

# VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

## CHAPTER 117

*An Act to amend and reenact § 15.2-2160 of the Code of Virginia and to amend the Code of Virginia by adding in Title 15.2 a chapter numbered 72, consisting of sections numbered 15.2-7200 through 15.2-7226, relating to the Bristol Virginia Utilities Authority.*

[S 12]

Approved March 11, 2010

**Be it enacted by the General Assembly of Virginia:**

**1. That § 15.2-2160 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 15.2 a chapter numbered 72, consisting of sections numbered 15.2-7200 through 15.2-7226, as follows:**

§ 15.2-2160. Provision of telecommunications services.

A. Any locality that operates an electric distribution system may provide telecommunications services, including local exchange telephone service as defined in § 56-1, within or outside its boundaries if the locality obtains a certificate pursuant to § 56-265.4:4. Such locality may provide telecommunications services within any locality in which it has electric distribution system facilities as of March 1, 2002. Any locality providing telecommunications services on March 1, 2002, may provide telecommunications, Internet access, broadband, information, and data transmission services within any locality within 75 miles of the geographic boundaries of its electric distribution system as such system existed on March 1, 2002.

B. A locality that has obtained a certificate pursuant to § 56-265.4:4 shall (i) comply with all applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable estimate of the amount of all federal, state, and local taxes (including income taxes and consumer utility taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any franchise fees and other state and local fees (including permit fees and pole rental fees), and right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider of telecommunications services, (iv) prepare and publish annually financial statements in accordance with generally accepted accounting principles showing the results of operations of its provision of telecommunications services, and (v) maintain records demonstrating compliance with the provisions of this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

C. Each locality that has obtained a certificate pursuant to § 56-265.4:4 shall provide nondiscriminatory access to for-profit providers of telecommunications services on a first-come, first-served basis to rights-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the locality unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities.

D. The prices charged and the revenue received by a locality for providing telecommunications services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as permitted by the provisions of subdivision B 5 of § 56-265.4:4. The provisions of this subsection shall not apply to Internet access, broadband, information, and data transmission services provided by any locality providing telecommunications services on March 1, 2002.

E. No locality providing such services shall acquire by eminent domain the facilities or other property of any telecommunications service provider to offer cable, telephone, data transmission or other information or online programming services.

F. Public records of a locality that has obtained a certificate pursuant to § 56-265.4:4, which records contain confidential proprietary information or trade secrets pertaining to the provision of telecommunications service, shall be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.). As used in this subsection, a public record contains confidential proprietary information or trade secrets if its acquisition by a competing provider of telecommunications services would provide the competing provider with a competitive benefit.

G. As used in this section, "locality" shall mean any county, city, town, authority, or other governmental entity which provides or seeks to provide telecommunications services. Every locality shall comply with the requirements of § 56-265.4:4 or 56-484.7:1 unless otherwise specifically exempt. Any locality that has obtained a certificate pursuant to § 56-265.4:4, and which surrenders or transfers such certificate shall continue to remain subject to subsections C, D, and E if any substantial part of its telecommunications assets or operations are transferred to an entity in which the locality has the right to appoint board members, directors, or managers.

*CHAPTER 72.*  
*BVU AUTHORITY ACT.*

*§ 15.2-7200. Short title.*

*This chapter shall be known and may be cited as the BVU Authority Act.*

*§ 15.2-7201. Creation; public purpose.*

*There is hereby created a political subdivision of the Commonwealth known as the BVU Authority.*

*The BVU Authority is created for the express purpose of receiving, by operation of this chapter, the powers, assets, and debts of that separately managed and financed division of the City of Bristol, Virginia, heretofore known as Bristol Virginia Utilities and to provide the services Bristol Virginia Utilities has provided or may lawfully provide. The General Assembly therefore deems this to be an entity conversion and for all purposes the BVU Authority is the same entity as Bristol Virginia Utilities, which is hereby converted to the BVU Authority. The BVU Authority shall exercise the rights and duties as hereinafter set out to provide the various utility services it currently lawfully provides all subject to the limitations as are herein set forth or referenced.*

*§ 15.2-7202. Definitions.*

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

*"Authority" means the BVU Authority created by entity conversion of Bristol Virginia Utilities by this chapter.*

*"Board," "Authority Board," or "Board of Directors" means the governing body of the Authority.*

*"Bonds" means any bonds, notes, debentures, bond acceptance notes, or other evidence of financial indebtedness either issued or assumed by the Authority pursuant to this chapter.*

*"Bristol Virginia Utilities Board" means the Board of Directors of Bristol Virginia Utilities governing that entity until the Authority Board takes office on July 1, 2010.*

*"City" means the City of Bristol, Virginia.*

*"City Council" means the City Council of the City of Bristol, Virginia.*

*"Commission" means the Virginia State Corporation Commission.*

*"Commonwealth" means the Commonwealth of Virginia.*

*"Infrastructure" means all property, whether attached to real property or not, now used by Bristol Virginia Utilities and hereafter used by the Authority for the provision of (i) electric, water, sewer, telecommunications, internet, and cable television services and (ii) all other utility, management, and consulting services the Authority may lawfully provide.*

*"MLEC" means any city, county, or town certificated to provide local exchange and/or interexchange telecommunications services pursuant to § 56-265.4:4 and any authority granted such powers pursuant to § 15.2-7209.*

*"Political subdivision" means a locality, authority, or other public body of the Commonwealth or of any state in which the Authority does business.*

*"Utility," "utilities," or "utility services" means and includes electric, water, sewer and telecommunications, internet and cable television services, including all other services that might be lawfully rendered by use of its fiber optic system.*

*§ 15.2-7203. Name of Authority; operating name or names.*

*The name of the Authority shall be "BVU Authority."*

*The BVU Authority is hereby authorized to operate under the names BVU, BVU OptiNet, CPC OptiNet, and BVU Focus. The name of the Authority and any division or operating name may be changed upon approval of a simple majority of the Board of Directors. The Board of Directors may adopt additional operating names in the future. If it does so, it shall comply with requisite fictitious name recording requirements for any areas in which it is doing business.*

*§ 15.2-7204. Divisions.*

*The Board may create such divisions of the Authority as it deems expedient to perform such services as are authorized by statute.*

*§ 15.2-7205. Appointment of a Board of Directors.*

*A. The powers of the Authority shall be vested in an Authority Board of Directors consisting of nine directors. The number of Directors on the Board may not be increased by the Authority Board.*

*B. The Authority's Board, which will initially take office on July 1, 2010, shall be constituted as follows:*

*1. Four Bristol, Virginia, citizen appointees. The four Bristol, Virginia, citizen appointees currently on the Bristol Virginia Utilities Board are hereby directors on the Authority's Board and their respective terms are extended on the Authority Board as follows:*

*a. The term ending June 30, 2010, will be extended to end June 30, 2014.*

*b. The term ending June 30, 2011, will be extended to end June 30, 2015.*

*c. The second term ending June 30, 2011, will be extended to end June 30, 2016.*

*d. The term ending June 30, 2012, will be extended to end June 30, 2016.*

*Each of said members will thereafter be eligible for one additional consecutive four-year term pursuant to the limitation set forth herein.*

*2. Two members appointed by the Bristol City Council who are members of the Bristol City Council*

serving on the Bristol Virginia Utilities Board as of June 1, 2010. Such members shall serve a four-year term, coterminous with their term on Council, commencing July 1, 2010. Should no present member of Council serving on the Bristol Virginia Utilities Board be a member of Council on that date, Council may appoint two other members of Council to serve on the initial Authority Board for a term that is coterminous with that member's term on Council.

3. One new Bristol, Virginia, citizen, who is not a city council member. Such citizen will be appointed by the Bristol, Virginia, City Council and shall serve a term from July 1, 2010, until June 30, 2015.

4. One new member, a Bristol, Virginia, citizen, appointed by the Bristol Virginia Utilities Board whose term will start July 1, 2010, and end June 30, 2014.

5. One member of the Board of Supervisors of Washington County, Virginia, who will be appointed by that Board of Supervisors to a four-year term coterminous with his or her term on the Board of Supervisors commencing July 1, 2010.

C. If any appointments to the initial Board are made prior to the effective date of this chapter, such appointments shall be deemed valid and effective as of such date.

D. The City Council shall elect, in addition to its Council members, three of the Bristol, Virginia, citizen Board members when the above terms expire. The remaining three Bristol, Virginia, citizen members will be elected by the Authority Board when the above terms expire. The City Council and the Authority Board will alternate electing persons to fill an expiring term until each has appointed the number it appoints to the Board. Any vacancy in a term shall be filled by the body making the original appointment and shall be for the remainder of the term. Said appointment shall be made within 30 days from the date the vacancy occurs.

E. The term of the Council members shall be for four years coterminous with those members' terms of office on the City Council. Those City Council Members may serve as many terms as the City Council decides as long as the appointees are members of the City Council. The City Council may appoint other members of the City Council at the end of any four-year Council term or upon exit of the Council member from the Council. In the latter case the Council Member will serve for the remainder of the term vacated by an exiting City Council member.

F. All other directors shall serve four-year terms, except for the longer appointments to the initial Board. Those directors may serve a maximum of two terms and then must be off the Board for one full year before election to fill another full term or to fill the remainder of a vacated term.

G. If funds are available, each director may be reimbursed by the Authority for the amount of actual expenses incurred by him in the performance of his duties. Such expense allowance shall constitute a cost of operation and maintenance of such utility systems and shall be prorated among each of the systems it manages using the "3-Factor" allocation method approved by the Commission. The three factors consist of the percentages that each division comprises of total plant in service, total operating revenues, and total customer accounts. Once each operating division's percentage of each of the three factors is calculated, the sum of the three factors divided by 3 results in the operating division's share of the total direct or indirect costs.

§ 15.2-7206. Organization; compensation.

A simple majority of the directors in office shall constitute a quorum. No vacancy in the Board of Directors shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

The Board of Directors shall hold regular meetings at such times and places as may be established by its bylaws.

The Board of Directors shall hold its first organizational meeting on July 1, 2010. Bylaws shall be duly adopted and published at said meeting. Also at said meeting, the Board of Directors shall elect a chairman and a vice-chairman from its membership and a secretary of the Board from the staff of the Authority to take office as of that same date. Thereafter the Board of Directors shall annually elect a chairman and a vice-chairman from its membership and a secretary from the staff of the Authority at its June meeting, to take office on the following July 1. The terms of such officers shall be for one year.

The Board of Directors shall continue to appoint and contract with a president and CEO to manage the operations of the Authority and a licensed attorney to serve as general counsel for the Authority, and the contracts with the president and general counsel of Bristol Virginia Utilities shall continue in effect and be binding upon the Authority. The Board of Directors shall also authorize the position of executive vice-president and CFO, to be filled and managed by the president. The president shall have the authority to hire, fire, and manage such staff as the president deems expedient to the operation of the Authority, subject to the availability of budgeted funds, and to assign such positions, titles, powers, and duties at such salaries as the president deems most effective for the efficient operation of the Authority.

Except for the purpose of inquiry, the Board and its individual members shall deal with Authority employees solely through the president. Neither the Board nor any member thereof shall give orders to any of the subordinates of the president, either publicly or privately. Any such orders or other interferences on the part of the Board or any of its members with subordinates or appointees of the

president, instead of dealing or communicating directly with the president, are prohibited. Neither shall the Board or any of its members direct the appointment or removal of any person from any office or employment by the president or any of his subordinates. Nothing herein shall be construed to limit or prohibit contact with the president and general counsel, both of whom report directly to the Board.

The Board of Directors shall make and, by recorded affirmative vote of three-fourths of all members, amend and repeal bylaws governing the manner in which the Authority's business may be transacted and in which the power granted to it may be enjoyed not inconsistent with this chapter. The initial set of such bylaws shall be adopted at the first regular meeting of the Board following the Board's first organizational meeting. The Board of Directors may appoint such committees as it may deem advisable and fix the duties and responsibilities of such committees. The Board of Directors shall have the power to request amendments to this chapter as set forth by the Code of Virginia that the Board deems necessary and expedient for the proper operation of the Authority.

*§ 15.2-7207. Powers generally.*

The Authority is hereby granted all powers necessary or appropriate to carry out the purposes of this chapter in order to provide electric, water, sewer, and telecommunication and related services, including without limitation, cable television internet, and all other services that might be lawfully rendered by use of the Authority's fiber optic system, subject to all existing limitations and restrictions thereon. Such powers include, without limitation, except as set forth hereafter, the following:

1. To adopt bylaws for the regulation of its affairs and the conduct of its business;
2. To sue and be sued in the Authority's name;
3. To have perpetual succession;
4. To adopt a corporate seal and alter the same at its pleasure;
5. To maintain offices at such places as it may designate;
6. To appoint, employ, or engage such officers, employees, architects, engineers, attorneys, accountants, financial advisors, investment bankers, and other advisors, consultants, and agents as may be necessary or appropriate, and to fix their duties and compensation;
7. To establish personnel rules;
8. To make, assume, and enter into all contracts, leases, and arrangements necessary or incidental to the exercise of its powers, including contracts for the management or operation of all or any part of its facilities;
9. To borrow money, as hereinafter provided, and to borrow money for the purpose of meeting casual deficits in its revenues;
10. To provide electric, water, sewer and telecommunication and related services, including without limitation, cable television, internet, and all other services that might be lawfully rendered by use of the Authority's fiber optic system as set forth in § 15.2-7208 subject to all existing restrictions and limitations thereon;
11. To determine fees, rates, and charges for the services and products it provides, subject only to such state or federal regulation as the Tennessee Valley Authority (TVA) or other cognizant state or federal agency may impose by order, rulemaking, contract or otherwise, including, without limitation, electric, water and sewer and internet and cable television services, including all other services that might be rendered by use of its fiber optic system, furnished by the Authority. MLEC telephone service, including rates, is regulated by the Commission. All rate increases for services other than electric, which are set by the TVA, and telephone, which are set by the Commission and applicable law, shall require a favorable vote at two meetings, one of which must be a regular meeting of the BVU Authority Board.

The Authority may assess such rates and charges for such services or products in such manner *mutatis mutandis* as BVU or the City has the authority to do so at present subject to the same restrictions and limitations thereon;

12. To adopt, amend, and repeal rules and regulations for the use, maintenance, and operation of its facilities and utility services and governing the conduct of persons and organizations using its facilities or obtaining its utility services and to enforce such rules and regulations and all other rules, regulations, ordinances, and statutes relating to its facilities and services, as authorized by the enacting body of such rules, regulations, ordinances, and statutes. The civil penalty for violation of any such rules and regulations shall be set forth in the rules and may be enforced by the Authority by direct action in terminating services and by the imposition of monetary penalties to be billed to the customer. The Authority may request the governing body of each locality in which it does business to impose by ordinance such penal liability for violation of such rules and regulations as such body deems appropriate;

13. To apply for and accept gifts or grants of money or gifts, grants, or loans of other property or other financial assistance from the United States of America and agencies and instrumentalities thereof, this Commonwealth and political subdivisions, agencies and instrumentalities thereof, or any other person or entity, for or in aid of the construction, acquisition, ownership, operation, maintenance, or repair of its infrastructure or for the payment of principal of any indebtedness of the Authority, interest thereon, or other cost incident thereto, or for the operation of any of its services, or for any other

*purpose of the Authority, and to this end the Authority shall have the power to render such services, comply with such conditions, and execute such agreements and legal instruments as may be necessary, convenient or desirable or imposed as a condition to such financial aid;*

*14. Subject to subdivision 16 and all existing limitations and restrictions thereon, to acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate electric, water, sewer, telecommunications, internet and cable television services, including all other services that might be rendered by use of its fiber optic system, and other infrastructure and facilities that are owned or managed by the Authority within the territorial areas in which it operates or provides services;*

*15. To construct, install, maintain, and operate facilities and infrastructure for managing its utility, consulting and operational management services. The Authority shall have the power and duty to manage and operate the electric, public lighting, water, sewerage, telecommunications, internet and cable television services, including all other services that might be rendered by use of its fiber optic system directly subject to all existing limitations and restrictions thereon, or it may subcontract such functions. The Authority shall construct, maintain, and operate all facilities necessary thereto; shall sell and distribute to the public electric power, light, water, sewer, telecommunications, internet and cable television, and other services as they now exist or may exist in the future subject to all existing limitations and restrictions thereon; and shall collect the rates and charges provided for all such services;*

*16. To own, purchase, lease, obtain options upon, acquire by gift, grant, or bequest or otherwise acquire any property, real or personal, or any interest therein, and in connection therewith to assume or take subject to any indebtedness secured by such property and dispose of any or all such properties as is deemed appropriate by the Board. The Authority shall have the power of eminent domain to acquire property and easements as needed for its various utility services within the areas it provides or can provide such services. The power of eminent domain shall not include the power to acquire existing telecommunications, internet or cable facilities, which is expressly prohibited, and the Authority shall not accept or receive any telecommunications, internet or cable facilities from an entity that acquired such facilities by use of eminent domain;*

*17. To purchase and maintain insurance or provide indemnification on behalf of any person who is or was a director, officer, employee, or agent of the Authority and on behalf of the Authority itself against any liability asserted against it or him or incurred by it or him in any such capacity or arising out of his status as such;*

*18. To establish and charge such fees as it deems appropriate for attachment to or inclusion in the Authority's infrastructure, including but not limited to its poles, conduits, and collocation sites, subject to all existing limitations and restrictions thereon;*

*19. To fund economic development projects and, in advance of economic development projects, to enter into contracts, to borrow money and to do all other such acts as will allow it to encourage and support economic development; and*

*20. To have police powers on all of the properties of the Authority within the Commonwealth, exercised through appointment of an armed conservator of the peace. The President of the Authority may apply to the circuit court for any locality in which the Authority has property for the appointment of one or more special conservators of the peace under procedures specified by Chapter 2 (§ 19.2-12 et seq.) of Title 19.2 of the Code of Virginia or any successor provisions. Any such special conservator of the peace shall have, within the lands and facilities controlled by the Authority, the powers, functions, duties, responsibilities, and authority of any other armed conservator of the peace. Nothing in this section shall be construed to prevent the conservator of the peace currently serving Bristol Virginia Utilities from continuing as an armed special conservator of the peace for the Authority during the remainder of his term, if not removed for cause.*

#### *§ 15.2-7208. Powers.*

*The Authority shall have those powers possessed by the City of Bristol necessary and convenient for the provision of electric, water and sanitary sewer services, and those powers possessed by the Bristol Virginia Utilities Board and the division of the city known as Bristol Virginia Utilities as they existed on July 1, 2001, in the Charter of the City of Bristol, Virginia and the general laws of the Commonwealth. The Authority shall also possess all those powers, subject to the limitations and restrictions thereon, as granted to the City, the Bristol Virginia Utilities Board, and BVU by Chapter 479 of the Acts of Assembly of 2002, Chapters 539, 546, and 677 of the Acts of Assembly 2003, Chapter 586 of the Acts of Assembly of 2004, Chapter 258 of the Acts of Assembly of 2005, Chapters 607 and 682 of the Acts of Assembly of 2007, and Chapters 99 and 323 of the Acts of Assembly of 2008.*

#### *§ 15.2-7209. Authority deemed to be an MLEC.*

*A. The establishment of the BVU Authority is deemed to be an entity conversion and all assets of, tariffs on file with the Commission, and all certificates authorizing the furnishing of Local Exchange Telephone Service and the furnishing of interexchange telecommunications services, granted to and held by Bristol Virginia Utilities and the City of Bristol, Bristol Virginia Utilities Division are hereby deemed to be transferred to BVU Authority without further application by BVU Authority to the Commission. The Commission shall issue appropriate documentation to effectuate this transfer without further action*

on behalf of BVU Authority. It is further deemed that the Authority has met all conditions precedent to qualify for such certificates and the powers granted therein and the limitations, restrictions, and requirements set forth thereto continuing in full force and effect.

B. BVU Authority will be deemed to be an MLEC.

C. Upon enactment of this chapter, the Authority shall file a name change with the Commission.

D. No bond shall be required of BVU Authority by the Commission.

§ 15.2-7210. Transfer of properties and debt.

All of the properties, infrastructure, and other assets used by Bristol Virginia Utilities for any of its utility services or otherwise, whether held in its name or in the name of the City of Bristol, Virginia, are hereby transferred to the Authority and declared to be held by the Authority as its property. The portion of the City's debt that was incurred for the benefit of Bristol Virginia Utilities is hereby declared to be the debt of the Authority. That debt will be the sole responsibility of the Authority. The Authority will either assume that debt or issue new bonded indebtedness to pay it off as soon as practical and in accordance with all bond covenants in the BVU bonds on the City's financial statements.

§ 15.2-7211. Reports.

The Authority shall keep minutes of its proceedings, which minutes shall be open to public inspection during normal business hours. It shall keep suitable records of all its financial transactions and shall arrange to have the same audited annually by an independent certified public accountant. Such audited financial reports will be provided to the Commonwealth Auditor of Public Accounts and to each participating political subdivision each year and shall be open to public inspection.

§ 15.2-7212. Procurement.

All contracts that the Authority may let for professional services, nonprofessional services, or goods, materials, and equipment shall be subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.). Nothing herein will be construed to prevent the Authority from adopting a small purchases policy in keeping with such Act. If the Authority is procuring pursuant to a federal grant or program that requires compliance with federal procurement law, then the Authority may procure in compliance with federal law. If the Authority in the exercise of its powers is procuring in another state for use in that state, the Authority may procure in compliance with that state's procurement law.

§ 15.2-7213. Deposit and investment of funds.

All moneys of the Authority shall be deposited as soon as practicable in a separate account or accounts in one or more banks or trust companies organized under the laws of the Commonwealth or national banking associations having their principal offices in the Commonwealth. Such deposits shall be continuously secured in accordance with the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.).

Funds of the Authority not needed for immediate use or disbursement may, subject to the provisions of any contract between the Authority and the holders of its bonds or any contract between the Authority and TVA, be invested in securities that are considered lawful investments for fiduciaries.

§ 15.2-7214. Authority to issue bonds.

The Authority shall have the power to issue bonds from time to time in its discretion, for any of its purposes, including the payment of all or any part of the cost of Authority infrastructure and facilities; including the payment or retirement of bonds previously issued by it and including the costs of the issuance of such bonds. The Authority may issue such types of bonds as it may determine, including, without limitation, bonds payable, both as to principal and interest: (i) from its revenues and receipts generally and (ii) exclusively from the revenues and receipts of certain designated operations or facilities whether or not they are financed in whole or in part from the proceeds of such bonds. Any such bonds may be additionally secured (a) by a pledge of any grant or contribution from the Commonwealth, or any political subdivision, agency, or instrumentality thereof, any federal agency or any unit, private corporation, co-partnership, association, or individual, or other entity, or (b) by mortgage or encumbrance of any property or facilities of the Authority. Unless otherwise provided in the proceedings authorizing the issuance of the bonds, or in the trust indenture securing the same, all bonds shall be payable solely and exclusively from the revenues and receipts of the Authority. Bonds may be executed and delivered by the Authority at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in registered, book entry, or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times, may be payable at such place or places whether within or without the Commonwealth, may bear interest at such rate or rates, may be payable at such time or times, and at such place or places, may be evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be provided and specified by the Board of Directors in authorizing each particular bond issue including any designation of an agent or officer of the Authority to establish such provisions under guidelines established by the Authority.

If deemed advisable by the Board of Directors, there may be retained in the proceedings under which any bonds of the Authority are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and as may be briefly recited

on the face of the bonds, but nothing herein contained shall be construed to confer on the Authority any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued. Any bonds of the Authority may be sold at public or private sale in such manner and from time to time as may be determined by the Board of Directors of the Authority to be most advantageous, and the Authority may pay all costs, premiums, and commissions that its Board of Directors may deem necessary or advantageous in connection with the issuance thereof. Issuance by the Authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same facility or any other facility, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds. Any bonds of the Authority at any time outstanding may from time to time be refunded by the Authority by the issuance of its refunding bonds in such amount as the Board of Directors may deem necessary, but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any costs, including insurance costs, premiums, or commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby.

All bonds shall be signed on behalf of the Authority by the chairman or vice-chairman of the Authority, or shall bear the facsimile signature of such officer, and shall bear the official seal of the Authority, or a facsimile thereof shall be impressed or imprinted thereon and shall be attested to by the manual or facsimile signature of the secretary (or the secretary-treasurer) or assistant secretary (or assistant secretary-treasurer) of the Authority. Any coupons attached thereto shall bear the signature or facsimile signature of such chairman. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or facsimile signature nevertheless shall be valid and sufficient for all purposes as if such officer had remained in office until such delivery. When the signatures of both the chairman or the vice-chairman and the secretary (or the secretary-treasurer) or the assistant secretary (or the assistant secretary-treasurer) are facsimiles, the bonds must be authenticated by a corporate trustee or other authenticating agent approved by the Authority.

If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, shall be less than the cost of the Authority facilities or infrastructure for which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any additions, improvements, or enlargements of the Authority facilities or infrastructure for which such bonds shall have been issued.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds that shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this chapter without obtaining the consent of any department, division, commission, board, bureau, or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions, or things that are specifically required by this chapter.

All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of and shall be and are hereby made negotiable instruments under the Uniform Commercial Code of Virginia (§ 8.1A-101 et seq.), subject only to provisions respecting registration of the bonds.

The interest income from and any profit made on the sale of the obligations issued under the provisions of this Act shall at all times be free and exempt from taxation by the Commonwealth and by any municipality, county, or other political subdivision thereof.

§ 15.2-7215. Credit of Commonwealth and political subdivisions not pledged.

Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth of Virginia, or any political subdivision thereof other than the Authority, but such bonds shall be payable solely from the funds provided therefor as herein authorized. All such bonds shall state on their face that neither the Commonwealth of Virginia nor any political subdivisions thereof, nor the Authority, are obligated to pay the same or the interest thereon or other costs incident thereto except from the revenues and money pledged therefor and that neither the faith and credit nor the taxing power of the Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of such bonds, the redemption premium, if any, thereon, or the interest thereon or other costs incident thereto.

All expenses incurred in carrying out the provisions of this chapter shall be payable solely from the

*funds of the Authority and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall be available to the Authority.*

*Bonds issued pursuant to the provisions of this Act shall not constitute indebtedness within the meaning of any debt limitation or restriction.*

*§ 15.2-7216. Directors and persons executing bonds not liable thereon.*

*Neither the Board of Directors nor any person executing the bonds shall be liable personally on the Authority's bonds by reasons of the issuance thereof.*

*§ 15.2-7217. Security for payment of bonds; default.*

*The principal of and interest on any bonds issued by the Authority shall be secured by a pledge of the revenues and receipts out of which the same shall be made payable, and may be secured by a trust indenture covering all or any part of the Authority facilities from which revenues or receipts so pledged may be derived, including any enlargements of any additions to any such projects thereafter made. The resolution under which the bonds are authorized to be issued and any such trust indenture may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents for any portions thereof leased by the Authority to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the Board of Directors shall deem advisable not in conflict with the provisions hereof. Each pledge, agreement and trust indenture made for the benefit or security of any of the bonds of the Authority shall continue effective until the principal of and interest on the bonds for the benefit of which the same were made shall have been fully paid. In the event of default in such payment or in any agreements of the Authority made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any trust indenture executed as security therefor, may be enforced by mandamus, suit, action or proceeding at law or in equity to compel the Authority and the directors, officers, agents, or employees thereof to perform each and every term, provision, and covenant contained in any trust indenture of the Authority, the appointment of a receiver in equity, or by foreclosure of any such trust indenture, or any one or more of such remedies.*

*§ 15.2-7218. Bonds as legal investments.*

*All bonds issued under the provisions of this chapter are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital, under their control or belonging to them. Such bonds are hereby made securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations is now or may hereafter be authorized by law.*

*§ 15.2-7219. Contracts concerning interest rates and investments.*

*The Authority may enter into any contract that the Board of Directors determines to be necessary or appropriate to place the obligation or investment of the Authority, as represented by the bonds or the investment of their proceeds, in whole or in part, on the interest rate, cash flow, or other basis desired by the Authority, which contract may include, without limitation, interest rate swap agreements, future contracts and contracts providing for payments based upon levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Authority in connection with, or incidental to, entering into or maintaining any (i) agreement that secures bonds or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts may contain such payment, security, default, remedy, and other terms as determined by the Authority. Any money set aside and pledged to secure payments of bonds or any contracts entered into pursuant to this section may be invested in accordance with Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2 and may be pledged to and used to service any of the contracts or agreements entered into pursuant to this section.*

*§ 15.2-7220. Taxation.*

*The exercise of the powers granted by this Act shall in all respects be presumed to be for the benefit of the public, for the increase of their commerce and for the promotion of their health, safety, welfare, convenience and prosperity, and as the operation and maintenance of any service that the Authority is authorized to provide will constitute the performance of an essential governmental function, the Authority shall not be required to pay any taxes or assessments upon any facilities acquired and constructed by it under the provisions of this Act and the bonds issued under the provisions of this Act, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any political subdivision thereof. Persons, firms, partnerships, associations, corporations, and organizations leasing property of the Authority or doing business on property of the Authority shall be subject to and liable for payment of all applicable taxes of the political subdivision in which such leased property lies or in which business is conducted including but not limited to any leasehold tax on real property and taxes on the sale of utility services and local general retail sales and use taxes, taxes to be paid on licenses in respect to any business, profession, vocation or calling, and taxes upon consumers of gas, electricity, telephone, and other public utility services. The Authority shall continue to pay or impute any taxes presently paid*



or imputed by Bristol Virginia Utilities and to collect and remit all taxes presently collected and remitted by Bristol Virginia Utilities.

*§ 15.2-7221. Sovereign immunity.*

No provisions of this chapter nor act of an authority, including the procurement of insurance or self-insurance, shall be deemed a waiver of any sovereign immunity to which the Authority or its directors, officers, employees, or agents are otherwise entitled.

*§ 15.2-7222. Appropriation by political subdivision.*

Any political subdivision of the Commonwealth is authorized to provide services, to donate real or personal property, and to make appropriations to the Authority for the acquisition, construction, maintenance, and operation of the Authority's facilities. Any such political subdivision is hereby authorized to issue its bonds, including general obligation bonds, in the manner provided in the Public Finance Act of 1991 (§ 15.2-2600 et seq.) or in any applicable municipal charter for the purpose of providing funds to be appropriated to the Authority, and such political subdivisions may enter into contracts obligating such bond proceeds to the Authority.

*§ 15.2-7223. Contracts with political subdivisions.*

The Authority is authorized to enter into contracts with the Commonwealth, with the states it operates within, with any one or more political subdivisions within and without the Commonwealth, and with any other person or entity for any legal purpose.

*§ 15.2-7224. Application of local ordinances, service charges, and taxes upon leaseholds.*

Nothing herein contained shall be construed to exempt the Authority's property from any applicable zoning, subdivision, erosion, and sediment control and fire prevention codes or from building regulations of a political subdivision in which such property is located, except as otherwise specifically excluded herein. Nor shall anything herein contained exempt the property of the Authority from any service charge authorized by the General Assembly pursuant to Article X, Section 6 (g) of the Constitution of Virginia, or exempt any lessee of any of the Authority's property from any tax imposed upon his leasehold interest in such property or upon the receipts derived therefrom.

*§ 15.2-7225. Existing contracts, leases, franchises, etc., not impaired.*

No provisions of this Act shall relieve, impair, or affect any right, duty, liability, or obligation arising out of any contract, concession, lease, or franchise now in existence, including all contracts entered into by Bristol Virginia Utilities except to the extent that such contract, concession, lease, or franchise may permit. Notwithstanding the foregoing provisions of this section, the Authority may renegotiate, renew, extend the term of, or otherwise modify at any time any contract, concession, lease, or franchise now in existence in such manner and on such terms and conditions as it may deem appropriate, provided that the operator of or under any said contract, concession, lease, or franchise consents to such renegotiation, renewal, extension, or modification. The Authority shall be obligated for the performance of any contract of Bristol Virginia Utilities now in existence in accordance with its terms, and such contracts shall remain in full force and effect.

*§ 15.2-7226. Liberal construction.*

Neither this chapter nor anything contained herein is or shall be construed as a restriction or limitation upon any powers that the Authority might otherwise have under any laws of the Commonwealth, and this chapter is cumulative to any such powers; provided, however, that nothing in the foregoing provision shall be deemed to have expanded the powers of the Authority to provide and operate telecommunication and related services, including without limitation, cable television, internet, and all other services that might be rendered by use of the Authority's fiber optic system, beyond existing restrictions and limitations thereon. This chapter does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws. The provisions of this Act are severable, and if any of its provisions shall be invalidated by a court of competent jurisdiction, the decision of such court shall not affect or impair any of the other provisions of this chapter unless said partial invalidation makes the continued operation of the Authority economically or operationally inviable, in which case, this chapter shall be deemed invalid as a whole.