

# ENROLLMENT(S)

(5)





ENROLLED ORIGINAL

AN ACT

D.C. ACT 11-201

*Codification  
District of  
Columbia  
Code  
1996 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 31, 1996

To establish a water and sewer authority to facilitate the adequate delivery of water to the District of Columbia and sewer system services to the District of Columbia and portions of the Metropolitan Washington area, to delegate Council authority to issue bonds to the Authority, to dedicate District water and sewer revenues to the Authority, to transfer the functions of the Water and Sewer Utility Administration, Department of Public Works to the Authority, and to abolish the Water and Sewer Utility Administration.

**New Chapter  
16B  
Title 43**

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996".

**Title I - Declaration of Policy.**

Sec. 101. The Council of the District of Columbia hereby finds and declares that:

**New Section  
43-1661**

(1) Providing water distribution services and sewage collection, treatment, and disposal to the District and portions of the Metropolitan Washington area is essential to ensure the health and safety of the citizens of the District.

(2) Commercial and industrial development in the District requires an adequate water and sewer utility system capable of meeting the needs of the District and the District's statutory obligation to provide wastewater treatment services to suburban jurisdictions.

(3) The financing requirements for water distribution and sewage collection, treatment, and disposal systems, including the ability to fund capital programs without undue reliance on the general obligation credit of the District, are substantial and require financial resources independent of other District funds.

(4) Creation of an authority to oversee water and sewer operations for the District and surrounding jurisdictions will enhance the financial viability of water distribution and sewage collection, treatment, and disposal systems in the District and enhance the District's ability to meet its statutory obligation to provide sanitary sewer services to the surrounding jurisdictions.

(5) Creation of a water and sewer authority will enhance opportunities for economic development in the District and the Metropolitan Washington area.



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(6) Professional and productive management and system-wide planning of water distribution and sewage collection, treatment, and disposal systems necessitate the creation of a water and sewer authority.

(7) It is in the best interest of the District, its citizens, and the surrounding jurisdictions that the Council establish an independent water and sewer authority to achieve the following goals and objectives:

(A) To facilitate the efficient and economical operation of water distribution and sewage collection, disposal, and treatment systems in the District and surrounding jurisdictions;

(B) To expedite the repair, replacement, rehabilitation, modernization, and extension of existing water distribution and sewage collection, treatment, and disposal systems including the financing, on a self-sustaining basis, of capital and operating expenses relating thereto;

(C) To enhance and protect water resources in the District and the Metropolitan Washington area by reducing pollution to adjacent streams; and

(D) To facilitate the provision of regional sanitary sewer services to the suburban jurisdictions that receive wastewater treatment services from the District's Blue Plains Wastewater Treatment Plant.

(8) In order to achieve maximum utilization of resources and efficiency of operations, the water and sewer authority should operate as a public enterprise.

### **Title II - General Provisions.**

#### Sec. 201. Definitions.

For the purposes of this act, the term:

(1) "Authority" means the District of Columbia Water and Sewer Authority established pursuant to section 202(a).

(2) "Cost" means any and all reasonable expenses including expenses for operation and maintenance activities; expenses for preconstruction and construction, acquisition, alteration, improvement, enlargement of furnishing, fixturing and equipping, reconstruction and rehabilitation of the water distribution and sewage collection, treatment, and disposal systems of the District, including without limitation, the purchase or lease expense for all lands, structures, real or personal property, rights, rights-of-way, roads, franchises, easements, and interest acquired or used for, or in connection with the Authority; the expenses of demolishing or removing buildings or structures on land acquired by the Authority, including the expenses incurred for acquiring any lands to which the buildings may be moved or located; the expenses incurred for all utility lines, structures or equipment charges, and interest on financial obligations incurred for a period as the Authority may reasonably determine to be necessary for the effective functioning of the water distribution and sewage collection, treatment, and disposal systems; provisions for reserves for principal and interest for extensions, operating and contingency reserves, enlargements, additions, and improvements; expenses incurred for architectural

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43-1671



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engineering, energy efficiency technology, design and consulting, financial and legal services, letters of credit, bond insurance, debt service or debt service reserve insurance, surety bonds or similar credit enhancement instruments, plans, specification studies, surveys, and estimates of expenses and of revenues; expenses necessary or incident to determining the feasibility of improvements to the water distribution and sewage collection, treatment, and disposal systems, the financing of such improvements, including a proper allowance for contingencies, and the provision of reasonable initial working capital for operating the improved systems.

(3) "Dedicated revenues" means revenues collected pursuant to water and sewer rates, fees, and charges imposed by the Authority.

(4) "Joint-use sewerage facilities" means the following:

- (A) Little Falls Trunk Sewer;
- (B) Upper Potomac Interceptor Sewer;
- (C) Upper Potomac Interceptor Relief Sewer;
- (D) Rock Creek Main Interceptor Sewer;
- (E) Rock Creek Main Interceptor Relief Sewer;
- (F) Potomac River Interceptor Sewer;
- (G) Potomac River Sewage Pumping Station;
- (H) Potomac River Force Mains;
- (I) Watts Branch Trunk Sewer;
- (J) Anacostia Force Main (Project 89 Sewer);
- (K) Anacostia Force Main & Gravity Sewer;
- (L) Outfall Sewers (Renamed Potomac River Trunk Sewers);
- (M) Outfall Relief Sewers (Renamed Potomac River Trunk Relief

Sewers);

- (N) Upper Oxon Run Trunk Sewer;
- (O) Upper Oxon Run Trunk Relief Sewer;
- (P) Lower Oxon Run Trunk Sewer;
- (Q) Lower Oxon Run Trunk Relief Sewer;
- (R) Blue Plains Wastewater Treatment Plant (Blue Plains); and
- (S) Potomac Interceptor Sewer.

(5) "Other participating jurisdictions" means the signatories to the 1985 Blue Plains Intermunicipal Agreement ("IMA"), other than the District of Columbia, that receive sewage treatment service from the Blue Plains Wastewater Treatment Plant.

(6) "Revenue bond" means any revenue bond, note, or other obligation (including refunding bonds, notes, or other obligations) used to borrow money to finance, assist in financing, or to refinance undertakings authorized by section 490 of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 809; D.C. Code § 47-334), and this act.

(7) "Service sewer" means a sewer with which connection may be directly made for the purpose of providing sewage facilities to abutting property.

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(8) "Sewage collection, treatment, and disposal systems" means all the facilities used, or to be used, for the collection, transmission, treatment, and disposal of sanitary sewage and stormwater flow, including the following:

- (A) Sewers carrying the following:
  - (i) Sewage mixed with storm and surface water;
  - (ii) Sewage discharged from sanitary conveniences;
  - (iii) Commercial or industrial wastes;
  - (iv) Water distributed after use;
  - (v) Stormwater run-off; and
  - (vi) Both sanitary sewage run-off and stormwater run-off;

(B) Sanitary, stormwater, and combined pumping stations;

(C) Wastewater treatment plants, including the Blue Plains Wastewater Treatment Plant; and

(D) Facilities for the processing, management, and disposal of biosolids.

(9) "Sewer" means a pipe or conduit carrying sewage or stormwater flow.

(10) "Water and sewer rates" means the fees imposed by the Authority on its retail customers for water, sewer, and stormwater services pursuant to this act.

(11) "Water distribution system" means all the facilities used, or to be used, for the distribution of potable water situated within the public space of the District exclusive of those facilities that are operated and maintained by the Washington Aqueduct Division of the Army Corps of Engineers or its designated successor.

Sec. 202. Establishment of the District of Columbia Water and Sewer Authority; general purpose of the Authority.

New Section  
43-1672

(a) There is established, as an independent authority of the District government, the District of Columbia Water and Sewer Authority. The Authority shall be a corporate body, created to effectuate certain public purposes, that has a separate legal existence within the District government.

(b) Except as provided in sections 214 and 215, the Authority shall be subject to all laws applicable to offices, agencies, departments, and instrumentalities of the District government, and shall be subject to the provisions of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 777; D.C. Code § 1-201 *passim*) ("Self-Government Act").

(c) Notwithstanding any other provisions of this act, the general purpose of the Authority is to plan, design, construct, operate, maintain, regulate, finance, repair, modernize, and improve water distribution and sewage collection, treatment, and disposal systems and services, and to encourage conservation.





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New Section  
43-1673

Sec. 203. General powers of Authority.

In addition to the delegation of powers contained in section 208, the Authority shall possess the following powers:

- (1) To sue and be sued;
- (2) To have a seal and alter the seal at its pleasure;
- (3) To make, adopt, and alter by-laws, rules, and regulations for the administration and regulation of its business and affairs;
- (4) To elect, appoint, or hire officers, employees, or other agents of the Authority, except Board members, including experts and fiscal agents, define their duties, and fix their compensation;
- (5) To acquire, by purchase, gift, lease, or otherwise, and to own, hold, improve, use, sell, convey, exchange, transfer, lease, sublease, and dispose of real and personal property of every kind and character, or any interest therein, for its corporate purposes;
- (6) To issue regulations and establish policies for contracting and procurement which are consistent with principles of competitive procurement;
- (7) To accept loans, gifts, or grants of money, materials, or property of any kind from the United States, or any agency or instrumentality thereof, or the District, upon terms and conditions as may be imposed upon the Authority to the extent that the terms and conditions are not inconsistent with the limitations and laws of the District and are otherwise within the powers of the Authority;
- (8) To borrow money for any of its corporate purposes and to provide for the payment of the same, as may be permitted under the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 777; D.C. Code § 1-201 *passim*), and the laws of the District;
- (9) To issue revenue bonds pursuant to section 209;
- (10) To enter into contracts with the District, the United States, Maryland, or Virginia, or their political subdivisions, other public entities, or private entities for goods and services as needed to achieve its purposes; provided, that prior to the Authority contracting out to a private entity, a service or activity performed by employees of the Authority, through established standards developed by rules and regulations, the Authority shall establish that the contracting out will achieve increased efficiencies and cost savings to the Authority; provided further, that any contractor who is awarded a contract that displaces any District government employee shall offer to any displaced employee a right-of-first-refusal to employment by the contractor, in a comparable available position for which the employee is qualified, for a least a 6-month period during which time the employee shall not be discharged without cause. If the employee's performance during the 6-month transition employment period is satisfactory, the new contractor shall offer the employee continued employment under the terms and conditions established by the new contractor. Any District government employee who is displaced as a result of a contract and is hired by the contractor who was awarded the contract which displaced the employee shall be entitled to the benefits provided by the Service Contract Act of 1965, 41



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U.S.C. § 351 *et seq.*, notwithstanding any exclusion of applicability of the Service Contract Act of 1965 to the employee.

(11) To establish, adjust, levy, collect, and abate charges for services, facilities, or commodities furnished or supplied by it;

(12) To refund overcharges for services, facilities, or commodities furnished or supplied by it;

(13) To undertake any public project, acquisition, construction, or any other act necessary to carry out its purposes;

(14) To maintain, repair, operate, extend, enlarge, investigate, design, construct, and improve the water distribution and sewage collection, treatment, and disposal systems;

(15) To engage in activities, programs, and projects on its own behalf or, with the concurrence of the Mayor, jointly with other public bodies or political divisions or subdivisions of the District of Columbia;

(16) To provide for the cost of activities, programs, and projects from grants, loans, the proceeds of bonds, or from other revenues available to the Authority for such purposes;

(17) To exercise any power usually possessed by public enterprises or private corporations performing similar functions that is not in conflict with the Self-Government Act, or the laws of the District;

(18) To implement all rules, regulations, and laws relating to the distribution of water and sewage collection, treatment, and disposal, other than those laws that impose a penalty of imprisonment;

(19) To shut off water and sewer service, after notice, for good and sufficient cause;

(20) To distribute potable water to the inhabitants of the District;

(21) To distribute potable water to the other participating jurisdictions as provided by law;

(22) To develop policies related to the proper use and distribution of water to households and public and private institutions during times of normal consumption and during emergency situations.

(23) To construct water mains and sewers in any street, avenue, road, or alley in the District under conditions as the Mayor may prescribe;

(24) To petition the Mayor to acquire property through eminent domain;

(25) To enter into contracts, including leases and lease-purchase agreements involving real property and personal property;

(26) To indicate in its records the existence and location of sewers and service sewers within its jurisdiction.

(27) To determine whether potable water should be used for mechanical and manufacturing purposes, private fountains, and street and pavement washers;

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(28) To privatize the day-to-day operations of the Blue Plains Wastewater Treatment Plant; provided, that the Board of Directors of the Authority submit its recommendation on the feasibility of privatization pursuant to section 205(g)(1) and submits the privatization contract pursuant to section 205(g)(2).

(29) To enter into a financing lease, a service agreement or other arrangement for contracted services; obligations with respect to credit facilities; and interest rate swaps, interest rate caps, interest rate floors and any other interest rate-related hedge agreements entered into by the Authority for the purpose of interest rate risk and asset management that may be, but need not be, entered into in conjunction with the issuance of bonds or notes by the Authority.

(30) To do all things necessary or convenient to carry out the powers expressly provided by this act.

(31) To determine whether churches, charitable organizations, or institutions that receive annual appropriations from Congress should be furnished with water or sewer service without charge.

Sec. 204. Establishment of a board of directors.

New Section  
43-1674

(a) (1) The Authority shall be governed by a board of directors ("Board") comprised of 10 members.

(2) Six Board members shall be residents of the District, appointed by the Mayor with the advice and consent of the Council, of which no more than 4 may be District employees or officials. The nomination of a Board member shall be submitted to the Council for a 30-day period of review excluding days of Council recess. The Council may approve or disapprove the nomination by resolution within 30 days of the date the nomination is transmitted to the Council. If the Council does not adopt a resolution within the 30-day period, the nomination shall be deemed approved upon the expiration of the review period.

(3) The Mayor shall appoint persons recommended by the other participating jurisdictions to the remaining 4 Board positions. These 4 Board members shall only participate in decisions affecting the general management of the joint-use facilities. Of the 4 non-District Board members appointed by the Mayor:

(A) One Board member shall be a person recommended by Fairfax County, Virginia, pursuant to jurisdictional law;

(B) One Board member shall be a person recommended by Montgomery County, Maryland, pursuant to jurisdictional law;

(C) One Board member shall be a person recommended by Prince Georges County, Maryland, pursuant to jurisdictional law; and

(D) One Board member shall be a person recommended by the Commissioners of the Washington Suburban Sanitary Commission.

(4) The Mayor shall also appoint an alternate for each Board member, in the same manner as set forth for Board members in paragraphs (2) and (3) of subsection, who may attend all Board meetings but who may act only in the absence of the Board member for whom



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he or she has been appointed the alternate.

(b) Any Board member or alternate who is an employee of the District government, including an elected official, shall be removed from the Board upon leaving the employment of the District government or elected office.

(c) Any Board member or alternate who is an employee of the government of one of the other participating jurisdictions, including an elected official, may, upon leaving the employment of the government or elected office, have his or her membership on the Board terminated by the Mayor or, at the Mayor's initiative, following consultation with the appropriate official set forth in subsection (a)(3) of this section.

(d) Board members and alternates shall serve 4-year terms. Of the 10 Board members and alternates initially appointed to the Board, 3 District appointees and 2 other participating jurisdiction appointees shall serve 4-year terms, 2 District appointees and 1 other participating jurisdiction appointee shall serve 3-year terms, and 1 District appointee and 1 other participating jurisdiction appointee shall serve 2-year terms.

(e) Any person appointed to fill a vacancy on the Board shall be appointed only for the unexpired term of the Board member whose vacancy is being filled. If any Board member or alternate is appointed to fill an unexpired term with more than 2 years remaining in the term, upon expiration of the term, that Board member or alternate shall be deemed to have served a full 4-year term. At the end of a term, a Board member or alternate shall continue to serve until a successor is appointed.

(f) The Mayor shall appoint a chairperson of the Board from among the 6 District Board members.

(g) The Mayor shall remove any Board member or alternate from office for misconduct or neglect of duty, as defined by the Board in its by-laws, or for other good cause, after notice to the Board member. Prior to removing a Board member or alternate appointed pursuant to subsection (a)(3) of this section, the Mayor shall consult with the official or officials who recommended the Board member or alternate. The Mayor shall also remove a Board member or alternate appointed pursuant to subsection (a)(3) of this section upon the request of the official or officials who recommended the board member or alternate, if grounds exist for removal under this subsection.

(h) Should a Board member or alternate be indicted for the commission of a felony, the Board member or alternate shall be automatically suspended from serving on the Board. Upon a final determination of guilt, the term of the Board member or alternate shall be automatically terminated. Upon a final determination of innocence, the Mayor may reinstate the Board member or alternate.

(i) All Board meetings shall be subject to the provisions of section 742 of the Self-Government Act (D.C. Code § 1-1504).

(j) Before any meeting of the Board, Board members shall be notified of the meeting. Six Board members shall constitute a quorum for the transaction of business. The existence of a quorum and an affirmative vote of a majority of the members present, who are permitted to

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participate in the matter under consideration, shall be required to approve any Board action; except, that 7 affirmative votes shall be required for approval of the Authority's budget and the selection of the General Manager. No vacancy in membership shall impair the right of a quorum to exercise all rights and perform all duties of the Board.

(k) A Board member not otherwise compensated by the District or one of the other participating jurisdictions shall be entitled to compensation by the Authority at the rate of \$50 per meeting, not to exceed \$4,000 per year. Board members shall not be entitled to reimbursement for expenses, except that transportation, parking, or mileage expenses incurred in the performance of official duties of the Board may be reimbursed, not to exceed \$20 per meeting.

Sec. 205. Duties of the Board.

New Section  
43-1675

(a) The Board shall have the following duties:

- (1) To adopt and publish internal operating rules for the conduct of Board meetings;
- (2) To develop policies for the management, maintenance, and operation of water distribution and sewage collection, treatment, and disposal systems under the control of the Authority;
- (3) Adopt and publish rules and regulations governing the operation of the water distribution and sewage collection, treatment, and disposal systems under the control of the Authority;
- (4) Develop and establish a personnel system and publish rules and regulations setting forth minimum standards for all employees, including pay, contract terms, leave, retirement, health and life insurance, and employee disability and death benefits;
- (5) Select, employ, and fix the compensation and benefits for the General Manager and for the staff of the Board, as it deems necessary; and
- (6) Delegate to the General Manager any authority granted to the Board under subsection (a)(2) through (5) of this section.

(b)(1) The personnel system developed pursuant to subsection (a)(4) of this section shall be in place no later than 6 months after the effective date of this act. The personnel rules and regulations shall require that no employee shall engage in outside employment, private business activity, or have any direct or indirect financial interest that conflicts, or would appear to conflict, with the fair, impartial, and objective performance of the employee's assigned duties and responsibilities.

(2) Department of Public Works employees whose salaries are funded by the Water and Sewer Utility Administration shall become employees of the Authority without impairment of civil service status and seniority, reduction in compensation (notwithstanding any change in job titles or duties) or loss of accrued rights to holidays, leave, and benefits. All employees of the Authority shall perform their duties under the direction, control, and supervision of the Authority; provided, however, that any employee subject to transfer whose





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existing duties and responsibilities are determined by the Authority and the Department of Public Works to relate directly and primarily to functions of the Department of Public Works, and for whom a position at the Department of Public Works is funded in whole or in part, shall remain an employee of the Department of Public Works and shall continue to perform duties under the direction, control, and supervision of the Department of Public Works and not under funding arrangements thereafter derived from the accounts of the Authority.

(c) The Board shall prepare, within 120 days after the end of each District government fiscal year, a detailed annual report setting forth a description of the Authority's operations and accomplishments during the year and shall transmit copies of the report to the Mayor and the Council.

(d) The Board shall contract with an independent certified public accountant to perform an annual audit of the books and accounts of the Authority.

(e) The Board shall annually develop, adopt, and submit to the Mayor, a multiyear financial plan for capital and operating expenses no less than 90 days prior to the beginning of each District government fiscal year.

(f) The Board shall carry insurance sufficient to protect the Authority, the Board, the Board members, officers, and employees of the Board, its lessees or occupants, the District government, and other participating jurisdictions against risks associated with the exercise by the Authority or the Board of any authority conferred by this act; provided, however, that no Board member shall be personally liable for any act or omission of the Authority, except with regard to any fraudulent or criminally prosecutable act committed by a Board member in connection with an act or omission of the Authority.

(g)(1) The Board shall assess the feasibility, including the financial benefits, if any, of engaging a private entity to operate, manage, maintain, lease, or purchase all or any portion of the Blue Plains Wastewater Treatment Plant. This assessment shall be completed no later than 6 months after the effective date of this act. The Board shall submit its recommendation to the Mayor who shall submit his or her recommendation to the Council within 60 days of receiving the Board's recommendation.

(2) No contract to privatize the Blue Plains Wastewater Treatment Plant shall be entered into by the Authority, unless the Board submits the privatization contract to the Mayor, the Mayor approves and submits the contract to the Council, and the Council approves the contract pursuant to section 451(b)(1) of the Self-Government Act (D.C. Code § 1-1130(b)(1)) and the Council Contract Approval Modification Emergency Act of 1995, effective October 27, 1995 (D.C. Act 11-149; 42 DCR 6178) ("Contract Approval Act") and succeeding laws.

(3) No contract to purchase or lease all or any portion of the Blue Plains Wastewater Treatment Plant shall be entered into by the Authority unless the Board submits the sale or lease contract to the Mayor, the Mayor approves and submits the contract to the Council, and the Council approves the contract pursuant to section 451(b)(1) of the Self-Government Act (D.C. Code § 1-1130(b)(1)) and the Contract Approval Act and any succeeding laws.



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(4) Notwithstanding any other law, any agreement or contract to operate the Blue Plains Treatment Plant shall reserve to the District the right of access and use of any water front property, include the concrete pier.

**Sec. 206. General Manager; employment and duties.**

**New Section  
43-1676**

The Board, by the affirmative vote of 7 of its members, shall employ a General Manager who shall be the chief administrative officer of the Authority. The General Manager shall not be a member of the Board and shall serve at the pleasure of the Board. The General Manager shall perform duties as determined by the Board.

**Sec. 207. Water and Sewer Enterprise Fund; assets of the Water and Sewer Utility Administration of the Department of Public Works; transfer of funds and assets; pledge of revenues.**

**New Section  
43-1677**

(a) There is established the Water and Sewer Enterprise Fund ("Fund") to be operated by the Authority.

(b) The monies in the Fund shall not be a part of, nor lapse into, the General Fund of the District or any other fund of the District.

(c) As of the effective date of this act, any and all dedicated revenues collected by the Mayor as an agent for the Authority shall be expeditiously deposited into the Fund for disbursement by the Authority for the purposes permitted by section 216(b) for revenue derived from the water and sewer rates. Dedicated revenues received by the Mayor shall be subject to any pledge of the Authority as if deposited into the Fund and shall not be commingled with the Cash Management Pool, the General Fund, or any other funds or accounts of the District of Columbia.

(d) Any pledge by the Authority of any funds on deposit in the Fund shall be effective, valid, perfected, and binding from the time the pledge is made with or without the delivery of any funds, and with or without any further action. Such pledge shall be effective, valid, perfected, and binding whether or not any statement, document, or instrument relating to such pledge is recorded or filed. The pledged revenues shall be immediately subject to the lien of the pledge, whether or not there has been any physical delivery. The lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against any person receiving distribution of revenues whether or not the parties have notice of the pledge.

(e) Within 120 days of the effective date of this act, the Mayor shall cause to be performed an independent audit of the assets and liabilities of the Department of Public Works, Water and Sewer Utility Administration. The independent audit shall also determine the present day value of services provided by the District government during the preceding 20-year period to the Water and Sewer Utility Administration, or any or its predecessor administrations or agencies. The audit shall determine the amount and adequacy of any funding provided by the Water and Sewer Utility Administration for these services. The Mayor shall provide the Council

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with a final version of the independent audit. Based upon the results of the independent audit, and notwithstanding the provisions of the Governmental Reorganization Procedures Act of 1981, effective October 17, 1981 (D.C. Law 4-42; D.C. Code §§ 1-299.1 through 1-299.7), the Mayor shall, through an intra-District government transfer, permit the Authority to use any assets the Mayor considers to be required for the Authority's operations upon such terms and conditions as the Mayor finds appropriate, and shall transfer any liabilities that are directly attributable to the water distribution system or sewage collection, treatment, and disposal systems, other than the general obligation bonds referred to in subsection (f) of this section. The District government shall retain full legal title to, and a complete equitable interest in, all assets made available for the Authority's use. Pending the intra-District government transfer required by this subsection, all assets and liabilities of the Water and Sewer Utility Administration, as indicated on the balance sheet prepared by the Water and Sewer Utility Administration just prior to the effective date of this act, shall be transferred for the Authority's use on an interim basis.

(f) The Authority shall transfer to the General Fund of the District funds necessary for the District to make debt service payments on District general obligation bonds related to the Department of Public Works, Water and Sewer Utility Administration. The payments shall be in the amount and made at such times as the Treasurer of the District of Columbia requires in writing, and the payments shall continue until the District's general obligations bonds related to the Department of Public Works, Water and Sewer Utility Administration are fully paid.

(g)(1) Twelve months subsequent to the completion of the first full year of operation of the Authority, the chairperson of the Board shall cause a study to be undertaken to determine the feasibility of establishing the Authority as an independent regional authority and to make recommendations for the ongoing relationship of user jurisdictions to the Authority.

(2) The feasibility study shall include base-line data obtained pursuant to the requirements for annual reports as set forth in sections 205(c), 205(d), and 205(e), and the audit of the assets and liabilities of the Department of Public Works, Water and Sewer Utility Administration required by section 207(e).

(3) The study recommendations shall include the manner in which the District would be compensated by the Authority for the District's historic investment in the capital improvements and maintenance of the Blue Plains facility, should the Authority become an independent regional authority, as well as options for retention by the District of the land upon which any Authority plant and facilities are located within the boundaries of the District.

(4) Within 180 days of its inception, the study and its recommendations shall be completed and submitted to the Mayor, the Council, and the appropriate official of each of the other participating jurisdictions.

Sec. 208. Delegation of Council authority to issue bonds.

The Council delegates to the Authority the power of the Council under section 490 of the Self-Government Act (D.C. Code § 47-334) to issue revenue bonds to finance, refinance, or assist in the financing or refinancing of any undertakings of the Authority pursuant to this

New Section  
43-1678



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act.

Sec. 209. Power of the Authority to issue revenue bonds and notes or other obligations.

New Section  
43-1679

(a) The Authority may at any time, and from time to time, issue revenue bonds (including refunding bonds, notes, or other obligations), by resolution, in one or more series to finance or refinance any cost. The resolution shall name the Chairperson of the Board or his or her designee as the authorized delegate to execute all documents related to the revenue bond financings or refinancings.

(b) Revenue bonds of the Authority are obligations payable from revenues of the Authority from whatever source derived, including certain dedicated revenues, earnings on the Fund, and any other revenue available to the Authority which may lawfully be used for these purposes.

(c) Regardless of their form or character, revenue bonds of the Authority are negotiable instruments for all purposes of the Uniform Commercial Code of the District of Columbia, approved December 30, 1963 (77 Stat. 631; D.C. Code § 28: 1-101 *et seq.*), subject only to the provisions of the bonds for registration.

(d) No official, employee, or agent of the Authority shall be held personally liable solely because a revenue bond is issued.

(e) The issuance and performance of bonds by the Authority as contemplated in this act and the adoption of resolutions authorizing such bonds, notes, and other obligations shall be done in compliance with the requirements of this act, but shall not be subject to the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 *et seq.*).

(f) The Authority shall have the power to borrow money and to issue revenue bonds regardless of whether or not the interest payable by the Authority incident to such loans or revenue bonds or the income derived by the holders of the evidence of such indebtedness or revenue bonds notes is, for the purposes of federal taxation, includable in the taxable income of the recipients of these payments or is otherwise not exempt from the imposition of taxation on the recipients.

(g) The Authority shall have the power to contract with the holders of its revenue bonds, as to the custody, collection, securing, investment, and payment of any monies of the Authority and of any monies held in trust or otherwise for the payment of revenue bonds.

Sec. 210. Terms for sale of bonds; additional bond and note provisions.

New Section  
43-1680

(a) The Authority may stipulate by resolution the terms for sale of its bonds in accordance with this act, including the following:

- (1) The date a note or bond bears;
- (2) The denomination;
- (3) Any interest rate or rates, or variable rate or rates changing from time to time, or premium or discount applicable;





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- (4) The registration privileges;
- (5) The medium and method for payment; and
- (6) The terms of redemption.

(b) The Authority may sell its bonds at public or private sale and may determine the price for sale.

(c) A resolution authorizing the sale of bonds may contain any of the following provisions, in which case these provisions shall be made part of the contract with holders of the bonds:

(1) The custody, security, expenditure, or application of proceeds of the sale of bonds of the Authority ("proceeds"), a pledge of the proceeds to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(2) A pledge of Authority revenues to secure payment and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(3) A pledge of assets of the Authority, other than those assets that the Mayor allows the Authority to use through an intra-District transfer, including mortgages and obligations securing mortgages, to secure payment, and the rank or priority of the pledge, subject to preexisting agreements with holders of the bonds;

(4) The proposed use of gross income from any mortgages owned by the Authority and payment of principal of mortgages owned by the Authority;

(5) The proposed use of reserves or sinking funds;

(6) The proposed use of proceeds from the sale of revenue bonds and a pledge of proceeds to secure payment;

(7) Any limitations on the issuance of revenue bonds, including terms or issuance and security, and the refunding of outstanding or other revenue bonds;

(8) Procedures for amendment or abrogation of a contract with holders of the revenue bonds, the amount of bonds, the holders of which must consent to the amendment, and the manner in which consent may be given;

(9) Any vesting in a trustee property, power, and duties, which may include the power and duties of a trustee appointed by holders of the revenue bonds;

(10) Limitations or abrogations of the right of holder of the revenue bonds to appoint a trustee;

(11) A defining of the nature of default in the obligations of the Authority to the holders of the revenue bonds and providing the rights and remedies of holders of the bonds in the event of default, including the right to the appointment of a receiver, in accordance with the general laws of the District and this act; and

(12) Any other provisions of like or different character that affect the security of holders of the revenue bonds.

(d) A pledge of the Authority is binding from the time it is made. Any funds, or property pledged, are subject to the lien of a pledge without physical delivery. The lien of a pledge is binding as against parties having any tort, contract, or other claim against the Authority

## ENROLLED ORIGINAL

regardless of notice. Neither the resolution stipulating the terms for sale of Authority bonds nor any other instrument creating a pledge need be recorded.

(e) The signature of any officer of the Authority which appears on a bond shall remain valid if that person ceases to hold office.

(f) The Authority may secure bonds by a trust indenture between the Authority and a corporate trustee that has trust company powers within the District.

(g) A trust indenture of the Authority may contain provisions for protecting and enforcing the rights and remedies of holders of the revenue bonds in accordance with the provisions of the resolution authorizing the sale of bonds.

(h) Subject to preexisting agreements with the holders of the revenue bonds, the Authority may purchase its own revenue bonds which may then be cancelled. The price the Authority pays in purchasing its own revenue bonds shall not exceed the following limits:

(1) If the revenue bonds are redeemable, the price shall not exceed the redemption price then applicable plus accrued interest to the next interest payment; or

(2) If the bonds are not redeemable, the price shall not exceed the redemption price applicable on the first date after the purchase upon which the bonds or notes become subject to redemption plus accrued interest to that date.

(i) The Authority may establish special or reserve accounts in furtherance of its authority under this act. Notwithstanding subsections (a) and (b) of this section and other applicable District law, and subject to agreements with holders of the bonds, the Authority shall manage its own funds, and may invest funds not required for disbursement in a manner consistent with industry practices.

(j) The bonds of the Authority are legal instruments in which public officers and public bodies of the District, insurance companies, insurance company associations, and other persons carrying on an insurance business, banks, bankers, banking institutions, including savings and loan associations, building and loan associations, trust companies, savings banks, savings associations, investment companies, and other persons carrying on a banking business, administrators, guardians, executors, trustees and other fiduciaries, and other persons authorized to invest in bonds or in other obligations of the District, may legally invest funds, including capital, in their control. The bonds are also securities which legally may be deposited with, and received by, public officers and public bodies of the District or any agency of the District for any purpose for which the deposit of bonds or other obligations of the District is authorized by law.

(k) The revenue bonds shall be special obligations of the District. The bonds shall be without recourse to the District. The bonds shall not be general obligations of the District, shall not be a pledge of or involve the faith and credit or the taking power of the District, shall not constitute a debt of the District, shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Self-Government Act, and shall not constitute debt for purposes of section 603 of the Self-Government Act.

(l) The revenue bonds shall not give rise to any pecuniary liability to the District and the District shall have no obligation with respect to the purchase of the bonds.



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(m) Nothing contained in the revenue bonds, in the financing documents, or in the closing documents shall create any obligation on the part of the District to make payments with respect to the bonds from sources other than those listed for that purpose in this act.

(n) The District shall not have liability for the payment of any issuance costs or for any transaction or event to be effected by the financing documents.

Sec. 211. District pledges.

New Section  
43-1681

The District pledges to the Authority and any holders of bonds that, except as provided in this act, the District will not limit or alter rights vested in the Authority to fulfill agreements made with holders of the bonds, or in any way impair the rights and remedies of the holders of the bonds until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the holders of the bonds are fully met and discharged. The Authority is authorized to include this pledge of the District in any agreement with the holders of the bonds.

Sec. 212. Transfer of funds.

New Section  
43-1682

No funds may be transferred from the Fund to the General Fund of the District except to pay for goods, services, and property contracted by the Authority from the District, or as otherwise authorized by this act.

Sec. 213. District repayment option.

New Section  
43-1683

The District retains the right to direct the Authority to purchase its own bonds and notes, subject to the terms and conditions of section 210(h), for the purpose of dissolving or altering the Authority after such bonds and notes are cancelled or defeased.

Sec. 214. Procurement system inapplicable.

New Section  
43-1684

Except as provided in section 217(b), the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Code § 1-1181.1 *et seq.*), shall not apply to the Authority.

Sec. 215. Merit personnel system inapplicable.

New Section  
43-1685

(a) Except as provided in this section and in section 217(b), no provision of District of the Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-601.1 *et seq.*), shall apply to employees of the Authority except as follows:

- (1) Titles V and XVII shall apply to all employees of the Authority; and
- (2) Titles XII, XXI, XXII, and XXVI shall apply to employees transferred to the Authority who are covered under the Civil Service Retirement System and the District of Columbia Defined Contribution Pension Plan; provided, that all Authority employees continuously employed by the District government since December 31, 1979, shall be guaranteed



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rights and benefits at least equal to those currently applicable to such persons under provisions of law and rules and regulations in force prior to the effective date of this act.

(b) An employee of the Authority who is covered under the District of Columbia Defined Contribution Pension Plan, who meets the minimum requirements for participation in a retirement plan established by the Authority, may, upon written notice to the Authority, elect, instead, to be covered by the Authority's plan.

### Sec. 216. Charges and fees and rate setting.

New Section  
43-1686

(a) The Authority shall collect and abate charges, fees, assessments, and levies for services, facilities, or commodities furnished or supplied by it.

(b) The Authority shall, following notice and public hearing, establish and adjust retail water and sewer rates. The District members of the Board shall establish the retail water and sewer rates prior to the Board's consideration of the Authority's budget. The water and sewer rates levied by the Authority shall only be a source of revenue for the maintenance of the District's supply of water and sewage systems, and shall constitute a fund exclusively to defray any cost of the Authority.

(c) In the absence of applicable standards, charges shall be levied and collected as determined by the Authority in accordance with section 487(b) of the Self-Government Act (D.C. Code § 43-1615(b)).

(d) The Authority may impose additional charges and penalties for late payment of bills.

(e) The Authority is authorized to shut off the water distribution to any building, establishment, or other place upon failure of the owner or occupant thereof to pay the charges within 90 days from the date of rendition of the bill.

### Sec. 217. Transition provisions.

New Section  
43-1687

(a) Until the initial meeting of the Board, but for not longer than 180 days from the effective date of this act, the existing management structure of the Water and Sewer Utility Administration, Department of Public Works shall serve as the operator of the Authority, thereafter, the Water and Sewer Utility Administration of the Department of Public Works shall be abolished.

(b) Until the Board establishes a personnel system and a procurement system, and until rules and regulations pertaining to the Board's duties have been promulgated, the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Code § 1-1181.1 *et seq.*), and the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective December 31, 1979 (D.C. Law 2-19; D.C. Code § 1-601.1 *et seq.*), and implementing rules and regulations shall continue to apply to the Authority.

(c) The administration of payroll services and personnel services, including benefits administration, shall be provided to the Authority by the Office of Pay and Retirement and the District of Columbia Office of Personnel at a negotiated fee. These services may be terminated by the Authority upon written notice to each provider.

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(d) All collective bargaining agreements shall remain in effect until they expire, or until they are renegotiated by the Authority, whichever comes first, unless otherwise agreed upon by the parties to the collective bargaining agreements.

**Sec. 218. Existing agreements.**

**New Section  
43-1688**

This act shall not serve as an amendment, alteration, modification, or repeal of the 1985 Blue Plains Intermunicipal Agreement or any other regional agreement between the District government and the other participating jurisdictions.

**Sec. 219. Transfer of function and redelegation of authority.**

**New Section  
43-1689**

(a) All of the functions transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, Vol, 1, p. 323, that have been delegated to the Water and Sewer Utility Administration are hereby transferred to the Water and Sewer Authority as follows:

(1) Pursuant to Part III (I), authority to plan, manage, and contract for design, engineering, and construction of the District's water and sewer facilities;

(2) Pursuant to Part III (K), authority to provide complete water and sewer utility systems including the provision of an adequate and potable water supply; water distribution, measurement, and billing; the collection and treatment of sewage; and the construction and maintenance of all related facilities on a cost basis; and

(3) Pursuant to Part IV (E), the functions of the Department of Environmental Services as set forth in Commissioners Order No. 71-255, dated July 27, 1971, except for the functions of the Office of Environmental Standards and Quality Assurance, which were transferred to the Department of Consumer and Regulatory Affairs, on the effective date of Reorganization Plan No. 4 of 1983.

(b) Any other functions not specified in this section that are now delegated to or vested in the Administrator of the Water and Sewer Utility Administration are hereby transferred to the Water and Sewer Utility Authority, including the power to obtain and enforce liens in accordance with sections 104 and 210 of the District of Columbia Public Works Act of 1954, approved May 18, 1954 (68 Stat. 102, 107; D.C. Code § 43-1529 and 43-1610).

**Title III - Repealers.**

**Sec. 301.** The last paragraph of section 1 of An Act Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of such District for the fiscal year ending June 30, 1931, and for other purposes, approved July 3, 1930 (46 Stat. 988; D.C. Code § 43-1522), is repealed.

**Section  
43-1522**

**Sec. 302.** Section 1 of article V of An Act To provide revenue for the District of Columbia, and for other purposes, approved July 16, 1947 (61 Stat. 360; D.C. Code § 43-1523), is repealed.

**Section  
43-1523**





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Sec. 303. Sections 101, 102, and 206 of the District of Columbia Public Works Act of 1954, approved May 18, 1954 (68 Stat. 101; D.C. Code §§ 43-1524, 43-1527, and 43-1604), are repealed.

Sections  
43-1524,  
43-1527,  
43-1604

Sec. 304. Section 701 of the Revenue Act of 1975, effective October 21, 1975 (D.C. Law 1-23; D.C. Code §§ 43-1525, 43-1605, and 43-1606), is repealed.

Sections  
43-1525,  
43-1605,  
43-1606

Sec. 305. Sections 2 through 8 of the Nonprofit Housing Developments' Water and Sanitary Sewer Service Rate Charges Reduction and the Consumer Credit Interest Rate Amendments Clarification Act of 1982, effective June 4, 1982 (D.C. Law 4-112; D.C. Code §§ 43-1522.1 through 43-1522.5 and 43-1605.1 through 43-1605.5), are repealed.

Sections  
43-1522.1 -  
43-1522.5,  
43-1605.1 -  
43-1605.5

Sec. 306. An Act Authorizing the Commissioners of the District of Columbia to furnish Potomac water without charges to charitable institutions and so forth, in the District of Columbia, approved February 21, 1905 (33 Stat. 742; D.C. Code § 43-1545), is repealed.

Section  
43-1545

**Title IV - Home Rule Act Amendments.**

Sec. 401. The Council requests that the United States Congress enact the following amendments to the District of Columbia Self-Government and Governmental Reorganization Act:

(a) **AUTHORITY TO ISSUE BONDS.** - The first sentence of section 490(a)(1) (DC Code, sec. 47-334(a)(1)) is amended to read as follows:

"(a)(1) The Council may by act authorize the issuance of revenue bonds, notes or other obligations (including refunding bonds, notes, or other obligations) to borrow money to finance, to refinance, or to assist in the financing or refinancing of undertakings in the areas of housing, health facilities, transit and utility facilities, recreational facilities, college and university facilities, college and university programs which provide loans for the payment of educational expenses for or on behalf of students, pollution control facilities, industrial and commercial development, and water distribution facilities, wastewater treatment and transmission facilities."

(b) **PAYMENTS ON BONDS.** - Section 490(a)(3)(A) and (B) (DC Code, sec. 47-334(a)(3)(A) and (B)) is amended to read as follows:

"(A) The payment of such bond, note, or other obligation from any available revenues, including water and sewer enterprise fund revenues, assets, or property; and  
"(B) The securing of such bond, note, or other obligation by the mortgage of real property or the creation of any security interest in available revenues, including water and sewer enterprise fund revenues, assets, or property."

(c) **NO PLEDGE OF THE DISTRICT'S FAITH AND CREDIT; EXEMPTION FROM DEBT CEILING.** - Section 490 (DC Code, sec. 47-334) is amended by adding a new subsection (c-1) to read as follows:



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"(c-1) Any and all bonds, notes, or other obligations issued pursuant to subsection (a)(1) of this section with regard to water distribution, water waste treatment, and water transmission facilities shall not be general obligations of the District and shall not be a pledge of or involve the faith and credit or the taxing power of the District, shall not constitute a debt of the District, shall not constitute lending of the public credit for private undertakings as contained in section 602(a)(2), and shall not constitute debt for the purposes of section 603."

(d) AUTHORIZATION TO DELEGATE AUTHORITY. - Section 490 (DC Code, sec. 47-334) is amended by adding a new subsection (h) to read as follows:

"(h)(1) The Council may delegate to the District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1995, ("Water and Sewer Authority Act"), the authority of the Council under subsection (a) of this section to issue taxable or tax-exempt revenue bonds, notes, and other obligations to borrow money to finance, refinance, or assist in the financing or refinancing of undertakings in the area of utilities facilities, pollution control facilities, water distribution facilities, and wastewater treatment and transmission facilities. The District of Columbia Water and Sewer Authority established pursuant to section 202 of the Water and Sewer Authority Act may exercise authority delegated to it by the Council as described in the first sentence of this paragraph (whether such delegation is made before or after the date of the enactment of this subsection) only in accordance with this subsection.

"(2) Revenue bonds, notes, and other obligations issued by the Water and Sewer Authority under a delegation of authority described in this section shall be issued by resolution of the Water and Sewer Authority, and any such resolution shall not be considered to be an act of the Council.

"(3) The fourth sentence of section 446 shall not apply to:

"(A) Any amount (including the amount of any accrued interest or premium) obligated or expended from the proceeds of the sale of any revenue bond, note, or other obligation issued pursuant to this section;

"(B) Any amount obligated or expended for the payment of the principal of, interest on, or any premium for any revenue bond, note, or other obligation issued pursuant to this section; and

"(C) Any amount obligated or expended to secure any revenue bond, note, or other obligation issued pursuant to this section."

"(D) Any amount obligated or expended for repair, maintenance, and capital improvements to facilities financed pursuant to this section."

(e) APPROPRIATION EXCEPTION; CONFORMING AMENDMENT. - Section 446 (DC Code, sec. 47-304) is amended by changing the fourth sentence to read:

"Except as provided in section 467(d), section 471(c), section 472(d)(2), section 483(d), and subsections (f), (g)(3), and h(3) of section 490, no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act."



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(f) EXCLUSION OF PLEDGED REVENUES. - Section 603(b)(1), (2) and (3)(A) (DC Code, sec. 47-313(b)(1), (2), and (3)(A)) are amended to read as follows:

"(b)(1) No general obligation bonds (other than bonds to refund outstanding indebtedness) or Treasury capital project loans shall be issued during any fiscal year in an amount which would cause the amount of principal and interest required to be paid both serially and into a sinking fund in any fiscal year on the aggregate amounts of all outstanding general obligation bonds and such Treasury loans, to exceed 14 percentum of the District revenues (less court fees, any fees or revenues directed to servicing or securing revenue bonds, any revenues, charged or fees dedicated for the purposes set forth in subsection (a) of section 490 with regard to water distribution, water waste treatment, and water transmission facilities, retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year in which the bonds will be issued. Treasury capital project loans include all borrowings from the United States Treasury, except those funds advanced to the District by the Secretary of the Treasury under the provisions of section 2501, title 47 of the District of Columbia Code, as amended.

"(2) Obligations incurred pursuant to the authority contained in the District of Columbia Stadium Act of 1957 (71 Stat. 619; D.C. Code, title 2, chapter 17, subchapter II), and obligations incurred by the agencies transferred or established by section 201 and 202, whether incurred before or after such transfer or establishment, and revenue bonds, notes, or other obligations issued pursuant to subsection (a) of section 490 with regard to water distribution, water waste treatment, and water transmission facilities, shall not be included in determining the aggregate amount of all outstanding obligations subject to the limitation specified in the preceding subsection.

"(3) The 14 per centum limitation specified in paragraph (1) shall be calculated in the following manner:

"(A) Determine the dollar amount equivalent to 14 percent of the District revenues (less court fees, any fees or revenues directed to servicing or securing revenue bonds, any revenues dedicated for the purposes set forth in subsection (a) of section 490 with regard to water distribution, water waste treatment, and water transmission facilities, retirement contributions, revenues from retirement systems, and revenues derived from such Treasury loans and the sale of general obligation or revenue bonds) which the Mayor estimates, and the District of Columbia Auditor certifies, will be credited to the District during the fiscal year for which the bonds will be issued."

(g) SUBMISSION OF ANNUAL BUDGET. - Section 442(b) (D.C. Code, sec. 47-301(b)) is amended to read:

"(b) The budget prepared and submitted by the Mayor shall include, but not be limited to, recommended expenditures at a reasonable level for the forthcoming fiscal year for the Council, the District of Columbia Auditor, the District of Columbia Board of Elections and Ethics, the District of Columbia Judicial Nomination Commission, the Zoning Commission of the District



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of Columbia, the Public Service Commission, the Armory Board, the Commission Judicial Disabilities and Tenure, and the District of Columbia Water and Sewer Authority."

(i) WATER AND SEWER AUTHORITY BUDGET. - A new section 445A is added to read as follows:

"The District of Columbia Water and Sewer Authority shall prepare and submit to the Mayor, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for the operation of the Authority for the year. All such estimates shall be forwarded by the Mayor to the Council for its action pursuant to sections 446 and 603(c), without revision but subject to recommendations. Notwithstanding any other provision of this Act, the Council may comment or make recommendations concerning such estimates, but shall have no authority to revise such estimates."

(j) APPROVAL OF CERTAIN CONTRACTS. - Section 451(b)(1) (D.C. Code, sec. 1-1130(b)(1)) is amended by inserting ", except contracts not for the privatization of day-to-day operations of the Blue Plains Wastewater Treatment Plant entered into by the District of Columbia Water and Sewer Authority established pursuant to the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1995," after "12-month period."

### **Title V - Fiscal Impact Statement.**

Sec. 501. (a) The fiscal impact of this legislation on the operating and capital budgets for the current and next 5 years will be to pay for the cost for District agencies water and sewer services and for reallocating central service costs currently being paid to the District to allow for funding new functions in the areas of financial planning, accounting, personnel, procurement, treasury and legal. The most recent Central Services Recovery Plan shows these costs to be approximately \$8 million annually. Current District policy requires that central service costs not be recognized in favor of not billing municipal owned and leased agencies for water and sewer services estimated at \$10.9 million annually. This means, that to date, the District would not charge WASUA for central service costs and WASUA would not charge District agencies for water and sewer services. It is expected that the new Authority will charge the District for water and sewer services. In return, any central service costs contracted by the Authority from the District will be paid by the Authority. Therefore, the first year's estimated net cost to the District for water and sewer services will be \$2.9 million, which the Executive will have to budget for in the budgets of District agencies. This cost will increase in the next 5 years due to the need for increases in water and sewer service rates. The Committee notes now that District agencies will be charged for water and sewer services, they will be expected to conserve water, decreasing the cost to the District for these services.

(b) Similarly, annual District intra-district costs for services provided by other District agencies for fleet maintenance, energy costs and management, communication costs and management, printing, legal services, and contractual oversight and disbursements are approximately \$20 million, this includes about \$.6 million for a ten percent overhead rate charge





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by DPW for handling maintenance contracts. The new Authority is expected to manage or seek these services on a competitive basis in the future. Therefore, to the extent that the District does not provide this service, there will be no cost to the District.

(c) Likewise, the Utility is charged a ten percent indirect cost rate on capital expenditures by the District's Office of the Budget. The annual cost is around \$1 million. The new Authority is expected to handle all capital financing and debt service functions in the future. Therefore, to the extent that the District does not provide this service, there will be no cost to the District.

(d) Other costs may include compensation for District Board members not otherwise compensated by the District or other public or private entity and a staff for an estimated annual cost of up to \$1 million. The Committee notes that these costs are to be incurred by the Authority, and not the District government.

(e) The legislation will require legal services and other outside consultant costs to establish the organizational structure that will accommodate the new responsibilities to be assumed by the new Authority in the areas of financial planning, accounting, personnel and procurement. It is estimated that the costs may range from a low of \$.5 million to a high of \$1 million. Existing water and sewer revenues will be used to fund this and other Authority set-up cost.

(f) With regard to the \$81.3 million in WASUA reserves that was used to meet other expenditures by the Executive in Fiscal Year 1995, the Executive has noted to the Committee that \$7.4 million of the reserves was used for WASUA expenditures in Fiscal Year 1995. The Executive has indicated to the Committee that as part of its development of a 5 year financial plan, it is developing a timetable for making the remainder of these reserve funds available to the Authority. Therefore, the Executive will have to transfer reserve funds to the Authority over the next 5 years.

(g) Pending the intra-District transfer authorized by section 207(e), all assets and liabilities of WASUA, as indicated on the balance sheet prepared by WASUA just prior to the effective date of this act, shall be transferred for the Authority's use on an interim basis.

1. What is the fiscal impact of Section 215 of the bill, Merit Personnel system Inapplicable?

Section 215 of the bill transfers to all employees of the new Authority, rights under Title V (access to Public Employees Relations Board) and Title XVII (Labor/Management Relations), and transfers to employees covered under the Civil Service Retirement System or D.C. Defined Contribution Pension Plan, rights under Title XII (Hours of Work, Legal Holidays, Leave), Title XXI (Health Benefits), Title XXII (Life Insurance) and Title XXVI (Retirement). This section also provides that employees continuously employed since December 31, 1979 shall receive rights and benefits at least equal to those currently applicable.

In FY 1995, the cost of these benefits was approximately \$6.75 million. Under the proposed legislation, these benefits would continue at the same level,



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however, the cost would shift from the General fund to the Water and Sewer Enterprise Fund.

2. What are the potential costs of contracting out/displaced workers under Section 203(10)?

Section 203(10), as amended, provides that the Authority may contract out operations under certain circumstances, provided that if the contract displaces any District employees, the contractor must offer the displaced employee a right of first refusal to employment. The section also requires the contractor to adopt the terms of the collective bargaining agreement with respect to wages and benefits.

The fiscal impact of this provision of the bill is difficult to determine at this point. The fiscal impact will be determined to the extent that a bidder passes along any supplemental costs associated with the above provisions on to the Authority.

3. The fiscal impact statement does not address how assets and liabilities will be handled by the proposed Authority and the District. Additionally, the use of assets by the Authority, while the District retains ownership of the assets, raises some concerns regarding the independence of the Authority. For example, how will depreciation of facilities be used by the Authority?

The fiscal impact (and operational impact) or the assignment of the use of assets cannot be calculated in advance of the independent audit to be performed under Section 207(e) of the bill. This bill is intended to be enabling legislation, designed to reorganize the Department of Public Works to create an independent District agency (D.C. Water and Sewer Authority). Many of the specific details of how the new Authority would operate, and its relationship with the District government, were purposefully left to be determined during the drafting of regulations for the Authority.

This bill is carefully balanced to attempt to meet several urgent needs:

- ◆ Provide for the efficient distribution of water in the District, and treatment of wastewater from the District and suburban user jurisdictions.
- ◆ Establish a new District agency with funding completely separate from the General Fund and with independent personnel and procurement systems.
- ◆ Ensure that the District government's interest in land and facilities were maintained and that the District government maintained some level of general policy control over the new agency.



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In balancing these needs, and to simplify the reorganization of a portion of the Department of Public Works into this new Authority, the Executive determined that title to the land and facilities would remain with the District government. As is provided in most agency reorganizations, the District government would assign the use of these facilities to the new agency (Authority). In addition, a thorough examination of the current assets and operations of the existing Water and Sewer Utility Administration would be conducted to assist in determining which assets are required for the Authority's use and which WASUA facilities are to be properly assignable to the new Authority.

4. Does the \$10.9 million estimate for the cost of water and sewer services to District agencies include independent agencies?

Yes.

5. The Committee Report mentions that \$7.4 million of the original \$81.3 million borrowed from the Enterprise Fund was used for Water and Sewer Utility Administration expenditures in FY 1995. What were these expenditures?

Each year, if Water and Sewer Utility Administration expenditures exceed revenues received, funds are transferred from the reserve fund to pay for these operating expenditures. In FY 1995, \$7.4 million was transferred from reserves to pay operating expenses of WASUA.

### **Title VI - Applicability.**

Sec. 601. Title III shall apply 90 days after the initial meeting of the Board established by section 204. Note, Section  
43-1522

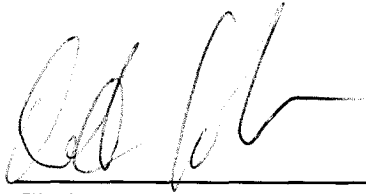
### **Title VII - Effective Dates.**

Sec. 701. This act, with the exception of sections 208 through 211, shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(c)), and a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the Note, Sections  
43-1678,  
43-1679,  
43-1680,  
43-1681



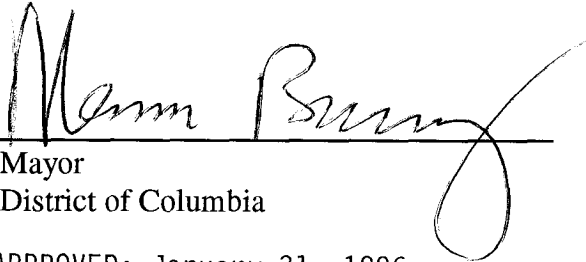
**ENROLLED ORIGINAL**

District of Columbia Register. Sections 208 through 211 of this act shall take effect upon the enactment by Congress of the legislation proposed in title IV of this act, or of substantially similar legislation.



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Chairman  
Council of the District of Columbia



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Mayor  
District of Columbia

APPROVED: January 31, 1996







## COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD ELEVEN

RECORD OF OFFICIAL COUNCIL VOTE

Docket No.

B11-102

 ITEM ON CONSENT CALENDAR ACTION & DATE

ADOPTED FIRST READING, 11-07-95

 VOICE VOTE

APPROVED

RECORDED VOTE ON REQUEST

ABSENT

BRAZIL

 ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

*Quyle*  
Secretary to the Council

*January 16, 1996*  
Date

 ITEM ON CONSENT CALENDAR ACTION & DATE

ADOPTED FINAL READING, 01-04-96

 VOICE VOTE

APPROVED

RECORDED VOTE ON REQUEST

ABSENT

BRAZIL, CHAVOUS, EVANS AND LIGHTFOOT

 ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X-indicates no

AB-Absent

NV-Present not voting

CERTIFICATION RECORD

*Quyle*  
Secretary to the Council

*January 16, 1996*  
Date

 ITEM ON CONSENT CALENDAR ACTION & DATE VOICE VOTE

RECORDED VOTE ON REQUEST

ABSENT

 ROLL CALL VOTE - Result

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date

