdivision thereof, nor the Authority shall be obligated to pay the principal of, or interest or premium on, the bond or other costs incident to the bond except from the revenue, money or property of the Authority pledged and (ii) that neither the faith and credit nor the taxing power of the Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of or interests or premium on the bond.

§ 62.1-208. Authorization, content and sale of bonds.—The bonds of the Authority shall be authorized by a resolution of the Board of Directors. The bonds shall bear the date or dates and mature at the time or times that the resolution provides, except that no bond shall mature more than fifty years from its date of issue. The bonds may bear interest at the rate or rates, including variable rates, be in the denominations, be executed in the manner, be payable in the medium of payment, be payable at the place or places, and be subject to the terms of redemption, including redemption before maturity, that the resolution authorizing their issuance provides. Bonds may be sold by the Authority at public or private sale at the price or prices

*that the Authority approves. The Authority may bring action pursuant to Article 6 (§ 15.1-213 et seq.) of Chapter 5 of Title 15.1 of the Code of Virginia to determine the validity of any issuance or proposed issuance of its bonds under this chapter and the legality and validity of all proceedings previously taken, or proposed in a resolution of the Authority to be taken, for the authorization, issuance, sale and delivery of bonds and for the payment of the principal of and premium, if any, and interest on bonds.*

*62.1-209. Provisions of resolution or trust indenture authorizing issuance of bonds.—A. Bonds may be secured by a trust indenture between the Authority and a corporate trustee, which may be any bank having the power of a trust company or any trust company within or outside of the Commonwealth. A trust indenture may contain provisions for protection and enforcing the rights and remedies of the bondholders that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the exercise of its powers and the custody, safekeeping and application of all money. The Authority may provide by the trust indenture for the payment of the proceeds of the bonds and all or any part of the revenues of the Authority to the trustee under the trust indenture or to some other depository, and for the method of their disbursement with whatever safeguards and restrictions as the Authority specifies. All expenses incurred in carrying out the trust indenture may be treated as part of the operating expenses of the Authority.*

*B. Any resolution or trust indenture pursuant to which bonds are issued may contain provisions, which shall be part of the contract or contracts with the holders of such bonds as to:*

*1. Pledging all or any part of the revenue of the Authority to secure the payment of the bonds, subject to any agreements with bondholders that then exist;*

*2. Pledging all or any part of the assets of the Authority, including local obligations owned by the Authority, to secure the payment of the bonds, subject to any agreements with bondholders that then exist;*

*3. The use and disposition of the gross income from, and payment of the principal of and premium, if any, and interest on local obligations owned by the Authority;*

*4. The establishment of reserves, sinking funds and other funds and accounts and the regulation and disposition thereof;*

*5. Limitations on the purposes to which the proceeds from the sale of the bonds may be applied, and limitations pledging the proceeds to secure the payment of the bonds;*

*6. Limitations on the issuance of additional bonds, the terms on which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;*

*7. The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds, if any, the holders of which must consent thereto, and the manner in which any consent may be given;*

*8. Limitations on the amount of money to be expended by the Authority for operating expenses of the Authority;*

*9. Vesting in a trustee or trustees any property, rights, powers and duties in trust that the Authority may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limit the rights, powers and duties of the trustees;*

*10. Defining the acts or omissions which shall constitute a default, the obligations or duties of the Authority to the holders of the bonds, and the rights and remedies of the holders of the bonds in the event of default, including as a matter of right the appointment of a receiver; these rights and remedies may include the general laws of the Commonwealth and other provisions of this chapter;*

*11. Requiring the Authority or the trustees under the trust indenture to file a petition with the Governor and to take any and all other actions required under § 15.1-225 of the Code of*

Virginia to obtain payment of all sums necessary to cover any default as to any principal of and premium, if any, and interest on local obligations owned by the Authority or held by a trustee to which § 15.1-225 shall be applicable; and

12. Any other matter, of like or different character, relating to the terms of the bonds or the security or protection of the holders of the bonds.

§ 62.1-210. Pledge by Authority.—Any pledge made by the Authority shall be valid and binding from the time when the pledge is made. The revenue, money or property so pledged and thereafter received by the Authority shall immediately be subject to the lien of such a pledge without any physical delivery thereof or further act. Furthermore, the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether the parties have notice of the pledge. No recording or filing of the resolution authorizing the issuance of bonds, the trust indenture securing bonds or any other instrument, including filings under Article 9 of the Uniform Commercial Code of Virginia (§ 8.901 et seq. of the Code of Virginia), shall be necessary to create or perfect any pledge or security interest granted by the Authority to secure any bonds.

§ 62.1-211. Purchase of bonds by authority.—The Authority, subject to such agreements with bondholders as may then exist, shall have the power to purchase bonds of the Authority out of any available funds, at any reasonable price. If the bonds are then redeemable, this price shall not exceed the redemption price then applicable plus accrued interest to the next interest payment date.

§ 62.1-212. Bonds as negotiable instruments.—Whether or not in form and character of negotiable instruments, the bonds of the Authority are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

§ 62.1-213. Validity of signatures of prior members or officers.—In the event that any of the members of the Board of Directors or any officers of the Authority cease to be members or officers before the delivery of any bonds signed by them, their signatures or authorized substitute signatures shall nevertheless be valid and sufficient for all purposes as if the members or officers had remained in office until delivery.

§ 62.1-214. Bondholder Protection.—Subsequent amendments to this chapter shall not limit the rights vested in the Authority with respect to any agreements made with, or remedies available to, the holders of bonds issued under this chapter before the enactment of the amendments until the bonds, together with all premium and interest thereon, and all costs and expenses in connection with any proceeding by or on behalf of the holders, are fully met and discharged.

§ 62.1-215. Establishment of capital reserve funds.—A. 1. The Authority may create and establish one or more capital reserve funds and may pay into each capital reserve fund (i) any moneys appropriated and made available by the Commonwealth for the purpose of such a fund, (ii) any proceeds of the sale of bonds of the Authority, to the extent provided in the resolution authorizing the issuance of, or the trust indenture securing, the bonds, and (iii) any other moneys which may be made available to the Authority for the purpose of such a fund from any other source. All moneys held in any capital reserve fund, except as hereinafter provided, shall be used solely for the payment when due of the principal of and premium, if any, and interest on the bonds secured in whole or in part by such a fund. If, however, moneys in any such fund are ever less than the minimum capital reserve fund requirement established for the fund, the Authority shall not use the moneys for any optional purchase or redemption of bonds. Any income or interest earned on, or increment to, any capital reserve fund due to its investment may be transferred by the Authority to other funds or accounts of the Authority to the extent it does not reduce the amount of the capital reserve fund below its minimal requirement.

2. The Authority shall not at any time issue bonds secured in whole or in part by any capital reserve fund, if upon the issuance of the bonds, the amount in the capital reserve fund will be less than its minimal requirement unless the Authority, at the time of issuance of the bonds, deposits in the fund an amount which, together with the amount then in the fund, will

*not be less than the fund's minimal capital reserve requirement.*

*B. In order to assure further the maintenance of capital reserve funds, the chairman of the Authority shall annually, on or before December 1, make and deliver to the Governor and the Secretary of Administration and Finance a certificate stating the sum, if any, required to restore each capital reserve fund to its minimal requirement. Within five days after the beginning of each session of the General Assembly, the Governor shall submit to the presiding officer of each House of the General Assembly printed copies of a budget including the sum, if any, required to restore each capital reserve fund to its minimal requirement. All sums appropriated by the General Assembly for any restoration and paid to the Authority shall be deposited by the Authority in the applicable capital reserve fund. All amounts paid to the Authority by the Commonwealth pursuant to the provisions of this section shall constitute and be accounted for as advances by the Commonwealth to the Authority and, subject to the rights of the holders of any bonds of the Authority, shall be repaid to the Commonwealth without interest from available operating revenues of the Authority in excess of amounts required for the payment of bonds or other obligations of the Authority, the maintenance of capital reserve funds, and operating expenses.*

*C. The Authority may create and establish other funds as necessary or desirable for its corporate purposes.*

*D. Nothing in this section shall be construed as limiting the power of the Authority to issue bonds not secured by a capital reserve fund.*

*§ 62.1-216. Purchase of local obligations.—The Authority shall have the power and authority, with any funds of the Authority available for such a purpose, to purchase and acquire, on terms which the Authority determines, local obligations to finance the cost of any project. The Authority may pledge to the payment of any bonds all or any portion of the local obligations so purchased. The Authority may also, subject to any such pledge, sell any local obligations so purchased and apply the proceeds of such a sale to the purchase of other local obligations for financing the cost of any project or for any other corporate purpose of the Authority.*

*The Authority may require, as a condition to the purchase of any local obligation, that the local government issuing an obligation covenant perform any of the following:*

*A. Establish and collect rents, rates, fees and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and premium, if any, and interest on the local obligations issued by the local government to the Authority; and (iii) any amounts necessary to create and maintain any required reserve;*

*B. Create and maintain a special fund or funds for the payment of the principal of and premium, if any, and interest on any local obligations and any other amounts becoming due under any agreement entered into in connection with the local obligation, or for the operation, maintenance, repair or replacement of the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments as they become due and payable;*

*C. Create and maintain other special funds as required by the Authority; and*

*D. Perform other acts, including the conveyance of real and personal property together with all right, title and interest therein to the Authority, or take other actions as may be deemed necessary or desirable by the Authority to secure payment of the principal of and premium, if any, and interest on the local obligations and to provide for the remedies of the Authority or other holder of the local obligations in the event of any default by the local government in the payment.*

*All local governments issuing and selling local obligations to the Authority are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts with the Authority that are contemplated by this chapter.*

§ 62.1-217. *Grants from Commonwealth.*—The Commonwealth may make grants of money or property to the Authority for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers, including deposits to the capital reserve funds. This section shall not be construed to limit any other power the Commonwealth may have to make grants to the Authority.

§ 62.1-218. *Grants to local governments.*—The Authority shall have the power and authority, with any funds of the Authority available for this purpose, to make grants or appropriations to local governments. In determining which local governments are to receive grants or appropriations, the State Water Control Board shall assist the Authority in determining needs for wastewater treatment facilities and the Department of Health shall assist the Authority in determining needs for water supply facilities.

§ 62.1-219. *Exemption from taxation.*—As set forth in § 62.1-200, the Authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. Accordingly, the Authority shall not be required to pay any taxes or assessments upon any project or any property, or any taxes or assessments upon any project or any property or local obligation acquired or used by the Authority under the provisions of this chapter or upon the income therefrom. Any bonds issued by the Authority under the provisions of this chapter, and the income therefrom shall at all times be free from taxation and assessment of every kind by the Commonwealth and by the local governments and other political subdivisions of the Commonwealth.

§ 62.1-220. *Bonds as legal investments and securities.*—The bonds issued by the Authority in accordance with the provisions of this chapter are declared to be legal investments in which all public officers or public bodies of the Commonwealth, its political subdivisions, all municipalities and municipal subdivisions; all insurance companies and associations and other persons carrying on insurance business; all banks, bankers, banking associations, trust companies, savings banks, savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees and other fiduciaries; and all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth, may invest funds, including capital, in their control or belonging to them. The bonds of the Authority are also hereby made securities which may be deposited with and received by all public officers and bodies of the Commonwealth or any agency or political subdivision of the Commonwealth and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may be later authorized by law.

§ 62.1-221. *Deposit of money; expenditures; security for deposits.*—A. All money of the Authority, except as otherwise authorized or provided in this chapter, shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations. The money in these accounts shall be paid by check signed by the Executive Director or other officers or employees and designated by the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks or trust companies are authorized to give security for the deposits.

B. Notwithstanding the provisions of subsection A the Authority shall have the power to contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any money of the Authority and of any money held in trust or otherwise for the payment of bonds and to carry out such a contract. Money held in trust or otherwise for the payment of bonds or in any way to secure bonds and deposits of money may be secured in the same manner as money of the Authority, and all banks and trust companies are authorized to give security for the deposits.

§ 62.1-222. *Annual reports; audit.*—The Authority shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor. The Clerk of each House of the General Assembly may receive a copy of the report by making a request for it to the chairman of the Authority. Each report shall set forth a complete operating and financial statement for the Authority during the fiscal year it covers. An independent certified public accountant shall audit the books and accounts of the Authority at least once in

*each fiscal year.*

*§ 62.1-223. Liberal construction of Act.—The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may be effectuated. No proceedings, notice or approval shall be required for the issuance of any bonds of the Authority or any instruments or the security thereof, except as provided in this chapter. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special or local, the provisions of this chapter shall be controlling.*



