

District of Columbia Water and Sewer Authority Enabling Legislation
(As Codified in the D.C. Code)
(D.C. Code § 34-2201.01 et seq.)
Enacted April 18, 1996
As Amended Through March 2009

TABLE OF CONTENTS

§34- 2201.01. Findings and declarations	Page 1
§34- 2201.01. Definitions	Page 2
§ 34-2202.02. Establishment of the District of Columbia Water and Sewer Authority; general purpose of the Authority.	Page 4
§ 34-2202.03. General Powers of Authority	Page 4
§ 34-2202.04. Establishment of a board of directors	Page 7
§ 34-2202.05. Duties of the Board	Page 8
§ 34-2202.06. General Manager; employment and duties	Page 10
§ 34-2202.06a. Storm Water Administration [Repealed]	Page 10
§ 34-2202.06b. Storm Water Permit Compliance Enterprise Fund. [Repealed]	Page 10
§ 34-2202.06c. Storm Water Advisory Panel [Repealed]	Page 10
§ 34-2202.07. 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.	Page 10
§ 34-2202.08. Delegation of Council authority to issue bonds.	Page 12
§ 34-2202.09. Power of the Authority to issue revenue bonds and notes or other obligations.	Page 12
§ 34-2202.10. Delegation of Council authority to issue bonds.	Page 13
§ 34-2202.11. Delegation of Council authority to issue bonds.	Page 16
§ 34-2202.12. Transfer of Funds [Repealed]	Page 16
§ 34-2202.13. District repayment option.	Page 16
§34-2202.13a. Defeasance of bonds.	Page 16
§ 34-2202.14. Procurement system inapplicable	Page 16
§ 34-2202.15. Merit personnel system inapplicable.	Page 17
§ 34-2202.16. Charges and fees and rate setting.	Page 17
§ 34-2202.16a. Low impact design incentive program and fee discounts	Page 18
§ 34-2202.17. Transition provisions.	Page 18
§ 34-2202.18. Existing agreements.	Page 18
§ 34-2202.19. Transfer of function and redelegation of authority.	Page 19
§ 34-2202.20. No inurement to private persons; exemption from District taxation.	Page 20
§ 34-2202.41. Operation and Maintenance Account.	

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§ 34-2201.01. Findings and declarations.

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

(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 independent authority with secure funding separated from the District's General Fund 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.

(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.

Subchapter II. General Provisions.

§ 34-2202.01. Definitions.

For the purposes of this chapter, the term:

(1) "Authority" means the District of Columbia Water and Sewer Authority established pursuant to § 34-2202.02(a).

(2) "Cost" means any and all reasonable expenses related to the purposes or activities of the Authority 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 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 and expenses for obtaining potable water for distribution.

(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 Montgomery County, Maryland, Prince George's County, Maryland, and Fairfax County, Virginia.

(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 § 1-204.90, and this chapter.

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

(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.

(9A) Repealed.

(9B) Repealed.

(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 chapter.

(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.

§ 34-2202.02. Establishment of the District of Columbia Water and Sewer Authority; general purpose of the Authority.

(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 §§ 34-2202.14 and 34-2202.15, 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 Chapter 2 of Title 1, including provisions granting oversight responsibilities to the Chief Financial Officer as defined in § 1-204.25(b).

(c) Notwithstanding any other provisions of this chapter, 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.

§ 34-2202.03. General powers of Authority.

In addition to the delegation of powers contained in § 34-2202.08, 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 Home Rule Act, approved December 24, 1973 (87 Stat. 777; § 1-201.01 et seq.), and the laws of the District;
- (9) To issue revenue bonds pursuant to § 34-2202.09;
- (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 of the Authority 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 of the Authority 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 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 District of Columbia Home Rule 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 purchase and distribute potable water to the inhabitants of the District;
- (21) To purchase and distribute potable water to other 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;
- (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 § 34-2202.05(g)(1) and submits the privatization contract pursuant to § 34-2202.05(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 chapter;
- (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;
- (32) To collect and receive its revenues and disburse its necessary and reasonable expenses;
and

(33) In collaboration with the Fire and Emergency Medical Services Department, to inspect, repair, and maintain all public fire hydrants, and to ensure that each hydrant will provide adequate flow levels to all locations in the District of Columbia.

§ 34-2202.04. Establishment of a board of directors.

(a)(1) The Authority shall be governed by a board of directors ("Board") comprised of 11 members.

(2)(A) Six Board members shall be District residents, appointed by the Mayor with the advice and consent of the Council, of whom:

(i) No more than 4 may be District employees or officials; and

(ii) One shall be the Director of the District Department of the Environment or a cabinet-level officer, as determined by the Mayor.

(B) The nomination of a Board member shall be submitted to the Council for a 90-day period of review, excluding days of Council recess. If the Council does not approve the nomination by resolution within this 90-day review period, the nomination shall be deemed disapproved.

(3) The Mayor shall appoint persons recommended by the other participating jurisdictions to the remaining 5 Board positions. These 5 Board members shall only participate in decisions directly affecting the general management of joint-use sewerage facilities. Of the 5 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) Two Board members shall be persons recommended by Montgomery County, Maryland, pursuant to jurisdictional law; and

(C) Two Board members shall be persons recommended by Prince George's County, Maryland, pursuant to jurisdictional law.

(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 this subsection, who may attend all Board meetings but who may act only in the absence of the Board member for whom 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 11 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 2 other participating jurisdiction appointees 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 § 1-207.42.

(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 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 8 affirmative votes shall be required for the hiring or firing 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.

§ 34-2202.05. Duties of the Board.

(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;

(6) Delegate to the General Manager any authority granted to the Board under subsection (a)(2) through (5) of this section; and

(7) To establish a procurement system which is consistent with principles of competitive procurement and to publish rules and regulations relating thereto.

(b)(1) The personnel system developed pursuant to subsection (a)(4) of this section shall be in place no later than 6 months after April 18, 1996. 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, and except as may otherwise be provided under the personnel system developed pursuant to subsection (a)(4) or a collective bargaining agreement entered into after April 18, 1996) 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 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 and shall submit the audit to the Mayor, the Chief Financial Officer, and the Inspector General.

(e) The Board shall annually develop, adopt, and submit to the Mayor a multiyear financial plan for capital and operating expenses encompassing at least the forthcoming 5 fiscal years. The plan shall be submitted to the Mayor 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 chapter; 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 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 April 18, 1996. 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 § 1-204.51(b)(1) and the Council Contract Approval Modification Temporary Act of 1996, effective April 9, 1997 (D.C. Law 11-190; 43 DCR 4279) ("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 § 1-204.51(b)(1) and the Contract Approval Act and any succeeding laws.

(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, including the concrete pier.

(h)(1) Within 60 days of September 18, 2007, the Board shall contract with an independent consultant to conduct a comprehensive review of the Authority's operating and capital budgets, plans, and programs, including a review of the merits of and the timetable for all planned capital expenditures.

(2) Within 240 days of September 18, 2007, the Board shall receive the independent consultant's report, with recommendations for maximizing potential savings to the District's rate-payers over the course of the implementation of both the Capital Improvement Program and the Long Term Control Plan, and shall transmit copies of the report to the Mayor and the Council within one week of its receipt by the Board.

§ 34-2202.06. General Manager; employment and duties.

(a) The Board, by the affirmative vote of 8 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.

(b) The General Manager, in his or her sole discretion, may restrict combined sewer flow into the District from Maryland and Virginia, so long as the action does not violate § 34-2202.18.

§ 34-2202.06a. Storm Water Administration. [Repealed]

§ 34-2202.06b. Storm Water Permit Compliance Enterprise Fund. [Repealed]

§ 34-2202.06c. Storm Water Advisory Panel. [Repealed]

§ 34-2202.07. 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.

(a) There is established the Water and Sewer Authority Enterprise Fund ("Fund") which shall be the successor to the Water and Sewer Enterprise Fund established pursuant to § 47-375(g). The Fund shall be operated by the Authority in accordance with generally accepted accounting principles.

(b) Subject to the provisions made by the Authority pursuant to this subchapter for security of revenue bonds, all revenues, proceeds, and moneys from whatever source derived, except those collected or received from the storm water fee, which are collected or received by the Authority shall be credited to the Fund and shall not, at any time, be transferred to, lapse into, or be commingled with the General Fund of the District of Columbia, the Cash Management Pool, or any other funds or accounts of the District of Columbia, except that funds shall be transferred to the District of Columbia Treasurer:

(1) To pay for goods, services, and property contracted for by the Authority from the District as authorized by § 34-2202.03(4) and (10) and § 34-2202.17(c);

(2) To make debt service payments required by subsection (f) of this section;

(3) To enable the Treasurer to make disbursements on the Authority's behalf until the Authority's own disbursement system is established, as authorized by § 34-2202.17(f); or

(4) As otherwise authorized by this subchapter.

(c) Repealed.

(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 April 18, 1996, 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 of 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 with a final version of the independent audit. Based upon the results of the independent audit, and notwithstanding the provisions of §§ 1-315.01 through 1-315.07, 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 April 18, 1996, shall be transferred for the Authority's use on an interim basis. Assets made available to the Authority pursuant to this

subsection shall remain under the control of the Authority for as long as Authority revenue bonds are outstanding, unless all of the outstanding revenue bonds are defeased pursuant to § 34-2202.13, or otherwise.

(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 § 34-2202.05(c), (d), and (e), and the audit of the assets and liabilities of the Department of Public Works, Water and Sewer Utility Administration required by subsection (e) of this section.

(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.

§ 34-2202.08. Delegation of Council authority to issue bonds.

The Council delegates to the Authority the power of the Council under section 490 of the District of Columbia Home Rule Act (§ 1-204.90) to issue revenue bonds to finance, refinance, or assist in the financing or refinancing of any undertakings of the Authority pursuant to this chapter.

§ 34-2202.09. Power of the Authority to issue revenue bonds and notes or other obligations.

(a) Except as provided in subsection (h) of this section, 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; § 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 chapter and the adoption of resolutions authorizing such bonds, notes, and other obligations shall be done in compliance with the requirements of this chapter, but shall not be subject to subchapter I of Chapter 5 of Title 2.

(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.

(h) During each fiscal year in which debt service on the proposed bonds and outstanding revenue bonds issued by the Authority, and the transfer provided in § 34-2202.07(f) becomes due and payable, the Authority may not issue bonds, notes, or other obligations or borrow money unless the Authority first certifies, to the reasonable satisfaction of the District of Columbia Auditor, that the revenues of the Authority are sufficient to pay its costs, the principal of and interest on and other requirements pertaining to the proposed bonds and outstanding revenue bonds issued by the Authority, and amounts equal to the debt service payments on District general obligation bonds issued by the District prior to October 1, 1996, which financed Department of Public Works, Water and Sewer Utility Administration capital projects, as such bonds and transfers become due and payable. The Authority's certification shall be supported by expert study and analysis.

(i) The Authority shall set rates, fees, levies, and other charges which will result in the collection of amounts which, together with other Authority revenues available and applicable, will be at least sufficient to pay its costs, the principal of and interest on and other requirements pertaining to its bonds, and to make transfers to the District of amounts equal to the debt service payments on District general obligation bonds issued by the District prior to October 1, 1996, which financed Department of Public Works, Water and Sewer Utility Administration capital projects, as such bonds and transfers become due and payable.

(j) All bonds issued by the Authority shall be callable not more than 11 years after the date of the issuance of the respective bond.

§ 34-2202.10. Delegation of Council authority to issue bonds.

(a) The Authority may stipulate by resolution the terms for sale of its bonds in accordance with this chapter, 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;

(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 chapter; 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 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 chapter. 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 § 1-206.02(a)(2), and shall not constitute debt for purposes of § 1-206.03.

(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.

(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 chapter.

(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.

§ 34-2202.11. Delegation of Council authority to issue bonds.

The District pledges to the Authority and any holders of bonds that, except as provided in this chapter, 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.

§ 34-2202.12. Transfer of funds. [Repealed]

§ 34-2202.13. District repayment option.

(a) The District retains the right to direct the Authority to purchase its own bonds and notes, subject to the terms and conditions of § 34-2202.10(h), for the purpose of dissolving or altering the Authority after such bonds and notes are cancelled or defeased.

(b) The District further retains the right to direct the Authority to defease bonds, and the authority shall do so, conditioned upon the District providing moneys, which together with the moneys of the Authority available for defeasance, would be sufficient to satisfy the requirements of § 34-2202.13a(a)(1).

§ 34-2202.13a. Defeasance of bonds.

(a) The Authority's bonds shall no longer be considered outstanding and unpaid and shall be deemed fully met and discharged for the purposes of § 34-2202.07(e) and the security provided by the pledges of and liens on, revenues, assets, and property, if the Authority:

(1) Deposits with an escrow agent, which shall be a bank, trust company, or national banking association with requisite trust powers, in a separate defeasance escrow account, established and maintained by the escrow agent solely at the expense of the Authority and held in trust for the bond owners, sufficient moneys or direct obligations of the United States, principal of and interest on which, when due and payable, will provide sufficient moneys, together with moneys so deposited, to pay when due the principal and interest of bonds issued by the Authority to be defeased; and

(2) Delivers to the defeasance escrow agent an irrevocable letter of instruction to apply the moneys or investments to the payment of the principal of and interest on the bonds issued by the Authority to be defeased as they become due and payable.

(b) The defeasance escrow agent shall not invest the defeasance escrow account in any investment callable at the option of its issuer if the call could result in less than sufficient moneys being available for the purposes required by this section.

(c) The defeasance escrow account specified in subsection (a) of this section may be established and maintained without regard to any limitations placed on these accounts by any act or resolution of the Authority now existing or adopted after April 9, 1997, except for this chapter.

§ 34-2202.14. Procurement system inapplicable.

Except as provided in § 34-2202.17(b), § 2-301.01 et seq., shall not apply to the Authority.

§ 34-2202.15. Merit personnel system inapplicable.

(a) Except as provided in this section and in § 34-2202.17(b), no provision of § 1-601.01 et seq., shall apply to employees of the Authority except as follows:

(1) Subchapters V and XVII of Chapter 6 of Title 1 shall apply to all employees of the Authority; and

(2) Subchapters XII, XXI, XXII, and XXVI of Chapter 6 of Title 1 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 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 April 18, 1996.

(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.

(c) Repealed.

§ 34-2202.16. Charges and fees and rate setting.

(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.

(b-1)(1) The Authority shall offer financial assistance programs to mitigate the impact of any increases in retail water and sewer rates on low-income residents of the District, including a low-impact design incentive program.

(2) Within 6 months of March 25, 2009, the authority shall provide a report to the Council of the District of Columbia detailing the number of low-income residents affected by increases in retail water and sewer rates and strategies that will significantly increase enrollment in existing discount programs available to low-income ratepayers.

(c) In the absence of applicable standards, charges shall be levied and collected as determined by the Authority in accordance with § 1-204.87(b).

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

(d-1) The Authority shall collect a stormwater user fee established by the Director of the District Department of the Environment ("Director"), which charge the Director shall establish by rule and may from time to time amend.

(d-2) The fee shall be collected from each property in the District of Columbia, and shall be based on an impervious area assessment of the property.

(d-3) The Mayor shall coordinate the development and implementation of the MS4 stormwater user fee with DC WASA's impervious area surface charge, to ensure that both fee systems employ consistent methodologies.”.

(d-4) The Mayor shall offer financial assistance programs to mitigate the impact of any increases in stormwater user fees on low-income residents of the District, and shall evaluate the applicability of similar existing District low-income assistance programs to the stormwater user fee.

(d-5) A landlord shall not pass a stormwater user fee charge to a tenant which is more than the stormwater user fee charge prescribed by the Director

(d-6) The stormwater user fee shall be the obligation of the property owner. Failure to pay the stormwater user fee shall result in a lien being placed upon the property without further notice to the owner. The Mayor may enforce the lien in the same manner as in § 34-2407.02.

(d-7) Any owner or occupant of a property that is charged a stormwater user fee may contest a stormwater user fee bill rendered for managing stormwater runoff, according to the same procedures provided to owners or occupants of properties that receive water and sewer services, under § 34-2305.

(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, including the storm water fee, within 90 days from the date of rendition of the bill.

§ 34-2202.16a. Low-impact design incentive program and fee discounts.

(a) Within one year of March 25, 2009, the Authority shall establish, together with the District Department of the Environment (“DDOE”), a low-impact design incentive program within the DDOE, to reduce the surface area that either prevents or retards the entry of water into the ground as occurring under natural conditions, or that causes water to run off the surface in greater quantities or at an increased rate of flow, relative to the flow present under natural conditions.

(b) The Authority and the DDOE will continue to collect and document the effects of the low-impact design techniques throughout the District on reducing stormwater runoff and the possible implications of how proven, long-term reductions in stormwater runoff may be used to renegotiate the consent decree and reduce the cost and size of the Long-Term Control Plan.

(c) Impervious surface fee discounts approved by the Authority shall be retroactive to no earlier than the date of the implementation of the impervious surface fee. A property owner may not qualify for an impervious surface fee discount until the stormwater management measures for which the property owner seeks a discount are demonstrated to be fully functional.

§ 34-2202.17. Transition provisions.

(a) Until the initial meeting of the Board, but for not longer than 180 days from April 18, 1996, 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, § 2-301.01 et seq., and § 1-601.01 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.

(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.

(e) The Treasurer of the District of Columbia shall collect retail water and sewer payments on the Authority's behalf until the Authority notifies the Treasurer that an independent collection system has been established and that retail water and sewer customers have been notified of any changes in payment procedures. Water and sewer payments collected by the Treasurer shall be expeditiously 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, except that payments made to District cashiers may be deposited directly into a District disbursement account until the Authority notifies the Treasurer that an independent disbursement system has been established. Dedicated revenues received by the District Treasurer shall be subject to any pledge of the Authority as if deposited into the Fund.

(f) The Treasurer of the District of Columbia is authorized to transfer funds from the Fund to a District disbursement account in order to pay the necessary and reasonable expenses of the Authority until the Authority notifies the Treasurer that an independent disbursement system has been established.

§ 34-2202.18. Existing agreements.

This chapter shall not serve as an amendment, alteration, modification, or repeal of any contract or any regional agreement to which the District government is a party, including the 1985 Blue Plains Intermunicipal Agreement.

§ 34-2202.19. Transfer of function and redelegation of authority.

(a) All of the functions transferred to the Department of Public Works by Reorganization Plan No. 4 of 1983, effective March 1, 1984, 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 for the failure to pay any charge, fee, assessment, or levy authorized or required by § 34-2202.16 in accordance with §§ 34-2407.02 and 34-2110.

§ 34-2202.20. No inurement to private persons; exemption from District taxation.

(a) All rights, property and assets of the Authority shall transfer automatically to the District government upon dissolution of the Authority.

(b) None of the property, assets or earnings of the Authority shall inure to any private person or entity.

(c) The Authority, its income, property, and transactions shall be exempt from District taxes.

Subchapter III. Enterprise Fund Operation and Maintenance Account.

§ 34-2202.41. Operation and Maintenance Account.

(a)(1) *Contents of account.* -- There is hereby established within the Water and Sewer Enterprise Fund the Operation and Maintenance Account, consisting of all funds paid to the District of Columbia on or after April 26, 1996 which are:

(A) Attributable to waste water treatment user charges;

(B) Paid by users jurisdictions for the operation and maintenance of the Blue Plains Wastewater Treatment Facility and related waste water treatment works; or

(C) Appropriated or otherwise provided for the operation and maintenance of the Blue Plains Wastewater Treatment Facility and related waste water treatment works.

(2) *Use of funds in account.* -- Funds in the Operation and Maintenance Account shall be used solely for funding the operation and maintenance of the Blue Plains Wastewater Treatment Facility and related waste water treatment works and may not be obligated or expended for any other purpose, and may be used for related debt service and capital costs if such funds are not attributable to user charges assessed for purposes of section 204(b)(1) of the Federal Water Pollution Control Act.

(b) *EPA Grant Account.* --

(1) *Contents of account.* -- There is hereby established within the Water and Sewer Enterprise Fund and EPA Grant Account, consisting of all funds paid to the District of Columbia on or after April 26, 1996, which are:

(A) Attributable to grants from the Environmental Protection Agency for construction at the Blue Plains Wastewater Treatment Facility and related waste water treatment works; or

(B) Appropriated or otherwise provided for construction at the Blue Plains Wastewater Treatment Facility and related waste water treatment works.

(2) *Use of funds in account.* -- Funds in the EPA Grant Account shall be used solely for the purposes specified under the terms of the grants and appropriations involved, and may not be obligated or expended for any other purpose.

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