

REPORT OF THE

STATE WATER COMMISSION

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



HOUSE DOCUMENT NO. 68

**COMMONWEALTH OF VIRGINIA
RICHMOND
1995**

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**REPORT OF THE
STATE WATER COMMISSION**

to

**The Honorable George Allen, Governor,
and
the General Assembly of Virginia
Richmond, Virginia
May 1995**

I. INTRODUCTION AND AUTHORITY FOR STUDY

The State Water Commission is a permanent agency of the Commonwealth directed by statute to (i) study all qualitative and quantitative water supply and allocation problems in the Commonwealth, (ii) coordinate the legislative recommendations of other state entities responsible for water supply and allocation issues, and (iii) report annually its findings and recommendations to the General Assembly and the Governor.¹

During 1994 the State Water Commission continued to review the appropriate role for the state in water planning and development. The Commission met in August 1994 to hear from localities regarding a number of staff-developed options (the "December 1993 options") for a new state role in water resource management.² It also discussed the Federal Energy Regulatory Commission's progress on conducting environmental impact statement investigation for the Lake Gaston pipeline. In January 1995 the Commission heard from the Hampton Roads Planning District Commission on its efforts to develop an alternative to the December 1993 options. The Commission also received testimony from those interested in developing an expedited procedure for localities to obtain relatively small loans for water facility emergencies, upgrades or repairs.

II. LOCALITY INPUT ON DECEMBER 1993 OPTIONS

To further its deliberations on the appropriate state role in water supply planning and development, the Commission invited representatives from localities to make presentations regarding water supply efforts. The localities represent a variety of problems the Commission seeks to resolve through a state water policy. The localities are areas that have: (i) joined together to try to develop a regional

¹ Va. Code § 9-145.8.

² The full text of these options can be found in the 1993 Water Commission Report (House Document No. 96, 1994). See also Appendices 2, 3, 4, and 5 for brief summaries of the options.

solution only to have one of its members select a different option (Regional Raw Water Study Group and James City County); (ii) sought to resolve conflicts over which locality should provide water treatment facilities and disputes over rights to water from the same body of water (City of Richmond and Henrico County); (iii) apparently resolved conflicts and developed a solution for regional needs (Spotsylvania County and the City of Fredericksburg); and (iv) been unable to resolve their conflict over one area's desire to acquire water from the second area (City of Virginia Beach and the Town of Clarksville-Lake Gaston area). Numerous other localities and interests are involved in each of these situations but because of time constraints not every involved party could be invited to testify.

The localities were asked to address three issues: first, what their planning efforts have been; second, how current state law and policy has helped or hindered that process; and finally, how the December 1993 options would help or hinder their efforts, including any suggested changes to those options.

A. Regional Raw Water Study Group and James City County

Brian Ramaley, Director of the Newport News Waterworks, and Sanford B. Wanner, Assistant Administrator for James City County, described efforts to develop a regional water supply for the Peninsula.

1. Planning Efforts

The jurisdictions of Newport News, Williamsburg, James City County and York County participated in the group studying the development of raw water sources. The group has undertaken numerous studies on demand projections, salinity impacts, water conservation, methods for screening alternative projects, environmental impacts, water treatment and water transmission. With the assistance of the consulting firm of Malcolm Pirnie, the group developed 31 alternatives. In April 1993 the group, less James City County which had withdrawn from formal participation in the group the preceding month, endorsed the King William Reservoir as its preferred project. A final environmental impact statement (EIS) will be issued by the spring of 1995. Issuance of the Virginia Water Protection Permit and Corps of Engineers construction permits are expected within a year from EIS issuance. Construction and filling of the reservoir will take eight to 10 years, meaning the Peninsula may begin receiving water from this project in the year 2005.

Wanner added that James City County has sought to develop the Ware Creek Reservoir since 1979. While it has been involved with the Regional Raw Water Study Group, ongoing litigation over Ware Creek hinders the county's ability to work with the other jurisdictions.

2. Impact of Current State Law and Policy

In Ramaley's view, most state agency involvement in water supply development is through the permitting programs administered by the Department of Environmental Quality. General oversight by the state is missing, however, and no single entity is responsible for coordinating and assimilating the different comments and positions of the state agencies on water projects. This disjunction exists despite state assurances that a coordinated and consolidated state review would take place.

The Groundwater Management Act of 1992 has enabled local governments in the Coastal Plain Aquifer to apply for ground water withdrawal permits. A permit to withdraw up to seven million gallons of water per day should meet short-term needs and would serve as the ground water component of a long-term plan.

3. Comments on the December 1993 Options

The Newport News Waterworks is a regional water utility with facilities in eight cities and counties, straddling two major basins and transcending local government, subbasin and basin boundaries. This situation is not unique. The December 1993 options' planning units (planning district commissions; subbasin commissions made up of local government officials and interest groups; and local governments within subbasins) will not fit this type of existing integrated multijurisdictional and multibasin system. In addition, localities perceive plan adoption and local consent as potential flaws in each of the proposed options.

Selecting a water supply project is a long process even when moving as fast as the permitting system will allow. The December 1993 options will not speed that process because they fail to address significant problems with federal regulations. A strong state advocacy role would shave years off the process.

4. Suggested Alternatives

A mechanism for adopting local or regional projects into a state water plan must be implemented. Because of the importance of the quality of source water in the production of a safe and reliable supply of drinking water, the Virginia Department of Health should be a key player in water plan development and adoption. The involvement of the Attorney General in disputes arising out of the state water plan or any element of the plan with other states and federal agencies is necessary. A method to incorporate the Attorney General in regulatory and permitting activities, particularly when the federal government is involved, would be particularly helpful.

Wanner echoed Ramaley's comments that the state has been of little help in securing permits for developing the Ware Creek Reservoir. However, despite the lack of state help, the major problem has been with the federal government. In Wanner's view, the state should utilize available opportunities to change federal legislation that is slowing the process. The numerous state and federal agencies and permits involved make it difficult to develop a clear idea of what will be permitted, though it can be said that regional projects appear to be favored. In short, there have been too many studies to complete and too many statutes to comply with. Additional legislation will not answer this problem.

In conclusion, Wanner recommended three additional actions. First, DEQ should complete water studies and research begun in the 1980's. Second, the local veto³ should be maintained with the Commonwealth acting as a mediator. Finally, the state should play an advocacy role.

B. The City of Richmond and the County of Henrico

Robert Bobb, Richmond city manager, and Patrick Brady, director of public utilities for Henrico County, described the efforts of those localities to resolve conflicts over James River water supply development.

1. Planning Efforts

The City of Richmond and Henrico County have been involved in a dispute over rights to water in the James River and the county's proposal to build a water treatment plant (the county now pays Richmond for water). This led to an intense evaluation of the Richmond region water supply needs for the next 40 to 50 years. Water supply alternatives to meet these needs and their impacts on the Falls of the James were also examined.

Because of a better understanding of water supply needs, water supply alternatives, and the impact of these alternatives on the environmental and economic well-being of individual localities and the region, the localities have resolved their conflicts. This resolution, in the form of a memorandum of understanding, provides a framework for: (i) transition to a new Henrico water treatment plant without imposing a financial hardship on ratepayers in the city or the region; (ii) further integration of the localities' individual systems into a regional water supply system; (iii) protection of the canal and canal system; and (iv) protection of the Falls of the James. In addition, the localities have agreed in principle on a joint river management plan to provide for the region's water needs. A complete regional water supply system will be achieved through water contracts between the City and Henrico, Chesterfield, Hanover and Goochland Counties.

³ The "local veto" refers to the ability of a local government to withhold consent from another local government to develop a water supply within its territory.

Henrico's new system will be integrated into the existing system so that the existing high quality water service will be improved and expanded.

2. Impact of Current State Law and Policy and Suggestions

While there was very little state involvement and therefore very little opportunity for state law and policy to help or hinder resolution of the Richmond-Henrico conflict, additional state regulation will hinder, not help, the planning process. Although Richmond and Henrico oppose additional state regulation the state's involvement is critical in several areas. First, the state should ensure that water withdrawals do not endanger water quality or beneficial uses of state waters. In doing so, the state should not overturn local judgments on the measures to protect water quality and beneficial uses unless clear evidence shows that they will not be protected. Second, through means other than regulation, the state should (i) foster resolution between local governments and (ii) support local and regional water supply plans if federal agencies resist or oppose them. Finally, the state should assist the implementation of local water supply plans. For example, low flow augmentation through releases from upstream impoundments will likely be needed as water withdrawals continue to increase.

3. Comments on the December 1993 Options

If an option must be selected, Bobb favors the option offering the most local control. He opposes placing local water planning with the planning district commissions because it has not worked in the Richmond area.

The city has concluded that water supply planning and the resolution of water supply disputes among neighboring jurisdictions are best left to the concerned local governments. Although this arrangement may not always work smoothly, local governments are in the best position to identify and provide for their water supply needs. A threat to one's claim to water evokes a strong response; however, the practical necessity for regional cooperation will ultimately force neighboring governments to resolve water supply conflicts.

Bobb added that not all water produced by water treatment plants is used for domestic consumption--much is used for manufacturing. Manufacturing uses are important but priority should not be given to them over direct withdrawals for other forms of economic development such as water for the city's canals. All economic development-related withdrawals should have the same priority.

C. Spotsylvania County and Fredericksburg

Kimball Payne III, county administrator for Spotsylvania County, and Tom Slaydon, director of public works for the City of Fredericksburg, made the following observations.

1. Planning Efforts

The localities have cooperated to provide an adequate water supply. Since 1988, they have considered 16 options, with federal agencies strongly encouraging the development of a regional project. The localities will use three sources in three different water basins that cross jurisdictional lines.

2. Impact of Current State Law and Policy

Current state law and policy has been of little help to the localities. Beginning in 1988 the localities requested help from the State Water Control Board (SWCB). The SWCB informed them that it could not help with the permit application process. Help and input would not come until the project was in the environmental impact statement stage. Again, as was expressed by previous speakers, the state has not been an advocate.

3. Suggestions

Incentives for regional planning would be helpful to localities. The ability to create such cooperative situations should not be restrained.

The Corps and the 404 permit requirements drove the planning and siting process more than anything else. A greater state presence would result in tremendous time savings. There is a particular need for the state to help localities obtain permits and with the requirements of National Environmental Policy Act (NEPA).

D. Virginia Beach

1. Planning Efforts

Clarence Warnstaff, director of public utilities for the City of Virginia Beach, reviewed the progress of water transfer from Lake Gaston.⁴

According to Warnstaff 75 percent of the flow in the Roanoke River above the Roanoke Rapids (North Carolina) comes from Virginia. The average flow of the

⁴ Virginia Beach's planning efforts and facts and progress of the Lake Gaston Project have been reported in previous Commission reports and therefore will not be repeated here.

Roanoke River at the Roanoke Rapids Dam is 5,200 million gallons per day. Average flow of the river at Albemarle Sound is 6,000 million gallons per day. The average flow of the Roanoke River during the driest year in over 80 years of record was 2,000 million gallons per day. The impact of the Lake Gaston withdrawal will be approximately two to three inches of additional drawdown in Kerr Reservoir (which feeds Lake Gaston) during drought periods. Kerr Reservoir fluctuates as much as 22 feet in any given year to control flooding in the lower Roanoke River.

The water withdrawal from the Roanoke River represents a one percent reduction in average flow and a three percent reduction in a drought of record. There will be no reduction in the Federal Energy Regulatory Commission (FERC) mandated minimum release from Lake Gaston.

2. Impact of Current State Law and Policy

Changes in the regulatory environment since the 1982 decision to pursue the Lake Gaston pipeline reinforce the fact that the Lake Gaston pipeline is the best alternative from an environmental and regulatory standpoint. Most of the alternatives considered in the 70's and early 80's are probably not permissible today. Examples of changes include:

- Implementation of a no net loss wetlands policy;
- Institution of the Virginia Water Protection Permit resulting in a state permitting process for new surface water withdrawals and requiring the establishment of minimum instream flows;⁵
- Granting additional power to the Department of Environmental Quality to regulate water withdrawals in areas designated as Surface Water Management Areas under the Surface Water Management Act;⁶
- Elimination of the municipal exemption for groundwater withdrawals by the Groundwater Management Act in 1986;
- Increasing the state's regulatory authority over groundwater through the 1992 Groundwater Management Act;⁷ and
- Increasing the number of compounds in drinking water that are regulated under the federal Safe Drinking Water Act (SDWA) amendments of 1986.⁸

These new laws and regulations place an increasing monetary and manpower burden on localities trying to develop new water supplies for the residents of the

⁵ Va. Code § 62.1-44.15:5.

⁶ Va. Code § 62.1-242 et seq.

⁷ Va. Code § 62.1-254 et seq.

⁸ A significant problem created for southeastern Virginia is that certain SDWA regulations deal with disinfection by-products. Disinfectants required by law may react with trace natural organic matter to create regulated compounds because the compounds are potential carcinogens. Waters from southeast Virginia have a very high potential for the formation of these by-products.

state. Due to these more stringent laws and regulations, water supply development in the coastal plain area of Virginia is, for all practical purposes, nonexistent. Wetlands inhibit reservoir development; large municipal withdrawals of groundwater are impeded or unavailable; and minimum instream flow requirements prevent removing adequate amounts of water from streams and rivers. Rather than creating more laws in Virginia, there is a need to streamline and modify the existing ones.

3. Comments on the December 1993 Options

Warnstaff recommends that the Commission reject the entire package of December 1993 options, asserting that the proposals would not aid in the development of needed water supply projects in the Commonwealth. Specific reasons include:

- a. The options add a layer of rules, regulations, and laws for water suppliers;
- b. The options essentially prohibit the inter-basin transfer of water within the Commonwealth and prohibit any additional water being made available for cities within the Virginia coastal plain; and
- c. The options do nothing to solve southeastern Virginia's critical water shortage.

In conclusion, Warnstaff noted that Virginia Beach is working with the Hampton Roads Planning District Commission to develop specific recommendations to modify existing laws as alternatives to the December 1993 options. One such modification is having the state play an active advocacy role for water supply development. He urged the Commission to wait for those recommendations before acting on a state policy.

E. Town of Clarksville

James V. Massingill, Town of Clarksville Town Council member, urged the Commission to remember the rights and interests of people and communities located near a body of water that may be the source of water for areas such as Virginia Beach. It appears that Virginia Beach residents are treated as if they have more rights than those in the Lake Gaston area. A source area may not have the same political clout or population density, but it does have the same rights as the receiving area. A state policy should provide protections for these less powerful areas and the state should act as a nonpolitical mediator in these situations.

At the conclusion of the presentations some commission members expressed frustration over the fact that local governments have been requesting a state water

policy but, based on the presentations, seem to be backing away from an increased state role in planning. In response to a request from HRPDC, which had committed to develop a formal policy proposal, the Commission delayed further action on the December 1993 options until the HRPDC study is complete. Following the July meeting the Commission requested that the study results be presented at the Commission's January meeting. A summary of the HRPDC efforts follows.

III. HAMPTON ROADS PLANNING DISTRICT COMMISSION UPDATE

John M. Carlock, director of physical and environmental planning for the Hampton Roads Planning District Commission (HRPDC), updated the Commission on the water supply and planning activities of the 15 counties and cities in HRPDC. The localities are cooperating on a variety of activities including water conservation, groundwater management, watershed management and a comprehensive review of state water law.⁹

A. Water Conservation

HRPDC promotes water conservation by the region's citizens and supports changes to the statewide building code to require more efficient plumbing devices in new construction. In June 1994 the Hampton Roads Water Efficiency Team (HR WET) was formed to increase public consciousness of the region's water supplies, to build an ethic of efficiency in the use of those supplies, and to reduce per capita water consumption. An intense media campaign is underway. In addition, a regional water conservation plan is being prepared to serve as a framework for developing individual plans tailored to specific local conditions and needs.

B. Ground Water Management

While a regional ground water mitigation program has been developed, locality-funded efforts continue in conjunction with efforts of the United States Geological Survey (USGS) and the Department of Environmental Quality to increase the understanding of the region's ground water system and to expand the data base necessary to properly manage the resource. In this regard, HRPDC has collected data on chloride levels to provide a baseline from which salt water intrusion may be analyzed and localities are providing support to the USGS ground water level monitoring network. Localities also provide special funding to HRPDC to analyze ground water impacts associated with episodic and emergency ground water withdrawals.

⁹ In January 1995, HRPDC provided the Commission with the results of this study. The study is summarized in section V of this report.

Educational material on the region's ground water system and proper well construction techniques are being developed. This effort is an outgrowth of concern that some impacts to private wells result from well construction techniques that are inconsistent with regional ground water conditions.

C. Watershed Management

HRPDC has begun an educational program on watershed management; has held a series of workshops on the use of Geographic Information Systems in watershed management, attended by 70 local government staff members; and is developing a comprehensive watershed management workshop program.

Carlock concluded by noting the need for state and local governments to work as partners in managing the water resources of the Commonwealth. This will ensure that a safe and reliable water supply is provided in an environmentally sound and cost-effective manner.

IV. FEDERAL ENERGY REGULATORY COMMISSION EIS ACTIVITY

Clarence A. Holland briefed the Commission on the ongoing debate over the need for further study by the Federal Energy Regulatory Commission in developing an EIS. At the time of the Commission's July meeting, FERC was determining the extent of needed analysis. Extensive environmental, economic and social issues associated with the pipeline project have been repeatedly and thoroughly studied. As a result, the Commission passed a resolution expressing to FERC the Commission's viewpoint that sufficient study has already taken place (appendix 1).

V. SUMMARY OF HAMPTON ROADS PLANNING DISTRICT COMMISSION REPORT; "VIRGINIA STATE WATER LAW- -A REVIEW WITH RECOMMENDATIONS"

HRPDC undertook a study designed to identify conflicts and redundancies in the Virginia Code, to identify deficiencies in the Code and related regulations, and to recommend appropriate revisions. The premise of the effort is that a body of law sufficient to address the water supply needs of the Commonwealth presently exists but some improvement is needed. The study was used to develop recommendations to support local water supply development.

A. Problem Definition

The report characterizes the provision of safe and reliable drinking water as a critical responsibility given to local governments through charter and legislation.

Achievement of this in a fiscally and environmentally sound manner is essential to the economic health of localities but occurs in an environment of regulatory and fiscal constraint. Many state and federal laws and regulations hinder the ability of local governments to meet this responsibility. For example, the Hampton Roads area agencies and governments have undertaken more than 100 studies on water supply in the region. The studies recommend several large water supply projects. Development of these water supplies has been complicated by conflicting provisions of law, policy and regulation. To overcome these obstacles, state support for and advocacy of local water supply development efforts is necessary.

B. Study Process

HRPDC retained Dr. William R. Walker of the Virginia Water Resources Research Center to assist with a review of the Code and with development of legislative proposals. Between June and November of 1994 the HRPDC Director of Utilities Committee (the committee) met 10 times to review existing provisions of the Code, to discuss issue papers and alternative proposals and to reach consensus on issues and legislative recommendations. Many recommendations were made. Where consensus could not be reached or an issue arose whose resolution exceeded the purview of the region, the issues are outlined and recommendations for further study are made in the report. Because of the magnitude of Virginia water law, the committee narrowed its review to nine priority issues. The issues falling into three areas: (i) state leadership; (ii) revision of laws and regulations; and (iii) reorganization of state agency functions. Recommendations in these areas fall into five categories: (i) water supply planning; (ii) local consent; (iii) compensation; (iv) issues for further study; and (v) specific legislative proposals.

C. Recommendations

1. Water Supply Planning

The committee's report identifies five priorities involving water supply planning: (i) the need for state advocacy of water supply projects, particularly during the federal agency review and decision making process; (ii) the state's failure to assume its statutory responsibility with water supply and the policy that "potable water use" for human consumption is to be the priority use; (iii) deficiencies in state implementation of state responsibilities for water supply planning and related activities in current law; (iv) a need for state data collection and analysis on a variety of water resource issues and state funding; and (v) watershed protection. In its study, the committee followed the "Philosophical Statement on Governmental Roles" in the HRPDC Water Supply Position Statement of July 1993 as follows:

. . . state and local governments and regional agencies in Virginia have distinct and shared responsibilities. All are responsible to their citizens

(citizens of localities are also citizens of the Commonwealth) for the protection of public health, safety, and welfare and for ensuring a clean and healthful environment. Provision of a safe water supply to all citizens of the Commonwealth is vital to the long-term economic well being of the Commonwealth and its citizens. Provision of water supply in an environmentally sound, cost-effective manner must be accomplished through a partnership between state and local government.¹⁰

To address the issues raised in this statement, the committee reviewed the Code and the December 1993 options. Recognizing that state planning efforts depend on sufficient funding and that the local experience with water supply development plays a major role in considering the need for state advocacy for local water supply projects, the committee proposed changes to Title 62.1 that:

- a. Establish a specific timetable for completing a state water plan and a schedule for updating the plan;
- b. Specify elements to be included in the plan;
- c. Delineate the responsibilities of the State Water Control Board (Department of Environmental Quality) and the Department of Health for water supply planning;
- d. Establish local government responsibility for local planning and the relationship between the state water plan and local water supply plans, including a conflict resolution mechanism; and
- e. Provide the basis for state support of and advocacy for development of public water supplies.¹¹

2. Local Consent

Local governments are empowered to develop water supplies in other jurisdictions if agreement can be obtained from the "host" locality. While the Code provides a dispute resolution mechanism, this "local consent" requirement has sometimes proved a contentious issue. The committee began its review of local consent by looking at Title 15.1 but found provisions in other titles and in regulations relevant as well. Determining that the issue would require a more detailed study than time allowed, the committee resolved to study the issue thoroughly during 1995.

3. Compensation

The committee examined several approaches to address compensation in water transfers, including legislation, future study, and no action. A number of options for determining the amount of compensation, recipients of compensation,

¹⁰ This statement was presented to the State Water Commission in July 1993.

¹¹ The full text of the statutory amendments may be found beginning on page 14 of this report.

integration of compensation and consent provisions were addressed in the committee's deliberations.

The committee's agreed that compensation is best addressed through (i) the "host agreement" component of the local consent provisions insofar as individual local jurisdictions are concerned and (ii) the court system for riparian owners who are damaged as the result of a water supply project. Therefore, the committee finds no legislation necessary at this time.

4. Issues for Further Study

The report identifies several issues that lie beyond the scope of the committee's efforts or beyond the scope of the region the committee represents. Hence, the committee recommends that the following be considered by the General Assembly and the Administration:

a. State law contains conflicting provisions which pit water supply against other instream uses and wetland protection. In addition, surface water and ground water management regulations contain conflicting elements. These conflicts may require correction through state or federal statutory modification or may require alteration of administrative interpretation and regulation. The committee recommends, at a minimum, the development of a formal process to resolve these conflicts.

b. Provisions related to water supply are scattered throughout the Code and not in a readily accessible, coherent format. The committee urges the General Assembly to consider a recodification of these provisions.

c. A number of the localities represented on the committee have found that state review of project plans, permit applications and environmental impact assessments and statements results in a myriad of conflicting questions from different agencies. The questions do not reflect any prioritization. Hence, the Commonwealth's environmental impact review process should be refined to include specific procedures for resolving conflicts among agency comments and for prioritizing issues requiring further study.

d. A number of state and federal initiatives include a watershed management and protection component, e.g., the federal Clean Water, Safe Drinking Water and Coastal Zone Management Acts and the state Chesapeake Bay Preservation Act and the Stormwater Management Act. Numerous local initiatives also impact the topic. The committee suggests that the state examine these requirements to ensure coordination in their application in Virginia. Incentives to localities to ensure that appropriate protection and management measures are applied to existing and potential water supply watersheds are encouraged as well.

5. Legislative Proposals

The committee's report includes draft legislative proposals for the Water Commission's consideration. The committee asked that the proposals not be introduced during the 1995 Session but that they be used to further the commission's ongoing study of state water policy.

The following is the text of the proposals along with brief explanatory notes and comparisons to the December 1993 options provided by Division of Legislative Services staff. The staff comments do not address perceived drafting errors such as numbering of sections. However, where the committee's draft dropped or incorrectly copied existing Code language it is corrected. The major portion of the legislative proposal deals with planning and plan formation. For comparison purposes a chart describing the December 1993 planning options is attached as appendix 2.

Chapter 3.2.

CONSERVATION AND DEVELOPMENT OF WATER RESOURCES; STATE WATER CONTROL BOARD.

§ 62.1-44.36. Responsibility of State Water Control Board, ~~formulation of policy for Water Resource Planning.~~

Being cognizant of the crucial importance of the Commonwealth's water resources to the health and welfare of the people of Virginia, and of the need of a water supply to assure further industrial growth and economic prosperity for the Commonwealth, and recognizing the necessity for continuous cooperative planning and effective state-level guidance in the use of water resources, the State Water Control Board ~~is assigned the~~ with the concurrence of the Virginia Department of Health, shall have oversight¹² responsibility for the planning, the development, conservation and utilization of Virginia's water resources with water for public water supplies receiving the highest priority.¹³

The Board shall continue the study of existing water resources of this Commonwealth, means and methods of conserving and augmenting such water resources, and existing and contemplated uses and needs of water for all purposes. Based upon these studies ~~and such policies as have been initiated by the Division of Water Resources,~~ and after an opportunity has been given to all concerned state agencies and political subdivisions to be heard, the Board shall ~~formulate a~~

¹² Introduces VDH into the current SWCB role for planning, development and utilization of Virginia's water resources. The meanings of "concurrence" and "oversight" are not defined.

¹³ Currently "human consumption" is set out in the code as the priority beneficial use. The proposal does not define "public water supplies."

~~coordinated policy for the use and control of all the water resources of the Commonwealth and issue a statement thereof~~ develop a state water plan by July 1, 1997, to provide guidance for the orderly and coordinated management, conservation, development¹⁴ and utilization of the water resources of the Commonwealth. Every five years, beginning in the year 2002, the Board shall review the state water plan and provide a written report to the Governor and the Water Commission that certain amendments are needed to update the plan or that no amendments are necessary and the reasons supporting such a determination.¹⁵ In formulating the Commonwealth's water resources ~~policy plan~~, the Board shall, among other things, take into consideration but not be limited to the following principles and policies:

(1) Existing water rights are to be protected and preserved subject to the principle that all of the state waters belong to the public for use by the people for beneficial purposes without waste;

(2) Adequate and safe supplies should be developed, preserved and protected for ~~human consumption~~ public water supplies, while conserving maximum supplies for other beneficial uses. When proposed uses of water are in mutually exclusive conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to ~~human consumption~~ public water supplies purposes over all other uses;¹⁶

(3) It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof for the benefit of the Commonwealth as a whole;¹⁷

~~(4) In considering the benefits to be derived from drainage, consideration shall also be given to possible harmful effects upon ground water supplies and protection of wildlife;~~¹⁸

(5) ~~(4) The maintenance of stream flows sufficient to support aquatic life and to minimize pollution shall be fostered and encouraged~~ Stream flows sufficient to support beneficial in-stream uses shall be protected so long as there is sufficient water to meet public water supply needs;¹⁹

¹⁴ The December 1993 options provide four alternative methods for involving the state in water supply development. Explanations of those options may be found in appendix 3.

¹⁵ Establishes a deadline for creation of a state water plan for the "management, conservation, development and utilization" of water in place of the formulation of a policy for use and control of water resources. A five-year review period is also established.

¹⁶ See footnote 13.

¹⁷ The December 1993 options would add language regarding encouragement of innovative alternatives such as desalinization.

¹⁸ Eliminates consideration of impacts on ground water and wildlife. However; the impacts to ground water may be picked up to some degree in principle and policy number 10. In addition, ground water conditions are proposed to be reported annually to the Commission and the Governor- -see proposed amendments to § 62.1-44.40 on page 20. Wildlife considerations may be contained in the retained language of principle and policy 2 of "beneficial use."

¹⁹ Deletes reference to maintenance of flows for support of aquatic life and minimization of pollution, again setting out "public water supplies" as the clear priority in determining stream

~~(6)~~ (5) Watershed development management policies shall be favored developed and implemented, whenever possible, for the preservation protection of balanced multiple uses water quality in identified or existing water supply sources²⁰, and project construction and planning with those ends in view shall be encouraged;

~~(7)~~ (6) Due regard shall be given in the planning and development of water recreation facilities to safeguard against pollution;

(7) Hydrologic boundaries shall be favored in planning for surface water development. However, it is recognized that the most practicable and least environmentally damaging solution to some water supply problems requires that water be moved interjurisdictionally. Likewise, geologic boundaries for ground water aquifers should be favored in water resources planning whenever possible but ground water may be moved interjurisdictionally to meet the water supply needs of the Commonwealth;²¹

(8) The interdependency of water users which are within the same hydrologic unit, but not in the same political jurisdiction should be recognized so cooperative planning, management, and protection of the common water resources can be achieved.²²

(9) All cooperative programs developed between the federal government, state and/or local governments must conform to the state water plan as developed by the State Water Control Board and the principles of sovereignty of this Commonwealth over all the waters within the state be protected and preserved;²³

(10) The natural interrelationship between surface and ground water shall be recognized so that surface and ground water can be managed conjunctively;²⁴

(11) Water conservation measures to prevent and minimize waste and promote wise use shall be utilized. Both supply management and demand techniques and programs such as leak detection, metering, installation of water saving plumbing, and educational efforts shall be employed;²⁵

flows. "Beneficial in-stream uses" are protected only so long as public water supply needs are met.

²⁰ Watershed management (rather than watershed development) policies are to be "developed and implemented" (rather than favored) for the protection of water quality in water supply sources (rather than for protection of balance multiple uses). Neither watershed management nor watershed development has been defined.

²¹ Similar to the December 1993 option's principles and policies number 5 but adds a clear policy statement that the interjurisdictional transfer of both surface and ground water is acceptable. A list of the principles and policies contained in the December 1993 options may be found in appendix 4.

²² Similar to December 1993 options principle and policy number 6 but language that the interdependency of water units and the need for cooperative planning, management and protection "shall be recognized" is in effect changed to "should" be recognized.

²³ December 1993 option principles and policy number 9 encourages cooperative programs, whereas this proposal requires that all cooperative programs conform to the state plan. In both, the sovereignty of the Commonwealth is to be protected.

²⁴ Similar to December 1993 option principle and policy number 10 but deletes specific requirement that an evaluation of hydrologic role of ground water be made.

²⁵ Same as December 1993 options principle and policy number 11.

(12) Appropriate management, planning and response strategies shall be utilized to reduce the impact of the drought of record and short-term emergency water shortages. Approaches which promote coordinated water distribution and emergency allocation by water users and suppliers shall be encouraged.²⁶

(13) Economic efficiency and equity among Virginia citizens shall guide management decisions affecting water resources of the state.²⁷

~~The statement of water resource policy shall be revised from time to time whenever the Board shall determine it to be in the public interest.~~²⁸

~~The initial statement of state water resource policy and any subsequent revisions thereof shall be furnished by the Board to all state agencies and to all political subdivisions of the Commonwealth.~~²⁹

§ 62.1-44.37. Resolution of conflicts as to water use; public hearings.

The Board shall upon application of any state agency or political subdivision, and may upon its own motion, recommend a plan to resolve any conflict as to actual or proposed water use or other practice directly affecting water use that involves a potential or existing conflict between water use functions under the jurisdiction of different state agencies. If requested by any state agency or political subdivision directly affected, or at the Board's discretion, the Board shall hold public hearings on such question at which all persons concerned shall be heard. Conflicts between the State Water Control Board and local governments regarding water supply plans shall be governed by the provisions of § 62.1-44.48.³⁰

§ 62.1-44.38. Plans State water plan and programs; registration of certain data by water users; advisory committees; committee membership for federal, state, and local agencies; water supply planning assistance.

A. The Board shall prepare ~~plans~~ a state water plan and ~~programs~~ program for the management of the water resources of this Commonwealth in such a manner as to encourage, promote and secure the maximum beneficial use and control thereof. These plans and programs shall be prepared for each major river basin of this Commonwealth, and appropriate subbasins therein, including specifically the Potomac-Shenandoah River Basin, the Rappahannock River Basin, the York River Basin, the James River Basin, the Chowan River Basin, the Roanoke River Basin, the New River Basin, the Tennessee-Big Sandy River Basin, and for those areas in

²⁶ Similar to staff principles and policies number 12 but replaces "impact of drought" with "impact of drought of record" and "other water shortages" with "short term emergency water shortages" and replaces the final word "preferred" with "encouraged."

²⁷ The December 1993 principles and policies do not contain a similar provision though the options relating to interbasin transfers do contain provisions related to economic impact.

²⁸ Replaced earlier with a five-year review period.

²⁹ No longer needed because distribution is set out earlier but eliminates state agencies and political subdivision.

³⁰ Effect is to clarify how conflicts between SWCB and local governments are to be resolved.

the Tidewater and elsewhere in the Commonwealth not within these major river basins. ~~Reports for each basin shall be published by the Board.~~

B. ~~In preparing river basin plan and program reports enumerated in subsection A of this section, the Board shall~~ The state water plan shall consist of the following components:

1. The principles and policies described in § 62.1-44.36, and³¹

2. Basin plans for each of the major river basins as delineated by the U.S. Geological Survey and referred to as the Potomac-Shenandoah River Basin, the James River Basin, the Rappahannock River Basin, the Roanoke River Basin, the Chowan and Dismal Swamp River Basin, the Tennessee and Big Sandy River Basin, the New River Basin, the York River Basin and for those areas in the Tidewater and elsewhere in the Commonwealth not within these major river basins.

The basin plans developed by the Board shall³² (i) estimate current water withdrawals and use for agriculture, industry, domestic use, and other significant categories of water users; (ii) project water withdrawals and use by agriculture, industry, domestic water use, and other significant categories of water users; (iii) estimate, for each major river and stream, the minimum instream flows necessary during drought conditions to maintain water quality and avoid permanent damage to aquatic life in streams, bays, and estuaries; (iv) evaluate, to the extent practicable, the ability of existing subsurface and surface waters to meet current and future water uses, including minimum instream flows, during drought conditions and identify those users who may face a water deficit during the fifty-year planning period;³³ (v) evaluate, in cooperation with the Virginia Department of Health and local water supply managers, the current and future capability of public water systems to provide adequate quantity and quality of water; (vi) identify water management problems and alternative water management plans to address such problems; and (vii) evaluate hydrologic, environmental, economic, social, legal, jurisdictional, and other aspects of each alternative management strategy identified; (viii) recognize that the solutions to some water supply problems facing the Commonwealth involve the integration of planning between and among more than one river basin;³⁴ (ix) determine suitability of potential sites for the storage of water and make an environmental assessment as to their feasibility;³⁵ (x) estimate

³¹ The December 1993 options contain a similar provision though, as noted earlier, the principles and policies have been changed in this proposal.

³² Requires the SWCB to develop basin plans for the major river basins as part of the state plan as does the December 1993 options.

³³ Establishes a 50-year planning period. The December 1993 options contain a minimum 30 year planning period.

³⁴ This is one of only two references in the proposal to interbasin transfers though interjurisdictional transfers are referred to in the proposed changes to § 62.1-44.36. The December 1993 options contain approaches to analyze interbasin transfers and to develop agreements between the "sending" area and the "receiving" area. A summary is provided in appendix 5.

³⁵ Similar to a suggestion contained in the December 1993 options but adds "and make an environmental assessment as to their feasibility..."

the amount of off-channel water storage of flood flows necessary to maintain established minimum instream flows, and identify potentially suitable sites for such storage, and make an environmental assessment of the sites identified;³⁶ and (xi) identify water supply shortages where transbasin transfer of water offers the most viable solution for meeting a water supply deficit.³⁷

C. The Board may, by regulation, require each water user withdrawing surface or subsurface water or both during each year to register, by a date to be established by the Board, water withdrawal and use data for the previous year including the estimated average daily withdrawal, maximum daily withdrawal, sources of water withdrawn, and volume of wastewater discharge, provided that the withdrawal exceeds one million gallons in any single month for use for crop irrigation, or that the daily average during any single month exceeds 10,000 gallons per day for all other users.

D. The Board shall establish advisory committees to assist it in the formulation of ~~such plans~~ the state water plan or programs and in formulating recommendations called for in subsection E of this section. In this connection, the Board may include committee membership for branches or agencies of the federal government, branches or agencies of the Commonwealth, branches or agencies of the government of any state in a river basin located within that state and Virginia, the political subdivisions of the Commonwealth, and all persons and corporations interested in or directly affected by ~~any the proposed or existing~~ state water plan or program.

E. The Board shall prepare ~~plans or programs and shall include in reports prepared under subsection A of this section recommended~~ a state water plan and recommend actions to be considered by the General Assembly, the agencies of the Commonwealth and local political subdivisions, the agencies of the federal government, or any other persons that the Board may deem necessary or desirable for the accomplishment of ~~plans~~ the state water plan or programs prepared under subsection B of this section.

F. In addition to the preparation of ~~plans~~ the state water plan called for in subsection A of this section, the Board, upon written request of a political subdivision of the Commonwealth, shall provide water supply planning assistance to such political subdivision, to include assistance in preparing drought management strategies, water conservation programs, evaluation of alternative water sources, state enabling legislation to facilitate a specific situation, applications for federal grants or permits, or other such planning activities to facilitate intergovernmental cooperation and coordination.

³⁶ A similar provision does not appear in the December 1993 options.

³⁷ Second of two references to interbasin transfers. Unlike the staff options no standards for determining the appropriateness of the transfer as "the most viable" solution are provided.

§ 62.1-44.39. Technical advice and information to be made available.

The Board may make available technical advice and information on water resources to any agency or political subdivision of this Commonwealth, any committee, association or person interested in the conservation or use of water resources, any interstate agency or any agency of the federal government, all for the purpose of assisting in the preparation or effectuation of any plan or program concerning the use or control of the water resources of this Commonwealth in harmony with the state water ~~resources~~ policy plan or otherwise with the public interest in encouraging, promoting and securing the maximum beneficial use and control of the water resources of this Commonwealth.

§ 62.1-44.40. Governor and ~~General Assembly~~ Water Commission to be advised; annual report.

The Board shall submit an annual report to the Governor and the ~~General Assembly~~ Water Commission on or before ~~October 1~~ July 1 of each year on matters relating to the state's water ~~resources~~ policy plan and its implementation, and the status of the state's water resources, including ground water. The report shall also identify potential reservoir sites and ground water recharge areas, describe the status of ground water conditions, indicate the need for additional surface and ground water gauging stations, specify legislative needs, and provide a budget estimate to meet statutory responsibilities. The annual report shall be distributed in accordance with the provisions of § 2.1-467.

§ 62.1-44.41. Board authorized to speak and act for Commonwealth.³⁸

(1) In all matters directly related to conservation, development or use of the Commonwealth's water resources, except as otherwise provided by law, the Board is authorized to speak and act for the Commonwealth in all relations with the federal government or with the government of other states or with interstate agencies or authorities directly concerning conservation, development or use of the Commonwealth's water resources.

(2) In regard to such matters, the Board, or such person or state agency as may be designated by it, may appear and testify for the Commonwealth before any committee of the United States Congress or any branch or agency of the federal government or the legislature or any court or commission of any state.

³⁸ Provides authority to the State Water Control Board to speak and act on behalf of the Commonwealth with regard to "development" of the Commonwealth's water resources. Currently such authority only extends to "conservation" and "use" of the water resources.

§ 62.1-44.42. Cooperation with other agencies.

(1) In order to assist the Board in carrying out its functions as provided by law, the Board may:

(a) Call upon the other agencies and political subdivisions of this Commonwealth to furnish or make available to the Board information concerning the water resources of this Commonwealth which such state agencies or political subdivisions have acquired or may acquire in the performance of their functions.

(b) Cooperate with the other agencies or political subdivisions of the Commonwealth in utilizing the services, records and other facilities of such agencies or political subdivisions to the maximum extent practicable.

(2) All officers and employees of the Commonwealth or the political subdivisions of the Commonwealth shall cooperate with the Board in the discharge of its duties and in effectuating ~~the water resources policy of~~ a state water plan for the Commonwealth.

(3) Upon receipt and approval by the Board of a claim therefor, any special or extraordinary expense incurred by any other agency or political subdivision of this Commonwealth in cooperating with the Board under subsections (1) and (2) of this section shall be paid to such other agency or political subdivision of the Commonwealth.

§ 62.1-44.43. Additional powers of Board. (No changes were made to this section)

In addition to other powers conferred by the foregoing sections, the Board shall have the following powers:

(a) To administer all funds available to the Board for carrying out the purposes and duties prescribed in §§ 62.1-44.36 through 62.1-44.43;

(b) To disburse funds to any department, commission, board, agency, officer or institution of the Commonwealth, or any political subdivision thereof for carrying out such purposes but in the disbursement of such funds the Board shall have no power to include, require or consider membership or nonmembership in any group, organization or political entity of whatsoever nature, and any formula for such distribution; except to the extent as may be required for qualification for such federal funds as may be involved in such distribution;

(c) To apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from federal programs respecting or related to conservation or development of the Commonwealth's water and related land resources;

(d) To act either independently or jointly with any department, commission, board, agency, officer or institution of the Commonwealth or any political subdivision thereof in order to carry out the Board's powers and duties;

(e) To accept gifts, bequests and any other things to be used for carrying out its purposes, powers and duties.

§ 62.1-44.44. Construction of chapter.

(a) Nothing in this chapter shall be construed as superseding any provisions of Chapter 5 of Title 10.1, or as limiting or affecting any powers, duties or responsibilities conferred or imposed heretofore or hereafter on the Virginia Soil and Water Conservation Board.

(b) Nothing in this chapter shall be construed as altering, or as authorizing any alteration of, ~~any existing riparian rights or other~~³⁹ vested rights in water or water use.

CHAPTER 3.3.

WATER SUPPLY PLANS; LOCAL GOVERNMENT RESPONSIBILITY.

§ 62.1-44.45. Definitions.

As used in this chapter unless the context requires a different meaning:

“Local government” includes all political subdivisions of the Commonwealth, including water authorities, with responsibilities for providing potable water to the public.

“Local water supply plan” is a plan for managing water demand and providing for an adequate potable water supply for a local government entity for a period of not less than fifty years.

§ 62.1-44.46. Local government responsibilities for developing local water supply plans.

Local governments shall develop a local water supply plan whenever the projected demand for water in the local service area shall exceed the existing water supply within the next ten years as shown by the state water plan developed by the State Water Control Board or when demands on the local water supply system exceed eighty percent of the safe yield as determined by the Virginia Department of Health. The water supply plan shall be consistent with the policies and principles of § 62.1-44.36 and the state water plan.⁴⁰

³⁹ No explanation of this deletion was provided. Presumably it is in recognition of the impact statutory law has on strict common law riparian doctrines.

⁴⁰ This section sets out a trigger for when local governments must develop local water supply plans as (i) projected demand will exceed supply within 10 years or (ii) demand on the local water supply exceeds 80 percent of the safe yield as determined by VDH. Under this proposal not all localities would be required to develop local water supply plans. Under the December 1993 options, regardless of planning authority structure (PDC, local governments in subbasins or subbasin commissions), all areas of the state would eventually develop some form of local plan.

§ 62.1-44.47. Approval of water supply plan.

(1) The State Water Control Board shall determine whether a local water supply plan submitted by a local government conforms to the state water plan. The Board shall approve a water supply plan if it is consistent with the policies and principles of § 62.1-44.36 and the state water plan and meets the local government's needs.⁴¹ If a local water supply plan is not approved, the State Water Control Board shall modify the local water supply plan or submit a new water supply plan which conforms to the state water plan to the local government for its concurrence within three months of the original submission by the local government. The modified or new water supply plan recommended by the State Water Control Board shall be cost-effective, environmentally acceptable and consistent with the local citizens' ability to pay.⁴² The modified or new plan recommended by the State Water Control Board shall not be based on a program of permanent mandatory water restrictions, nor shall it impair the economic viability⁴³ of the locality.⁴⁴

(2) Any local water supply project which has received a state water quality certification pursuant to § 401 of the Clean Water Act or any regional project which has been adopted by the local governments and for which substantial efforts have been expended prior to January 1, 1995, shall be deemed to be approved and incorporated into the state water plan. Existing water supply systems which have a Virginia Department of Health operating permit as of July, 1, 1995, shall be incorporated into the state water plan without diminution of capacity.

§ 62.1-44.48. Resolution of conflict.

If the local government does not concur with the modified or new plan proposed by the State Water Control Board, differences shall be addressed through a negotiation process between the local government and the State Water Control Board. If differences cannot be resolved through negotiations, the local water supply plan may be appealed by the Board to a three-member tribunal. The tribunal shall consist of one member appointed by the local government, one member appointed by the State Water Control Board and one member appointed by the initial two members of the tribunal. If the differences cannot be resolved by the tribunal, then the local water supply plan may be appealed by the Board to the circuit court.⁴⁵

⁴¹ The term "needs" is not defined nor is a method for evaluation set out.

⁴² No definition or standard for "ability to pay" is provided.

⁴³ No definition or standard for determining "economic viability" is provided.

⁴⁴ This section does not establish any procedures for public input into the process nor does it provide for input from other localities that may be impacted by the plan of another locality. The December 1993 options provide a variety of mechanisms for interested parties to provide input into the planning process. See appendix 2.

⁴⁵ This presents an interesting placement of the burden of proof. Apparently the locality is presumed to be correct in its rejection, leaving it to the Board to prove otherwise. A procedure

§ 62.1-44.49. Legal responsibility.

At the request of a local government, the Virginia Attorney General shall advance and defend the implementation of any local water supply plan, which has been approved by the State Water Control Board as part of the state water plan in accordance with § 62.1-44.47, in all legal actions involving the federal government, the government of other states or interstate agencies.⁴⁶

VI. "SIGNATURE LOAN" CONCEPT

At the July commission meeting Donald Stern, acting commissioner of health, expressed the Department of Health's desire to develop a "signature loan" program, a simple, quick funding mechanism for small water projects. The proposal to provide unsecured loans met with some skepticism. However, to more fully explore the issue, the commission, at its January meeting, allowed interested parties to discuss the need and potential for such a program. The following reviews the testimony provided at that meeting and subsequent legislative activity.

A. Donald L. Stern, M.D., M.P.H., Acting Health Commissioner

A goal of the Health Department is to promote the availability of safe drinking water to all citizens of the Commonwealth. A "signature loan" program, by providing Virginia localities with quick access to relatively small quantities of money from the Virginia Water Supply Revolving Fund (WSRF)⁴⁷, would be a valuable tool in accomplishing this goal. Localities have expressed a strong desire for such a program. VDH would like to be able to respond by having a mechanism to fulfill requests for funds.

Currently, the Board of Health in conjunction with the Virginia Resources Authority (VRA), through the WSRF, may award loans and grants. The Code requires that bonds or notes be provided as security for all size loans. The issuing of marketable bonds is burdensome and not timely when small amounts of money are needed to deal with emergency situations or to finance a small planned project. In some instances, the time and expense of acquiring small amounts of money are disproportionate to the amount being sought. The VDH proposal would authorize

for input from interested parties is not provided. The December 1993 options provide a variety of alternative administrative and judicial mechanisms for public input and dispute resolution.

⁴⁶ This would provide a mechanism for local governments to gain state level support and advocacy of local water projects that are within the scope of the state plan. The December 1993 option do not contain a similar provision.

⁴⁷ Va. Code §§ 62.1-233 through 62.1-241.

the Board of Health to determine whether a note or bond will be required to secure loans of \$40,000 or less.⁴⁸

WSRF did not receive a state appropriation for the current biennium and all of its previous funding has been obligated. Despite this fact, a signature loan option within the Code may be advisable to provide authority to use the funds when they become available from the state or other sources.

One potential source, if established through reauthorization of the federal Safe Drinking Water Act, is the federally financed State Revolving Fund for financing public drinking water system improvements. WSRF would administer the fund.⁴⁹ In the past a 20 percent state match has been required to receive the funds. The Health Department has been advocating for a waiver of the match requirement.

B. Ronald L. Tillett, State Treasurer

The State Treasurer addressed the state aid intercept program⁵⁰ as a method of securing signature loans.

The state aid intercept program comes into play when a local government defaults on any general obligation debt including notes, bonds or other obligations for which the locality has pledged its taxing authority.⁵¹ The program provides that funds appropriated by the General Assembly and payable to a defaulting locality may be withheld and used for the payment of debt service. This program has enhanced the credit quality of general obligation bonds issued by Virginia localities; is an inexpensive and effective way for the Commonwealth to assist localities in reducing borrowing costs; acts as a form of guarantee that general obligation debt service will be met if a locality cannot meet its repayment obligation; and improves capital market access for localities, enabling them to issue debt at lower interest rates and with lower transaction costs.

Extending the provisions of the intercept program beyond general obligation debt could dilute the ratio of state aid to debt service, possibly causing some localities to fall below the Standard & Poor's minimum requirements for favorable rating. This could negatively impact the expense and ease of obtaining access to capital markets.

⁴⁸ VDH provided proposed statutory language to accomplish its goal. The proposal is attached as appendix 6.

⁴⁹ The reauthorization bill before the 103rd Congress before it adjourned contained \$31 million for Virginia.

⁵⁰ Va. Code § 15.1-227.61 and Item Number 340 of the 1994-96 Appropriations Act.

⁵¹ The treasurer suggested that a "signature loan" might not be considered general obligation debt and therefore the state aid intercept program may not automatically kick in.

C. Beth Taylor, Loan Manager, Southeast Rural Development Loan Fund, a program of the Virginia Water Project

Funded by a Ford Foundation loan, the Southeast Rural Development Loan Fund (SRDLF) was created in 1986 to provide quick and easily accessible loans to small rural water and waste water systems in Virginia. It functions as an alternative to state and federal financing mechanisms for loans, primarily those under \$100,000, and offers flexible terms and low interest rates that banks cannot match. The average loan is \$54,000. In eight years, only one default has occurred and that has been cured and payments are once again being made.

Increasing regulation and the aging infrastructure of small water systems make system upgrades more necessary every year. In 1994, the 56 inquiries received from Virginia localities testify to this and reveal an interest and need for small, quick loans.

Taylor cited two examples of the use of the loan program. The Town of Brodnax borrowed three loans of \$1,000, \$4,700 and \$16,331 to up-grade its water system. Such small loans would have been cumbersome and costly to process through current state or federal revolving loan funds. Dickenson County borrowed \$62,000 for a water line extension secured by water revenues, and repaid the loan before it matured.

In making loans, the Southeast Rural Development Loan Fund tries to minimize paperwork. Loan applications are seven pages long and are reviewed by a committee of engineers, health department sanitarians, and business, legal and financial representatives. Bond security is not required; either full faith and credit, water or sewer revenues, or liens on land and/or equipment via a promissory note are acceptable to secure loans. The turn-around time averages 60 to 90 days.

The terms and conditions of loans vary, ranging in amounts from \$1,000 to \$150,000, in length from one to 10 years and in interest rates from three to seven percent. Tailored to the needs and abilities of the borrower, the loans carry no penalty for prepayment.

Seventeen loans have been made with a total volume of \$900,000. Although SRDLF maintains loan loss reserve of \$100,000, it has never been used. The organization was recently approved for an additional \$2 million in funding from a new source.

D. Donald Wampler, Director of Construction Assistance, Department of Environmental Quality, Wastewater Program

The Department of Environmental Quality (DEQ) shares responsibility with VRA for managing the Virginia Water Facilities Revolving Loan Fund (WRLF),⁵² which provides financial assistance to local governments for water treatment facility improvements.⁵³ In only seven years of operation, the program has closed 83 loans and boasts a portfolio that exceeds \$400 million. With another 29 localities ready to proceed to construction and loan closure, the program has been recognized by EPA and other national groups as a national success story.

To date, the wastewater loan program has been used primarily for high-dollar projects.⁵⁴ The longevity associated with wastewater treatment infrastructure lends itself to bond type debt. All loans are secured through revenue or general obligation pledges by the locality. As treatment facilities age and wastewater treatment technology and requirements evolve, DEQ has been exploring the development of a funding mechanism that would enable localities to obtain direct loan assistance, particularly for small planned upgrades and emergencies and for homeowners and small businesses that need to make on-site sewage treatment and disposal system improvements.

On-site sewage treatment presents special problems. Many older rural homes' wastewater disposal systems were built to standards which are inadequate today. In some rural areas rock, soil, terrain, and flood plain conditions make it impossible to install a legally sufficient, conventional septic/absorption field. Without favorable financing, costs prohibit the use of available innovative on-site systems. DEQ hopes, through "signature loans", to resolve this situation. Ideally, funding would be available for improvements to inadequate on-site disposal systems where public health and/or water quality problems exist and where connections to a public sewer system are not feasible because of cost or location.

A potential solution would be to loan money from VRA to the locality. The locality would in turn develop its own low-interest loan program for correcting on-site treatment and disposal problems. Currently, the likely form of security for such a program would be a "general obligation" pledge by the locality. The procedures for incurring such debt are expensive and time consuming, particularly for counties. The ability of a locality to incur debt via "signature loans" or promissory notes, potentially secured through programs such as the state aid intercept program, enhances the probable success of this type of small loan initiative. This method would allow the localities to skip the referendum process

⁵² Va. Code §§ 62.1-224 through 62.1-232.

⁵³ As opposed to water supply facility funding administered by the VRA and the VDH.

⁵⁴ According to Hap Gardner, Director of the VRA, the Fund has made loans as small as \$35,000.

for relatively small amounts of funding and would establish a system for securing those dollars.

The signature loan concept should be evaluated to assure that the financial integrity of Virginia's loan programs remains a high priority. The use of signature loans should remain the exception. A cap of \$100,000 would be appropriate to resolve the needs of localities and initiate DEQ's on-site treatment and disposal program expansion.

E. Commission Deliberations

While money may not be available to implement a "signature loan" program, the Commission endorsed the development of a mechanism for access to loans of up to \$40,000 for water systems and \$100,00 for loans to local governments that have developed a loan program for on-site treatment problems along the lines described by DEQ. This will avoid delay once funding becomes available. Although the commission rejected the concept of a pure signature loan with no security and the use of the state aid intercept program, it endorsed a process where by the optional one percent local sales tax⁵⁵ or one percent local use tax⁵⁶ could be "intercepted" in cases of default.

Legislation was introduced during the 1995 Session to establish a mechanism for signature loans (see appendix 7). The introduced bill is outlined below.

F. Outline of Proposed Legislation (SB 1019)

Currently, funds handled by VRA may be loaned to local governments for the financing or refinancing of water supply projects (through WSRF) or water treatment facility projects (through WRLF). Such loans may be evidenced by either bonds or a note. VRA determines the form of security and the majority of the terms and conditions of its loan. SB 1019 would have altered this determination in very limited circumstances by authorizing the Board of Health and the State Water Control Board to approve small loans from certain VRA funds evidenced by a note which need only be secured by a newly created procedure for cure of default.

1. Loans, in amounts up to \$40,000, would be available:
 - a. To local governments;
 - b. In the discretion of the respective Boards;
 - c. For repair or upgrade of a water supply or water treatment project;⁵⁷ and
 - d. From funds available and allowable for such use.

⁵⁵ Va. Code § 58.1-605.

⁵⁶ Va. Code § 58.1-606.

⁵⁷ The term "project" is defined for water supplies in § 62.1-233 and for water treatment facilities in § 62.1-224.

e. In the discretion of the respective Board, the loans would need to be secured only by the newly created "intercept" type program (See 3 below). No such loan could be made if it negatively impacted the financial integrity of the Fund.

2. Loans of up to \$100,000 could be made from WRLF under the same conditions outlined above to localities (i) which have developed a low interest loan program or incentive program for the repair or upgrade of on-site sewage systems owned by individual residents of the Commonwealth; and (ii) if public health or water quality concerns are present and connection to a public sewer system is not feasible because of location or cost.

3. The procedure for cure of a default by a local government would be as follows:
- a. Upon default the Board notifies the Comptroller;
 - b. Once the Comptroller is satisfied that a default has occurred, he is to withhold from the defaulting locality its share of the optional one percent sales and use taxes collected and otherwise payable to the defaulting locality;
 - c. The withheld funds are to be in an amount to cure the default or cure it as much as possible;
 - d. The funds are to be paid by the Comptroller to VRA; and
 - e. The costs incurred by the Comptroller are further charges against the one percent sales and use taxes of the defaulting locality.

The bill made it clear that neither the Comptroller nor the Commonwealth was required to make payments to cure the default from funds other than those collected on behalf of the defaulting locality from the optional one percent sales and use taxes due to the defaulting locality.

Additional provisions dealt with how the funds are handled on the books of the Comptroller.

During the 1995 Session questions arose regarding controls on a local government's use of funds acquired through the process established by SB 1019 and the total amount a locality could receive through multiple loans. Hap Gardner, director of VRA, raised the concern that the federal government might not allow federal moneys that come to the state for use in the revolving to be used for this type of program. In his opinion, if there is a real need for money, VRA can process the request quickly and make money available. The bill was withdrawn with the understanding that the Commission would examine the bill before the 1996 Session to resolve these concerns.

Respectfully submitted,

Senator Charles J. Colgan, Chairman
Senator Elmo G. Cross, Jr.
Senator Mark L. Earley
Senator Clarence A. Holland
Senator Stanley C. Walker
Delegate J. Paul Councill, Jr., Vice Chairman
Delegate Watkins M. Abbitt, Jr.
Delegate Glenn R. Croshaw
Delegate Alan A. Diamonstein
Delegate James H. Dillard II
Delegate William P. Robinson, Jr.
Delegate A. Victor Thomas
Delegate Clifton A. Woodrum
The Honorable J. Granger Macfarlane
Walter McFarlane

APPENDICES

APPENDIX 1

**RESOLUTION OF THE STATE WATER COMMISSION
OF THE COMMONWEALTH OF VIRGINIA
SUPPORTING THE CITY OF VIRGINIA BEACH IN ITS
EFFORTS TO OBTAIN EASEMENTS NECESSARY FOR THE
CONSTRUCTION AND OPERATION OF THE LAKE GASTON
WATER SUPPLY PROJECT**

WHEREAS, for more than a decade, the City of Virginia Beach has been attempting to obtain a permanent, reliable water supply; and

WHEREAS, after evaluating potential alternative water supply sources the City of Virginia Beach selected a pipeline extending from Lake Gaston as the best, most environmentally sound alternative; and

WHEREAS, a water supply pipeline from Lake Gaston would benefit not only the City of Virginia Beach, but the southeastern Virginia region as well, in that the shortage of water is regional in nature; and

WHEREAS, the Federal Energy Regulatory Commission is currently reviewing an application filed by Virginia Electric and Power Company concerning certain easements needed by the City of Virginia Beach to construct and operate the project; and

WHEREAS, the proposed withdrawal from Lake Gaston has been the subject of exhaustive and repeated environmental studies which have not found significant adverse environmental impacts; and

WHEREAS, the City of Virginia Beach has taken certain legal actions, both administrative and judicial in nature as a result of the Federal Energy Regulatory Commission directing that an Environmental Impact Statement be prepared; and

WHEREAS, the State Water Commission, which has been established, by law, to study all aspects of water supply in the Commonwealth, is of the opinion that the environmental impacts on the Lake Gaston Water Supply Project have been studied thoroughly and sufficiently, and that further study would needlessly and

unjustifiably cause further delay in completion of this critical public project; now, therefore, be it

RESOLVED by the State Water Commission of the Commonwealth of Virginia, That the State Water Commission of the Commonwealth of Virginia hereby declares its support of the City of Virginia Beach in its position before the Federal Energy Regulatory Commission on the lack of need for further environmental study of Lake Gaston Water Supply Project; and, be it

RESOLVED FURTHER, That the staff of the State Water Commission prepare a copy of this resolution for transmittal to the Secretary of the Federal Energy Regulatory Commission, that she may be apprised of the position of the State Water Commission.

#

APPENDIX 2

OVERVIEW OF THE DECEMBER 1993 WATER PLANNING OPTIONS

The options present three structures for the development of comprehensive water plans. All contemplate a shared role between local entities and the state in developing water plans following certain guiding principles and policies. The options utilize either local governments, planning district commissions (PDCs) or newly created basin commissions as the local entity. With varying degrees of success, the options attempt to use or develop entities that would be based on hydrological boundaries.

The following two pages contain a chart comparing the December 1993 planning options.

Comparison of Planning Options

	Subbasin Commissions	Political Subdivisions	Planning District Commissions (PDC)
1. Agency responsible for state water plan	SWCB	Same	Same
2. Principles & policies to follow in plan development	12 principles & policies	Same	Same
3. Components of state plan	<ul style="list-style-type: none"> • 12 principles and policies • 9 basin plans developed by SWCB • Subbasin plans developed by subbasin commissions 	<ul style="list-style-type: none"> • 12 principles and policies • 9 basin plans developed by SWCB • Subbasin plan jointly and cooperatively developed by political subdivisions within the subbasin 	<ul style="list-style-type: none"> • 12 principles and policies • 9 basin plans prepared by SWCB • Planning districts water plan prepared by PDCs
4. Contents of basin plan	<ul style="list-style-type: none"> • Current water withdrawals • Projected withdrawals • Estimates of current water resources to meet current and projected future uses and identification of subbasins with projected deficiencies • Suitability of storage sites • Delineation of subbasins • Establishment of timetable for submission of local plans 	Same as subbasin commissions	Same except no delineation of subbasins
5. Responsibility for developing local plan (strategies & projects)	<ul style="list-style-type: none"> • Subbasin commissions • One member from each city and county in subbasin (at least 4) • 1 from agriculture • 2 from industrial manufacturing, mining or electrical power generation • 1 from environmental group 	Local political subdivisions within subbasin acting cooperatively	Each PDC

Comparison of Planning Options

6. Local plan contents	<ul style="list-style-type: none"> • Description of strategies and projects to be implemented • Documentation of appropriateness • Timetable • Procedures to include public comment 	Same	Same
7. Staff for local plan development provided by	Members of subbasin commission and SWCB (upon request)	Local political subdivisions within subbasin and SWCB (upon request)	PDC and technical assistance from SWCB (upon request)
8. Public participation	Specific procedure established in statute	Statute specifies local governments to establish procedure	§ 15.1-431
9. Approval of local plan by local entity	¾ of subbasin commission members	Unanimous vote of all political subdivisions within basin	Unanimous vote of all political subdivisions within basin
10. SWCB criteria for approval of local plan	<ul style="list-style-type: none"> • Consistent with principles and policies • Consistent with state basin plan 	Same	Same
11. Review of local plan by SWCB	Conducted pursuant to existing SWCB procedure for permits and certificates (case decisions under APA)	Same	Same
12. Time limit for SWCB approval of local plan	9 months from date of submission	Same	Same
13. Right to appeal SWCB's decision	<ul style="list-style-type: none"> • PDC • City or county within planning district • Major water users • Participants in SWCB's public hearing 	<ul style="list-style-type: none"> • Political subdivisions within subbasin • Major water users • Participants in SWCB's public hearing 	<ul style="list-style-type: none"> • PDC • City or county within planning district • Major water users • Participants in SWCB's public hearing
14. Failure to submit local plan	SWCB to develop local plan	Same	Same

APPENDIX 3

OVERVIEW OF THE DECEMBER 1993 DEVELOPMENT OPTIONS

The development options take into consideration the acquisition, construction, financing and management of major water projects. Three specific options are presented. "Option 4" is a set of proposed amendments that may be appropriate if state agencies are to increase their roles and a state water plan is developed.

Some noted advantages to an increased state role in development are economies of scale; the potential for a smaller environmental impact from a few large projects than could result from a high number of small, haphazardly placed projects; and smoother permit approval due to the regional nature of projects and the clout of state involvement.

Option 1: This option, based on the Texas Water Storage Acquisition Program,¹ would allow the Virginia Resources Authority (VRA) to issue revenue bonds to finance the development and acquisition of water projects. The costs would be paid from the sale of impounded water or the sale, use or lease of a water project. Once the bonds are satisfied, the project ownership would be placed with those who covered the costs of the bonds.

The issuance of bonds and financing scheme follow closely those currently authorized for VRA and in the Water and Sewer Authorities Act.²

Option 2: This option, based on the Georgia Water Supply Act,³ would allow SWCB to issue revenue bonds of the Commonwealth to finance the development or acquisition of water projects. The costs would be paid from fees for withdrawals of impounded water. Project ownership remains with the state after the bonds are paid, increasing the state's long-term control and involvement with the project. This option also expands the role of the state over the role found in option 1 in that the state is more involved in the provision of water. A potential drawback is that it places SWCB in a new role--that of water development rather than water quality. Another significant difference is the compensation of localities where a project is located for loss of revenue caused by land being taken out of the tax base by the project. Transportation bonds and state park revenue bonds provide the models for the financing and bond provisions.

Option 3: This option capitalizes the Water Supply Revolving Fund⁴ with moneys from a severance fee on water. Moneys in the fund are to be loaned to local governments for the development of water supply projects. The existing revolving

¹ Tx. Code, Water Vol. 1, §§ 15.301 through 15.331.

² Va. Code § 15.1-1239 et seq.

³ Ga. Code § 12-5-470 et seq.

⁴ Va. Code § 62.1-233 et seq.

fund has not been capitalized to a level that would allow for significant development of a water project. States that have taken this approach include Kansas (3 cents per 1,000 gallons) and Arizona (\$5 per acre foot with \$2 going to supply and development projects).

Option 4: Option 4 is a group of proposed amendments that tie local water supply development actions to a state water plan. They may be appropriate if development of reservoirs and other "major" water supply projects are to be within the jurisdiction of a state agency or if a state planning mechanism is established.

APPENDIX 4

"PRINCIPLES AND POLICIES" IN THE DECEMBER 1993 PLANNING OPTIONS

§ 62.1-44.36:2. Development of plan; formulation of policies.

A. The Board shall develop a state water plan that provides guidance for the orderly and coordinated management, conservation, development and utilization of the water resources of the Commonwealth.

B. In formulating the state water plan, consideration shall be given, among other things, to the following principles and policies:

1. Existing water rights shall be protected and preserved, subject to the principle that all of the state waters belong to the public for use by the people for beneficial purposes without waste.

2. Adequate and safe supplies shall be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses. When proposed uses of water are in conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption over all other uses.

3. It is in the public interest to integrate and coordinate uses of water and to augment existing supplies for all beneficial purposes to achieve maximum economic development for the Commonwealth. Innovative alternatives for obtaining and developing additional supplies (e.g., desalinization, recycling and reuse) shall be encouraged.

4. Stream flows sufficient to support beneficial in-stream uses shall be protected.

5. The hydrologic boundaries of water resources shall be favored, whenever possible, for planning and project development.

6. The interdependency of water users which are within the same hydrologic unit, and the need to establish cooperative planning, management and protection of the common water resources shall be recognized.

7. Multi-purpose impoundment structures (e.g., water supply storage, flood control and recreation) shall be favored over single-purpose structures; upstream impoundments are to be favored over downstream impoundments.

8. The fishery resource of the Commonwealth is an important economic and recreational asset. In planning and constructing impoundment structures and other artificial obstructions, due regard shall be given to means and methods for protection of the fishery resource.

9. Cooperative programs between the state, federal, and local governments shall be encouraged; however, the principle of the sovereignty of this Commonwealth over all the waters within the Commonwealth shall be protected and preserved.

10. The natural interrelationship of surface and ground water shall be recognized. Evaluation of the hydrological role of ground water shall be made so that surface and ground water can be managed conjunctively.

11. Water conservation measures to prevent and minimize waste and promote wise use shall be utilized. Both supply management and demand techniques and programs such as leak detection, metering, installation of water-saving plumbing, and educational efforts shall be employed.

12. Appropriate management, planning and response strategies shall be utilized to reduce the impact of drought and other water shortages. Approaches which promote coordinated water distribution and emergency allocation by water users and suppliers shall be preferred.¹

¹ At the December 1993 Commission meeting it was suggested that a 13th principle be added to the effect that water is a commodity and should be treated as such.

APPENDIX 5

OVERVIEW OF DECEMBER 1993 INTERBASIN TRANSFER OPTIONS

Virginia has experienced a number of problems involving the allocation of water between "water rich" and "water poor" areas. Options aimed at seeing that all interests involved in such transfers are protected and assuring that water is available when and where needed are presented below. The options provide varying balances between local and state control based on determinations of need, impact and agreements between sending and receiving areas. The options contain varying provisions for registration of transfers, threshold levels for coverage, the unit of analysis for inclusion (i.e. whether the transfer is between jurisdictions, water basins, subbasins, etc.), information required when applying for authorization for a transfer, public participation, methods for agreeing to terms for the transfer, alternative parties with control over the terms of the transfer and standards of review.

The third option combines a planning and a transfer statute to demonstrate how they could interrelate and includes several new options for the review of transfer agreements by the state. This option also includes provisions for enforcement based upon those currently found in Title 62.1. A statute creating a special court for the resolution of certain disputes is also included.

APPENDIX 6

State Water Commission
item by Health Commissioner
January 10, 1995

Relating to the Virginia Water Supply Revolving fund:
Add the phrase(s) indicated below to Code Sections 62.1-234 and 62.1-238 to clarify existing language to allow initiation of a fast, economical and less burdensome approach to loan funds, other than grants.

HOUSE BILL _____

SENATE BILL _____

§ 62.1-234. Creation and management of Fund. — There shall be set apart as a permanent and perpetual fund, to be known as the "Virginia Water Supply Revolving Fund," sums appropriated to the Fund by the General Assembly, all receipts by the Fund from loans made by it to local governments, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source public or private. The Fund shall be administered and managed by the Authority as prescribed in this chapter, subject to the right of the Board, following consultation with the Authority, to direct the distribution of loans or grants from the Fund to particular local governments and to establish the interest rates and repayment terms of such loans as provided in this chapter.

~~In addition, the Board has sole authority to determine whether a note or bond shall be required to secure loans of \$40,000 or less.~~ In order to carry out the administration and management of the Fund, the Authority is granted the power to employ officers, employees, agents, advisers and consultants, including, without limitation, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality. The Authority may disburse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund and a reasonable fee to be approved by the Board for its management services. (1987, c. 324.)

§ 62.1-238. Loans to local governments. — Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans to local governments to finance or refinance the cost of any project. The local governments to which loans are to be made, the purposes of the loan, and the amount of each such loan, the interest rate thereon and the repayment terms thereof, which may vary between local governments, shall be designated in writing by the Board to the Authority following consultation with the Authority. ~~In addition, the Board has sole authority to determine whether a note or bond shall be required and its form, terms, and conditions to secure loans of \$40,000 or less.~~

No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses.

Except as set forth above, the Authority shall determine the terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions which the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government receiving the loan covenant to perform any of the following:

Appendix 7
1995 SESSION

LD5355633

SENATE BILL NO. 1019

Offered January 23, 1995

A BILL to amend and reenact §§ 62.1-229 and 62.1-238 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 62.1-229.1 and 62.1-238.1, relating to loans from the Virginia Resources Authority.

Patrons—Colgan; Delegates: Diamonstein, Parrish and Woodrum

Referred to the Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-229 and 62.1-238 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 62.1-229.1 and 62.1-238.1 as follows:

§ 62.1-229. Loans to local governments.

Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans to local governments to finance or refinance the cost of any project. The local governments to which loans are to be made, the purposes of the loan, and the amount of each such loan, the interest rate thereon and the repayment terms thereof, which may vary between local governments, shall be designated in writing by the Board to the Authority following consultation with the Authority. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses. *Loans of up to \$40,000, evidenced by a note, may be made from the Fund, in the Board's discretion, to a local government for financing the cost of repairs or upgrades of a project from funds available and allowable for such use, and need only be secured by the provisions of § 62.1-229.1, provided that the Board shall make no such loan if the Board determines that such loans and security method would negatively impact the financial integrity of the Fund. Loans of up to \$100,000 may be made under the same conditions contained in the previous sentence to a local government which has developed a low-interest loan program to provide loans or other incentives to facilitate the correction of onsite sewage disposal system problems, provided that the moneys may be used only for the program and that the onsite sewage disposal systems to be repaired or upgraded are owned by individual citizens of the Commonwealth where (i) public health or water quality concerns are present and (ii) connection to a public sewer system is not feasible because of location or cost. Loans made under the previous two sentences shall be referred to in this chapter as "small water facility project loans."*

Except as set forth above, the Authority shall determine the terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions which the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government receiving the loan covenant to 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 loan from the Fund to the local government; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees or charges;

B. Levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government;

C. Create and maintain a special fund or funds for the payment of the principal of and premium,

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SB1019

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1 if any, and interest on the loan from the Fund to the local government and any other amounts
 2 becoming due under any agreement entered into in connection with the loan, or for the operation,
 3 maintenance, repair or replacement of the project or any portions thereof or other property of the
 4 local government, and deposit into any fund or funds amounts sufficient to make any payments on the
 5 loan as they become due and payable;

6 D. Create and maintain other special funds as required by the Authority; and

7 E. Perform other acts, including the conveyance of, or the granting of liens on or security interests
 8 in, real and personal property, together with all rights, title and interest therein, to the Fund, or take
 9 other actions as may be deemed necessary or desirable by the Authority to secure payment of the
 10 principal of and premium, if any, and interest on the loan from the Fund to the local government and
 11 to provide for the remedies of the Fund in the event of any default by the local government in the
 12 payment of the loan, including, without limitation, any of the following:

13 1. The procurement of insurance, guarantees, letters of credit and other forms of collateral,
 14 security, liquidity arrangements or credit supports for the loan from any source, public or private, and
 15 the payment therefor of premiums, fees or other charges;

16 2. The combination of one or more projects, or the combination of one or more projects with one
 17 or more other undertakings, facilities, utilities or systems, for the purpose of operations and financing,
 18 and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and
 19 systems to secure the loan from the Fund to the local government made in connection with such
 20 combination or any part or parts thereof;

21 3. The maintenance, replacement, renewal and repair of the project; and

22 4. The procurement of casualty and liability insurance.

23 All local governments borrowing money from the Fund are authorized to perform any acts, take
 24 any action, adopt any proceedings and make and carry out any contracts that are contemplated by this
 25 chapter. Such contracts need not be identical among all local governments, but may be structured as
 26 determined by the Authority according to the needs of the contracting local governments and the
 27 Fund.

28 Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the
 29 Authority may consent to and approve any modification in the terms of any loan to any local
 30 government subject to guidelines adopted by the Board.

31 *§ 62.1-229.1. Small water facility project loan security.*

32 A. Any local government entitled to returns of local taxes collected under the provisions of
 33 §§ 58.1-605 or 58.1-606 may secure small water facility project loans allowed in § 62.1-229 with
 34 such returns by the means and conditions provided for in this section.

35 B. If any local government defaults on a small water facility project loan, the Board, by providing
 36 proof of such default, shall notify the Comptroller. When it is established to the satisfaction of the
 37 Comptroller that a default has occurred, the Comptroller shall withhold from the defaulting local
 38 government the payment of its share of the optional sales and use taxes authorized by §§ 58.1-605
 39 and 58.1-606 in an amount sufficient to cure the default. The Comptroller shall pay over to the
 40 creditor all sums withheld so as to cure, or cure insofar as possible, the default. Any payment so
 41 made by the Comptroller to the creditor shall be credited as if made directly by the defaulting local
 42 government and shall be charged by the Comptroller against the first taxes collected and otherwise
 43 payable to the local government as if paid to the local government. The creditor, at the time of
 44 payment or at the time of each payment, shall provide a receipt for the payment and deliver it to the
 45 Comptroller. The Comptroller shall report each payment made to the local government by delivering
 46 or sending by registered mail to the local government copies of receipts or other evidence of payment
 47 of the debt received by it.

48 The costs incurred by the Comptroller under this section shall be a further charge against the
 49 funds in the hands of the Comptroller payable to the local government and collected under
 50 §§ 58.1-605 or 58.1-606.

51 C. Nothing in this section shall be construed to create any obligation on the part of the
 52 Comptroller or the Commonwealth to make any payment on behalf of the defaulting local government
 53 other than from funds received by the Comptroller through taxes collected pursuant to §§ 58.1-605
 54 and 58.1-606 and due to the defaulting local government. Nor shall it be construed as authorizing the

1 *pledging of the faith and credit of the Commonwealth of Virginia, or any of its revenues, for the*
2 *payment of any debts.*

3 § 62.1-238. Loans to local governments.

4 Except as otherwise provided in this chapter, money in the Fund shall be used solely to make
5 loans to local governments to finance or refinance the cost of any project. The local governments to
6 which loans are to be made, the purposes of the loan, and the amount of each such loan, the interest
7 rate thereon and the repayment terms thereof, which may vary between local governments, shall be
8 designated in writing by the Board to the Authority following consultation with the Authority. No
9 loan from the Fund shall exceed the total cost of the project to be financed or the outstanding
10 principal amount of the indebtedness to be refinanced plus reasonable financing expenses. *Loans of up*
11 *to \$40,000, evidenced by a note, may be made from the Fund, in the Board's discretion, to a local*
12 *government for financing the cost of repairs or upgrades of a project from funds available and*
13 *allowable for such use, and need only be secured by the provisions of § 62.1-238.1, provided that*
14 *the Board shall make no such loan if the Board determines that such loans and security method*
15 *would negatively impact the financial integrity of the Fund. Loans made under the previous sentence*
16 *shall be referred to in this chapter as "small water supply project loans."*

17 Except as set forth above, the Authority shall determine the terms and conditions of any loan from
18 the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate
19 bonds or notes of the local government payable to the Fund. The bonds or notes shall have been duly
20 authorized by the local government and executed by its authorized legal representatives. The
21 Authority is authorized to require in connection with any loan from the Fund such documents,
22 instruments, certificates, legal opinions and other information as it may deem necessary or convenient.
23 In addition to any other terms or conditions which the Authority may establish, the Authority may
24 require, as a condition to making any loan from the Fund, that the local government receiving the
25 loan covenant to perform any of the following:

26 A. Establish and collect rents, rates, fees and charges to produce revenue sufficient to pay all or a
27 specified portion of (i) the costs of operation, maintenance, replacement, renewal and repairs of the
28 project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the
29 principal of and premium, if any, and interest on the loan from the Fund to the local government; and
30 (iii) any amounts necessary to create and maintain any required reserve, including any rate
31 stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or
32 part, for future increases in rents, rates, fees or charges;

33 B. Levy and collect ad valorem taxes on all property within the jurisdiction of the local
34 government subject to local taxation sufficient to pay the principal of and premium, if any, and
35 interest on the loan from the Fund to the local government;

36 C. Create and maintain a special fund or funds for the payment of the principal of and premium,
37 if any, and interest on the loan from the Fund to the local government and any other amounts
38 becoming due under any agreement entered into in connection with the loan, or for the operation,
39 maintenance, repair or replacement of the project or any portions thereof or other property of the
40 local government, and deposit into any fund or funds amounts sufficient to make any payments on the
41 loan as they become due and payable;

42 D. Create and maintain other special funds as required by the Authority; and

43 E. Perform other acts, including the conveyance of, or the granting of liens on or security interests
44 in, real and personal property, together with all rights, title and interest therein, to the Fund, or take
45 other actions as may be deemed necessary or desirable by the Authority to secure payment of the
46 principal of and premium, if any, and interest on the loan from the Fund to the local government and
47 to provide for the remedies of the Fund in the event of any default by the local government in the
48 payment of the loan, including, without limitation, any of the following:

49 1. The procurement of insurance, guarantees, letters of credit and other forms of collateral,
50 security, liquidity arrangements or credit supports for the loan from any source, public or private, and
51 the payment therefor of premiums, fees or other charges;

52 2. The combination of one or more projects, or the combination of one or more projects with one
53 or more other undertakings, facilities, utilities or systems, for the purpose of operations and financing,
54 and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and

1 systems to secure the loan from the Fund to the local government made in connection with such
2 combination or any part or parts thereof;

3 3. The maintenance, replacement, renewal and repair of the project; and

4 4. The procurement of casualty and liability insurance.

5 All local governments borrowing money from the Fund are authorized to perform any acts, take
6 any action, adopt any proceedings and make and carry out any contracts that are contemplated by this
7 chapter. Such contracts need not be identical among all local governments, but may be structured as
8 determined by the Authority according to the needs of the contracting local governments and the
9 Fund.

10 Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the
11 Authority may consent to and approve any modification in the terms of any loan to any local
12 government subject to guidelines adopted by the Board.

13 § 62.1-238.1. *Small water supply project loan security.*

14 A. Any local government entitled to monthly returns of local taxes collected under the provisions
15 of §§ 58.1-605 or 58.1-606 may secure small water supply project loans allowed in § 62.1-238 with
16 such returns by the means and conditions provided for in this section.

17 B. If any local government defaults on a small water supply project loan, the Board, by providing
18 proof of such default, shall notify the Comptroller. When it is established to the satisfaction of the
19 Comptroller that a default has occurred, the Comptroller shall withhold from the defaulting local
20 government the payment of its share of the optional sales and use taxes authorized by §§ 58.1-605
21 and 58.1-606 in an amount sufficient to cure the default. The Comptroller shall pay over to the
22 creditor all sums withheld so as to cure, or cure insofar as possible, the default. Any payment so
23 made by the Comptroller to the creditor shall be credited as if made directly by the local government
24 and shall be charged by the Comptroller against the first taxes collected and otherwise payable to the
25 local government as if paid to the local government. The creditor, at the time of payment or at the
26 time of each payment, shall provide a receipt for the payment and deliver it to the Comptroller. The
27 Comptroller shall report each payment made to the defaulting local government by delivering or
28 sending, by registered mail, to the local government copies of receipts or other evidence of payment
29 of the debt received by it.

30 The costs incurred by the Comptroller under this section shall be a further charge against the
31 funds in the hands of the Comptroller payable to the local government and collected pursuant to
32 §§ 58.1-605 or 58.1-606.

33 C. Nothing in this section shall be construed to create any obligation on the part of the
34 Comptroller or the Commonwealth to make any payment on behalf of the defaulting local government
35 other than from funds received by the Comptroller through taxes collected pursuant to §§ 58.1-605
36 and 58.1-606 and due to the defaulting local government. Nor shall it be construed as authorizing the
37 pledging of the faith and credit of the Commonwealth of Virginia, or any of its revenues, for the
38 payment of any debts.

Official Use By Clerks		Passed By	
Passed By The Senate		The House of Delegates	
without amendment	<input type="checkbox"/>	without amendment	<input type="checkbox"/>
with amendment	<input type="checkbox"/>	with amendment	<input type="checkbox"/>
substitute	<input type="checkbox"/>	substitute	<input type="checkbox"/>
substitute w/amdt	<input type="checkbox"/>	substitute w/amdt	<input type="checkbox"/>
Date: _____		Date: _____	
_____ Clerk of the Senate		_____ Clerk of the House of Delegates	