

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 477

An Act to amend and reenact §§ 15.1-1250 and 15.1-1260 of the Code of Virginia, relating to powers of water and sewer authorities and rates and charges for such authority's services.

[H 814]

Approved April 8, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-1250 and 15.1-1260 of the Code of Virginia are amended and reenacted as follows:

§ 15.1-1250. Powers of authority.

Each authority created hereunder shall be deemed to be an instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each such authority is hereby authorized and empowered:

(a) To have existence for a term of fifty years as a corporation, and for such further period or periods as may from time to time be provided by appropriate resolutions of the political subdivisions then members of the authority; provided, however, that the term of an authority shall not be extended beyond a date exceeding fifty years from the date of the adoption of such resolutions;

(b) To adopt, amend or repeal bylaws, rules and regulations, not inconsistent with this chapter or the general laws of the Commonwealth, for the regulation of its affairs and the conduct of its business and to carry into effect its powers and purposes;

(c) To adopt an official seal and alter the same at pleasure;

(d) To maintain an office at such place or places as it may designate;

(e) To sue and be sued;

(f) To acquire, purchase, lease as lessee, construct, reconstruct, improve, extend, operate and maintain any water system, or sewer system, or sewage disposal system, or a garbage and refuse collection and disposal system or any combination of such systems within, without, or partly within and partly without one or more of the political subdivision or subdivisions by action of whose governing body or governing bodies the authority was created, or who may after February 27, 1962, join such authority *and to lease as lessee or otherwise contract for the provision of a street light system in a county having a population between 13,200 and 14,000 according to the 1990 United States Census, provided that the lessor or other contractual provider of such system shall be a public service corporation which holds a certificate of public convenience and necessity to provide retail electric service in the territory in which such system shall be located*; and to acquire by gift, purchase or the exercise of the right of eminent domain lands or rights in land or water rights in connection therewith, within, without, or partly within and partly without one or more of the political subdivision or subdivisions by action of whose governing body or governing bodies the authority was created, or who may after February 27, 1962, join such authority; and to sell, lease as lessor, transfer or dispose of all or any part of any property, real, personal or mixed, or interest therein at any time acquired by it; provided, that in the exercise of the right of eminent domain the provisions of § 25-233 shall apply. In addition, the authority in any county or city to which §§ 15.1-335 and 15.1-340 are applicable shall have the same power of eminent domain and shall follow the same procedure therefor as provided in §§ 15.1-335 and 15.1-340 of the Code of Virginia; and provided, further, that no property or any interest or estate therein owned by any county, city, town or other political subdivision of the Commonwealth shall be acquired by the exercise of the power of eminent domain without the consent of the governing body of such county, city, town or political subdivision; and except as otherwise herein provided, each authority is hereby vested with the same authority to exercise the power of eminent domain as is vested in the Commonwealth Transportation Commissioner;

(g) To issue revenue bonds of the authority, such bonds to be payable solely from revenues to pay all or a part of the cost of a water system, sewer system, or sewage disposal system, or a garbage and refuse collection and disposal system, or any combination of such systems;

(h) To combine any water system, sewer system, sewage disposal system, or garbage and refuse collection and disposal system as a single system for the purpose of operation and financing;

(h1) To borrow at such rates of interest as may be authorized at general law for authorities and as the authority may determine and to issue its notes, bonds or other obligations therefor. Any political subdivision which is a member of an authority may lend, advance or give money to such authority;

(i) To fix, charge and collect rates, fees and charges for the use of or for the services furnished by *or for the benefit from* any system operated by the authority. Such rates, fees, rents and charges shall be charged to and collected from any person contracting for the same; or lessee or tenant, or some or all of them, who uses or occupies any real estate which is served by *or benefited from* any such system;

(j) To enter into contracts with the federal government, the Commonwealth of Virginia, the District of Columbia and any adjoining state, or any agency or instrumentality thereof, or with any unit, private

corporation, copartnership, association, or individual providing for or relating to the furnishing of services and facilities of any water system, sewer system, sewage disposal system, or garbage and refuse collection and disposal system of the authority or in connection with the services and facilities rendered by any such system owned or controlled by the federal government, the Commonwealth of Virginia, the District of Columbia or any adjoining state, or any agency or instrumentality thereof, and any unit, private corporation, copartnership, association or individual, including contracts providing for or relating to the right of an authority, created for such purpose, to receive and use and dispose of all or any portion of the garbage or refuse generated or collected by or within the jurisdiction or under the control of any one or more of them and in implementation of any such contract to exercise the powers set forth in §§ 15.1-857 and 15.1-879;

(k) To contract with the federal government, the Commonwealth of Virginia, the District of Columbia and any adjoining state, or with any municipality, county, corporation, individual or any public authority or unit thereof, on such terms as the said authority shall deem proper, for the construction, operation or use of any project which is located partly or wholly outside the Commonwealth of Virginia;

(l) To make and enter into all contracts or agreements, as the authority may determine, which are necessary or incidental to the performance of its duties and to the execution of the powers granted by this chapter, including contracts with any federal agency, the Commonwealth of Virginia, the District of Columbia and any adjoining state, or with any unit thereof, on such terms and conditions as the authority may approve, relating to (1) the use of any water system, sewer system, sewage disposal system, or garbage and refuse collection and disposal system, *or streetlight system in a county having a population between 13,200 and 14,000 according to the 1990 United States Census* acquired or constructed by the authority under this chapter, or the services therefrom or the facilities thereof, or (2) the use by the authority of the services or facilities of any water system, sewer system, sewage disposal system, or garbage and refuse collection and disposal system, *or streetlight system in a county having a population between 13,200 and 14,000 according to the 1990 United States Census* owned or operated by an owner other than the authority. Any such contract shall be subject to such provisions, limitations or conditions as may be contained in the resolution of the authority authorizing revenue bonds of the authority or the provisions of any trust agreement securing such bonds. Any such contract may provide for the collecting of fees, rates or charges for the services and facilities rendered to a unit or to the inhabitants thereof, by such unit or by its agents or by the agents of the authority, and for the enforcement of delinquent charges for such services and facilities. The provisions of any such contract and of any ordinance or resolution of the governing body of a unit enacted pursuant thereto shall be irrevocable so long as any of the revenue bonds issued under the authority of this chapter shall be outstanding and unpaid, and the provisions of any such contract, and of any ordinance or resolution enacted pursuant thereto shall be and be deemed to be for the benefit of such bondholders. The aggregate of any fees, rates or charges which shall be required to be collected pursuant to any such contract or any ordinance or resolution enacted thereunder shall be sufficient to pay all obligations which may be assumed by the other contracting party. Each water company, which is a public utility supplying water to the owners, lessees or tenants of real estate which is or will be served by any sewer or sewage disposal system of an authority is authorized to act as the billing and collecting agent of the authority for any rates, fees, rents or charges imposed by the authority for the service rendered by such sewer or sewage disposal system and shall furnish to the authority copies of its regular periodic meter reading and water consumption records and other pertinent data as may be required for the authority to act as its own billing and collecting agent. The authority shall pay to such water company the reasonable additional cost of clerical services and other expenses incurred by the water company in rendering such services to the authority. Upon the inability of an authority and such water company to agree upon the terms and conditions under which the water company shall act as the billing and collecting agent of the authority, either or both may petition the State Corporation Commission for a determination of the terms and conditions under which the water company shall act as the billing and collecting agent of the authority. In the event that such water company acts as the billing and collecting agent of an authority it shall set forth separately on its bills the rates, fees or charges imposed by the authority, but both the water and sewage disposal charges shall be payable to and collected by the water company, and payment of either shall be refused unless both shall be paid. The authority shall pay to the water company the cost of shutting off any water service on account of nonpayment of the sewage disposal charge. In the event of such discontinuance of water service the same shall not be reestablished until such time as the sewage disposal charge shall have been paid;

(m) To enter upon, use, occupy, and dig up any street, road, highway or private or public lands necessary to be entered upon, used or occupied in connection with the acquisition, construction or improvement, maintenance or operation of a water system, sewer system, sewage disposal system, or garbage and refuse collection and disposal system, *or streetlight system in a county having a population between 13,200 and 14,000 according to the 1990 United States Census*, subject, however, to such reasonable local police regulation as may be established by the governing body of any unit having jurisdiction in the particular respect. The governing body of any unit, notwithstanding any contrary

provision of law, is hereby authorized and empowered to transfer jurisdiction over, to lease, lend, grant or convey, to the authority upon the request of the authority, upon such terms and conditions as the governing body of such unit may agree with the authority as reasonable and fair, such real or personal property as may be necessary or desirable in connection with the acquisition, construction, improvement, operation or maintenance of a water system, sewer system, sewage disposal system, or garbage and refuse collection and disposal system by the authority including public roads and other property already devoted to public use. The Commonwealth of Virginia hereby consents to the use of all lands above or under water and owned or controlled by it which are necessary for the construction, improvement, operation or maintenance of any such system; except that the use of any portion between the right-of-way limits of any primary or secondary highway in this Commonwealth shall be subject to the approval of the Commonwealth Transportation Commissioner. Whenever any railroad tracks, pipes, poles, wires, conduits or other structures or facilities which are located in, along, across, over or under any public road, street, highway, alley or other public right-of-way shall become an obstruction to, interfere with or be endangered by the construction, operation or maintenance of any system of the authority the governmental unit having ownership, control or jurisdiction over such public road, street, highway, alley or other public right-of-way may, as the exercise of an essential governmental function, order the safeguarding, maintaining, relocating, rebuilding, removing and replacing of such railroad tracks, pipes, poles, wires, conduits or other structures or facilities by the owner thereof at the expense of the authority, and subject to the provisions of § 25-233 of the Code of Virginia;

(n) In the event of any annexation by a municipality not a member of the authority of lands, areas, or territory served by the authority, to continue to do business, exercise its jurisdiction over its properties and facilities in and upon or over such lands, areas or territory as long as any bonds or indebtedness remain outstanding or unpaid, or any contracts or other obligations remain in force;

(o) The articles of incorporation of any authority created under the provisions of this chapter may be amended with respect to the name or powers of such authority or in any other manner not inconsistent with this chapter by following the procedure prescribed by law for the creation of an authority. All amendments heretofore adopted in accordance with the provisions of this section and all proceedings heretofore taken pursuant to any such amendment are hereby validated, ratified, approved and confirmed;

(p) To enter into contracts with any political subdivision, federal agency, corporation, copartnership, association, individual or any public authority or unit of this Commonwealth, on such terms as said authority shall deem proper, for the purpose of acting as a billing and collecting agent for sewer service or sewage disposal service fees, rents or charges imposed by any such body; ~~and~~

(q) To establish retirement, group life insurance, and group accident and sickness insurance plans or systems for its employees in the same manner as cities, counties and towns are permitted under ~~§ 51-112~~ §§ 51.1-801 and 51.1-802, and all such plans or systems heretofore established by any authority are hereby validated. ;

(r) *Notwithstanding any contrary provision of law in this chapter, an authority created pursuant to the provisions of this chapter is hereby authorized and empowered to lease as lessee or otherwise contract for the provision of, operate and maintain streetlights in a county having a population between 13,200 and 14,000 according to the 1990 United States Census; provided, that the lessor or other contractual provider of such streetlights shall be a public service corporation which holds a certificate of public convenience and necessity to provide retail electric service in the territory in which such streetlights are located. Such county may contribute funds to the authority by act of its governing body for use by the authority in carrying out the authority's powers listed in this subdivision. In addition, the authority may fix, charge and collect rates, fees and charges for the use of such service described herein or for the service described herein furnished by the authority and shall be charged to and collected from any person contracting for the same, or lessee, or tenant or any other person who uses or occupies any real estate served by or benefiting from such service described herein.*

Notwithstanding any other provision of this chapter to the contrary, where the use of any water or sewer systems described in this section is contracted for by an occupant who is not the owner of the premises and where such occupant's premises are separately metered for service, the owner of any such premises shall be liable only for the payment of delinquent rates or charges applicable to three delinquent billing periods but not to exceed a period of ninety days for such delinquency. No authority shall refuse to service other premises of the owner not occupied by an occupant who is delinquent in the payment of such rates or charges on account of such delinquency provided that such owner has paid in full any delinquent charges for which he would be responsible for paying. No authority shall refuse to service or unreasonably delay reinstatement of service to premises where such occupant who is delinquent has vacated the premises and a new party has applied for service provided such owner has paid in full such delinquent charges as he would be responsible for paying.

§ 15.1-1260. Rates and charges.

The authority is hereby authorized to fix and revise from time to time rates, fees and other charges (which shall include, but not be limited to, a penalty not to exceed ten percent on delinquent accounts, and interest on the principal), subject to the provisions hereinafter provided, for the use of and for the

services furnished or to be furnished by any water system, sewer system, sewage disposal system, or garbage and refuse collection and disposal system, *or streetlight system in a county having a population between 13,200 and 14,000 according to the 1990 United States Census* owned, operated or maintained by the authority, or facilities incident thereto, and on account of which the authority shall have issued revenue bonds as authorized by this chapter. Such rates, fees and charges shall be so fixed and revised as to provide funds, with other funds available for such purposes, sufficient at all times (i) to pay the cost of maintaining, repairing and operating the system or systems, or facilities incident thereto, on account of which such bonds are issued, including reserves for such purposes and for replacement and depreciation and necessary extensions, (ii) to pay the principal of and the interest on the revenue bonds as the same shall become due and reserves therefor, and (iii) to provide a margin of safety for making such payments. The authority shall charge and collect the rates, fees and charges so fixed or revised and such rates, fees and charges shall be subject to the jurisdiction of the State Corporation Commission and to any applicable regulation of the State Corporation Commission or law appertaining thereto.

The rates for water, including fire protection, and sewer service, including disposal, respectively, shall be sufficient to cover the expenses necessary or properly attributable to the furnishing of the class of services for which charges are made; provided, however, that the authority may fix rates and charges for the services and facilities of its water system sufficient to pay all or any part of the cost of operating and maintaining its sewer system, including disposal, and all or any part of the principal of or the interest upon the revenue bonds issued on account of such sewer and/or disposal system, and to pledge any surplus revenues of its water system, subject to prior pledges thereof, for such purposes. Rates, fees and charges for the services of a sewer and/or disposal system shall be just and equitable, and may be based or computed either upon the quantity of water used or upon the number and size of sewer connections or upon the number and kind of plumbing fixtures in use in the premises connected with the sewer system or upon the number or average number of persons residing or working in or otherwise connected with such premises or upon the type or character of such premises or upon any other factor affecting the use of the facilities furnished or upon any combination of the foregoing factors; provided, however, that the authority may fix rates and charges for services of its sewer system sufficient to pay all or any part of the cost of operating and maintaining its water system, including distribution and disposal, and all or any part of the principal of or the interest upon the revenue bonds issued on account of such water system, and to pledge any surplus revenues of its water system, subject to prior pledges thereof, for such purposes.

Rates, fees and charges for the service of a streetlight system shall be just and equitable, and may be based or computed either upon the quantity of such system used, or upon the number and size of premises benefiting therefrom, or upon the number or average number of persons residing or working in or otherwise connected with such premises, or upon the type or character of such premises, or upon any other factor affecting the use of the facilities furnished, or upon any combination of the foregoing factors; however, the authority may fix rates and charges for the service of its streetlight system sufficient to pay all or any part of the cost of operating and maintaining such system.

The authority may also fix rates and charges for the services and facilities of a water system or a garbage and refuse collection and disposal system sufficient to pay all or any part of the cost of operating and maintaining facilities incident thereto for the generation or transmission of power or energy and all or any part of the principal of or interest upon the revenue bonds issued on account of any such facilities incident thereto, and to pledge any surplus revenues from any such system, subject to prior pledges thereof, for such purposes. Charges for services to premises, including services to manufacturing and industrial plants, obtaining all or a part of their water supply from sources other than a public water system may be determined by gauging or metering or in any other manner approved by the authority.

No sewer, sewage disposal, or garbage and refuse collection and disposal rates, fees or charges shall be fixed under the foregoing provisions of this section until after a public hearing at which all of the users of such facilities and owners, tenants or occupants of property served or to be served thereby and all others interested shall have an opportunity to be heard concerning the proposed rates, fees and charges. After the adoption by the authority of a resolution setting forth the preliminary schedule or schedules fixing and classifying such rates, fees and charges, notice of such public hearing, setting forth the proposed schedule or schedules of rates, fees and charges, shall be given by two publications, which publications shall be at least six days apart, in a newspaper having a general circulation in the area to be served by such systems at least sixty days before the date fixed in such notice for the hearing, which may be adjourned from time to time. A copy of such notice shall be mailed to the governing bodies of all local governments in the area served by the authority. After such hearing such preliminary schedule or schedules, either as originally adopted or as modified or amended, shall be adopted and put into effect. A copy of the schedule or schedules of such rates, fees and charges finally fixed in such resolution shall be kept on file in the office of the clerk or secretary of the governing body of each political subdivision in which such systems or any part thereof is located, and shall be open to inspection by all parties interested. The rates, fees or charges so fixed for any class of users or property served shall be extended to cover any additional properties thereafter served which fall within the same

class, without the necessity of any hearing or notice. Any change or revision of such rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as hereinabove provided.